

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, JM AND AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No. 1676/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Translands Infrastructure Developers Pvt. Ltd. Office No. A-702, 7 th Floor, Everest Nivara Infotech Park, Plot No.D/3, TTC Industrial Area, MIDC, Turbhe, Navi Mumbai-400705.	बनाम/ Vs.	DCIT-15(3)(1) Room No.451, Aayakar Bhavan, M. K. Marg, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCT0036B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri J. P. Bairagra	
Revenue by:	Shri S. N. Kabra (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 24/01/2022

घोषणा की तारीख /Date of Pronouncement: 21/02/2022

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 25.02.2020 passed by the Commissioner of Income Tax (Appeals) -24, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

2. The assessee has raised the following grounds: -

“1. Ld. CIT (A) erred in upholding the reopening of assessment u/s 147 of the Income Tax Act.



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2. *Ld. CIT (A) erred in upholding the reassessment u/s 147 which was reopened by AO on the basis of borrowed satisfaction i.e. merely on the basis of information received in letter from Dy. DIT (Inv.) in respect of search and seizure u/s 132 of the Act in the case of Shri Vipul Vidur Bhatt without application of his own mind before issue of notice u/s 148.*

3. *The Ld CIT (A) erred in upholding the reassessment u/s 147 reopened by AO without taking the requisite approval from the Principal Commissioner u/s 151(1) of the Income Tax Act, 1961 by recording the satisfaction that it is a fit case for reopening on the basis of reasons for reopening recorded by the Ld AO as no exact copy of the said approval has been given to the Appellant.*

4. *Ld. CIT (A) erred in upholding the reassessment u/s 147 which was reopened by AO on the basis of reasons which are factually incorrect.*

5. *The Ld CIT (A) erred in confirming the addition u/s 68 made by AO in respect of amount of Rs 1,85,00,000 being share of profit in joint venture pertaining to last year i.e. AY 2011-12 payable to M/s Sampada Chemicals Ltd which was paid during the year under appeal and there is no credit in the books of the appellant companies on account of amount received from the said party.*

6. *The Ld CIT (A) erred in issuing direction to AO to make addition of Rs.3,35,00,000/being amount paid to M/s Acute Consultancy Ltd towards share of joint venture profit payable for last year to the income of the appellant for AY 2011-12 by treating the same as bogus expenditure while the assessment for that assessment year was completed u/s 143(3) after examining all the details.*



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7. *The Ld CIT (A) erred in confirming the addition made by AO relying on the statement of Shri Vipul Vidur Bhatt recorded u/s 132(4) which has been retracted subsequently and hence it does not have any evidentiary value.*

8. *The Ld CIT (A) erred in confirming the additions made by AO u/s 68 without appreciating that no opportunity to cross examine Mr. Vipul Bhatt was provided and the onus to ensure presence of deponent whose statement was relied by AO was on him which cannot be shifted to the assessee as held by Hon. Delhi High Court in the case of PCIT v. Best Infrastructure (India) (P) Ltd, 397 ITR 82.*

9. *The Appellant craves leave to add to, alter or amend any ground before or at the time of hearing.”*

3. The brief facts of the case are that the assessee filed its return of income on 30.03.2013 declaring total income to the tune of Rs.51,47,530/- for the A.Y.2012-13. The return was processed u/s 143(1) of the Act. The case of the assessee was reopened u/s 147 of the Act after recording the reasons mentioned below: -

M/s Translands Infrastructure Developers Pvt. Ltd.

PAN: AADCT0036B

A.Y. 2012-13

Reasons or Reopening

This office has received an information from the DDIT(inv.) Unit 7(4), Mumbai. Vide letter No. DDIT(Inv.) /Unit-7(4) /Information/2016-17 dated 08.11.2016 enclosing the copy of ledger of M/s.Translands Infrastructure Developers P. Ltd. in the books of



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M/s. Acute Consultancy Limited, which is involved in providing accommodation entries.

In the instant case, as per the information received from the DDIT(Inv) Unit '7(4), Mumbai vide letter No. DDIT(Iny.) /Unit-7(4)/information/2016-17 dated 08.11.2016, stated that M/s Translands Infrastructure Developers P. Lid. had taken bogus accommodation entries from M/s. Acute Consultancy Limited, which is covered under search u/s, 132 of the Act and same is. managed and controlled by Shiri Vipul Vidur Bhatt. The ledger provided with the said letter showing credit entry of Rs.3,35,00,000/- for A. Y.2012-13 in the books of M/s. Acute Consultancy Limited.

This office has also examined: the evidence, and fact of the case independently and it is found that, there is failure on 'the part of the assessee to disclose fully and truly all material facts necessary for its assessment.' Therefore, I have the reason to believe that the income chargeable to" tax under the provisions has escaped assessment for A.Y. 2012-13, coming within the meaning of the section 147of the I.T. Act, 1961.

Notice u/s 148 is accordingly issued."

4. After the reply of the assessee, the AO raised the addition to the tune of Rs.3,35,00,000/- and assessed the total income to the tune of Rs.5,71,47,530/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the assessee was not satisfied on the grounds mentioned above, therefore, the assessee has filed the present appeal before us.

ISSUE NO. 5 to 8



5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has challenged the confirmation of the addition in sum of Rs.1,85,00,000/- payable to M/s. Sampada Chemical Ltd, and sum of Rs.3,35,00,000/- payable to M/s. Acute Consultancy Ltd., u/s 68 of the Act. It is not in dispute that during the F.Y.2011-12, there was an opening balance of Rs.1,85,00,000/- payable to M/s. Sampada Chemicals Ltd. which was paid by assessee's related company namely M/s. Dawn Infrastructure Pvt. Ltd., to M/s. Sampada Chemicals Ltd., on behalf of assessee company. The assessee company has shown the transaction in its books of account under head current liability. The AO as well as CIT(A) has held the transaction as non-genuine. The credit balance has been shown in sum of Rs.3,35,00,000/- which was paid by assessee in the year under consideration in F.Y. 2011-12. The AO as well as CIT(A) has held the transaction as non-genuine but it is not in dispute that the transaction has been shown by assessee company in his books of account in the preceding year. Under this year, the assessee discharged his liability. Since the transaction has been shown in the preceding year and discharged in the current year, the provision u/s 68 of the Act is not applicable to the facts and circumstances of the case and in this regard we relied upon the decision of Hon'ble Bombay High Court in the case of **CIT Vs. Usha Stud Agricultural Farms Ltd, 301 ITR 384, M/s. Sooraj Leathers Vs. ITO ITA. No.305/Mds/2016, Ivan Singh Vs. ACIT & CIT Vs. Jagatkumar Satishbhai Patel (2014) 45 taxmann.com 441**. Accordingly, we delete the addition in question and decide these issues in favour of the assessee against the revenue.

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7. Since the issue nos. 5 to 8 has been decided in favour of the assessee on merits, therefore, decision on these issues would only be academic in nature.

8. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 21/02/2022

Sd/-
(AMARJIT SINGH)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 21/02/2022
Vijay Pal Singh/Sr. PS

Sd/-
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai