

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 548/Mum/2022 (A.Y. 2012-13)

CRP Risk Management Limited.

(Formerly Known as CRP Risk Management Pvt. Ltd.)

B-208/209, Classique Centre,
off. Mahalaxmi Caves Road,
Andheri (East), Mumbai-400093.

PAN: AABCC4889P

..... Appellant

Vs.

DCIT, Circle-9(2)(2),
6th Floor, Aayakar Bhavan,
M.K. Road, Mumbai-400020.

..... Respondent

Appellant by	:	Sh. Rajesh Sanghvi, CA
Respondent by	:	Sh. R.A. Dhyani, Sr. DR
Date of hearing	:	21/12/2022
Date of pronouncement	:	13/01/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)-49, Mumbai [for short 'CIT (A)'] dated 23.02.2022 under section 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law. The CIT (A)-49, hereinafter to as the Ld. A.O. has erred in assessing Total Income of the Appellant at Rs. 5,81,23,990/- instead of Rs. 4,09.23,988/-. The returned Income of the Appellant may please be accepted.

2. On the facts and circumstances of the case and in law, the Id. CIT (A) has erred in accepting the Id. AO order in making an addition of Rs. 1,22,00,000/- on the basis of the assessee is treated owner of money u/s.69A of Income Tax Act, 1961 of M/s. Nissim Traders Private Limited. Your Honor is requested to delete the said addition.

3. On the facts and circumstances of the case and in law, the Id. CIT (A) has erred in accepting the Id. AO order in making an addition of Rs. 50,00,000/- on the basis of the unexplained investment u/s.69 of Income tax Act, 1961 of M/s. Nissim Traders Private Limited. Your Honor is requested to delete the said addition.”

2. Brief facts of the case are that assessee filed its return of income on 29-09-2012 declaring total income of Rs. 4,09,23,988/-. The case of the assessee was assessed u/s 143(3) vide order dated 21-02-2015 at income of Rs. 4,14,56,970/- subsequently an information was received from the DDIT(Inv)(Mum) that the assessee had received accommodation entry for an amount of Rs. 72.6 Lakhs from M/s Nissim Traders Pvt Ltd controlled by Shri Jetender Salecha.

3. Accordingly, the case of the assessee was reopened after recording the reasons and notice u/s 148 dated 30-03-2019 was issued. However, there was no response from the side of the assessee again notices were issued u/s 142(1) and 143(2) still there was no response from the side of the assessee.

4. In this case information was received that Shri Jetender Salecha has categorically admitted in the statements recorded under oath on 10-08-2017, 11-09-2017 and 12-09-2017 that he was engaged in providing accommodation entries without doing any real business through different companies floated by him. It was also noted that assessee has received accommodation entries of Rs

72.6 Lakhs from one of the concern of Shri Jetender Salecha. Thus, on the basis of information case of the assessee was reopened.

5. Assessee was issued a show cause to prove the genuineness of this transaction but again there was no response from the assessee. Ultimately, on 23-11-2019 assessee submitted its reply and stated that Shri Jetender Salecha was not associated with M/s Nissim Traders Pvt. Ltd for the year under consideration. To substantiate its contention assessee submitted list of directors of M/s Nissim Traders Pvt. Ltd obtained from the MCA website from 2004 to 2016. Assessee claimed that statement given by Shri Jetender Salecha on behalf of the company without providing any details of his association with the company concerned. It is further stated by the assessee that none of the other director of the company has given any statement based on which such action can be taken. Assessee further objected that copies of such statement not provided to the assessee and it is also not clarified that statement given by Shri Jetender Salecha is with reference to his personal business or the business of the company.

6. AO being not satisfied with the contentions of the assessee added back an amount of Rs. 1,22,60,000/- u/s 69A and Rs. 50 Lakhs u/s 69. Being aggrieved with this order of AO assessee preferred an appeal before the Ld. CIT (A). Ld. CIT (A) directed the AO to verify the claim of the assessee with reference to addition of Rs. 50 Lakhs again and restricted the addition upto Rs. 1, 32, 60,000/- with a finding that there is no debit entry in the ledger account hence addition is restricted upto the credit entry only. This is subject to factual verification by the AO about debit entry of Rs. 50 Lakhs. Being aggrieved with this order of Ld. CIT (A) assessee preferred this appeal before ITAT.

7. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee along with paper-book. We have carefully gone through the ledger of the party in the books of the assessee for FY 2010-11 and 2011-12 along with bank statement of the assessee for the relevant year vide pg no. 37 to 74 of the paper-book. The Ld. Authorized Representative (AR) for the assessee argued that he had filed objection to the reasons for re-opening before the AO which have never been decided and drew our attention towards page no. 97 of the PB where challenge to the reason for re-opening vide letter dated 23.11.2019 was made.

8. The AO has not decided the objection filed by the assessee which makes the further proceedings irregular because without deciding the objection filed by the assessee, addition could not have been made on merit.

9. It is also brought to our notice by Ld. AR for the assessee that the entire re-opening is based upon the statement of one Shri Jetender Salecha of M/s Nissim Traders Pvt. Ltd. who has made the statement that assessee has received accommodation entry of Rs. 72,60,000/- from M/s Nissim Traders Pvt. Ltd. But statement of Shri Jetender Salecha has not been provided to the assessee despite demand.

10. On the other hand, Ld. Departmental Representative (DR) for the Revenue contended that the assessee has failed to rebut the fact that M/s Nissim Traders Pvt. Ltd. has provided accommodation entry to him and took us to page no. 91 to 94 of the PB on the basis of which, the assessee has tried to prove the transactions with M/s Nissim Traders Pvt. Ltd. regarding the addition in question. We have examined the copy of bills for the services rendered by the assessee to

M/s Nissim Traders Pvt. Ltd., wherein it is categorically mentioned that the services were rendered as per contract dated 01.04.2010.

11. However, no such contract (supra) has come on record. Assessee has not even preferred to bring the said contract on record before the Tribunal. So this fact also remained unexamined by the AO as well as CIT(A).

12. In the light of the above discussion, we are of the considered view that the entire issue involved in this case is required to be decided afresh by the AO by deciding objection filed by the assessee to the reasons for re-opening and by examining the ledger and bills relied upon by the assessee issued for alleged services rendered by the assessee to M/s Nissim Traders Pvt. Ltd. in the light of the contract dated 01.04.2010 vide which assessee claimed to have rendered services to M/s Nissim Traders Pvt. Ltd. Without examining all these facts, logical conclusion cannot be drawn to the issue raised by the assessee by way of filing present appeal. Consequently, impugned order passed by Ld. CIT(A) is set-aside and file is remanded back to the AO to decide afresh after providing reasonable opportunity of hearing to the assessee.

13. **In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 13th day of January, 2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 13/01/2023

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,

2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) /The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai