

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
ITA No. 2781/Mum/2022 (A.Y: 2013-14)

The DCIT, Central Circle 5(1), Room No. 1928, 19 th Floor, AirIndiaBldg, Nariman Point, Mumbai-400021.	Vs.	M/s. RPS Infra Projects Pvt Ltd., C, 113 Shyam Kamal, 27, Tejpal Road, Vile Parle (E), Mumbai-400057.
PAN/GIR No. : AADCR3607E		
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:

The revenue has filed the appeal against the order of Commissioner of Income Tax (Appeals)-53, Mumbai passed u/s 250 of the Act. The revenue has raised the following grounds of appeal:

I Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 50,43,000/- on account of bogus purchase ignoring

the fact. that the assessee failed to prove the genuineness of purchases, and payments by account payee cheques is not enough evidence to prove the genuineness of the transaction ?"

ii Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 2,43,85,285/- as alleged job work and labour expenses ignoring the facts that the assessee failed to prove the genuineness of these expenses and to produce evidences to substantiate the genuineness ?"

iii. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 9,12,500/- u/s 68 of the Act in respect of unsecured loans from M/s Kothari Impex ignoring the facts that the assessee has not proved the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the parties to the satisfaction of the AO, so as to discharge the primary onus?"

iv) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 9,12,500/- u/s 68 of on the grounds that the same was deleted in AY 2014-15 ignoring the fact that for the AY 2014-15, the Ld CIT(A) had confirmed the addition u/s 68 on account of interest from M/s Kothari Impex.?"

"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 company 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 2013-14 on 22.11.2013 disclosing a total income of Rs.17,76,09,120/- and the assessment u/sec143(3) of the Act was completed on 26.02.2016 determining the total income of Rs. 18,10,39,100/- 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.2012-13 and the A.O. has a reason to believe that the income has escaped the assessment and issued notice U/sec148 of the Act. In compliance, the assessee has filed the return of income on 14.04.2021 disclosing a total income of Rs. 17,98,97,960/- and the assessee was provided with the reasons for reopening and the assessee has filed objections. The A.O. has disposed off the objections on **24.12.2021**.

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, the A.O. has issued show cause notice referred at Para 5 of the order. In response to the notice, the assessee has submitted the details vide letter dated 25.03.2022 referred at page 7 to 47 of the order. The assessing officer dealt on the facts and submissions on expenditure on account of bogus purchases at Page 32 to 40 of the order and made disallowance of purchases from M/s Nidhi enterprises of Rs.50,43,000/-. On the second disputed issue of expenditure on bogus job works & labour charges, the A.O. has dealt on the facts pertaining to the parties at page 41 to 71 of the order and made disallowance of payments made to two

parties (i) Yashi Corporation of Rs.60,17,300/- and (ii) Roof N Proof of Rs 1,83,67,985/- all aggregated to Rs2,43,85,285/-. And the on the Last disputed issue of unsecured loans the A.O. has considered the submissions and dealt at page 48 to 59 of the order and made addition of unsecured loan of Rs.9,12,500/-as unexplained cash credit u/sec68 of the Act. Finally the A.O. has assessed the total income of Rs 21,13,79,890/- and passed the order u/s 143 r.w.s 147 of the Act dated26.03.2022.

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 reassessment proceedings u/sec147 of the Act and granted relief in other grounds of appeal observing at page 8 Para 5 to 9 of the order read as under:

5. Ground No.2 is regarding disallowance of Rs.50,43,000/- as alleged bogus purchases.

5.1 For A.Y. 2013-14, the AO has disallowed purchases from Nidhi Enterprises of Rs.50,43,000/-The issue regarding disallowance of purchases from Nidhi Enterprises. has been discussed in Para 6 of the appellate order for A.Y. 2014-15. 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. 2014-15. For A.Y. 2014-15, the disallowance made by the AO in respect of alleged bogus purchases from Nidhi Enterprises has been deleted Thus, following the decision taken on this issue in A.Y. 2014-15, the disallowance made by the AO in respect of bogus purchases in A.Y. 2013-14 is also deleted. Accordingly, Ground No.2 of the appeal is allowed.

6. Ground No.3 is regarding disallowance of Rs.2,43,85,285/- in respect of bogus Job work and labour charges.

6.1 For A.Y. 2013-14, the AO has disallowed bogus job work and labour expenses of Rs.60,17,300/- from Yashi Construction and Rs.1,83,67,985/- from Roof&Proof. The issue regarding disallowance of bogus job work and labour expenses from Roof&Proof has been discussed in Para 7 of the appellate order for A.Y.2014-15.The findings of the AO in the assessment order and the submission made by the appellant are similar to purchases made from Yashi Construction are similar to purchases made from other parties during A.Y.2014-15. Thus, following the appellate orders for A.Y.2014-15 the disallowance of job work and labour

expenses is also deleted for A.Y.2013-14. Accordingly, Ground No. 3 of the appeal is Allowed.

7. Ground No.4 is regarding addition of Rs.9,12,500/- u/s. 68 of the Act in respect of unsecured loans.

7.1 For A.Y2013-14, the AO has made addition of unsecured loans of Rs 9,12,500/ During the appellate proceedings, the appellant has explained that during the A.Y.2013-14the appellant has taken unsecured loans of Rs. 9,12,500 taken from Kothari Impex.

The issue regarding addition of unsecured loans from Kothari Impex has been discussed in Para 8 of the appellate order for A.Y2014-15. 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. 2014-15. For A.Y2014-15, the addition made by the AO in respect of unsecured loans has been deleted Thus, following the appellate order for A.Y2014-15, the addition made by the AO in respect of unsecured loans received from these 4 parties in A.Y. 2013-14 is also deleted.

Accordingly the ground No. 4 of the appeal is allowed

The CIT(A) has considered the submissions, details and relied on the similar findings and decision of the appellate authority in the subsequent assessment years and deleted the additions made in respect of

bogus purchases, job works & labour expenses and unsecured loan 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 unsecured loan 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. 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 loan .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, income tax returns, copies of bills, ledger confirmation, bank statement. 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 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. The third disputed issue with respect to unsecured loan, the assessee has obtained loan from 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. Further the assessee also submitted the audited financial statements, confirmations, Bank statements, copy of the income tax return to substantiate the genuineness and credit worthiness of loan creditor. 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.

8. In the result, the appeal filed by the revenue is 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
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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai