

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 863/Kol/2024
Assessment Year: 2011-12

DCIT, CC-1(3), Kolkata	Vs.	Raic Integrated Sponge and Power Pvt. Ltd. (PAN: AACCB 3462 A)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	02.12.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.12.2024
For the assessee / निर्धारिती की ओर से	Shri Siddharth Jhajharia, FCA
For the revenue / राजस्व की ओर से	Shri Abhijit Adhikari, JCIT, Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-20, Kolkata (hereinafter referred to as the “Ld. CIT(A)”) dated 06.02.2024 for the AY 2011-12.

2. Brief facts of the case are that the assessee being a company RAIC Integrated Sponge and Power Pvt. Ltd. formerly known as Bhagwati Sponge Pvt. Ltd. was engaged in the business of manufacture and sale of sponge iron. The assessee filed return of

income declaring loss of Rs. 64,08,290/-. On the basis of information received that the assessee had received unexplained money amounting to Rs. 1,15,00,000/- from M/s Shroff Tradelink Pvt. Ltd. assessment proceedings of the assessee was reopened. A notice u/s 148 of the Act was issued and assessee submitted several documents in compliance of the notice u/s 142(1), of the Act but the AO did not convince to the response submitted by the assessee, as a result of, which addition of Rs. 3,31,46,778.64/- has been made in the total income of the assessee, declaring unexplained cash credit u/s 68 of Act. The Ld. AO has further added an amount of Rs. 1,29,86,000/- by holding that the assessee claimed that during the FY 2010-11 a large share capital along with share premium but in fact it was in the benefit for the assessee company and amount as above has been added back to the total income of the assessee. The Ld. AO has further added an amount of Rs. 26,149/- u/s 2(24)(x) of the Act and added an amount of Rs. 6,614/- being interest on TDS and further added Rs. 1,00,00,000/- as the assessee did not provide details of the party from whom loan was taken and declared a gross total income of the assessee at Rs. 4,97,56,621.64/-.

3. The said order has been challenged by the assessee before the Ld. CIT(A) where in after considering the documentary evidences as well as submission of the assessee, the Ld. CIT(A) has directed the AO to delete the addition of Rs. 3,31,46,778/-, directed to delete the addition of Rs. 1,29,86,000/-, and Rs. 1,00,00,000/-, directed to delete the addition of Rs. 6,614/- but confirmed the addition of Rs. 26,149/- and the appeal of the assessee has been partly allowed.

Being aggrieved and dissatisfied with the impugned order department had preferred the present appeal.

4. The ld. Sr. D.R has challenged the impugned order there by submitting that the Ld. CIT(A) has erred in deleting the addition u/s 68 of the Act an amount of Rs. 3,31,46,778/- and further committing wrong by giving direction of deletion of Rs. 1,29,86,000/- and Rs. 1,00,00,000/- ignoring the facts and law laid down in this context.

7. Contrary to that it has been argued by the ld. Counsel appeared on behalf of the assessee that there is no illegality in the order of the Ld. CIT(A) as according to him, the Ld. CIT(A) has not considered the facts of the case rather considered the documentary evidences of the assessee. The Ld. Counsel has also raised that the Ld. CIT(A) was well justified in dismissing the validity of the impugned order u/s 147 of the act on the ground of absence of any tangible material to allege that the income of the assessee is escapement assessment. The Ld. Counsel further submits that there was no allegation in the reasons recorded for there being any failure on the part of the assessee to disclose fully and truly all the material facts and the order of the Ld. CIT(A) is well justified in this context. He has cited a decision passed by the Delhi High Court in the case of Sabha Infrastructure Pvt. Ltd. vs. ACIT in [2017] 398 ITR 198 (Del) and further cited a decision reported in [2023] 146 taxmann.com 108 (SC) passed in the case of ACIT vs. CEAT Ltd.

8. Upon hearing the submission of the Counsel of the respective parties, we have perused the case of the assessee and order passed by the Ld. CIT(A). Going over the case of the assessee it appears to that the assessee is a manufacturer of sponge iron and also earned profit from trading in commodity market during the year under consideration. Turnover has also been declared in profits and loss account included profit earned from trading in commodity market amounting to Rs. 33,145,578/-. The books of account also reveals that the amount of Rs. 3,31,46,778/- received from M/s Shroff Tradelink Pvt. Ltd. was on account of commodity trading profit earned by the assessee. We further find that the assessee has filed following documents in support of its contentions:

- i) Copy of P & L account
- ii) Details of other business receipts
- iii) Copy of ledger of profit on dealing in commodity market
- iv) Ledger copy of M/s Shroff Tradelink Pvt. Ltd.

v) Bank statement

vi) Copies of contract notes from M/s Shroff Tradelink Pvt. Ltd.

9. We find that the assessee has done transaction on commodity exchange through M/s Shroff Tradelink Pvt Ltd. a registered broker and Rs. 3,31,46,778/- from the said party on account of profit in commodity trading. Contract notes and bank statement had been furnished by the assessee before the AO and on perusal of the contract note it goes to show that M/s Shroff Tradelink Pvt. Ltd. is a registered member of National Multi Commodity Exchange on India Ltd. and the assessee has done transaction through this broker. Money has been received from M/s Shroff Tradelink Pvt. Ltd. on account of profit earned in the commodity market. We do not find any cash trail nor any statement of any person to support the allegation as levelled by Investigation Wing. It appears to us that the assessee had already considered the entire receipt from M/s Shroff Tradelink Pvt. Ltd. in its books of account. Thus, in our view there is no escapement of income. We have gone through the operative portion of the Ld. CIT(A) which according to us it is essential to reproduce herein below:

“3.5.b) It appears that information was received from the Investigation Wing that certain receipts from M/s Shroff Tradelink Pvt. Ltd. would not be properly accounted in the books of the assessee. It implies that there was apprehension that receipts to the tune of Rs. 1,15,00,000/- from M/s Shroff Tradelink Pvt. Ltd. would wither not be disclosed or it would be disclosed as capital receipt as unsecured loan/ share capital etc. However, it has been established that assessee has properly accounted the receipt from M/s Shroff Tradelink Pvt. Ltd. In the first place, the actual higher amount of Rs. 3,31,46,778/- have been accounted in the books of accounts. Further, these receipts have been accounted as revenue receipts in the Profit and loss account. Thus, there is no escapement of income by non-reporting, under-reporting or mis-reporting of receipts from M/s Shroff Tradelink Pvt. Ltd. AO has held the profit earned in commodity market, as unexplained cash credit. AO’s action in adding the same amount u/s 68, amounts to double addition. When AO is making addition for any amount, by categorizing that revenue receipt differently, then equivalent amount should be reduced from the head of income under which it was accounted by the assessee. This would be a revenue neutral exercise. Even if for arguments sake, the amount received from M/s Shroff Tradelink Pvt. Ltd. are assessed u/s 68 of the act, there would be no effect on the net total income of the assessee. In the current year, assessee had business losses from trading in Iron ore etc. these losses have been set off against the commodity profit declared by the assessee. There are several judgments where it is held that normal business losses can be set off against deemed income (u/s 68 of the Act). There has been

amendment in section 115BBE(2) vide Finance Act, 2016, effective from 01.04.2017, which has now prohibited set off of losses against income determined u/s 68 and 69. However, CBDT vide circular no. 11 of 2019, has clarified that this amendment would be effective from 01.04.2017. Under the circumstances, no benefit would arise by assessing receipts from M/s Shroff Tradelinks Pvt. Ltd. as deemed income u/s 68 of the Act. Moreover, there is no evidence in this regard. Appellant has submitted all the relevant documents to establish that receipts from M/s Shroff Tradelink Pvt. Ltd. was the net commodity trading profit earned by it through commodity stock exchange.”

9.1. So far the addition of Rs. 1,00,00,000/- has been made by the AO. We find the Ld. CIT(A) has discussed the issue very elaborately which is as such:

“4.3. I have carefully considered the facts of the case and the submissions of the appellant. Issues relating to the share capital and loans are not part of reasons for reassessment. No adverse information has been received in this regard. It appears that even AO has not enquired about it during assessment proceedings. All enquiries and show cause notices are in respect of money received from M/s Shroff Tradelink Pvt. Ltd. As AO has not asked for the details of share subscribers and/or unsecured loans, appellant did not provide these details. However, without providing any opportunity to the appellant to explain the source of share capital raised and the unsecured loan taken, AO has made additions in the last moment by hurriedly going through the balance sheet of the appellant. However, even while doing so he has arrived at wrong conclusion based on his own surmises and conjectures. In the first place, he has missed out the fact that there are no fresh loans in the current year, Hence, no addition could be made u/s 68 of the Act in respect of any money received in preceding years. Secondly, without specifying the rules which says that the companies should mandatorily give complete details of all share holders in their audit reports, AO has held the assessee company to be a defaulter in this regard. Further, without any incriminating evidences against share capital received, he has gone ahead and made additions on the basis of his own presumptions. In the first place, there was no information that share capital and/or unsecured loans were not genuine. No phishing and roving enquiry are permitted under reassessment proceedings. But in the present case, AO has not even conducted any enquiry and straightway jumped to the conclusion about non-genuineness of share capital and unsecured loans. Under the facts and circumstances of the case, AO is not justified in making additions in respect of share capital and unsecured loans. Hence, AO is directed to delete the addition of Rs. 1,29,86,000/- and Rs. 1,00,00,000/-.”

9.2. The Ld. CIT(A) has further deleted the addition of Rs. 6,614/- by holding thus:

“6.1. It is mentioned that assessee had claimed deduction of Rs. 6,614/- being interest on TDS. As this was inadmissible u/s 40(a), the claim of deduction was disallowed and addition of Rs. 6,614/- has been made.

6.2. Appellant has submitted that while filing the return, it had added back the sum of Rs. 6,614/- in its computation of income. Appellant has pointed out that this is visible in return of income at serial no. 8Af, part A-other information, on page 7 of return of

income. Thus, addition of Rs. 6,614/- would result in double taxation of the same amount.

6.3 As the interest on TDS, amounting to Rs. 6,614/- has already been added back in the computation of income, addition made by the AO would amount to double taxation of the same amount, which is not permissible as per law. Hence, AO is directed to delete the addition of Rs. 6,614/-.”

10. Going over the order of Ld. CIT(A) it appears to us that the Ld. CIT(A) has discussed the case of the assessee, discussed the documentary evidences filed by the assessee in support of its contentions and further discussed the reasons for reopening of reassessment and thereafter gave its finding that there was only apprehension that the assessee received the tune of Rs. 1,15,00,000/- to M/s Shroff Tradelink Pvt. Ltd. and opening of the case as stated by the AO cannot be said to be legal. The Ld. CIT(A) have clearly held that neither the reason to believe nor the assessment order shows any light as to what basis received of Rs. 1,15,00,000/- from M/s Shroff Tradelink Pvt. Ltd. is not genuine. Though the assessee had submitted all the relevant documents relating to its transaction. Keeping in view the facts of the case as well as going over the impugned order of the Ld. CIT(A), we do not find any infirmity in the order and accordingly the appeal of the revenue is hereby dismissed on both accounts on legal as well as facts.

In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 17th December, 2024

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 17th December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, CC-1(3), Kolkata
2. Respondent – Raic Integrated Sponge and Power Pvt. Ltd., 25, Ganesh Chandra Avenue, Kolkata-700013.
3. Ld. CIT(A)-20, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata