

आयकर अपीलीय अधिकरण
मुंबई पीठ " ए ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं.207/मुं/2023 (नि.व. 2014-15)
ITA NO.207/MUM/2023 (A.Y.2014-15)

Ace Property Developers,
A Wing, 'Taal' Building No.6, HDIL Layout,
Sector No.2, Chikhali Dongre Road,
Global City, Virar (West), Palghar 401 303
PAN: AASFA-3204-E

..... अपीलार्थी/Appellant

बनाम Vs.

Jt. CIT 24(1)

Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Yogesh Thar and
Ms. Sukanya Jayaram
प्रतिवादी द्वारा/Respondent by : Shri Manoj Kumar Sinha, Sr. AR
सुनवाई की तिथि/ Date of hearing : 09/05/2023
घोषणा की तिथि/ Date of pronouncement : 09/05/2023

आदेश/ORDER

PER VIKAS AWASTHY, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 16/12/2022, for the Assessment Year 2014-15.

2. The assessee in appeal has assailed the order of CIT (A) on two grounds viz:

- (i) Disallowance of remuneration paid to working partners; and
- (ii) Addition of unsecured loans u/s. 68 of the Income Tax Act, 1961 [in short 'the Act'].

3. Shri Yogesh Thar appearing on behalf of the assessee submits that the assessee is a partnership firm. The assessee filed its return of income for the impugned assessment year declaring total income of Rs.36,36,240/-. In scrutiny assessment proceedings the Assessing Officer disallowed remuneration paid to partners. The remuneration was paid to six partners in accordance with the supplementary partnership deed dated 18/11/2010. Similar disallowance was made in assessment year 2012-13. The issue travelled to the Tribunal in ITA No.908/Mum/2017. The Tribunal vide order dated 26/03/2021 allowed payment of remuneration to the partners.

With regard to ground No.2 of appeal, the Id. Authorized Representative for the assessee submitted that the assessee had taken unsecured loans from four parties aggregating to Rs.48,37,405/-. The Assessing Officer made addition of the aforesaid unsecured loans on the ground that the assessee failed to prove identity and creditworthiness of the parties and genuineness of the transaction. During assessment proceedings, the assessee had furnished all relevant documents to prove identity and creditworthiness of the lenders and genuineness of the transaction. The Id. Authorized Representative for the assessee placed on record copy of letter dated 17/08/2016, vide which the assessee had filed statement of confirmation and other relevant documents. The Id. Authorized Representative for the assessee pointed that the said letter

bears the stamp of acknowledgement of the receipt of the documents by the office of Asst. Commissioner of Income Tax -24(1) [Assessing Officer] dated 06/09/2016. The Id. Authorized Representative for the assessee further submitted that even before the CIT(A) the assessee had furnished necessary documents. However, the same were not considered before passing the impugned order.

4. Per contra, Shri Manoj Kumar Sinha representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative fairly admitted that the Tribunal in assessee's own case in the preceding assessment year has considered the issue similar to ground no.1 of the appeal. However, in the impugned assessment year the quantum of the remuneration paid to the partners has not been examined either by the Assessing Officer or the CIT(A). With respect to ground No.2 of appeal, the Id. Departmental Representative submits that from perusal of assessment order and the order of CIT(A) it is not emanating that the relevant documents were furnished by the assessee to discharge the onus cast upon the assessee u/s. 68 of the Act.

5. We have heard the rival submissions and have examined the orders of authorities below. In ground No.1 of appeal, the assessee has assailed disallowance of remuneration paid to the partners. The Assessing Officer has disallowed remuneration to the partners invoking provisions of section 40(b) of the Act. We find that similar disallowance was made in assessment year 2012-13. The Tribunal in assessee's own case in ITA No.908/Mum/2017 (supra) allowed the remuneration paid to the partners. The facts in the impugned assessment year are similar, however, the quantum of remuneration paid has

neither been examined by the Assessing Officer or the CIT(A). In facts of the case, we deem it appropriate to restore this ground to the file of Assessing Officer for fresh adjudication in the light of order of Tribunal in assessee's own case for assessment year 2013-14(supra).

6. In ground No.2 of appeal, the assessee has assailed addition u/s. 68 of the Act on account of unproved unsecured loans. The contention of the assessee is that the assessee had furnished confirmations from the parties along with other documents during assessment proceedings. The Id. Authorized Representatives for the assessee has placed on record copy of letter dated 17/08/2016 vide which the assessee has purportedly furnished the relevant documents to prove genuineness of the transaction, identity and creditworthiness of the lenders. The said letter bears the stamp of office of Assistant Commissioner of Income Tax -24(1), Mumbai dated 06/09/2016. From the acknowledgement stamp on the said letter, a reasonable presumption can be drawn that relevant documents were furnished by the assessee before the Assessing Officer, however, during the scrutiny assessment proceedings they remain to be considered by the Assessing Officer. The CIT(A) has confirmed the addition u/s 68 of the Act for the similar reasons as were stated by the Assessing Officer. Taking into account entire facts of the case, we are of considered view that the documents furnished by the assessee to discharge its onus u/s. 68 of the Act have neither been considered by the Assessing Officer or the CIT(A). Without commenting on merits, we deem it appropriate to restore this issue back to the file of Assessing Officer for de-novo adjudication, in accordance with law.

7. In the result, appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open court on Tuesday the 9th day of May, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 09/05/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,
Mumbai