

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAHUL CHAUDHARY, JM

ITA No. 1166/Mum/2021
(Assessment Year: 2012-13)

Dy. CIT-15(3)(1) Room No. 460, 4 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	M/s. Translands Infrastructure Developers P. Ltd. JN-3, 14-15, Aashirward CHS, Sector-9, Vashi, Navi Mumbai-400 703
PAN/GIR No. AADCT 0036 B		
(Appellant)	:	(Respondent)
Appellant by	:	Shri J. P. Bairaga, CA
Respondent by	:	Shri B. K. Bagchi, Sr. AR
Date of Hearing	:	20.04.2022
Date of Pronouncement	:	27.04.2022

ORDER

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-24, Mumbai ('ld.CIT(A) for short) dated 25.02.2020 and pertains to the assessment year (A.Y.) 2012-13.

2. The grounds of appeal read as under:

1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not taxing the amount of Rs.3,35,00,000/- in the current year despite the finding that such payment/expenditure was bogus and despite accepting the decision of the AO that M/s Acute Consultancy Ltd. is in fact a bogus entity?"

2. Whether On the facts and circumstances of the case and in law, the Ld.CIT(A) is right in first observing (Page 31 of the Ltd. CIT(A) order) that the entries made by the appellant in his books do not match with the entries made in the books of M/s Acute Consultancy Ltd. thereby doubting the authenticity of the books and then directing to make addition in earlier years believing in the authenticity of the same books?"

3 Whether on the facts and circumstances of the case and in law, the amount of Rs.3,35,00,000/- is conclusively chargeable to tax in the hands of the assessee in the Assessment Year 2011-12 or Assessment Year 2012-13?"

4. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the assessing officer be restored.

3. At the outset, the Id. Counsel of the assessee submitted that in same case the appeal of the assessee company for the same assessment year on a similar issue was already heard on 24-01-2022 and the order was passed by the member of Hon'ble ITAT 'F' Bench on 21-02-2022. That since, the grounds raised in the appeal filed by the department are already decided in the appeal filed by the assessee company. Hence, this appeal should be dismissed. It has further been claimed that the appeal filed by the department for the same assessment year came to the knowledge of the assessee company when the notice fixing the hearing on 14-03-2022 was received, and before that neither the assessee company was aware of the appeal filed by the department nor pointed out by the department at the time of the hearing fixed on 21-10-2021, 06-12-2021, and 24-01-2022 in the case of the appeal filed by the assessee company. Hence, the Id. Counsel of the assessee pleaded that the issue is already decided by the ITAT in assessee's favour. The Id. DR did not dispute the above proposition canvassed by the Id. Counsel of the assessee.

4. We have heard both the counsel and perused the records. We note that the ITAT has disposed of the assessee's appeal as referred above by as order as under:

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.

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.

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 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.) /Unit7(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.

5. We agree that ITAT has already adjudicated the issue arising in this appeal. The aforesaid order applies *mutate mutandis* to the Revenue’s appeal. The ld. Departmental Representative fairly agreed to the same. It is also not the case that the Hon’ble Bombay High Court has reversed the aforesaid order of ITAT. Accordingly, the revenue’s appeal stands dismissed in view of ITAT order dated 21.02.2022 in assessee’s appeal where on same issue order of the ld. CIT(A) was confirmed in favour of the assessee.

6. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 27.04.2022

Sd/-
(Rahul Chaudhary)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 27.04.2022

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai