

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.5251Mum/2017
(A.Y. 2012-13)**

Deputy Commissioner of Income Tax-1(3)(1) Room No. 540, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai – 400 020	Vs.	M/s Shah Granites Private Ltd 409/410, A Wing, Master Mind-1, Royal Palms, Mayur Nagar, Aarey Milk, Colony, Goregoan (E), Mumbai - 400065
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACS5241C		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Soumendu Kumar Dash

Date of Hearing	13.09.2022
Date of Pronouncement	28.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order passed by the Id. CIT(A)-3, Mumbai which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2012-13. The revenue has raised the following grounds before us:

- “1. On the facts and circumstances of the case the Ld. CIT(A) erred in law in deleting the disallowance of Rs.1,33,67,274/ made u/s 36(1)(ii) of the Act”

2. *On the facts and circumstances of the case the Ld.CIT(A) has erred in law in deleting the addition of Rs.140,16,818/ made u/s 69C of the Act, on the non-genuine expenses claimed towards the various parties for the services supposed to be received from despite the fact that the assessee could not prove the genuineness of the said expenditure.*
3. *The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal.*

2. This case was listed for hearing for more than 3 times however, no compliance was made from the side of the assessee therefore, the appeal filed by the Revenue is adjudicated by hearing the ld. D.R. and perusal of material on record.

3. The fact in brief is that the return of income declaring income of Rs.13,55,572/- was filed on 30.11.2012. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 07.08.2013. During the course of assessment the A.O had issued notices u/s 133(6) of the Act to the parties from whom certain services were utilized by the assessee for the year under consideration. However, no compliance was made in response to the notice u/s 133(6) issued by the A.O. Consequently, the A.O has treated amount of Rs.1,40,18,818/- as unexplained expenditure u/s 69C of the Act and same was added to the total income. During the course of assessment the A.O has also noticed that assessee had made loan advances to its associated companies totaling to Rs.72,25,537/- as on 31.03.2012. The break-up of such detail of advances given as under:

Sr. No.	Loans given to	Amount (Rs.)
1.	Loan to wholly owned subsidiary M/s Star Granites & Marbles Pvt. Ltd. Singapore	4,36,06,322/-
2.	Advances to others including M/s Shah Granites Contracting LLC, Advance to Daily RO, Shri Brijen Joshi & Shri Nagendra Prasad	2,86,49,215/-

	Total	7,22,55,537/-
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The A.O has further noticed that assessee has not charged any interest on the aforesaid advances made to the related concern, however, it has debited interest expenditure to the amount of Rs.2,64,83,920/- in the profit and loss account. Consequently, the A.O has levied interest @ 18.5% on the aggregating loan and advance of Rs.7,22,55,537/- and computed interest of Rs.1,33,67,274/- which was proportionately disallowed u/s 36(1)(iii) of the Act.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). In respect of disallowance of Rs.1,40,16,818/- made u/s 69C of the Act the ld. CIT(A) had allowed the claim of the assessee stating that source of expenditure was fully explained and the payment were made through banking channel and all the bills were produced which were not rejected.

4. During the course of appellate proceedings before us ,the ld. D.R has submitted that in spite of issuing a number of notice u/s 133(6) of the Act, non-compliance was made before the A.O and necessary verification could not be carried out to prove the genuineness of the impugned expenditure. After hearing the ld. D.R and perusal of the material on record it is noticed that as per para 1 of the assessment order the A.O has issued notices u/s 133(6) to the different parties as under:

Sr. No.	Name of the Party	Section	Date of issue	Expected date of reply	Present status
1.	Shri V. Srinivas Reddy	133(6)	02.02.2015	12.02.2015	Reply not recd.
2.	Shri Syed Hamed Ali	133(6)	02.02.2015	12.02.2015	Reply not recd.
3.	Shri Sunil Contractor	133(6)	02.02.2015	12.02.2015	Returned

					unserved.
4.	M/s Shakti Marble	133(6)	02.02.2015	12.02.2015	Reply no recd.
5.	Shri Ram Pukar Singh	133(6)	02.02.2015	12.02.2015	Reply not recd.
6.	Shri Mohan Lal Yadav	133(6)	02.02.2015	12.02.2015	Returned unserved.
7.	Shri Md Mansoor Alam	133(6)	02.02.2015	12.02.2015	Returned unserved.
8.	Shri Mahaveer Prasad	133(6)	02.02.2015	12.02.2015	Reply not recd.
9.	Shri N. Krishna Reddy	133(6)	02.02.2015	12.02.2015	Returned unserved.
10.	Shri Dhusasan Swain	133(6)	02.02.2015	12.02.2015	Reply not recd.
11.	Shri Ashok Sah	133(6)	02.02.2015	12.02.2015	Reply not recd.
12.	Shri Ahmad Akhtar Shaeik	133(6)	02.02.2015	12.02.2015	Returned unserved

However, it is noticed that no compliance was made to the notices issued and no detail was furnished before the A.O. In this regard it is further noticed that the ld. CIT(A) has deleted the addition on the basis of his own observation without calling any remand report from the A.O, therefore, we consider it appropriate to restore this matter to the file of the ld. CIT(A) for deciding de novo after obtaining remand report from the A.O.

5. In respect of deleting disallowance of interest expenses of Rs.1,33,76,274/- ld. D.R. contended that the detailed information and relevant evidences mentioned by the ld. CIT(A) in his findings were not furnished by the assessee before the A.O and no remand report was called by the ld. CIT(A) from the AO before deciding this issue.

6. Heard the ld. D.R and perused the material on record. It is noticed that ld. CIT(A) has deleted the impugned addition after discussing the details information furnished by the A.O, however, neither any reference was made in the finding whether such detail and evidences were also

produced before the A.O at the time of assessment proceedings nor any remand report was called by the Id. CIT(A) from the A.O. Therefore, this issue is also restored the Id. CIT(A) for deciding afresh after calling the remand report from the A.O.

7. In the result, the appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on 28.09.2022

Sd/-

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 28.09.2022

PS: Rohit

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

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

आदेशानुसार/BY
ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai