

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
And Ravish Sood (Judicial Member)]**

ITA No.10/Mum/2019
Assessment year: 2015-16

Shamrock Infosys Ltd **Appellant**
*83E, Hansraj Paraji Building,
Dr. E Moses Road, Mahalaxmi (W),
Mumbai 400011
[PAN:AAACS5755K]*

Vs

Income Tax Officer 3(3) (2) **Respondent**
Mumbai

Appearances by

Bharat Gandhi *for the appellant*
V. Vinod Kumar *for the respondent*

Date of concluding the hearing: September 19th, 2019
Date of pronouncement : December 17th 2019

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of learned CIT(A)'s order dated 23rd October 2018 in the matter of assessment under section 143(3) of the Income Tax Act 1961, for the assessment year 2015-16.

2. Grievances raised by the appellant are as follows:-

1. The Ld. CIT(A) has erred in law in facts in passing the order without complying the principles of natural justice.

2. The Ld. CIT(A) has erred in law and facts in confirming the addition made by the Assessing Officer on account of rent paid to Guidelines Property Solution LLP amounting to Rs. 1,55,40,000/-

3. To adjudicate on this appeal, only a few material facts need to be taken note of. During the course of scrutiny assessment proceeding, the Assessing Officer noticed that the assessee has received rent of Rs. 1,55,40,000/- from C Edge Technologies Ltd and had paid identical amount of Rs. 1,55,40,000/- to Guideline Property Solutions LLP- a sister concern. It was an undisputed position that the arrangement was tax neutral. Yet, the Assessing Officer proceeded to disallowance rent payment of Rs. 1,55,40,000/- by observing as follows:-

4.15. The leave and license agreement entered into by the assessee with M/s Guideline Property Solutions LLP and the claim of rent for sub-letting charges debited in the books of accounts is a colourable device/document furnished by assessee which cannot be part of tax planning and the same was made to avoid the payment of tax by resorting to dubious methods. It is obligation of assessee to pay taxes honestly without resorting to subterfuges.

4.16. In view of the facts mentioned above, the transaction made with M/s Guideline Property Solutions LLP is a sham transaction. The assessee has acted in connivance with M/s Guideline Property Solutions LLP. The transaction in the present case is an arrangement of tax

avoidance. Accordingly, the claim of sub-letting charges to M/s Guideline Property Solutions LLP made by the assessee amounting to Rs.1,55,40,000/- is disallowed and added to the total income of the assessee.

4. Aggrieved assessee carried the matter in appeal before the CIT(A), but without any success. While confirming the disallowance of Rs. 1,55,40,000/- the CIT(A) observed as follows:-

5. I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

5.2 I find that it is extremely strange that the rent paid of Rs 1.55 Crores is the same as the rent received of Rs 1.55 Crores. This does not make any business sense. No person of right mind would sub let a property at the same price at which e property is leased.

5.3 During the appellate proceedings, the appellant has submitted that originally it was supposed to construct Furniture in the said premises for the benefit of C Edge. However, instead of purchasing the furniture in lump sum, C Edge would pay rent to the appellant. This arrangement is extremely strange and shows it as a mere finance lease.

5.4 The appellant then submitted that due to paucity of funds, it could not build the furniture / Fit Outs. Thus, the fit outs were built by Guideline. If the appellant did not have the funds to build the Fit Outs, then, there was no reason to enter into the Fit Out agreement in the first place. There was no reason for Guideline to build the Fit Outs since it was not a party to the original Fit Out agreement which was between the appellant and C Edge. This shows that all the transactions are nothing but sham transactions. They are back to back agreements so as to reduce profits.

5.5 The fact that the parties are related even more fits in to the AO's finding that the transaction was a sham transaction. There is no payment of license fees / rent.

There is only a payment of Fit Out charges for lease of furniture. The Hon'ble Supreme Court in the case of Mcdowell & Co Ltd v CIT (1985) 154 ITR 148 has held that tax planning is legal provided its within the framework of law. The leave and license agreement entered into by the assesses with M/s Guideline Property Solutions LLP and the claim of rent for sub letting charges debited in the books of, accounts is a colourable device / document furnished by assessee which cannot be part of tax planning and the same was made to avoid the payment of tax by resorting to dubious methods. It is the obligation of assessee to pay taxes honestly without resorting to subterfuges.

5. The assessee is not satisfied and is in further appeal before us.

6. We have heard the rival contentions, perused the material in record and duly considered facts of the case in the light of the applicable legal position.

7. We find that while the Assessing Officer has treated rental income of Rs. 1,55,40,000/- he has disallowed the payment for rent, which was necessary to earn this income, of Rs. 1,55,40,000/- by treating it as sham transaction. A partly sham and partly bonafide, and in any case, learned CIT(A)'s conclusions are based on surmises and conjectures. If the payment of rent is treated as sham transaction, the resultant sub letting income cannot be genuine income either. The assessee having entered into a no profit no loss transaction cannot be basis enough to disallow outgo while accepting inflow. There is a clear contradiction in the approach of the authorities of 'colourable device' to evade taxes in anyway devoid of legally sustainable merits on the facts of this case, as admittedly transaction, in entirety , is tax neutral.

8. In view of these discussions, and bearing in mind entirety or the case, we uphold the plea of the assessee. the Assessing Officer as, accordingly, directed to delete impugned disallowance of Rs. 1,55,40,000/-. The assessee gets relief accordingly.

9. In the result, the appeal is allowed, in the terms indicated above. Pronounced in the open court today on the 17th day of December, 2019

Sd/-

Ravish Sood
(Judicial Member)

Sd/-

Pramod Kumar
(Vice President)

Mumbai, dated the 17th of December, 2019

Nishant Verma Sr.PS

Copies to: (1) The appellant (2) The respondent
 (3) CIT (4) CIT(A)
 (5) DR (6) Guard File

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*