

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं .I.T.A No. 1062/Del/2018
निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Mahamaya Exports Pvt. Ltd., Rectangle-1, D-4, Saket, New Delhi - 110 017.	<u>बनाम</u> Vs.	ACIT, Central Circle : 16, New Delhi.
PAN No. AAACM0765B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by :	N o n e;
राजस्वकीओरसे / Department by :	Ms. Rinku Singh, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	24.08.2022
उद्घोषणाकीतारीख/Pronouncement on :	24.08.2022

आदेश / O R D E R

PER C. N. PRASAD, J.M.

1. This appeal is filed by the assessee against the order of the
ld. Commissioner of Income Tax (Appeals)-31 [hereinafter referred

to CIT (Appeals)] New Delhi, dated 20.12.2017 for assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

“1. That the learned Commissioner of Income Tax (Appeals)-31, New Delhi has erred both in law and on facts in substantially confirming the order of assessment dated 30.3.2016 u/s 143(3) of the Act without appreciating that impugned order of assessment has been framed without valid opportunity and in disregard of the settled position of law and even the letter from learned ACIT, Circle-1, Muzaffarnagar as obtained in the appellate proceedings had been made in a cursory manner without due application of mind and hence the order so framed are illegal, arbitrary, unjustified, contrary to principle of natural justice and wholly vitiated.

1.1 That both the authorities below have framed impugned orders without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principles of natural justice and hence vitiated.

1.2 That furthermore impugned orders are vitiated orders having been made with a premeditated and preconceived opinion to make arbitrary addition and raise demand and that too without considering the facts and evidence on record and settled position of law and thus such an orders be quashed as such.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming an addition of Rs. 1,46.48,34,700/- representing alleged unexplained sundry creditors outstanding at the end of the year and. held to be unexplained credit u/s 68 of the Act.

2.1 That while drawing adverse inferences, regarding the alleged modus operandi, the learned Commissioner of Income Tax (Appeals) has arbitrarily brushed aside the submission made by the assessee and has drawn adverse inference only on the basis of surmises and conjectures and subjective satisfaction, which too is unsupported by any material on record and does not pertain to the instant assessment year.

2.2 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts on observing that “the appellant’s modus operandi has been to inflate the cost of land in its books of accounts by directly taking the enhancement in value to the balance sheet without routing it through the P&L account.”

2.3 That findings of the learned Commissioner of Income Tax (Appeals) is wholly misconceived on factual grounds that “ It is also to be noted that in most of these companies/entities, the appellant may be having a controlling/substantial interest.”

3. That various adverse findings and conclusions recorded in the impugned order are factually incorrect and contrary to record, legally misconceived and untenable.

It is therefore, prayed that the addition made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and appeal of the appellant company be allowed.”

3. In spite of issue of several notices through speed post with acknowledgement due posting the appeal for hearing on 8 occasions from 18.02.2021 to 24.08.2022, none appeared on behalf of the assessee nor any adjournment was moved. It is noticed from the record that in fact the notice issued under speed post with acknowledgement due posting the appeal for hearing on 25.08.2021 the notice returned un-served with the postal authorities remark that the addressee left. We dispose of the appeal on hearing the ld. DR.

4. The ld. DR submits that assessee is engaged in the business of development of residential and commercial projects at various places in Haryana State. The ld. DR submits that the Assessing Officer while completing the assessment noticed that the assessee has shown a balance of Rs.148,93,34,700/- on account of sundry creditors as on 31st March, 2013. The assessee was required to furnish the details of such sundry creditors along with the copy of accounts of the creditors and confirmations from the respective creditors with the nature of

transaction. The ld. DR submits that the assessee filed its reply submitting that out of Rs.148,93,34,700/- a sum of Rs.8.40 crores was received in advance against sale of property and the balance of Rs.140,53,34,700/- has arisen as liability due to cancellation of the agreement to sell the property. The ld. DR submits that the Assessing Officer noticed that the assessee has been following this practice of first entering into agreement to sell at a nominal price and subsequent cancellation of such agreement to sell by paying huge compensation to illegally increase its cost of land. The ld. DR submits that based on the statements recorded from Shri Lalit Aggarwal, Director of Shree Bihari Forging Pvt. Ltd., one of the Directors of the companies to whom the compensation had shown to have been paid and the modus operandi adopted by the assessee concluded that assessee has substantially evaded the tax liability by reducing the profit, treated the outstanding balance in the sundry creditors amounting to Rs.148,93,34,700/- as unexplained cash credit of the assessee. The ld. DR submits that on appeal the ld. CIT (Appeals) sustained the addition to the extent of Rs.146,48,34,700/- as the assessee received only Rs.2.45 crores in the earlier years which the ld. CIT (Appeals) deleted from the outstanding sundry creditors of the current assessment year.

5. We have heard the ld. DR and perused the orders of the authorities below. The Assessing Officer made addition treating the sundry creditors balances outstanding as on 31st March, 2013 as income of the assessee observing as under :-

“4.4 Thus, it is seen that the assessee has been following this practice of first entering into agreement to sell at a nominal price and subsequent cancellation of such agreement to sell by paying huge compensation to illegally increase its cost of land. It is worthwhile to mention here that during the assessment proceedings for A.Y. 2008-09 in other group companies of ABW group, wherein the exactly similar modus operandi had been used

by such companies to increase its cost of land, the statements of directors of the companies to whom the compensation had shown to have been paid was recorded under oath. The gist of such statements is discussed in the latter paragraphs of the order. It is highly interesting to note that M/s Shree Bihari Forgings Pvt. Ltd. had taken the compensation from M/s Jassurn Infrastructure Pvt. Ltd. and M/s Progressive Buidtech Pvt, Ltd., companies of ABV group during F.Y. 2008-09 relevant to A.Y. 2009-10 and has also received the compensation of Rs.50,00,000/- during the year under assessment. The statement of Sh. Lalit Aggarwal PAL ADPPA2960D, Director of M/s Shree Bihari Forgings Pvt. Ltd. was recorded on 26.02.2016 and 29.02.2016 u/s 131 of the I.T. Act during above referred reassessment proceedings for A.Y. 2008-09. In his statement recorded on 26.02.2016 and 29.02.2016 under oath, Shri Agarwal has stated that the agreement to sell and cancellation of the same as shown to have entered into between the assessee and M/s Shree Bihari Forgings Pvt. Ltd. was prepared on the same day in the year 2008 after the month of April. He further stated that such compensation was received by M/s Shree Bihari Forgings Pvt. Ltd. against a commission of 5% and M/s Shree Bihari Forgings Pvt. Ltd. was deeply involved in tax evasion practices and the Hon'ble High Court of Delhi has ordered the comprehensive audit of operations. Mr Agarwal had further stated that M/s Shree Bihari Forgings Pvt.. Ltd. had also received the compensation from other companies of ABW group also namely M/s Progressive Buidtech Pvt. Ltd. in the same year with the exactly similar modus operandi.

4.5 The statement of Shri Lalit Aggarwal had revealed various surprising facts through which it is evident and crystal clear that the assessee company was indulged in the illegal activities to defraud the revenue and to evade the taxes, Mr. Lalit Aggarwal has elaborately disclosed the modus operandi followed by the assessee. company to increase its cost of land by way of entering into unenforceable agreement to sell in connivance with various entry providing companies including M/s Shree Bihari Forgings Pvt. Ltd. of which Shri Lalit Aggarwal himself is a director. Shri Aggarwal has further stated that initially the land owner assessee company allegedly entered into an 'agreement to sell' and receives certain amount as an advance and the agreement is shown as cancelled at a later date and huge compensation is shown to have paid to M/s Shree Bihari Forgings Pvt. Ltd. due to cancellation of the agreement, whereby the cost of land of the assessee company is fictitiously increased by this substantial amount. In reply to one of the Question at serial number 9 of the statement recorded under oath of Shri Agarwal, can be seen as under-

Q.9 How do you say that M/s Shree Bihari Forgings Pvt. Ltd. was not engaged in any Sand deal with ABW group of companies ?

Ans. First of all, I would like to state that the companies having status quo dated 08.05,2008 as per Company Law Board's order on Fixed assets. This was ordered by the Company Law Board on the petition CP 15 of 2008. I will provide the copy cr'tlte order, if required. Secondly, it is noticed that as per the MOA of company, the group is not allowed for any land agreement. Finally, no Board of Director's meeting was held on this issue and no one authorised Mr. Pramod Goil, one of the director of M/s M/s Shree Bihari Forgings Pvt. Ltd. to enter any kind of land deal/agreement.

4.6 Mr. Lalit Aggarwal had also produced the orders dated 4.09.2015, 9.12.2013 and 13.05,2013 of the Hon'ble Delhi High Court in the case of Shri Lalit Kumar Agarwal & Others vs M/s Shree Bihari Forgings Pvt. Ltd. & others, in which Hon'ble Court has ordered on the application moved by the appellant Mr. Lalit Aggarwal under Rule 9 of the Companies (Court) Rules, 1959 praying for directions to the respondents to hand over copies of relevant financial statement, books of accounts and other relevant documents and papers to the Administrator.

Shri Lalit Aggarwal had further stated that actually no amount was ever paid by M/s Shree Bihari Forgings Pvt. Ltd. to M/s Jassum Infrastructure Pvt. Ltd. and all these amounts were written in the unregistered agreement without any actual or physical transaction.

4.7 The land which was claimed to being sold by the assessee company at a price of Rs.76,05,000/- was ended by paying Rs, 4.53 crore as compensation by the same assessee company. In nutshell, the assessee company has entered into an agreement to sell the land to incur business loss of Rs. 4.53 crore and actually no such agreement to sell was ever entered into on the given date. Thus, there was no doubt that the assessee had claimed bogus compensation on account of cancellation of agreement to sale in respect of M/s Shree Bihari Forgings Pvt. Ltd. When the purchase of land itself was denied there was no question of payment of compensation on cancellation thereof. It was found that the cheque received by the assessee was not deposited and the entire sale proceeds as per agreement to sale were not received by the

assessee. Under the circumstances the agreement to sale itself was not complete and there could not have been question of payment of any compensation. Considering the modus operandi of the group companies and the specific findings in the case of the assessee company as discussed above, the compensation claimed in respect of the two companies also cannot be genuine.

4.8 Thus, it was held that the land which was Claimed to being sold by the assessee company at a price of Rs.76,05,000/- was ended by paying Rs. 4.53 crore as compensation by the same assessee company is far from the fact. The alleged "Agreement to Sell" during the year F.Y. 2007-08 had actually never taken place..

4.9 Further, during the course of reassessment proceedings for A.Y. 2008-09, it was seen that M/s Miraz Overseas Pvt. Ltd. one of the ABW group companies had paid huge compensation to M/s. Arison Builders Pvt. Ltd. Now known as M/s. Arison Associates Pvt. Ltd. Following the similar modus operandi. Thus in order to verify the genuineness of said transaction, the statement of Shri Mohit Gupta one of the directors of M/s Arison Builders Pvt. Ltd. now known as M/s Arison Associates Pvt. Ltd. was recorded On oath. Mr. Mohit Gupta had specifically stated that his company had never entered into any such 'agreement to self with the M/s Miraz Overseas Pvt. Ltd, It was seen that the agreement dated 3.10.2007 as shown to have executed between M/s Miraz Overseas Pvt. Ltd.(ABW group company) and M/s Arison Builders Pvt, Ltd. now known as M/s Arison Associates Pvt. Ltd. was signed by Sh. Mohit Gupta on behalf of the purchaser. During the process of recording of the statement, Sh. Mohit Gupta was shown a copy of the agreement to sell. Shri Gupta categorically denied the signature appearing in this document and stated that it was not his signature. He also denied having given any money to either the assessee nor have signed any cheque as an advance, while entering into the purported agreement for purchase of land from the assessee company. When inquired about the huge compensation received in lieu of cancellation of agreement to sell, he replied that the company had never received any such money. He reiterated in the course of statement that the signature as appearing on the copy of "agreemnt to sell" was not his.

4.10 The relevant page of the statement recorded of the Directorof the purchaser company Mr. Mohit Gupta is as under:-

Arison Builders Pvt. Ltd.) had entered into with the following companies

- i) M/s Beta Promoters Pvt. Ltd.
- ii) M/s Progressive Buildtech Pvt. Ltd.
- iii) M/s Sheel Buildcon Pvt. Ltd.
- iv) M/s Miraz Overseas Pvt. Ltd.
- v) M/s Divya Jyoti Enterprises Pvt. Ltd.

Q17. No, I am not aware about any agreement to sell with regard to any land between my company and ABW group companies, namely M/s Beta Promoters Pvt. Ltd., M/s Progressive Buildtech Pvt. Ltd., M/s Sheel Buildcon Pvt. Ltd., M/s Miraz Overseas Pvt. Ltd. and M/s Divya Jyoti Enterprises Pvt. Ltd.

Q18. Please explain the nature of business of the company, M/s Arison Associates Pvt. Ltd. in which you are a director?

Ans. My company, namely M/s Arison Associates Pvt. Ltd. is engaged in the business of supply of land filling material and building materials also. In the land filling work, the company used to fill up the land with mud and malba.

Q19. Can you explain the details of the other director in the company M/s Arison Associates Pvt. Ltd. (now known as M/s Arison Builders Pvt. Ltd.)?

Ans. It is to state that Mr. Gourav Jyoti is the main director of the company M/s Arison Associates Pvt. Ltd.

Q20. Can you tell something about the nature of agreement to sell with the parties mentioned at Question No. 6 above, which were owner of the land and your company was entered into an agreement to purchase the land from the above 5 companies of ABW group?

Ans. As far as I am concerned and the company is concerned my company never had the capacity in terms of finances to purchase these lands. You have shown me the copy of agreement to sell as detailed below

- i) M/s Beta Promoters Pvt. Ltd. agreement to sell dated 09.10.2007
- ii) M/s Divya Jyoti Enterprises Pvt. Ltd. agreement to sell dated 09.10.2007
- iii) M/s Miraz Overseas Pvt. Ltd. agreement to sell dated 10.10.2007
- iv) M/s Progressive Buildtech Pvt. Ltd. agreement to sell dated 06.10.2007
- v) M/s Sheel Buildcon Pvt. Ltd. agreement to sell dated 06.10.2007

I firmly state that on these agreement to sell, the signatures are not mine



18/10/18

4.11 Mr Gupta has also stated that his company was never in such a financial capacity to purchase these lands. M/s Arison Builders Pvt. Ltd. now known as M/s Arison Associates Pvt. Ltd. is engaged in the business of supplying of land filling materials and building materials. In the land filling work, the company used to fill up the land with mud and malba, The statement of other director of M/s Arison Builders Pvt. Ltd, now known as M/s Arison associates Pvt. Ltd. is also been recorded under oath. The statement of Shri Mohit

Gupta and Shri Gaurav Tayal had revealed various surprising facts through which it is crystal clear that AB.W group companies were deeply indulged in the illegal activities to defraud the revenue and to evade the taxes. This fact was found corroborated with the facts revealed from the statement recorded in the case of directors of the other land purchaser companies with other companies of ABW group, who have entered into an agreement to sell and subsequently cancellation of the same.

4.12 The land which was claimed to being sold by the one of the ABW group companies at a price of Rs.58,60,000/' was ended by paying Rs. 3.636 crore as compensation by the same company. In nutshell, the said company had entered into an agreement to sell the land to incur business loss of crores of rupees and actually no such agreement to sell was ever entered into on the given date.

4.13 In view of the above facts and findings, there is no doubt that the assessee had claimed bogus compensation on account of cancellation of agreement to sale in respect of M/s Arison Builders Pvt. Ltd. now known as M/s Arison Associates Pvt. Ltd. and all the other three purchaser companies as well. When the purchase of land itself was denied there was no question of payment of compensation on cancellation thereof. Considering the modus operandi of the group companies and the specific findings in the case of such company as discussed above, the compensation claimed in respect of the two companies was treated as non genuine.

4.14 In view of the above discussion and the statements recorded under oath of one of the director of the compensation receiving company during the course of reassessment proceedings for the A.Y. 2008-09, it is manifestly apparent that the assessee company has followed the exactly similar modus operandi as followed by other ABW group companies in the earlier years to illegally increase its cost of land and resultantly substantially reducing the profit and thereby evading the tax liability. Thus, the amount of Rs. 1,48,93,34,700 /- as shown by the assessee under the head "Trade Payable" is added to the total income of the assessee for the year under consideration as undisclosed income."

6. The assessee preferred appeal before the ld. CIT (Appeals) and made its submissions. Considering the submissions and the evidences furnished by the assessee, the ld. CIT (Appeals) sustained the addition, observing as under :-

“7.10. By not routing the enhanced cost of land through P&L Account the assessee/appellant has tried to evade scrutiny by tax authorities. Further, the companies/entities in whose names credits have been booked have (in almost all cases) not shown the increase in value of their assets (or corresponding income). It is also to be noted that in most of these companies/entities, the appellant may be having a controlling/substantial interest. I have already noted that the confirmations filed by the appellant, do not inspire any confidence, as they are not proper and are incomplete/self generated. The AO, in his assessment order has brought out in detail the modus operandi of the appellant, in enhancing the cost of land. Surprisingly, even though land is sought to be treated as inventory, the same is not depicted as stock in trade or as closing stock in the P&L Account. The AO has already noted the intention of the appellant to not actually pay the enhanced amounts to 21 entities as mentioned. There is no evidence on record whether the amounts have been paid even after elapse of 4 years [the matter pertains to F.Y. 2012-13, and we are in December 2017], It is also surprising to note that how, within one year, a piece of land that was shown in the balance sheet at value Rs. 40.44 crore, quadrupled to more than 4 times. Thus, it is clear, that the appellant is booking enhanced amount in a sham manner, for purposes of manipulation of tax liability. The AO has rightly made addition of this enhanced amount u/s 68 treating the same as cash credit.

Provisions of section 68 reads as follows-

"68. Where any sum is found credited in the books of an assessee maintained for any previous year; and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by what-ever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the assessing Officer aforesaid has been found to be satisfactory:"

As per section 68, the onus is on the assessee to prove not only the source but also the nature of credits. The analysis as aforesaid *brings* out in detail that the enhanced amounts payable for land do not *have* any credible basis. The nature of such enhanced credits remains unexplained. As such, the AO's action is found to be in order, and the assessment order is confirmed hereby.

7.11 However, out of the aforesaid amount of Rs. 148, 93, 34,700/- , a sum of Rs. 2.45 crores was received in the earlier year, and hence the same cannot be added in this year.

7.12 Further, the amount received during the year amounting to Rs. 5.95 crore remains unexplained in view of the confirmations not being in order, as detailed above.

7.13 In final analysis, the action of the AO is upheld. The addition amounting to Rs.148,93,34,700/- is down scaled to Rs.146,48,34,700/-.”

7. We find that the ld. CIT (Appeals) passed a reasoned order considering the evidence and submissions of the assessee. In the circumstances we sustained the order of the ld. CIT (Appeals) and reject the grounds raised by the assessee.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 24/08/2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated: 24/08/2022

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	24.08.2022
Date on which the typed draft is placed before the dictating member	24.08.2022
Date on which the typed draft is placed before the other member	24.08.2022
Date on which the approved draft comes to the Sr. PS/ PS	24.08.2022
Date on which the fair order is placed before the dictating member for pronouncement	24.08.2022
Date on which the fair order comes back to the Sr. PS/ PS	24.08.2022
Date on which the final order is uploaded on the website of ITAT	24.08.2022
Date on which the file goes to the Bench Clerk	24.08.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	