

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.661/Mum./2023

(Assessment Year : 2011-12)

Allied Computers International (Asia) Ltd.

Office no.8, 5th Floor, Block-A

Aidun Building, 1st 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 – 05/07/2023

Date of Order – 18/07/2023

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 2011-12.

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. That the Ld. AO grossly erred in facts of the case in increasing the interest income by Rs. 10,02,631/- being difference of Rs. 13,59,109/- as per books of account and Rs. 23,70,127/- as per Form 26AS as the differential amount was already declared as income for A.Y. 2012-13.

3. The Ld. AO has grossly erred in law as well as on facts of the case in disallowing business loss of Rs. 44,97,569/- incurred to the assessee during the year under consideration.

4. That the Ld. AO has further grossly erred in law in making addition of Rs. 74,99,350/- under section 68 of the Act. 5. That the appellant assails his right to amend, alter, change any grounds of appeal, or take any further ground at any time even during 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 an increase in the interest income due to differences as per books of accounts and as per Form 26AS.

5. We have considered the submissions of both sides and perused the material available on record. It is the plea of the assessee that interest income from some parties was recognised in the year under consideration itself and in respect of other parties interest income was recorded in the books of account for the subsequent year. During the hearing, the learned AR submitted that in the year under consideration, the amount of interest income was taken from Form 26AS and assessed as income from other sources. While in the assessment year 2012-13, the Assessing Officer ("AO") took the amount of interest income from the profit and loss account and not from Form 26AS. Thus, the same has led to double taxation of interest income amounting to Rs.10,02,631, once in the assessment year 2011-12 and again in the

assessment year 2012-13. In this regard, reference was made to the reconciliation of interest income as per Form 26AS and as per the books of account submitted before the learned CIT(A), forming part of the paper book on page 101, which is reproduced as under:-

For the assessment year 2011-12

Sr. no.	Party Name	TAN no.	As per Form 26AS	As per books of account	Difference
1.	J.R. Steel Industries	AHMJ01402C	2,68,219	2,68,219	-
2.	Salil Kumar K Badjatiya	BPLS03940G	8,387		8,387
3.	Green Valley Homes Developers Ltd.	MUMG11762C	8,84,589	8,84,589	-
4.	Goldwin Healthcare Pvt. Ltd.	MUMG13837F	1,38,082		1,38,082
5.	Italia Automation Pvt. Ltd.	MUM109586D	3,26,795		3,26,795
6.	Mansuri Caterers Pvt. Ltd.	MUMM19509A	99,248		99,248
7.	Premier Industrial Corporation Ltd.	MUMP24480B	2,06,301	2,06,301	-
8.	Parsh Housing Pvt. Ltd.	MUMP29315G	1,52,753		1,52,753
9.	Shree Krishna Development Corporation	MUMS45879B	2,85,753		2,85,753
			23,70,127	13,59,109	10,11,018

For the assessment year 2012-13

Sr. no.	Party Name	TAN no.	As per Form 26AS	As per books of account	Difference
1.	J.R. Steel Industries	AHMJ01402C	3,86,301	3,86,301	-
2.	Salil Kumar K Badjatiya	BPLS03940G	64,604	64,604	-
3.	Green Valley Homes Developers Ltd.	MUMG11762C	18,50,055	-	18,50,055
4.	Goldwin Healthcare Pvt. Ltd.	MUMG13837F	1,38,082	-	1,38,082
5.	Italia Automation Pvt. Ltd.	MUM109586D	11,66,795	8,40,000	3,26,795
6.	Mansuri Caterers Pvt. Ltd.	MUMM19509A	99,248	-	99,248
7.	Premier Industrial Corporation Ltd.	MUMP24480B	3,00,000	3,00,000	-
8.	Parsh Housing Pvt. Ltd.	MUMP29315G	2,47,684	94,931	1,52,753
9.	Shree Krishna Development Corporation	MUMS45879B	9,85,753	7,00,000	2,85,753
10.	Jbddd Hospitality LLP	MUMJ15426F	1,35,000	1,35,000	-
11.	S.K. Global	MUMS29729A	21,17,500	21,17,500	-
			74,91,022	46,38,336	28,52,686

6. In view of the submissions made by the learned AR, we deem it appropriate to remand this issue to the file of the AO for necessary verification. We further direct that if upon verification it is found that interest income has already been taxed in the subsequent year, i.e. assessment year 2012-13, then to that extent the interest income be reduced in the year under consideration, as otherwise it would result in the double taxation of the same income. As a result, ground no.2 raised in assessee's appeal is allowed for statistical purposes.

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

8. 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 30/09/2011, declaring a loss of Rs.15,67,118. 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 respond 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 loss of Rs.21,27,442. 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.

9. 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.

10. Having considered the submissions of both sides and perused the material available on record, we find that a similar issue came up for consideration before the coordinate bench of the Tribunal in assessee's own

case for the assessment year 2012-13. The coordinate bench vide order dated 23/06/2023, passed in ITA No. 687/Mum./2023, remanded a similar issue to the file of the AO, by observing as under:-

"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.

11. Since similar issue arising from similar set of facts has already been considered by the coordinate bench in assessee's own case, we find no reason to deviate from the views so taken in the aforesaid decision. Accordingly, we remand this issue to the file of the AO for *de novo* adjudication with similar directions as rendered in the aforesaid decision. Accordingly, the impugned order passed by the learned CIT(A) on this issue is set aside. As a result ground no.3 raised in assessee's appeal is allowed for statistical purposes.

12. The issue arising in ground no.4, raised in assessee's appeal, is pertaining to addition under section 68 of the Act.

13. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, on the basis of AIR information, the AO noted that cash deposits of Rs.74,99,350, remained unexplained. Accordingly, the AO vide order passed under section 143(3) read with section 153C of the Act added the same to the total income of the assessee under section 68 of the Act. The learned CIT(A), vide impugned order, granted partial relief to the assessee and deleted the addition amounting to Rs.4 lakh appearing in the AIR report, as the same was not in the name of the assessee. However, the learned CIT(A) upheld the addition of Rs.70,99,350, made by the AO under section 68 of the Act. Being aggrieved, the assessee is in appeal before us.

14. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee filed its original return of income on 30/09/2011, which was not picked up for scrutiny assessment and the time period for issuance of notice under section 143(2) of the Act also expired on 30/09/2012. Thus, on the date of issuance of notice under section 153C of the Act, i.e. 29/03/2014, no assessment for the year under consideration was pending, and therefore the same was not abated as per the second proviso to section 153A read with the first proviso to section 153C(1) of the Act. From the perusal of the order passed under section 143(3) read with section 153C of the Act, we find that the AO made the addition under section 68 of the Act only on the basis of AIR information. Therefore, it is discernible that the aforesaid addition is not based on the material found during the course of the aforesaid search, pursuant to which proceedings under section 153C of the Act were initiated in the case of the assessee.

15. We find that recently the Hon'ble Supreme Court affirmed this position in DCIT v/s U. K. Paints (Overseas) Ltd., [2023] 150 taxmann.com 108 (SC) held that where no incriminating material was found in the case of any of assessee either from assessee or from third party and assessment were under section 153-C, High Court rightly set aside assessment order. The relevant findings of the Hon'ble Supreme Court, in the aforesaid decision, are reproduced as under:-

"As observed hereinabove, as no incriminating material was found in case of any of the Assessee either from the Assessee or from the third party and the assessments were under Section 153-C of the Act, the High Court has rightly set aside the Assessment Order(s). Therefore, the impugned judgment and order(s) passed by the High Court do not require any interference by this Court. Hence, all these appeals deserve to be dismissed and are accordingly dismissed."

16. Since, in the present case, it is undisputed that the assessment year under consideration is an unabated/concluded year, therefore, respectfully following the aforesaid decision of the Hon'ble Supreme Court we delete the addition made by the AO under section 68 of the Act in the absence of incriminating material. As a result, ground no.4 raised in assessee's appeal is allowed.

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

Order pronounced in the open Court on 18/07/2023

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 18/07/2023

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*

By Order

Assistant Registrar
ITAT, Mumbai