

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"G" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.687/Mum./2023**

**(Assessment Year : 2012-13)**

Allied Computers International (Asia) Ltd.

Office no.8, 5<sup>th</sup> Floor, Block-A

Aidun Building, 1<sup>st</sup> Dhobi Talao Lane

Mumbai 400 002 PAN – AADCA4412E

..... Appellant

v/s

Dy. Commissioner of Income Tax

Central Circle-2(2), Mumbai

..... Respondent

Assessee by : Shri Neeraj Mangla

Revenue by : Dr. Kishor Dhule

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 17/02/2023 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 2012-13.

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

*"1. That the assessment order passed u/s 143(3) r.w.s. 153C of the Income Tax Act, 1961 on 30/03/2016 is perverse to the law and to the facts of the case because of not following proper law and procedure while completing the assessment proceedings.*

*2. The Ld. AO has grossly erred in law as well as on facts of the case in disallowing business loss of Rs. 61,30,042/- incurred to the assessee during the year under consideration.*

*3. 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 ground no.1. Accordingly, the said ground is dismissed as not pressed.

4. The issue arising in ground No. 2, raised in assessee's appeal, is pertaining to the disallowance of business loss.

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 29/09/2012 declaring a total income of Rs.13,60,980. During the search carried out at various premises of Shri Shirish C Shah under section 132 of the Act, various documents belonging to the assessee were seized from the computer of Shri Shirish C Shah indicating transactions with various companies of Shri Shirish C Shah. Accordingly, the proceedings under section 153C of the Act were initiated in the case of the assessee for the assessment years 2008-09 to 2013-14 and notice under section 153C dated 29/03/2014 was served on the assessee. However, the assessee did not response to the aforesaid notice. Thereafter, notices under section 142(1) were also issued, which were also not responded to by the assessee. Notices under section 133(6) of the Act were also issued to the directors of the assessee, which were either returned unserved or no response was filed pursuant thereto. Finally, in response to the notice issued under section 153C

of the Act, the assessee filed its return of income on 26/11/2015 declaring the same income as was declared in the original return of income. During the assessment proceedings, the assessee submitted that all the funds have been arranged by Shri Shirish C Shah and deployed on his instructions. The Assessing Officer ("AO") during the assessment proceedings noticed that there were 7 parties from whom purchases above Rs.50 lakhs were made and notices to 4 parties were returned unserved, whereas the balance 3 parties did not reply. During the search and from statements of Shri Shirish C Shah, it was revealed that he had been engaged in providing various sorts of accommodation entries to various parties through such entities which were directly or indirectly controlled by him. Accordingly, the AO vide order dated 30/03/2016 passed under section 143(3) read with section 153C of the Act held that the assessee was engaged in the business of providing accommodation entries to various parties in association with Shri Shirish C Shah. Since the assessee could not explain the purchases as well as sales and various other entries of the profit and loss account, the AO considered the business loss at Nil. Further, the AO taxed the interest income earned by the assessee as income from other sources.

6. The learned CIT(A), vide impugned order, dismissed the grounds raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned AR submitted that the assessee had assets on which depreciation was allowed in previous years, and the carried forward depreciation was claimed in the year under consideration, which was

treated as Nil by the AO without any examination. The learned AO accepted that Shri Shirish C Shah is an accommodation entry provider and the assessee is one of its companies. The learned AR further submitted that interest income earned by the assessee is in the nature of business income and the same has wrongly been taxed as income from other sources.

8. On the other hand, the learned Departmental Representative by vehemently relying upon the orders passed by the lower authorities submitted that interest income can be business income only if the assessee is a bank or NBFC, which is not the facts of the present case.

9. We have considered the submissions of both sides and perused the material available on record. In the present case, it is an accepted position that the assessee is engaged in providing accommodation entries. From the financial statement of the assessee, we find that the assessee has claimed depreciation in respect of various assets including assets acquired in the preceding years. In this regard, the assessee has also furnished the fixed assets schedule and statement of depreciation as per the Income Tax Rules. It is the claim of the assessee that it had credit facilities from the bank on which interest was being paid by it. Further, it has also earned interest income of Rs.74,91,022, which has been claimed to be business income. However, we find that the AO has treated the interest income as income from other sources without examining whether the interest is in the nature of business income or income from other sources. We find that the aforesaid aspects have not been properly examined by the AO and the entire business loss was treated at Nil in the absence of explanation regarding the purchases as well as sales.

Therefore, we deem it appropriate to remand this issue to the file of the AO for *de novo* adjudication after necessary verification. We further direct the assessee to provide all the details in support of its claim before the AO regarding this issue without any default. Needless to mention that no order shall be passed without affording reasonable opportunity of being heard to the assessee. In view of the above, the impugned order passed by the learned CIT(A) on this issue is set aside. Accordingly, ground No. 2 raised in assessee's appeal is allowed for statistical purposes.

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

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