

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.7582/Del/2019
Assessment Year: 2010-11

Balaji Tirupati Buildcon Ltd., (Formerly Media Toys Ltd.) C/o MVL Ltd., 6 th floor Chandan Nagar Sec 15, Gurgaon, Haryana 122001 PAN AADCB 6549 D	vs.	ITO Ward 4(2), New Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri Arun Kishore, CA Shri Alok Surya, Adv.
Revenue For :	Shri Kanav Bali, Sr. DR

Date of Hearing :	13.06.2023
Date of Pronouncement :	01.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Ld. CIT(A)-2, New Delhi dated 27.06.2019 for AY 2010-11.

2. The grounds of assessee are as follows:-

1. That the order of CIT(Appeals) 2 (CIT A) dated 27-06-2019 confirming the addition made by Income Tax Officer Ward 4(2) (AO), is illegal, unjust and opposed to facts.

2. That the Ld. CIT-A and Ld. AO have both erred on Facts of the Case and in law, in making an assessment and confirming the addition on a non-existent person.

3. That the service of notice by affixture on 31-03-2017 in the name of non-existent person is an invalid service, the assessment in pursuance of such invalid service is illegal.

4. That the notice w/s 148 is illegal, since:

a) Ld. AO has issued notice w/s 148 without proper application of mind and without recording proper satisfaction after due verification of records.

b) Notice has been issued to a non-existent person which is an invalid notice.

c) Notice is issued on wrong foundation that no return was filed by the appellant, whereas the appellant had filed its return for AY 2010-11.

5. That on the Facts of the Case and in law, the Ld. AO and Ld. CIT-A have both erred in assessment of income of Rs. 17,90,671/- as if earned and received, when the appellant had neither earned nor received such interest income during the year as per copy of audited financial statements filed.

6. That on the Facts and Circumstances of the case and in law, Ld. AO and Ld. CIT-A have both erred in confirming addition of Rs. 17,90,671/- u/s 68 of The IT Act, when no such amount was found credited in the books of account maintained by the appellant for the previous year, the illegal addition be deleted.

7. That the illegal assessment be annulled and addition of Rs. 17,90,671/- be deleted.

3. First of all, the Id. Assessee Representative (AR) submitted that the assessee does not want to press ground no. 2 hence the same is dismissed as not pressed.

Ground no. 5 & 6

4. The Id. AR submitted that on the Facts of the Case and in law, the Ld. AO and Ld. CIT-A have both erred in assessment of income of Rs. 17,90,671/- as if earned and received, when the appellant had neither earned nor received such interest income during the year as per copy of audited financial statements filed. He further contended that on the Facts and Circumstances of the case and in law, Ld. AO and Ld. CIT-A have both erred in confirming addition of Rs. 17,90,671/- u/s 68 of The IT Act, when no such amount was found credited in the books of account maintained by the appellant for the previous year, the illegal addition be deleted. The Id. AR submitted that from the copy of return of income filed by the assessee and computation available at pages 5 to 7 clearly reveals that the assessee has neither earned nor received impugned interest income during the year and no such amount was credited to the books of accounts of assessee maintained and audited by the competent auditor therefore no addition, u/s. 68 or any other provision of the Act was required to be made.

5. Replying to the above the Id Senior DR supported that orders of the authorities below and submitted that the AIR Information available through the system reveals that assessee had received payment of Rs. 17,90,671/- on which TDS of Rs. 1,79,067/- u/s 194A of the Act was deducted by the payee M/s. Ecos India Mobility and Hospitality Pvt. Ltd. The Id. Senior DR submitted that the payee did not respond to the notice u/s. 133(6) of the Act dated 13.10.2017 and it was received back unserved therefore the Assessing Officer was right in having adverse inference against the assessee therefore addition may kindly be upheld.

6. On the other hand, the Id. AR submitted that the assessee did not recognize any interest income during AY 2010-11 and no TDS has been claimed by the assessee. On being asked by the bench the Id. Senior DR, in all fairness did not controvert a factual position that neither the assessee has shown any amount as interest income nor has claimed TDS thereon. In view of above uncontroverted factual matrix we have no hesitation to hold that the addition made by the Assessing Officer and upheld by the Id. CIT(A) u/s. 68 of the Act is not sustainable as the copy of return of income and computation clearly reveals that neither the assessee has shown any interest income nor the assessee has claimed any TDS thereon as, picked up by the Assessing Officer for making addition in the hands of assessee. Accordingly, ground no. 5 & 6 of assessee are allowed and Assessing Officer is directed to delete the addition.

7. The Id. representatives of both the side have not placed any submissions on the remaining grounds no. 1, 3 & 4 of assessee therefore we don't deem it fit to adjudicate the same in absence of any submissions and therefore the same are not being adjudicated.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 01.08.2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated:01st August, 2023.

Sd

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi