

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4858 & 4859/Mum/2019

(A.Y: 2010-11& 2011-12)

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| M/s Transcon Skycity Pvt Ltd (formerly known as M/s Samta Builders Pvt Ltd), 622-B/1, Goshala Compound, LBS Marg, Mulund (W), Mumbai - 400 080. | Vs. | DCIT, CC- 4(2) Room No. 1918, Air India Bldg, Nariman Point, Mumbai - 400 021. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCS6362G | | |
| Appellant | .. | Respondent |

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|-----------------|--------------------------|
| Appellant by : | None |
| Respondent by : | Shri Suresh Periasamy.DR |

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| Date of Hearing | 10.10.2022 |
| Date of Pronouncement | 12.10.2022 |

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

These are the two appeals filed by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)-52, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act.

Since the issues in these two appeals are common and identical, hence are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take up the ITA No. 4858/Mum/2019 for the A.Y 2010-11 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal:

The following grounds of appeal are without prejudice to each other:

- 1. The learned CIT (A) has erred in law and in facts in not holding that the AO issued notice u/s. 148 of the Act which is bad in law, illegal and null and void.*
- 2. Further, the learned CIT (A) erred in law and in facts in not holding that the consequential assessment order u/s. 143(3) r.w.s. 147 of the Act passed by the AO is bad in law, illegal and null and void.*
- 3. The learned CIT(A) has erred in law and in facts in not holding that the AO erred in passing the assessment order in gross violation of principles of natural justice.*
- 4. The learned CIT(A) has erred in law and in facts in confirming the disallowance on account of Legal and Professional Fees of Rs. 12,00,000/- u/s 37(1) of the Act.*

Further, learned CIT(A) has erred in law and in facts in directing the AO to verify the amount of disallowance on account of Legal and Professional Fees of Rs. 22,00,000/-.

5. The appellant craves leave of Your Honour to add, amend, modify, alter and /or delete any of the above grounds of appeal.

2. The brief facts of the case are that the assessee company is engaged in the business as property developers and filed the return of income for the A.Y 2010-11 on 29.09.2011 disclosing a total income of Rs. Nil and the return of income processed u/s 143(1) of the Act. The AO has received the information that the assessee has made payments by way of legal and professional fees to Shri Jitendra Avhad and M/s Jitnat Infrastructure Pvt Ltd and such payments were not incurred wholly and exclusively for the purpose of business and without receiving the services, hence the deduction cannot be allowed and the A.O. has issued notice u/s 148 of the Act. Further the assessee has obtained reasons for reopening of assessment and objections were filed and were disposed off by the A.O. Further notice u/s 142(1) of the Act was issued calling for various information. Incompliance to notice, the assessee has submitted the details of payment of legal

fee and the ledger account copies of Mr. Jitendra Avhad and M/s Jitnat Infrastructure Pvt Ltd. and due to survey operations conducted, the Income Tax Department has impounded the original bills and documents. The A.O found that the payments were not genuine and no documentary evidences were filed to substantiate the claim. Finally the A.O. was not satisfied with the explanations and made a disallowance of Rs.22 lakhs as there is no proper evidences produced and was not allowed to carry forward in the working in progress(WIP) for subsequent years and assessed the total income of Rs. Nil and passed the order u/s 143(3) r.w.s 147 of the Act dated 11.12.2017.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A).Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has confirmed the validity of reassessment proceedings and in respect of claim of deduction of legal fees and professional fees, the CIT(A) has directed the AO to verify and adopt the correct figures and partly allowed the assessee appeal.

Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, none appeared on behalf of the assessee nor any application was filed and the Ld. DR has made submissions.

5. We heard the Ld. DR submission and perused the material available on record. The assessee has raised the grounds of appeal challenging the validity of re assessment and disallowance of legal and professional fees where the CIT(A) has only directed the A.O to verify the amount. On the first disputed issue with respect to validity of reassessment proceedings, since there was no compliance by the assessee and there is no fresh material filed by the assessee other than information filed before the CIT(A) challenging the validity of reassessment and on perusal of facts and findings of the CIT(A), we do not find any infirmity in the order of the CIT(A) with respect to validity of reassessment proceedings and we dismiss these grounds of appeal of the assessee. The second disputed issue is with respect to legal and professional fee was disallowed u/s 37(1) of the Act, On perusal of

the facts and the assessment order, we found that the lower authorities has disallowed the claim as they are not properly supported with the material information to substantiate the claim. We have considered the overall facts, submissions and principles of natural justice and shall provide one more opportunity to the assessee to substantiate the claim before the lower authorities and restore the disputed issue for limited purpose to the file of the Assessing officer to verify and examine the expenses. Further the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and the ground of appeal of the assessee is allowed for statistical purpose.

6. In the result appeal filed by the assessee is partly allowed for statistical purposes.

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7. As the facts and circumstances in this appeal are identical to ITA No. 4858/Mum/2019, for A.Y 2010-11 (except variance in figures) and the decision rendered

in above paragraphs would apply mutatis mutandis for this case also. Accordingly, the grounds of appeal of the assessee are partly allowed for statistical purposes.

8. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on 12.10.2022

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 12.10.2022
KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai