

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'B', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.1041/Kol/2024
Assessment Year: 2019-20

Sumangal Dealmark Pvt. Ltd. Appellant
403, Sagar Trade Cube 104 S. P.
Mukherjee Road, Kolkata-700026.
(PAN: AAPCS1198B)

vs.

ACIT, Central Circle-1(3), Kolkata Respondent

Appearances by:

Shri A. K. Tulsyan, AR appeared on behalf of the Appellant
Shri Abhijit Kundu, CIT DR appeared on behalf of the Respondent

Date of concluding the hearing: November 21, 2024
Date of pronouncing the order: December 11, 2024

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

The present appeal has been preferred by the assessee against the revision order dated 11.03.2024 of the Ld. Pr. Commissioner of Income Tax, (Central), Kolkata-1 [hereinafter referred to as the "Ld. Pr. CIT"] passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AY 2019-20.

2. The assessee in this appeal has agitated against the exercise of revision jurisdiction u/s. 263 of the Act by the Ld. Pr. CIT, whereby, he has set aside the assessment order dated 31.03.2022 passed u/s. 153A of the Act and directed to pass a fresh assessment order.

3. The brief facts of the case are that a search and seizure action u/s. 132 of the Act was carried out at the S. M. Group of cases and the assessee company, being part of the said group, was covered in the search action.

Pursuant to the said search action, assessment u/s. 153A of the Act was carried out. During the assessment proceeding, the AO issued notices and questionnaire etc. to the assessee which were duly complied with. The AO after considering the submissions of the assessee and the reply and document furnished before him, did not find any discrepancy in the same and completed the assessment at the returned income of the assessee at Rs.1,31,80,810/-. The aforesaid assessment order was passed by the AO after taking prior approval of the Addl. CIT, Range-1, Central Kolkata u/s. 153D of the Act.

3.1. Thereafter, the Ld. Pr. CIT noted that in this case, the AO had sought the details of unlisted securities along with party wise details of sale of investments during the course of assessment proceedings. He further observed that such details were not filed by the assessee before the AO during the assessment proceedings. He observed that the AO had also issued show cause notice to the assessee dated 17.03.2022 to explain as to why the sale of unlisted securities should not be added back to the total income of the assessee. He observed that the said notice was also not replied by the assessee. He, therefore, held that the issue of sale of unlisted securities during this year was not properly examined by the AO. He accordingly, held that the assessment order was erroneous and prejudicial to the interest of revenue. He accordingly, set aside the assessment order and directed the AO to verify the aforesaid issue and pass the assessment order afresh.

4. At the outset, the Ld. Counsel for the assessee has invited our attention to pages 6 to 11 of the paper book, which is copy of notice u/s. 142(1) of the Act along with the questionnaire. He has demonstrated that the AO had duly raised queries relating to the investments made by the assessee and sale of investments etc. The Ld. Counsel has further invited our attention to page 12 onwards of the paper book to submit that the

queries raised by the AO were duly replied by the assessee. In para 3 of the reply, the assessee had duly explained about the sale of investments and it was demonstrated that the buyers were all registered companies with ROC. They were also assessed to income tax. The payments against sale of investments have been received through banking channel. The identity of the buyers was duly proved. Moreover, the AO had also issued notice u/s. 133(6) of the Act to the buyer companies and most of the notices were complied with and it was confirmed that those companies had purchased the investments. The copies of their acknowledgments for income tax return, copies of audited accounts and copies of relevant pages of bank statements were also furnished. It was further explained that during the course of search action, no incriminating material was found. The Ld. Counsel, therefore, has made following twofold submissions.

(i) That the observations of the Ld. Pr. CIT that the assessee had not filed any reply to the queries raised by the AO in respect of sale of investments was factually incorrect. He has further, submitted in this respect that not only the assessee had filed reply to the queries raised by the AO but the same was duly considered by the AO and the AO after due verification of the issue did not find any reason to disturb the returned income of the assessee.

(ii) The second submission of the Ld. Counsel is that, in this case, originally, return of income was filed by the assessee on 30.10.2019. The limitation, to issue notice u/s. 143(2) of the Act to proceed with the assessment u/s. 143(3) of the Act, expired on 30.09.2020. The search action in the case of the assessee was conducted on 07.12.2020. On the date of search action, the assessment for the Assessment Year under consideration stood completed and was not abated. Admittedly, no incriminating material was found during the course of search action. That under the circumstances, the issue was covered in favour of the assessee

as per the law laid down by the Hon'ble Supreme Court in the case of *Pr. CIT Vs. Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC)*, wherein the Hon'ble Supreme Court has held that in the case of non-abated/completed assessments, no addition can be made by the Assessing Officer in an assessment carried out u/s.153A of the Act in the absence of any incriminating material found during the search action.

5. The Ld. DR has also fairly admitted that no incriminating material was found during the course of search action in relation to assessment year under consideration.

6. In view of the aforesaid factual and legal position, the AO otherwise was not supposed to make any addition on reappraisal of facts in the absence of any incriminating material found during the course of search action, the assessment being completed/non-abated on the date of search action. Secondly, the Ld. Counsel otherwise, has duly demonstrated that the observation of the Ld. Pr. CIT that the assessee had not filed any reply or documents in response to the notice u/s. 142(1) of the Act or the show cause notice issued by the AO was factually incorrect. The Ld. Counsel has duly demonstrated that not only the reply along with relevant document was filed but the same was duly examined and considered by the AO and thereafter, the assessment order dated 31.03.2022 was passed by the AO after taking due permission of the Addl. Commissioner of Income Tax, Range-1 (Central) Kolkata. In view of the above discussion, it is established on the file that the exercise of the revision jurisdiction by the Ld. Pr. CIT was on the basis of wrong appreciation of facts, and the observation of the Ld. Pr. CIT that assessment order was erroneous for want of verification of the issue of sale of securities is factually incorrect. Even otherwise, since no incriminating material was found during the

course of search action and the assessment stood completed/non-abated on the date of search action, the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of *Abhisar Buildwell (P) Ltd. (supra)* and hence, the AO, otherwise, was not supposed to make any addition on reappraisal of the facts on record. The impugned revision order passed by the Ld. Pr. CIT u/s. 263 of the Act is not sustainable in the eyes of law and the same is hereby quashed.

7. In the result, appeal of the assessee stands allowed.

Order is pronounced in the open court on 11.12.2024.

Sd/-

[Sanjay Awasthi]
लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 11.12.2024.

JD Sr. P.S

Copy of the order forwarded to:

1. **Appellant – Sumangal Dealmark Pvt. Ltd.**
2. **Respondent – ACIT, Central Circle-1(3), Kolkata**
3. **Pr. CIT (Central), Kolkata-1.**
4. **ACIT, Circle-1(3), Kolkata.**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar,
ITAT, Kolkata