

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.680/Mum./2023
(Assessment Year : 2009-10)

Secunderabad Healthcare Ltd.
6-220/1/1, 2nd Floor, Ram Nagar
Hyderabad 500 020 PAN – AACCS8246B

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-2(2), Mumbai

..... Respondent

Assessee by : Shri Neeraj Mangla
Revenue by : Shri Anil Kumar Das

Date of Hearing – 13/06/2023

Date of Order – 23/06/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 02/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-48, Mumbai, [*"learned CIT(A)"*], for the assessment year 2009-10.

2. In its appeal, the assessee has raised the following grounds:-

"1. That the assessment order passed u/s 153C of the Act is not tenable under the law because neither any search u/s 132 was conducted nor any requisition under Section 132A of the Act was made in the case of the appellant for the year under consideration.

2. The disallowance made by Ld. AO is bad in law as no incriminating material concerning such additions were ever found and further no assessments for this year was pending.

3. That the Ld. AO has grossly erred in law and on facts while disallowing purchases worth of Rs. 6,87,64,162/-.

4. That the appellant assails his right to amend, alter, change any grounds of appeal or take any further ground at any time even during the course of hearing of instant appeal."

3. During the hearing, the learned Authorised Representative ("learned AR") wishes not to press grounds no.1 and 2. Accordingly, the said grounds are dismissed as not pressed.

4. The issue arising in ground no.3, raised in assessee's appeal, is pertaining to the disallowance of purchases.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee filed an original return of income, for the year under consideration, on 25/09/2009 declaring a loss of Rs.87,62,265. Pursuant to the search under section 132 as well as the survey under section 133A of the Act at various premises of Shri Shirish C Shah, proceedings under section 153C of the Act were initiated in the case of the assessee by the issuance of notice for the assessment years 2008-09 to 2013-14 on 13/02/2015. The assessee filed its return of income on 21/12/2015 in response to the aforesaid notice declaring the same income as was declared in the original return of income. During the assessment proceedings, notice under section 133(6) of the Act were issued to some of the parties on the basis of details available in assessee's Form 26AS. However, these parties did not respond or notices were received unserved. During the survey at the premises of the assessee, it was

found that there was no business activity carried out by the assessee. During the assessment proceedings, the assessee was asked to explain the source of funds brought in as fresh capital by the assessee and its further deployment. On the basis of the reply filed by the assessee, it was noticed that the assessee has allowed its bank account to Shri Shirish C Shah who brought the funds in the guise of preferential allotment and subsequently deployed them as share capital/loan, etc., which was actually bogus accommodation entries to various persons. The Assessing Officer ("AO") vide order dated 28/03/2016 passed under section 143(3) read with section 153C of the Act came to the conclusion that the assessee in collaboration with Shri Shirish C Shah brought the share capital through preferential allotment and invested the amount with ultimate beneficiaries in the share capital with huge share premium. The AO further held that the assessee has failed to establish the genuineness of the transaction reflected in the profit and loss account and the assessee was engaged in the business of providing accommodation entries to various parties in association with Shri Shirish C Shah. During the assessment proceedings, it was observed that the assessee has debited purchase of Rs.6,87,64,162 from M/s Jurong Labs Private Ltd and M/s Jasmine Healthcare Private Ltd. During the course of an investigation before the DDIT Investigation Unit-1(3), Hyderabad, the assessee simply submitted Ledger account of these parties and failed to establish the genuineness of the transaction with these parties. In the absence of any details regarding the genuineness of the purchase so debited, the AO, vide assessment order, treated the purchases as bogus and added the same to the total income of the assessee.

6. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the assessee is not doing any actual business and has inflated the purchases by getting bogus accommodation entries from the other entities controlled by Shri Shirish C Shah. The learned CIT(A) further held that the assessee has failed to prove the identity of the parties with whom purchases were made and no supporting documentary evidence was produced by the assessee and the transaction remains unexplained and unconfirmed by the parties. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. It is the plea of the assessee that the Revenue has not invoked the provisions of section 145 of the Act and assessee's books of accounts are not rejected. Further, the assessee has placed reliance upon the purchase invoices and stock registers along with a copy of Ledger accounts, wherein the details of payments made for purchases are shown. As per the assessee, it has sold the entire material purchased from the stated parties and sale proceeds thereof are credited to the books of accounts of the assessee company.

8. It is evident from the record that the assessee is one of the companies which is either associated with or under the direct or indirect control of Shri Shirish C Shah. Further, during the course of the search and the statements of Shri Shirish C Shah, it was revealed that he had been engaged in providing accommodation entries to various parties through such entities which were directly or indirectly either associated or controlled by him. No material has

been brought on record to refute the aforesaid findings. In the present case, the assessee apart from placing reliance upon the invoices, Ledger account of the vendors, and stock register neither could produce confirmation from the parties from whom the purchase was made nor could produce the confirmation from parties to whom the sale has been made. We find that in the case of one of the companies, i.e. M/s Empower India Ltd., which is controlled by Shri Shirish C Shah, the AO vide order dated 22/03/2016 passed under section 143(3) read with section 153C of the Act, forming part of the paper book, treated 1% of the total sales as the commission earned from the provision of accommodation entry in the similar facts and circumstances. Since the assessee is also found to be involved in the process of providing accommodation entries at the behest of Shri Shirish C Shah, we direct the AO to consider 1% of the total sales declared during the year as net commission in the hands of the assessee for providing accommodation entry. Accordingly, ground no.3 raised in assessee's appeal is partly allowed.

9. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 23/06/2023

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 23/06/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai