

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 651/KOL/2024
(Assessment Year:2018-19)**

**Income Tax Officer, Ward-7(1),
5th floor, Aaykar Bhavan, P-7,
Chowringhee Square,
Kolkata-700069
West Bengal
(Appellant)**

Vs.

**Tiru Complex LLP
51, Shakespeare Sarani,
Kolkata-700017,
West Bengal
(Respondent)**

PAN No. AAMFT966R

Assessee by : Shri Siddharth Agarwal, AR
Revenue by : Shri P.N. Barnwal, CIT DR

Date of hearing: 06.03.2025
Date of pronouncement : 14.05.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the Revenue against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 09.03.2023 for the AY 2018-19.

02. The Id. CIT DR filed the revised grounds of appeal at the beginning of the hearing which are extracted below:-

"(1) For that, the Ld. CIT(A), NFAC, New Delhi erred in deleting the addition of Rs. 7,01,00,000/- in the form of fresh capital introduction without giving due weightage to the unjustified receipt of high fresh capital to carry on of a seemingly unprospective firm and without examining the creditworthiness of the capital introducer.

(2) For that, the Ld. CIT(A), NFAC, New Delhi erred in admitting fresh evidence/ documents without allowing a reasonable opportunity to the AO in violation of Rule 46A.

(3) For that, the appellant craves leave to add, delete, alter, modify, and substitute otherwise in any or all of the grounds of appeal at or before the time of hearing of the appeal."

03. The first issue raised by the Id. CIT DR is against the order of Id. CIT (A) admitting fresh evidences/ documents without allowing reasonable opportunity to the Id. AO in violation of Rule 46A.
04. The facts in brief are that the assessee filed the return of loss of ₹2,735/- on 30.08.2018 and the case of the assessee was selected for scrutiny for the reason of large capital or share capital in the year of incorporation and low income in comparison to high loss/ investments. Accordingly, the statutory notices along with questionnaires were issued and duly served upon the assessee. the case of the assessee was fixed from time to time from 07.10.2019 to 12.03.2021. However, there was no compliance on the part of the assessee and finally, a show cause notice was issued by the Id. AO to the assessee given show cause as to why the capital introduced of ₹7,01,00,000/- during the year should not be treated as unexplained investment u/s 69C of the Act. Finally, the Id. AO framed the assessment u/s 144 of the Act by treating the said amount as unexplained expenditure u/s 69C of the Act when the assessee failed to comply to the said notice by framing the assessment u/s 144 read with section 144B of the Act dated 21.04.2021.
05. In the appellate proceeding, the Id. CIT (A) allowed the appeal of the assessee after taking into consideration the contention and submission of the assessee by observing and holding as under:-

"5. DECISION

5.1 I have carefully considered the facts of this case, grounds of appeal, written submissions filed during appeal proceedings. All the grounds raised in the appeal point to the addition made invoking the provisions of section 69C of the Act. Therefore, for

the sake of convenience, all the grounds are taken together for adjudication of this appeal.

5.2 The assessment was completed ex-parte in this case. The Assessing Officer (AO) took note of the facts of appellant's non-compliances to the notices issued, proceeded to complete the assessment after issue of a show cause notice. As per the AO: " During the faceless assessment proceedings, a show cause notice was issued to the assessee mentioning the following facts:

took note of the facts of appellant's non-compliances to the notices issued, proceeded to complete the assessment after issue of a show cause notice. As per the AO: " During the faceless assessment proceedings, a show cause notice was issued to the assessee mentioning the following facts:

"The assessee has introduced capital of Rs. 7,01,00,000/- during year under consideration and not submitted any explanation or documentary evidence regarding introduction of capital during the year. Therefore, please explain as to why the case may not be completed under section 144 by making an addition of Rs. 7,01,00,000/- as unexplained investment under section 69C of the I.T. Act, 1961. . In pursuance to the above show cause notice, the assessee neither submitted the desired information nor sought adjournment in his case. It means the assessee has nothing to say about the addition discussed in show cause notice. In light of the facts enumerated above, the Assessing Office has left no option other than completion of assessment u/s 144 of the I.T. Act, 1961. Therefore, the introduced capital of Rs.7,01,00,000/- is being added back to the total income of the assessee by treating as explained expenditure us 69C of the I.T. Act, 1961."

5.3 The appellant had filed written submissions during appeal proceedings and these have been duly considered. As per the provisions of Section 69C of the Act, in case the assessee fails to explain the source of expenditure or part thereof to the satisfaction of the AO, such expenditure shall be considered as unexplained expenditure and be deemed to be expenditure made by the assessee firm. The appellant reiterates that: But in this case, there was no expenditure. It was a capital receipt to the assessee firm and such capital receipt is outside the purview of section 69C of the Income Tax Act. There are two conditions for the deeming provisions of Section 69C of the Income Tax Act as detailed below :

(i) There should be an expenditure;

(ii) Failure to explain such expenditure

In our case, there was no expenditure. It was only a capital receipt to the assessee firm. In view of the above, we request your honour to delete such unjustified and illegal additions u/s. 69C of the Income Tax Act.

5.4 The appellant explains that in the " During the Financial Year 2017-18 (Assessment Year 2018-19), Mr. Govind Garg, a Partner of the Assessee Firm also brought in as capital under current A/c. a sum of Rs. 7,00,00,000/- under clause 4 of the LLP Agreement dated 21.07.2017. The details of such capital under current A/c. brought in

by Sri Govind Garg, a partner of the Firm. A copy of the Bank Statement of Sri Govind Garg evidencing the above said payment as well as PAN card and Aadhar card and confirmation of the above said information as well as Ledger copy of Tiru Complex LLP account in the books of Sri Govind Garg are enclosed. We are also enclosing a copy of the Balance sheet of Mr. Govind Garg and I.T. Acknowledgement.....'The above said amount of Rs. 7,00,00,000/- was received by Sri Govind Garg from M/s. Tiru Fine Residency LLP, a registered LLP Firm (LLPIN) No. AAH-1869 and PAN No. AALFT 5223B. Tiru Fine Residency LLP has made the above said payment of Rs. 7,00,00,000/- . Mr. Govind Garg is a partner in Tiru Fine Residency LLP. He is also a landowner in a registered Development Agreement dated 25.11.2016 entered into by Tiru Fine Residency LLP with Mr. Govind Garg for development of a construction project in Siliguri. Sri Govind Garg received the above said sum of Rs. 7,00,00,000/- as land owners deposit.

(a): The fact of the matter is that these amounts are received by cheque from M/s Tiru Fine Residency. The receipt of sum of Rs.7 crores is a capital receipt and as per the appellant the provisions of section 69C are not applicable to its case.

(b). Section 69C envisages that: "69C. 2 Unexplained expenditure, etc. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.]

(c). The appellant reiterates that it is only a capital receipt by banking channels from M/s. Tiru Fine Residency by way of Cheques - all drawn on 2nd February in 2018- and not involving expenditure. This fact is evidenced by the bank statement and therefore, it is clear that there is no expenditure incurred by the assessee firm in respect of this transaction. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year: Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income

5.5 In the appellant's case, it is a capital receipt by way of Cheques and completely through banking channels as explained by the appellant in the written submissions. This is not a case of involving any expenditure debited in the books of accounts of the appellant. For this reason alone, I agree with the appellant that the AO is incorrect and unjustified in invoking the provisions of section 69C of the Act. The grounds raised in this appeal are all allowed. 6. In the result, the appeal is allowed."

06. We note that in this case, ex-parte assessment was framed by the Id. AO when assessee did not turn up on the various hearing namely 7.10.2019, 10.02.2020, 25.12.2020, 18.01.2021, 01.03.2021, and

12.03.2021 and made an addition of ₹7,01,00,000/- on account of unexplained expenditure u/s 69C of the Act in the order dated 21.04.2021. We note that the period during which the assessee was allowed opportunities by the Id. AO file during the co-vid pandemic and accordingly, no representation could be made before the Id. AO and before the Id. CIT (A) filed all the evidences qua the capital introduced during the year. The details are given in para 3.5 of the appellate, which is reproduced as under:-

"3.5 Brief details of capital as on 31.03.2018 was as follows: Opening balance as an 01.04.2017 Rs 1,00,000/- Introduction of capital by Mr. Govind Garg, Designated Partner during the financial year 2017-18

| Date | Cheque No | Amount |
|------------|-----------|---------------|
| 02.02.2018 | 628152 | 1,50,00,000/- |
| 02.02.2018 | 628153 | 1,50,00,000/- |
| 02.02.2018 | 628154 | 1,50,00,000/- |
| 02.02.2018 | 628155 | 1,75,00,000/- |
| 02.02.2018 | 628156 | 75,00,000/- |
| | Total | 7,00,00,000/- |

Balance as on 31.03.2018 Rs 7,01,00,000/-"

07. We note that all these introductions in capital account were made by Mr. Govind Garg through banking channels and out of the money borrowed from LIC Housing Finance Co. Ltd, the copy of statement of the assessee as well as the partner are available in the paper book. Therefore, there is no dispute as to the source of money. Therefore, the order passed by the Id. CIT (A) is very reason and speaking order dealing with each and every aspect of the matter and therefore, we

are inclined to uphold the same by dismissing the appeal of the Revenue.

08. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 14.05.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 14.05.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata