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| आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH: CHENNAI | | |
| श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER | | |
| आयकर अपील सं./ITA No.849/Chny/2018 निर्धारण वर्ष /Assessment Year: 2013-14 | | |
| The Income Tax Officer, Corporate Ward-4(3), Chennai. | v. | M/s.Kali Infra Pvt. Ltd., 202, Prince Centre, 709 & 710, Mount Road, Chennai-600 006. [PAN: AAECK 9409 N] |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |
| आयकर अपील सं./ITA No.850/Chny/2018 निर्धारण वर्ष /Assessment Year: 2013-14 | | |
| The Income Tax Officer, Corporate Ward-4(3), Chennai. | v. | M/s.Kali Hotels Pvt. Ltd., 202, Prince Centre, 709 & 710, Mount Road, Chennai-600 006. [PAN: AAECK 9410 H] |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |
| Department by | : | Shri Nilay Baran Som, CIT |
| Assessee by | : | Shri K. Ravi, Advocate |
| सुनवाई की तारीख/Date of Hearing | : | 18.01.2024 |
| घोषणा की तारीख /Date of Pronouncement | : | 18.01.2024 |

:: 2 ::

आदेश / ORDER

PER MANJUNATHA.G, AM:

These two appeals filed by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-8, Chennai, dated 04.01.2018, and pertains to assessment year 2013-14.

2. The brief facts of the case are that the assessee's company is engaged in the business of infrastructure development, filed its return of income for AY 2013-14 on 30.09.2013 declaring total loss of Rs.2,02,036/- . The case was selected for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee claimed to have received 'share application money' pending allotment amounting to Rs.15.09 Crs. Therefore, called upon the assessee to file necessary evidences, including identity of the subscriber to the share capital, genuineness of transactions and creditworthiness of the parties. During the course of assessment proceedings, there was no cooperation from the assessee. Therefore, the AO issued a show cause notice and called upon the assessee to explain 'as to why' 'share application money' received pending allotment cannot be treated as unexplained credit u/s.68 of the Act. In response, the Authorized Representative of the assessee submitted that the assessee has not received any 'share application money' in cash, but has brought in certain assets of the shareholders in lieu of Joint Development Agreement proposed to be entered into between the assessee and the shareholders by

:: 3 ::

passing necessary entries in the books of accounts by debiting to land & development expenses and crediting into 'share application money' in order to show better financial results for the purpose of obtaining bank loan, however, there is no infusion of actual cash by way of 'share application money'. The AO, however, was not convinced with the explanation of the assessee and according to the AO, the assessee could not establish credit in the form of 'share application money', and thus, made additions u/s.68 of the Act amounting to Rs.15.09 Crs.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee contended that 'share application money' claimed to have been received and shown in the balance sheet with corresponding land development expenses is a bogus, fraudulent entry but not actual receipt of money. The purpose of passing notional entries in the books of accounts was to show better financial results for the purpose of obtaining bank loan. Since, there is no receipt of actual money, question of addition u/s.68 of the Act, does not arise. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of financial statements filed by the assessee, deleted the addition made towards 'share application money' u/s.68 of the Act, on the ground that the assessee has filed fraudulent and bogus claim of 'share application money' without there being any actual receipt of amount. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeals before us.

:: 4 ::

4. The Ld.DR, Shri Nilay Baran Som, CIT, submitted that the Ld.CIT(A) deleted the additions made u/s.68 of the Act, towards 'share application money' without appreciating the fact that the assessee has accounted receipt of 'share application money' in the books of accounts with corresponding debit to land & development account. Although, the assessee claims to have fabricated financial statements in a fraudulent manner, but such claim was not proved with necessary evidences. Therefore, the matter may be set aside to the file of the AO to verify the claim of the assessee with reference to books of accounts and bank statements to ascertain the nature of credit in light of Sec.68 of the Act.

5. The Ld.Counsel for the assessee, Shri K. Ravi, Advocate, referring to financial statement filed by the assessee submitted that the assessee's company was incorporated on 08.10.2012 and within a short period of five months, it cannot generate unaccounted income to the extent of Rs.15.09 Crs. The allegation that the assessee has re-routed its unaccounted income in the form of 'share application money', is not proved, because, there is no findings in the order of the AO to the effect that the assessee has received 'share application money' either in cash or through proper banking channel. The assessee had explained the reason for filing fraudulent financial statement. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO and their orders should be upheld.

:: 5 ::

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The sole dispute arises for our consideration with regard to additions made u/s.68 of the Act, is alleged receipt of 'share application money' amounting to Rs.15.09 Crs. The AO made additions u/s.68 of the Act on the ground that the assessee could not establish identity, genuineness of the transactions and creditworthiness of the persons who have contributed to 'share application money'. It was the arguments of the assessee before the AO and even before us that there was no actual receipt of money in the form of 'share application money' for pending allotment, but, the assessee has fabricated the financial statement in fraudulent way and passed notional entries towards value of land and developments thereon, which belongs to the Director of the company on the ground that the assessee is going to enter into the Joint Development Agreement for development of property. Further, while bringing the value of the asset into the books of accounts, the assessee has passed journal entries by debiting to land and land development with a corresponding credit to 'share application money' account. In fact, there is no receipt of money in the form of cash or bank.

7. Having heard both the sides, we find that although, the AO has made additions u/s.68 of the Act, towards alleged 'share application money' received by the assessee, but there is no discussion in the assessment order 'as to how' said 'share application money' was received by the assessee, whether it is in the form of cash or through proper banking channel. At the

:: 6 ::

same time, although, the assessee claims that it has filed a fraudulent financial statement incorporating certain notional entries in the form of 'share application money' with a corresponding debit to land and land development, but no evidence has been filed to justify the claim. Even the Ld.CIT(A) has deleted the additions made by the AO with a vague observation that the assessee has filed fraudulent and bogus financial statement. In our considered view, the matter needs further verification in light of averments of the assessee and also findings of the Ld.CIT(A). Thus, we set aside the order of the Ld.CIT(A) and restore the issue back to file the of the AO and also direct the AO to verify the issue in light of claim of the assessee and also books of accounts and other bank statements that may be filed by the assessee to justify their claim.

8. In the result, appeal filed by the Revenue in ITA No.849/Chny/2018 is allowed for statistical purposes.

ITA No.850/Chny/2018:

9. The facts and issues involved in the appeal filed by the Revenue in ITA No.850/Chny/2018 is also identical to the facts and issues which we had considered in ITA No.849/Chny/2018 in the case of M/s.Kali Infra Pvt. Ltd. The reasons given by us in the preceding paragraphs shall, ***mutatis mutandis***, apply to this appeal, as well. Therefore, for similar reasons, we set aside the order of the Ld.CIT(A) and restore the issues to the file of the AO and also direct the AO to verify the claim of the assessee with reference

:: 7 ::

to books of accounts, bank statements and any other evidences that may be filed by the assessee and decide the issue in accordance with law.

10. In the result, appeal filed by the Revenue in ITA No.850/Chny/2018 is allowed for statistical purposes.

11. As a result, appeals filed by the Revenue in ITA No.849/Chny/2018 & ITA No.850/Chny/2018 are allowed for statistical purposes.

Order pronounced on the 18th day of January, 2024, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 18th January, 2024.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|----------------------------|---------------------------|--------------------|
| 1. अपीलार्थी / Appellant | 3. आयकर आयुक्त / CIT | 5. गार्ड फाईल / GF |
| 2. प्रत्यर्थी / Respondent | 4. विभागीय प्रतिनिधि / DR | |