

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

BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2693/Mum/2022 (A.Y: 2019-20)&
ITA No. 2714/Mum/2022 (A.Y.2020-21)

The DCIT, Central Circle 5(1), Room No. 1928, 19 th Floor, AirIndiaBldg, Nariman Point, Mumbai-400021.	Vs.	M/s.SpecoInfrastructure C, 110 Shyam Kamal, 27, Tejpal Road, Vile Parle (E), Mumbai-400057.
PAN/GIR No. : ACEFS4960M		
Appellant	..	Respondent

Appellant by :	Shri.Dr. Kishor Dhule CIT-DR & Smt. Neeraja Sharma.DR
Respondent by :	Shri. JP Bairagra, Shri Ashiskumar Bairagra & Shri Akhilesh Pevekar. AR

Date of Hearing	06.02.2023
Date of Pronouncement	03.05.2023

आदेश / O R D E R

PER BENCH:

These two appeals are filed by the revenue the against the common order of Commissioner of Income Tax (Appeals)-53, Mumbai passed u/s 250 of the Act.

Since issues in these appeals are similar & identical hence are clubbed, heard and consolidated order is

passed. For the sake of convenience, we shall take up the revenue appeal in ITA No. 2693/Mum/2022 for the A.Y. 2019-20 as a lead case and the facts narrated. The revenue has raised the following grounds of appeal:

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,37,70,231/on account of bogus purchase expenses ignoring the facts that the assessee failed to prove the genuineness of purchases, and any expenditure in respect of which payments by account payee cheques is not enough evidence to prove the genuineness of the transaction?"

2. Whether on the facts and circumstances of the case and in law, whether the Ld. CIT(A) is justified in deleting the addition of Rs. 3,35,44,438/as alleged bogus jobwork and labour expenses ignoring the facts that the assessee failed to prove the genuineness of these expenses?"

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 7,15,25,735/w/s 68 of the Act in respect of unsecured loans ignoring the facts that the assessee has not proved the genuineness of the transactionthe identity of most of the creditors, and credit-worthiness of the parties to the satisfaction of the AO, so as to discharge the primary onus?"

4. "The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal if need be."

2. The brief facts of the case are that the assessee Firm is engaged in the business of civil contract

works, construction of roads and buildings and undertakes BMC and Government contract works. The assessee has filed the return of income for the A.Y 2019-20 on 26.10.2019 disclosing a total income of Rs.12,38,07,450/-. There was search and seizure action U/sec132 of the Act carried out in the group of M/s RPS Infra Projects and related entities on 06.11.2019. Therefore the assessments relating to A.Y. 2014-15 to 2017-18 and subsequent years were covered and completed u/s 143(3) r.w.s 153A of the Act. The Assessing officer (A.O) found that the assessee is a beneficiary of accommodation entries in the nature of purchases, subcontract expenses, labour & Jobwork charges and unsecured loans in the F.Y.2018-19 and the A.O. has issued notice U/sec153A of the Act. In compliance, the assessee has filed the return of income disclosing a total income of Rs. 12,38,07,450/- on 24-12-2020.

3. The A.O. has issued notice U/sec 142(1) of the Act calling for the details on the disputed issues. The assessee has filed the voluminous details substantiating the claims made in the Audited financial statements and the return of income filed.

Whereas the A.O. in order to verify the genuineness of the transactions has issued notice U/sec133(6) of the Act on the parties concerned with the purchases, subcontract expenses, labour and job works and unsecured loans. Since these entities have not provided the complete details with supporting evidences i.e delivery challans, lorry receipts, way bills in respect of movement of goods and the A.O has relied on the statement recorded. The A.O. has issued show cause notice referred at Para6.6 of the order. In response to the notice, the assessee has submitted the details referred at page 29 of the order. The assessing officer dealt on the facts and submissions on expenditure on account of bogus purchases at Page 30 to 32 of the order and made disallowance of purchases from four parties (i) S.R Traders Rs 39,85,390/- (ii) Oasis Infra Rs.69,77,863/- and Pushpam enterprises of Rs.23,94,677/- all aggregating to Rs.1,37,70,231/-. On the second disputed issue of expenditure on bogus job works & labour charges, the A.O. has dealt on the facts pertaining to the ten parties at page 70 to 98 of the order and made disallowance of payments of

Rs.3,35,44,438/- And the on the Last disputed issue of unsecured loans the A.O. has considered the submissions and dealt at page 65 to 70 of the order and made addition of unsecured loans from 24 parties including interest all aggregating to Rs.7,15,25,735/-as unexplained cash credit u/sec68 of the Act. Finally the A.O. has assessed the total income of Rs.24,26,47,850/- and passed the order u/s 153A r.w.s 143(3) of the Act dated30.09.2021.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas, the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the scrutiny assessment, remand report, provisions of law, judicial decisions and up held the validity of issue of notice U/sec153A of the Act and the assessment for the A.Y.2019-20 was an abated as per provisions of section 153A of the Act and granted relief in other grounds of appeal observing at page 165 Para 65.1 to 67.1 of the order read as under:

65.1 Ground No. 1 & 2 are regarding disallowance of Rs.1,37,70,231/on account of Bogus purchases.

65.2 During A.Y2019-20 the AO has disallowed purchases of Rs. 1,37,70,231/made by the assessee from S R Traders, Oasis Infra Pushpam Enterprises and Pranali Enterprises The facts of the case findings of the AO in the assessment order and the submission made by the appellant are similar to that for A.Y2018-19 The issue has been discussed in Para no.6 of this appellate order for A.Y. 2018-19 and the ground has been adjudicated in favour of the assessee There is no material change in the facts of the case for A.Y2018-19 and 2019-20 thus following the decision taken on this issue in A.Y2018-19, Ground Nos. 1 & 2 of the appeal for A.Y2019-20 are also allowed. Accordingly, ground nos 1 & 2 of the appeal are allowed.

66. Ground No3 is regarding disallowance of Rs3,35,44,438/as alleged Job Work and Labour Expenses. 66.1 During A.Y2019-20, the AO has disallowed job work and labour expenses of Rs. 3,35,44,438/- made to 10 parties i.e. S.R. Infrastructure, S. R. P.Enterprise, Prakash Engineers & Construction, Mohan Project, Super Tiles & marble Pvt. Ltd, Bharat Construction company, Kanchan Enterprise, Balaji Enterprises, Malik Transport and Vijay S Jadhav. The facts of the case, findings of the AO in the assessment order and the submission made by the appellant are similar to that for A.Y. 2018-19. The issue has been discussed in Para no. 7 of this appellate order for A.Y. 2018-19 and the ground has been adjudicated in favour of the assessee. Thus, following the decision taken on this issue in A.Y. 2018-19, Ground No3 of the appeal for A.Y2019-20 is allowed Accordingly, ground no3 of the appeal is allowed.

67. Ground No5 is regarding addition of Rs7,15,25,735/u/s68 in respect of unsecured loan.

67.1 During A.Y2019-20, the AO has made an addition u/s. 68 of Rs. 69,21,950/in respect of unsecured loan received from 24 parties i.e. Jinal GemsYashika Jewels Pvt LtdVeena Tejpal JainVimal EnterprisePratap Constructions CoSanmati Gems Pvt LtdChirag Satish Surana, Gavriben N Surana, Kailash N Surana (HUF), Lalita S Surana, Mahendra Nainmal Surana, Nainmal V Surana HUF, Poornima Yashwant Surana, Pratima Surana, Satish Surana (HUF)Rajani Satish Surana, Sonali Satish Surana, Sushil Surana HUF, Yashoda Prashant SuranaYashwant Nainmal Surana (HUF)Kothari Impex, Pragati Pre Fab India Pvt LtdJayeshbhai Dhirajlal Gandhi and Sangeeta jayesh GandhiAs discussed in para 8.3.3 to 8.3.11 of this appellate order, the addition made by AO u/s.68 in respect of unsecured loan received from those 9 parties is not sustainable.

During the appellate proceedings, the appellant was asked to give bifurcation of fresh loans received during the year and the interest paid on loans during the year. It is explained by the appellant that total addition of Rs.7,15,25,735/, include fresh loans of Rs.6,19,90,057/received and interest of Rs.95,35,678/, paid on loans received during the year and also received in earlier years.

As discussed above, the addition made by AO u/s.68 in respect of unsecured loan received from those 24 parties is not sustainable Subsequently addition of interest paid on such loans also is not sustainable. Accordingly, ground no5 of the appeal is allowed.

The CIT(A) has considered the submissions, details, remand report and relied on the similar findings and decision of the appellate authority in the assessment year 2018-19 and deleted the additions made in respect of bogus purchases, job works & labour expenses and unsecured loans and interest disallowance and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the revenue has filed the appeal before the Honble Tribunal.

5. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in deleting bogus purchases expenses, bogus job work and labour expenses were the assessee has not substantiated the claim with the complete details and the CIT(A) has erred in deleting the addition of unsecured loans and interest disallowance though the assessee has not proved the identity, genuineness and creditworthiness of the lender and the Ld.DR supported the order of the A.O and prayed for allowing the revenue appeal. Per Contra, the Ld. AR supported the order of the CIT(A) and substantiated the submissions with the factual paper book, notes and judicial decisions.

6. We heard the rival submissions and perused the material on record. The grievance of the revenue that, the CIT(A) has erred in deleting the additions of the bogus purchases expenses, bogus job work & labour and unsecured loans and interest disallowance. The Ld.AR submitted that the assessee has cooperated in submitting the information in the assessment proceedings, whereas the A.O has ignored the information, evidences and Audited financial statements. The Ld. AR emphasized that the assessee has discharged its burden by submitting the details/information in the original assessment proceedings and in the remand proceedings. Whereas in respect of bogus purchases and job work & labour expenses, the assessee has submitted the details of PAN, financial statements, income tax returns, copies of bills, ledger confirmation, bank statements of suppliers, MVAT registration certificate etc . But the AO has made addition as the parties were not produced and the payments were not proved. In the appellate proceedings before the CIT(A), the assessee has filed additional evidence and the Ld.AR demonstrated the evidences filed by letter dated 15-3-

2022 on the disputed issues placed at page 1292 to 1305 of the paper book and CIT(A) has admitted the evidence and issued directions to the A.O. and called for the report. In the remand proceedings before the A.O, the parties have appeared and furnished the details and the A.O. has recorded the submissions and remand report was submitted placed at page 1306 to 1346 of the paper book. The third disputed issue with respect to unsecured loan, the assessee has obtained loans from the parties during the year and the transactions were reflected in the financial statements. The assessee has submitted the documentary evidence with PAN number of lender, address, contact number, confirmation, Income tax returns, bank statement, audited balance sheet, MCA data and GST details.

7. The CIT(A) has called for the remand report from the AO on the additional evidence and in the remand proceedings the parties have appeared before the AO and the statement was recorded and the remand report was submitted and rejoinder to remand report was filed on 4.07.2022 placed at page 1347 to 1395 of paper book. Further the assessee also submitted the

audited financial statements, confirmations, Bank statements, copy of the income tax return, Form no 16A to substantiate the genuineness and credit worthiness of loan creditors. The CIT(A) has considered the facts, circumstances and remand report and observed that the assessee prima-facie has complied the ingredients required u/s 68 of the Act of identity, genuineness and creditworthiness. Further, the CIT(A) relied on the judicial decisions and test checked the genuineness and creditworthiness of the lenders and the CIT(A) came to a reasonable conclusion that the assessee has discharged its burden on submitting the information. We considered the facts, circumstances and submissions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

ITA No. 2714/Mum/2022(A.Y.2020-21)

8. The revenue has raised the following grounds of appeal:

1 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs1,34,66,909/- on account of bogus purchase ignoring the facts that the assessee failed to prove the genuineness of purchases, and any expenditure in respect of which payments by account payee cheques is not enough evidence to prove the genuineness of the transaction?"

2. Whether on the facts and circumstances of the case and in law, whether the Ld. CIT(A) is justified in deleting the addition of Rs8,10,65,938/- as alleged bogus jobwork and labour expenses ignoring the facts that the assessee failed to prove the genuineness of these expenses?"

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 2,05,35,031/- w/s 68 of the Act in respect of unsecured loans ignoring the facts that the assessee has not proved the genuineness of the transaction, the identity of most of the creditors, and credit-worthiness of the parties to the satisfaction of the AO, so as to discharge the primary onus?"

4 "The appellant craves to leave, to add, to amend and / or to alter any of the ground of appeal if

9. As the facts and circumstances in this appeal is identical to ITA No 2693/Mum/2020 on the disputed issues of bogus purchases, jobwork & labour expenses and unsecured loans and interest (except variance in figures) and the decision rendered in the

above paragraphs-6&7 will apply *mutatis mutandis* to this appeal also. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

10. In the result, the two appeals filed by the revenue are dismissed.

Order pronounced in the open court on 03.05.2023

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 03.05.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

1.

(Asst. Registrar)
ITAT, Mumba