

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, JM]

I.T.A. No. 1009/Kol/2024

Assessment Year: 2014-15

DCIT, Centra Circle-4(2), Kolkata	Vs.	Balajee Vinimay Pvt. Ltd. 21 & 22, 2 nd Floor, Plot 230, Sakhar Bhawan, Ramnath Gowenka Mark, Nariman Point, Mumbai-400002. (PAN: AACCB6115A)
Appellant		Respondent

&

C.O. No. 35/Kol/2024

In I.T.A. No. 1009/Kol/2024

Assessment Year: 2014-15

Balajee Vinimay Pvt. Ltd.	Vs.	DCIT, Central Circle-4(2), Kolkata
Cross Objector		Respondent

Date of conclusion of Hearing	12.12.2024
Date of Pronouncement	06.01.2025
For the Assessee	Shri Akkal Dudhewala, AR
For the Revenue	Shri Praveen Kishore, CIT, DR

ORDER

Per Shri Rajesh Kumar, AM

The appeal filed by the revenue and the Cross Objection filed by the assessee are against the order of Ld. CIT(A), Kolkata-27 dated 02.02.2024 for AY 2014-15 arising out of assessment order passed u/s. 153A of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by ACIT, Central Circle-4(2), Kolkata dated 30.03.2022.

2. At the outset we note that the revenue appeal is time barred by 31 days. An application for condonation of delay dated 03.05.2024 has been filed by the revenue stating the administrative reasons for filing the appeal in 31 days. Considering the application of the revenue, we condone the delay and admit the appeal of the revenue for adjudication.

3. The revenue has filed appeal before us challenging the deletion of addition to the tune of Rs.4,08,45,000/- by Ld. CIT(A) as made by the AO u/s. 68 of the Act in respect of bogus share capital/share premium. Whereas the assessee has, by way of cross objection, challenged the jurisdiction of the AO to make addition in the assessment framed u/s. 143(3) read with sec. 153A of the Act in absence of any incriminating material found and seized during the course of search in an unabated assessment. First of all, we would like to adjudicate the legal issue raised by the assessee in the Cross Objection. The ground of Cross Objection reads as under:

“1. For that on the facts and in the circumstances of the case and in law, the Ld. CIT(A) should have held that in absence of any incriminating material found in the course of search, the additions of Rs.4,08,45,000/- on account of share capital raised during the relevant FY 2013-14 and Rs.3,00,140/- on account of gain on sale of shares made u/s 68 of the Act in the impugned unabated AY was unjustified.

2. For that the appellant craves leave to submit additional cross objections and/or amend or alter the cross objections already taken either at the time of hearing of the appeal or before.”

4. The facts in brief are that the assessee filed the return of income u/s. 139(1) of the Act on 22.09.2014 declaring total income of Rs.10,96,073/-. A search action u/s. 132 of the Act was conducted on 11.02.2020 and subsequent dates on “Rika-Lalwani-Patodia-Prakash Group” of cases to which the assessee is a related entity and accordingly notice u/s. 153A of the Act was issued on 12.07.2021 which was duly served. The assessee complied with the said notice by filing a return of income on 30.07.2021 declaring total income at Rs.10,96,073/-. Thereafter, statutory notices were issued along with questionnaire which were duly replied by the assessee. Pertinent to state that the impugned assessment is an unabated assessment on the date of search as there were no pending proceeding and also the time period prescribed under the Act for issuing notice u/s. 143(2) had also expired. The AO after taking into account the contentions and submissions of the assessee made two additions to the income of the assessee namely (i) in respect of share capital /share premium of Rs.4,08,45,0000/- and (ii) in respect of profit for sale of investment of group companies of Rs.3,00,140/- u/s. 68.

5. The Ld. CIT(A) in the appellate proceeding allowed the appeal of the assessee on merit directing the AO to delete the addition in respect of share capital/share premium of

Rs.4,08,45,000/- and also Rs. 3,00,140/- in respect of profit on sale of shares in the group companies. The Ld. CIT(A), however, dismissed the legal issue by observing and holding as under:

“9.1.1. I have perused the assessment order as well as the submissions of the assessee. It is observed that this ground of appeal had not been pressed by the assessee. It is pertinent to mention that on going through the assessment record, it is noticed the AO had followed all the requisite procedure while framing the assessment u/s. 153A of the Act. Hence, the contention raised by the assessee in this legal ground is not acceptable. Therefore, this ground of appeal raised by the assessee is dismissed.”

6. After hearing the rival contentions and perusing the material available on record, we find that the return of income was filed u/s 139(1) of the Act on 28.10.2019. A search action u/s 132(1) was conducted on the assessee on 02.04.2019. So on the date of search there were no pending proceedings before the AO qua this assessment year and also that the time limit for issuing notice u/s 143(2) had already expired. Therefore the impugned assessment was unabated on the date of search or had attained finality in terms provisions of section 153A of the Act. Now the issue before us for adjudication is whether the AO has jurisdiction to make additions without there being any incriminating materials seized during the search. In our opinion the addition in case of unabated assessment can only be made with reference to incriminating materials seized during search and not otherwise. We note that in the appellate order, Ld. CIT(A) has clearly recorded a finding of fact that AO has not referred to any incriminating materials found during the course of search qua the share capital/share premium and scrip sold by the assessee during the impugned financial year. Accordingly, we are in agreement with the Ld. CIT(A) that addition in case of unabated assessment year can only be made on the basis of search material found and seized during search. The case of the assessee is squarely covered by the decision of 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. Accordingly, the cross objection by the assessee is allowed.

7. Since we have allowed the cross objection filed by the assessee, therefore appeal by the revenue becomes infructuous and accordingly is dismissed.

8. In the result, appeal of the revenue is dismissed and the Cross Objection of the assessee is allowed.

Order is pronounced in the open court on 6th January, 2025

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 6th January, 2025

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–DCIT, Central Circle-4(2), Kolkata.
2. Respondent – Balajee Vinimay Pvt. Ltd.
3. CIT(A), Kolkata-27
4. Pr. CIT
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata