

**THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 2189/KOL/2024
Assessment Year: 2018-2019**

***Winner Tradecom Pvt. Limited,.....Appellant
2/6, Sarat Bose Road, Suite-308,
Central Plaza, Kolkata-700020
[PAN:AABCW0321N]***

-Vs.-

***Income Tax Officer,Respondent
Assessment Unit,
Ward-6(2),
Income Tax Department, NFAC, Delhi
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri S.K. Tulsian, Advocate, appeared on behalf of the
assessee*

*Shri Manoj Kumar Pati, Addl. CIT, appeared on behalf
of the Revenue*

Date of concluding the hearing: December 12, 2024

Date of pronouncing the order: December 30, 2024

O R D E R

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 3rd October, 2024 passed for Assessment Year 2018-19.

2. Brief facts of the case are that the assessee is a Private Limited Company, which filed its return of income for the assessment year 2018-19 declaring total income of Rs.78,750/-. As per the information received from the Investigation Wing that the assessee-company has received credits of Rs.15,00,000/- from one M/s. Sankalp Vincom Pvt. Limited. The case was selected for scrutiny under section 147 of the Act. Since M/s. Sankalp Vincom Pvt. Limited is a shell concern, which is non-existing and having no creditworthiness and the funds were layered through its different accounts. Hence, the alleged transaction of Rs.15,00,000/- remained unexplained and undisclosed. Therefore, the assessment proceeding under section 147 has been initiated. Accordingly, ld. JAO passed an order under section 148A(d) of the Income Tax Act and subsequently notice under section 148 was issued to the assessee on 06.04.2022 through ITBA Portal after recording the reasons as prescribed under section 147. In response to the notice, the assessee filed invalid return of income on 27.04.2022 declaring total income of Rs.78,750/-. The assessee has denied the alleged transaction of Rs.15,00,000/- with M/s. Sankalp Vincom Pvt. Limited including the impugned assessment order. There was no proper reply from the assessee except saying that the assessee has not received any amount from M/s. Sankalp Vincom Pvt. Limited. Thereafter the ld. Assessing Officer made an addition of Rs.15,00,000/- under section 68 of the Act.

3. Aggrieved with the order of ld. Assessing Officer, the assessee preferred an appeal before the ld. CIT(Appeals). After considering

the submissions of the assessee, the ld. CIT(Appeals) also confirmed the addition made by the ld. Assessing Officer.

4. On being aggrieved, the assessee preferred an appeal before the ITAT and raised the following issues:-

(1) That, the Ld. CIT(A), on the facts and in the circumstances of the case, erred in law in having upheld the reopening of the assessment u/s 148 r.w.s. 147 of the Act for the A.Y. 2018-19 simply by stating that he found no reason to hold that the A.O. was wrong in reopening of the assessment and simultaneously discarding the assessee's objections without giving/recording any reason/finding whatsoever on the maintainability of such invalid reassessment proceeding.

(2) That, the Ld. CIT(A) while upholding the re-assessment order dated 04.01.2024 passed on the alleged information from Insight Portal about the assessee's getting accommodation entry from a shell company M/s Sankalp Vincomn Pvt. Ltd. erred in not considering that the information and documents found from a third party and used against the assessee were not shared with it which was sine qua non for valid initiation of a reassessment proceeding and was also in violation of sec.292C of the Act and guidelines for reopening the assessment, as settled in Sabli Infrastructure Ltd. vs. AC1T (2017) 398 ITR 198 (Del).

(3) That, the basic fundamental to the provisions of sec.148A(a) r.w.s. 148 of the Act had not been followed while passing the reassessment order u/s 147 of the Act inasmuch as the Ld. A.O. had miserably failed to establish that the information relied upon has live link and nexus with the assessee more so when the assessee categorically denied to have any transaction with M/s Sankalp Vincomn Pvt. Ltd. and the Ld. C.I.T.(A) has also erred in having upheld such invalid assessment order and addition of Rs. 15,00,000/- made u/s 68 of the Act.

(4) That, the Ld. C.I.T.(A) without considering the written explanation in true perspective and without there being any credit in the books with respect to the transaction alleged, erred in law in upholding the addition of Rs. 15,00,000/- u/s 68 of the Act because on the facts of the case the question of unexplained credit did not arise and further the conditions to

invoke the deeming provisions of sec. 68 of the Act have not been satisfied in this case.

(5) That, as the order u/s 250 of the Act of the Ld. C.I.T.(A), NFAC, Delhi dated 03.10.2024 suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

5. I have heard both the sides. It was the submission of the assessee that the ld. Assessing Officer has issued notices under section 142(1) saying that “it is found that assessee has received Rs.15,00,000/- from M/s. Sankalp Vincom Pvt. Limited, during financial year 2017-18, which is a shell company lacking genuineness and creditworthiness”. The assessee gave its reply by saying that the assessee-company has not received any amount from the shell companies, more particularly from M/s. Sankalp Vincom Pvt. Limited maintaining Bank account No. 07921200000763 with DCB Bank. Ld. Counsel for the assessee further submitted that there is no transaction entered with M/s. Sankalp Vincom Pvt. Limited by the assessee-company and no documents has been provided to the assessee. He further submitted that the proceedings are based on incorrect facts and ld. Assessing Officer has not discharged his onus. Initially ld. Assessing Officer failed to mention that on which date, the assessee received 15,00,000/- rupees and ld. Assessing Officer failed to mention the Bank account and other details. Therefore, there is no material/evidence to establish that the assessee has received an amount of Rs.15,00,000/- from M/s. Sankalp Vincom Pvt. Limited. Therefore, ld. Assessing Officer as well as ld. CIT(Appeals) were wrong in making the addition of Rs.15,00,000/- in the hands of the assessee-company under section 68 of the Act

and he pleaded to delete the addition made by the ld. Assessing Officer.

6. On the other hand, ld. Departmental Representative has submitted that information received from the Investigation Wing, therefore, ld. Assessing Officer reopened the assessment and the assessee has not given any details about the receipt of Rs.15,00,000/- from M/s. Sankalp Vincom Pvt. Limited. He further submitted that the burden lies on the assessee to prove the source for the amount of Rs.15,00,000/-. Since the assessee failed to prove the source for Rs.15,00,000/-, ld. Assessing Officer made the addition of Rs.15,00,000/- and ld. CIT(Appeals) confirmed the same. He pleaded to confirm the orders passed by the revenue authorities.

7. I have heard both the sides and perused the material available on record. It is an admitted fact that the ld. Assessing Officer issued various notices to the assessee to explain the transaction of Rs.15,00,000/- with M/s. Sankalp Vincom Pvt. Limited. It is also an admitted fact that the assessee has responded for all the notices saying that the assessee has not received any amount from M/s. Sankalp Vincom Pvt. Limited. It is also an admitted fact that the ld. Assessing Officer has not given any details about the transaction of Rs.15,00,000/- between M/s. Sankalp Vincom Pvt. Limited and the assessee. The ld. Assessing Officer has not given the Bank details, date of transaction, etc. Therefore, I am of the considered view that the initial burden lies on the ld. Assessing Officer to furnish the transaction between the

assesee-company and M/s. Sankalp Vincom Pvt. Limited, which is called as shell company. In the assessment order also, the Id. Assessing Officer has not mentioned anything about the transaction except saying that there was a transaction between the assesee and the shell company for an amount of Rs.15,00,000/-. During the appellate proceedings, the Id. CIT(Appeals) mentioned in his order that “burden of proof lies on the assessee to prove the transaction. Id. CIT(Appeals) relied on the ratio laid down by the Hon’ble Apex Court in the case of Rajendran Chingaravelu -vs.- R.K. Mishra reported in 320 ITR 1, wherein Hon’ble Apex Court noted with grave concern the rampant circulation of unaccounted money destroying the economy of our country. Considering the decision of the Hon’ble Apex Court, Id. CIT(Appeals) confirmed the order passed by the Id. Assessing Officer.

8. In the present case on hand, the main contention of the assessee is that the Id. Assessing Officer has not discharged his initial burden. The Id. Assessing Officer failed to furnish any evidence to establish that there was a transaction between the assessee and M/s. Sankalp Vincom Pvt. Limited during the year under consideration. The Id. CIT(Appeals) also nowhere has mentioned about the exact transaction between the assessee-company and M/s. Sankalp Vincom Pvt. Limited regarding the credit of Rs.15,00,000/-. Moreover, the revenue authorities are insisting the assessee to establish the negative fact because the assessee has given its reply saying that there was no transaction between the assessee and other companies. In my view, it is not

possible to establish the transaction between the assessee and M/s. Sankalp Vincom Pvt. Limited unless the ld. Assessing Officer furnishes some evidence to prove the transaction between the assessee-company and M/s. Sankalp Vincom Pvt. Limited. Therefore, I am of the considered view that ld. Assessing Officer failed to discharge his initial burden about the transaction between the assessee and M/s. Sankalp Vincom Pvt. Limited by providing the date of transaction and Bank Account details. Hence, in the absence of such evidence, the addition made under section 68 of the Act for an amount of Rs.15,00,000/- has no legs to stand. There is no valid reason for reopening. Therefore, I am of the view that both the revenue authorities are not correct to make an addition under section 68 of the Act. The grounds raised by the assessee are allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 30/12/2024.

Sd/-

(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 30th day of December, 2024

*Copies to :(1) Winner Tradecom Pvt. Limited,
2/6, Sarat Bose Road, Suite-308,
Central Plaza, Kolkata-700020*

*(2) Income Tax Officer,
Assessment Unit,
Ward-6(2),
Income Tax Department, NFAC, Delhi
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata-700069*

- (3) *Commissioner of Income Tax (Appeals);
National Faceless Appeal Centre (NFAC),
Delhi;*
 - (4) *CIT - , Kolkata;*
 - (5) *The Departmental Representative;*
 - (6) *Guard File*
- TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.