

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

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

**ITA No.1001/KOL/2013
(Assessment Year:2009-10)**

M/s Lahoti India Ltd.
Diamond Prestige, Unit No.611,
6th Floor, 41, A.J.C. Bose Road,
Kolkata-700017, West Bengal

(Appellant)

ITO Ward 6(2),
Aaykar Bhavan, P-7,
Chowringhee Square,
Kolkata-700069, West Bengal

(Respondent)

PAN No. AABCL0391B

Assessee by : Shri Ankit Jalan, AR
Revenue by : Shri Kallol Mistry, DR

Date of hearing: 13.01.2025
Date of pronouncement : 25.02.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 15.03.2013 for the AY 2009-10.

02. The only issue pressed at the time of hearing is against the confirmation of addition of ₹1,00,02,000/- by the Id. CIT (A) as made by the Id. AO on account of concealed income.
03. The facts in brief are that the assessee filed the return of income on 18.09.2019, declaring total income at ₹ Nil. The case of the assessee was processed u/s 143(1) of the Act, accepting the return of income. Thereafter, the case of the assessee was selected for scrutiny through Computer Assisted Scrutiny Selection (CASS) and statutory notices were duly issued and served upon the assessee. Pertinent to note that during the year the assessee company earned income by way of rent



and maintenance. During the year, the assessee entered into contracts with companies for selling plots to them after levelling and filling and received money as under:-

<i>Name of the Companies</i>	<i>Amount of Advances received</i>
1. Sushil Marketing Pvt. Ltd.	₹25,01,000
2. Orbital Contractors & Financiers Pvt. Ltd.	₹25,00,000
3. Welspun Sales Pvt. Ltd.	₹25,01,000
4. Rainy Trading Pvt. Ltd.	₹25,00,000

04. The assessee company received the cash advance from above four companies aggregating to ₹1,00,02,000/-. On 13.01.2009, at around 09.50 PM, a theft occurred at the premises of the assessee and the cash amount was stolen. In the theft, 2 persons were involved, one is the ex-employee and another the existing employee of the assessee company. The assessee registered an FIR with the Hare police station. The assessee informed the income tax authorities about the theft of money by armed robbers. The police recovered the money from the miscreants which included ex-employee and the existing employee with some outsiders. The police department deposited the same before the Id. Chief Metropolitan Magistrate, who directed further investigation into the ownership and the manner of assessee's possession of money. The assessee explained the source of money to the police authorities in the statement taken by them for investigation and on the basis of the police investigation report, the trial court issued order for restoration of cash to the assessee. In the meantime, the contracts entered into with the four companies were also cancelled by them and the assessee refunded the money through banking channel on 26.03.2009, through account payee cheques which duly reflected in the bank statement and in the return filed by the assessee. The amount of ₹1,00,02,000/- was not shown as income on

the ground that contracts under which these advances were taken were cancelled by the byers and therefore, the tax already paid amounting to ₹30 lacs was claimed as refund. Pertinent to mention that a survey was conducted by the department on 19.05.2009, in the office premises of the assessee and computerized books of accounts updated up to 16.02.2009, were recovered. The print out of cash book and the Profit and Loss account, B/S and Trial balance for the period of 01.04.2008 to 16.02.2009 were taken and impounded which have been duly counter signed by the Director of the company Mr. Amit Kr. Lahoti, in which the assessee has shown as income from operation of ₹1,00,02,000/- and Mr. Lahoti had given a statement on oath during survey in reply to question no.19 that company had income from operation of ₹1,00,02,000/- and paid advance taxes accordingly amounting to ₹30 lacs. The Id. AO rejected the contentions made by the assessee during the assessment proceedings that assessee suo moto admitted the said sum as income of the assessee and therefore, the same cannot be back tracked subsequently, resulting into an addition of ₹1,00,02,000/- to the income of the assessee.

05. In the appellate proceedings, the Id. CIT (A) dismissed the appeal of the assessee by relying on the presumptions, surmises and conjunctures by observing and holding as under:-

"23. The agreement about real transactions takes place in secret and direct evidence about such discreet transaction/agreement would be not available to the department in the normal circumstances during assessment proceedings. The result of this transaction of showing money received from four companies was designed that so as to avoid payment of taxes were by the appellant. It is held that after considering the surrounding circumstances and applying the test of human probabilities it is rightly concluded that the fact mentioned in the statement of facts that the assessee entered into contracts with the companies for selling to them etc. and the negotiations fizzling out near completion stage and intending purchasing companies agreeing to give the assessee cash by way of advance towards consideration of the plots of land are unbelievable and false. In the facts and circumstances where appellant has not been



able to give any evidence and the addition made by the Assessing Officer is to be upheld.

24. Therefore, the cumulative effect of all the above facts & circumstances and decisions of the Hon'ble appellate Authorities makes clear that the transactions of receiving cash from four companies is not genuine and has been shown only to conceal its own income and to avoid payment of taxes. Hence, the addition made by the Assessing Officer is upheld. These grounds of appeal are dismissed."

06. After hearing the rival contentions and perusing the materials available on record, we find that undisputedly, the assessee entered into agreements with four parties for sale of lands during the year against which the assessee had received cash in aggregate of ₹1,00,02,000/-, details whereby are given hereinabove. The said money was received on 13.01.2009 and in the very same day ,in late evening at around 9.15 PM, the armored robbery took place in the office premises of the assessee and the entire cash was stolen. The very next day the assessee lodged an FIR with Hare Police station and the police recovered the money in which an existing and ex-employee and some outsiders were involved. The cash recovered was deposited by the police before the Id. Chief Metropolitan Magistrate. The Id. judge directed the police to conduct the investigation into the facts and also the ownership of the money. The police accordingly conducted an investigation and on the basis of the said investigation report, the Id. judge released the money to the assessee. In the meantime, agreements for sale of land were cancelled by the buyers i.e. four companies from whom the assessee received the cash advances and the assessee refunded the money on 29.03.2009, through account payee cheques which were duly encashed and presented in favour of the companies who had given advances to the assessee. Thereafter, a survey was conducted on 19.05.2009 and impounded the books updated up to 16.02.2009, wherein the said sum was shown as income from operation. Thereafter, during survey the director of the company Mr. Amit Kr. Lahoti has given a



statement on oath in reply to question no.19 that company had income from operation of ₹1,00,02,000/- and accordingly thereafter paid advance taxes accordingly amounting to ₹30 lacs. The books were audited by the tax auditors and filed return of income accordingly claiming the refund of tax paid of ₹ 30 lacs. The assessee claimed that ₹1,00,02,000/- were refunded to the four parties and therefore, the same could not be treated as income of the assessee as the admission of the director during the survey was under coercion. Now the issue before us is that whether the money received in cash against the sale agreement to four parties constitutes the income of the assessee or otherwise. In the present case, since the assessee has already refunded these advances to the persons from whom the amount received by account payee cheques and therefore, the assessee is left with no money. In our opinion, the income can only be treated when it has received or agreed to be received by the assessee and not otherwise. In the present case, the money received stood refunded and returned to the entities from whom these were received which was confirmed by the parties. Therefore, we are not in concurrence to the conclusion drawn by the Id. CIT (A) on the issue. Consequently, we set aside the order of Id. Commissioner of Income-tax (Appeals) and direct the AO to delete the addition.

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

Order pronounced in the open court on 25.02.2025.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 25.02.2025

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