

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

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. No. 2174/Kol/2019
Assessment Year: 2014-15**

ACIT, CC-1 (3), Kolkata.....Appellant

Vs.

**M/s. Kalindi Merchandise Pvt. Ltd.....Respondent
[PAN: AADCK 8082 G]**

Appearances by:

Sh. Devi Saran Singh, CIT, appeared on behalf of the Revenue.

Sh. S.M. Surana, Adv., appeared on behalf of the Assessee.

Date of concluding the hearing : May 05th, 2021

Date of pronouncing the order : June 18th, 2021

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the Revenue directed against the order of the Learned Commissioner of Income Tax (Appeals)-20, Kolkata [hereinafter the "CIT(A)"], passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), dated 11.04.2019 for the Assessment Year 2014-15.

2. There is a delay of 76 days in filing of the appeal. After perusing the reasons stated for delay of the appeal, we condone the delay and admit the appeal.

3. The revised grounds of the appeal are as follows:

"1. That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred by deleting the addition of Rs. 8,62,33,618/- under section 69 of the IT Act, 1961, without adjudicating the case on merits and without appreciating the facts and the circumstances of the case detailed in the assessment order of the erstwhile AO.

2. That on the facts and circumstances of the cases and in law, the Ld. CIT(A) has violated the Rule 46A of the IT Rule,1962. The Ld. CIT(A) failed to call/remand report on the evidences provided by the assessee before Ld.CIT(A) and to allow the AO to corroborate with the evidence presented before the Appellate Authority.

3. The Ld. CIT(A) erred both the facts and circumstances of the case as well as in law in holding that section 69 of the IT Act, 1961 is not justifiable in the instant case. However, the assessee had not produced any satisfactory explanation corroborated along with any factual evidences

to substantiate the claim of the assessee in respect of investments, before the AO, which clearly distinguished in the Section 69 of IT Act, 1961.

4. That the Department craves the leave to addition, alter or modify any Ground of Appeal in the course of Appellate Proceedings."

4. The Id. CIT(D/R) submitted that he is pressing ground no. 2 which is against violation of Rule 46A of the Income Tax Rules, 1962. He submitted that the Id. CIT(A) did not call for a remand report from the AO on the evidences provided by the assessee and thus the AO was not given an opportunity to examine the facts and give his view on the matter. Thus he submitted that the issue may be set aside to the file of the AO for fresh adjudication in accordance with law.

5. The Id. Counsel for the assessee on the other hand submitted that, there is no additional evidence or additional material that was presented before the Id. CIT(A). He submitted that all the materials in question were part of the assessment record and hence the question of violation of Rule 46A of the Income Tax Rules, 1962 does not arise. He relied on the order of the Id. CIT(A) and submitted that factually the order of the Id. CIT(A) has not been controverted by the Id. D/R.

6. Rival contentions heard. On a careful consideration of the facts and circumstances of the case and a perusal of the papers on record and the orders of the authorities below as well as the case laws cited, we hold as follows.

7. The AO passed an order u/s 144 of the Act. He made an addition of ₹8,62,33,618/- based on figures available on record in the annual accounts of the assessee i.e. the balance sheet and profit & loss account. The AO stated that the assessee had made investment in unlisted securities. The Id. CIT(A) in his order on facts found that there is no such investment made in unlisted securities by the assessee during the year. He examined the annual accounts of the assessee and found that the AO had erred on facts as well as in law. He deleted the addition.

7.1. We find no infirmity in the order of the Id. CIT(A). The AO picked up figures from the air. There is no investment in unlisted securities made by the assessee company during the year. This is clear from the examination of the annual accounts of the assessee. Such blatant and unjustified addition has been made without any basis. The Id. CIT(A) at page 7 of his order held as follows:

"From the schedule 8 it can be seen that as on 31-03-2013 the CURRENT INVESTMENT of the company consists of genuine investments and no shell company asset or fictitious asset is there. Ld AR produced bank statement of the assessee company to show that Investment of Rs.6.34 crores (schedule-6) made in group companies has been made out of sale of units of mutual fund as shown in Schedule 8 above.

It is seen that the assessee company has made fresh investments out of proceeds from redemption of mutual fund held as investments. The source of fresh investment being redemption from schemes approved by the financial regulators there can be no adverse inference attracting the provisions of section 68 of the Income-tax Act, 1961. The AO has wrongly added the difference between the closing investment as on 31.03.2014 as undisclosed investments. Since, the investments are recorded in the books of account and the source of such investment is found to be satisfactory the addition made by the AO are incorrect and are hereby deleted."

8. We uphold this factual finding and dismiss the appeal of the Revenue.
9. In the result, the appeal filed by the Revenue is dismissed.

Kolkata, the 18th June, 2021.

Sd/-
 [Aby T. Varkey]
 Judicial Member

Sd/-
 [J. Sudhakar Reddy]
 Accountant Member

Dated: 18.06.2021

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***ACIT, CC-1 (3), Kolkata.***
2. ***M/s. Kalindi Merchandise Pvt. Ltd., 13/1, Mahendra Roy Lane, Kolkata-700 046.***
3. CIT(A)- 20, Kolkata (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar/DDO
 ITAT, Kolkata Benches