

IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI

SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2500/MUM/2019  
(Assessment Year: 2008-09)

Duke Business Pvt. Ltd.,  
Office No. 211, Balaji Arcade Premises,  
Near Sejal Glass, S.V. Road,  
Kandivali (West),  
Mumbai - 400067  
[PAN: AABCJ6245N]

..... Appellant

Vs

DCIT, CC 1(1),  
Room No. 903, 9<sup>th</sup> Floor,  
Pratishtha Bhavan, (Old CGO Building  
(Annexe) M.K. Road,  
Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : Shri Aakash Kumar  
For the Respondent/Department : Smt. Riddhi Mishra

Date of conclusion of hearing : 23.11.2022  
Date of pronouncement of order : 25.11.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant has challenged the order, dated 26.02.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2008-09, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 18.03.2016, passed under Section 153C read with Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal:

*"1. The Learned Commissioner of Income Tax (Appeals) has deleted addition made by Learned Assessing Officer on protective basis under Section. 68 as unexplained cash credit amounting to Rs. 7.50 Crores with comments/observation/order that the same shall revive if the addition in the case of Third Party/Shri Praveen Kumar Jain is deleted in the appellate proceedings."*

3. Brief facts of the case are that on the basis of search and seizure operation conducted by DDIT(Inv.) Mumbai under Section 132 of the Act in case of Praveen Kumar Jain, his associates and related companies, assessment was framed on the Appellant-Company under Section 153C read with Section 143(3) of the Act vide order dated 18.03.2016 by making addition of INR 7.5 Crores on protective basis in relation to loans from Spanco Telesystems & Solutions Private Limited since substantive assessment was framed on Praveen Kumar Jain.

4. Being aggrieved the Appellant preferred appeal before CIT(A). Since the substantive additions made in the hands of Praveen Kumar Jain on this issue were confirmed, the CIT(A) deleted the protective addition made in the hands of the Appellant subject to the condition that the same shall stand revived in case the substantive additions made in the hands of Praveen Kumar Jain are deleted in appellate proceedings. Aggrieved by the conditional deletion of the protective addition, the Appellant has preferred the present appeal.

5. During the course of hearing a copy of decision of the Tribunal in the case of Ms Atharv Business Pvt. Ltd. Vs. DCIT, CC 1(1) [ITA No. 2497/Mum/2019, Assessment Year 2008-09, dated 25.08.2022] was placed on record wherein in the identical facts

and circumstances the appeal preferred by the assessee has been dismissed holding as under:

*“7. In the backdrop of the aforesaid facts and circumstances of the case, the Ld. CIT(A) given the relief to the assessee by returning following findings:*

*“22.3 Since the substantive assessment on account of unexplained cash credit relating to Spanco Group of companies amounting to Rs.47.39 crores had already been upheld in the case of Shri Parveen Kumar Jain by the undersigned, the addition of Rs. 9 crores made by the AO u/s 68 of the Act in the hands of the Appellant Company needs to be deleted, so that there is no double taxation of the same income.*

*22.4 However, in case the addition made in the hands of Shri Parveen Kumar Jain of the unexplained credits u/s 68 of the Act is deleted in any of the appellate proceedings, then the addition made by the AO amounting to Rs. 9 Crores u/s 68 of the Act in the hands of the Appellant Company shall revive. In this regard, it may be noted that the cash credits are appearing in the books of accounts of the Appellant Company and a detailed discussion had been made in the appellate order of Shri Parveen Kumar Jain wherein it had been held that the identity and credit worthiness of the lenders and the genuineness of the transaction had not been explained by the Appellant Company.*

*22.5 In view of the above facts and circumstances and the various judicial pronouncements, the Ground No. 7 raised for assessment year 2008-09 is hereby allowed with the comments that the same shall revive, if the addition made in the case of Shri Parveen Kumar Jain is deleted in the appellate proceedings.”*

*8. Bare perusal of the order passed by the Ld. CIT(A) goes to prove that when substantive assessment qua the unexplained cash credit in question has already been confirmed in the case of Pravin Kumar Jain by Ld. CIT(A) on whose premises search and seizure operation under section 132 of the Act was conducted, by deleting the*

*addition so made in the hands of the assessee on protective basis, the present appeal filed by the assessee is not maintainable having already been become infructuous. Because Revenue has not challenged the deletion of protective addition made by the AO by the Ld. CIT(A) on the ground that there can be no double taxation of the same income. Even otherwise from the impugned order passed by the Ld. CIT(A) no ground challenging the same has arisen in favour of the assessee as he has already got the relief and challenging the conditions imposed by the Ld. CIT(A) while deleting the protective addition in the hands of the assessee is premature. Reliance on the order passed by the co-ordinate Bench of the Tribunal in case of Shri Dilip Shah vs. DCIT, Mumbai in ITA No.5739 to 5745/M/2012 & ors. for A.Y. 2001-02 to 2007-08 order dated 25.09.2017 by the Ld. D.R. is misplaced being distinguished on facts."*

6. We have perused the order passed by the CIT(A) and the Assessing Officer in the present case. The condition of revival of addition/proceedings included by the CIT(A) is for protecting interest of Revenue and cannot be regarded as excessive or unwarranted. The facts in the present case are identical to the above decisions of the Tribunal. Therefore, concurring with the reasoning of the Tribunal in the above decision, we dismiss the present appeal by the assessee.

In the result, the present appeal filed by the Assessee is dismissed.

Order pronounced on 25.11.2022.

*Sd/-*  
(Amarjit Singh)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.11.2022  
Alindra, PS

**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