

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajesh Kumar Accountant Member
&
Shri Pradip Kumar Choubey, Judicial Member**

**I.T.A. No. 1319/KOL/2024
Assessment Year: 2012-2013**

***M/s. Wexford Sales Pvt. Limited,.....Appellant
44, Ezra Street,
Room No. 5A, Ground Floor,
Kolkata-700001
[PAN:AAACW2151P]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-6(4), Kolkata***

Appearances by:

Shri V.N. Dubey, A.R., appeared on behalf of the assessee

*Shri Chandan Das, Addl. CIT (D.R.), appeared on behalf
of the Revenue*

Date of concluding the hearing: February 27, 2025

Date of pronouncing the order: April 24, 2025

O R D E R

Per Rajesh Kumar, Accountant Member:-

The 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 23rd February, 2024 passed for Assessment Year 2012-13.

2. In this appeal, Ground No. 1 is general in nature, which does not require any adjudication.

3. The issue raised in Ground No. 2 is against the confirmation of addition of Rs.2,21,93,720/- as made by the ld. Assessing Officer by making two additions, i.e. (i) Rs.1,90,00,000/- in respect of share capital/share premium and (ii) Rs.31,93,720/- in respect of trading losses under section 68 by treating the same as unexplained cash credit. The assessee has raised the issue separately in Grounds No. 4 & 5 of this appeal qua the above two amounts.

4. The facts in brief are that the assessee filed its return of income on 29.09.2012 declaring loss of Rs.1,51,081/-. The case of the assessee was stated to be assessed under section 143(3) of the Income Tax Act on 26.03.2015 assessing the income at Rs.1,88,48,919/- by making an addition of Rs.1,90,00,000/-. The case of the assessee was reopened under section 147 by issuing notice under section 148 dated 29.03.2019. After that the ld. Assessing Officer received information that the assessee is beneficiary for providing accommodation entries in the scrip of Scan Steel Limited (formerly known as Clarus Infrastructure Realities Limited) in which the assessee has made a loss of Rs.31,93,720/-. The assessee filed the return of income in response to notice issued under section 148 vide letter dated 24.04.2019 and stated that the original return filed on 29.09.2012 for the assessment year 2012-13 may be treated as return filed under section 148. The assessee attended the proceedings before

the ld. Assessing Officer by furnishing requisite information/details as called for by the ld. Assessing Officer. So far as the addition of Rs.1,90,00,000/- is concerned, which was qua the share capital/share premium, the ld. Assessing Officer extracting the original assessment order passed under section 143(3) dated 26.03.2015 in the assessment order passed u/s 143(3) /147 of the Act and thereafter discussing the bogus loss of penny stock in the scrip of Scan Steel Limited made the addition by relying on the statement of Shri Shirish Shah recorded under section 132(4) of the Act during the course of search on 19.03.2019. The ld. Assessing Officer also issued notice under section 133(6) to the Bombay Stock Exchange for procuring the details of assessee in respect of the transactions of the scrip of Scan Steel Limited, which were duly supplied. The assessee also filed necessary evidences comprising the share purchase documents along with Demat account, copy of Bank statement before the ld. Assessing Officer. The ld. Assessing Officer thereafter discussing the records submitted by the assessee as well as details from Bombay Stock Exchange and statement recorded under section 132(4) of Shri Naresh Jain concluded that the losses towards purchase and sale of scrip of Scan Steel Limited amounting to Rs.31,93,720/- were bogus and fictitious and accordingly the same was disallowed and added to the income of the assessee.

5. In the appellate proceeding, the assessee challenged the order passed by the ld. Assessing Officer under section 143(3)/147 of the Act on the ground that the said order was on the basis of the order

passed under section 143(3) by the ld. Assessing Officer on 26.03.2015, which was never served upon the assessee. The ld. CIT(Appeals) simply noted that the order passed u/s 143(3) of the Act was reproduced in the assessment order passed under section 147/143(3) dated 17th December, 2019 and therefore, no finding was given on this issue during the course of hearing also. The matter was vehemently pointed out by the ld. Counsel for the assessee and ld. D.R. was specifically asked about the service of this order. However, despite the repeated opportunities given to the Department, the same could not be proved by the ld. D.R. The ld. D.R. again requested some time and on 15.01.2025, the time was allowed to the ld. DR to verify the service of original order u/s 143(3) of the Act on the assessee and submit the proof of the same before the bench by passing the following order-sheet :-

“The ld. A.R. raised the legal ground that the order passed u/s 143(3) dated 26.03.2015 which has been reproduced on page 2 of the order u/s 147/143(3) dated 17.12.2019 has never been served upon the assessee. The ld. D.R. wants time to verify the same, accordingly adjourned for 18.02.2025. The ld. D.R. is directed to verify the issues and submit proof of service of the order u/s 143(3) of the I.T. Act to the Bench on 18.02.2025”.

6. It is apparent from the above that the Department was directed to submit the proof of service of the order passed under section 143(3) of the Act and the case was posted for hearing on 18.02.2025. However, on that date, the Bench did not function and the same was adjourned to 27.02.2025. However, on that date too, the Department did not furnish any evidence to prove the service of the assessment order on the assessee and then Bench decided to hear the appeal on the premise that the Department has nothing

say on this issue. Even the Id CIT(A) has not commented on the non-service of order despite the same specifically raised by the assessee.

7. Considering the facts and circumstances of the issue, we are of the considered view that once the order passed by the Id. Assessing Officer, which has never been served upon the assessee, is not an order in the eyes of law and, therefore, reopening of assessment based upon the said order cannot be sustained on this issue alone. The assessment under section 143(3) as well as assessment under section 147/143(3) both are bad in law and invalid and therefore are quashed accordingly. The ground no. 2 is allowed.

8. Without prejudice to the above, now coming to the Grounds No. 3, 4 & 5, in which the assessee challenged the addition of Rs.1,90,00,000/- in respect of share capital/share premium and share trading loss of Rs.31,93,720/-, which was added under section 68. The first addition of Rs. 1,90,00,000/- was made in the assessment framed under section 143(3) and second of Rs. 31,93,720/- was made in the assessment framed under section 143(3)/147 of the Act. First of all, we shall deal with the merits of the case in respect of addition made under section 68 towards share capital/share premium.

9. We find from the information furnished before us that during the original assessment proceeding, the assessee filed before the Id. Assessing Officer the share application money from six parties

aggregating to Rs.2,09,00,000/-, allotment of shares to five parties allotting to them 1,90,000 shares, copy of bank statement evidencing the receipt of money through banking channel, copies of audited financial statements, bank statement, Certificate of Incorporation, ITR Acknowledgment, Master Data from Portal of Ministry of Corporate Affairs, Memorandum of Association, Article of Association in respect of the assessee. All the contribution to the share capital has been made through banking channel. The assessee-company has proved the identity of all the investors, their creditworthiness and genuineness of the transactions of receipt of share capital and share premium. Even source of the source amount of the shareholder company has been produced before the Id. Assessing Officer. We note that the assessee has discharged its burden to prove by furnishing all these evidences and Id. Assessing Officer without pointing out any defect or deficiency in the said documents made the addition, which is incorrect in the eyes of law. In the first ground, assessment order passed under section 143(3)/147 becomes invalid on the ground that the same was passed on the basis of the order passed under section 143(3), which was never served upon the assessee and the department has hopelessly failed to produce any evidence before the Tribunal qua the service of the same. Even Id. CIT(A) has not commented on this issue despite the assessee specifically raising the issue before him. Therefore, the addition made by the Id. Assessing Officer amounting to Rs.1,90,00,000/- is merely on the basis of apprehensions/presumptions, which is not sustainable in the eyes of law and is accordingly deleted.

10. So far as the second addition is concerned, the Id. Assessing Officer has simply relied on the statement of Shri Shirish Shah and Shri Naresh Jain and nowhere recorded his finding as to how the assessee has received money from the transactions of shares in the scrip of Scan Steel Limited (formerly known as Clarus Infrastructure Realities Limited) in which the assessee has made a loss of Rs.31,93,720/-. We note that the assessee has furnished all the evidences relating to transactions of purchase and sale of shares through Bombay Stock Exchange and even the Id. Assessing Officer called for details from Bombay Stock Exchange, which were duly furnished ,but Id. Assessing Officer did not point out any flaw in the said documents and simply relied on the finding of Investigation Wing as Shri Naresh Jain was searched on 19.03.2019 and his statement was recorded under section 132(4) of the Act. Thus, addition made by the Id. Assessing Officer and confirmed by the Id. CIT(Appeals) is wrong and against the facts on record. The addition cannot be made by relying on the statement of a third party unless the same is confronted to the assessee. Therefore, the addition made on account of bogus loss by the Id. Assessing Officer is deleted. The grounds no. 3, 4 and 5 are allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 24/04/2025.

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Kolkata, the 24th day of April, 2025

*Copies to :(1) M/s. Wexford Sales Pvt. Limited,
44, Ezra Street,
Room No. 5A, Ground Floor, Kolkata-700001*

- (2) Income Tax Officer,
Ward-6(4), Kolkata*
- (3) CIT(Appeals), NFAC, Delhi;*
- (4) CIT-----, Kolkata;*
- (4) The Departmental Representative;*
- (5) Guard File*

TRUE COPY

By order

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

Laha/Sr. P.S.