

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1402/Mum./2023
(Assessment Year : 2008-09)

ITA no.1404/Mum./2023
(Assessment Year : 2010-11)

ITA no.1406/Mum./2023
(Assessment Year : 2012-13)

ITA no.1403/Mum./2023
(Assessment Year : 2009-10)

ITA no.1405/Mum./2023
(Assessment Year : 2011-12)

ITA no.1407/Mum./2023
(Assessment Year : 2013-14)

M/s. Olive Overseas Pvt. Ltd.
Office no.27, Kamla BMC Market
Padma Nagar Road, Chikuwadi
Borivali West, Mumbai 400 092
PAN – AACCR4512K

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-1(1), Mumbai

.....Respondent

Assessee by : Shri Vimal Punamiya
Revenue by : Shri R.A. Dhyani

Date of Hearing – 13/07/2023

Date of Order – 27/07/2023

ORDER

The present appeals have been filed by the assessee challenging the common impugned order dated 08/02/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-47, Mumbai, [*learned CIT(A)*], inter-alia, for the assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, and 2013-14.

2. Since the present batch of appeals arise out of a similar factual matrix and involve common issues, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. The assessee has raised similar grounds in the present appeals, therefore, the grounds raised in assessee's appeal being ITA no.1402/Mum./2023, for the assessment year 2008-09, are reproduced as under for reference:-

"I. The learned Commissioner of income Tax (Appeal) has erred in not allowing the appellant company's appeal for disapproving the learned Assessing officer's view of rejecting the Books of Accounts and Income of appellant by invoking the provision of section 145 (3) of the income tax Act, 1961.

II. The learned Commissioner of Income Tax (Appeal) has again erred in upholding the action of learned assessing officer of treating all the business activities as accommodation entry without appreciating the submission / documentary evidence provided to prove the genuineness of all the transaction of Income, Expenses, Business Losses, Capital Gain / Loss, purchase, sales, loans and advances and Investments etc submitted by appellant company.

III. The Learned Commissioner of Income Tax (Appeal) has again erred in upholding the addition made by the learned Dy. Commissioner of Income Tax by estimating addition at the rate of alleged commission income at 0.20% p.m. for Loans & Advances and 2% for Share Application money (Investments) during the captioned year.

IV. The Learned Commissioner of Income Tax (Appeal) has again erred in upholding the proposition of the learned assessing officer and treatment of the alleged unaccounted commission income is confirmed on "Protective Basis".

V. The appellant craves to add, amend or alter the grounds of appeal at the time of or before the hearing of appeal."

3. During the hearing, at the outset, the learned Authorised Representative ("*learned AR*") submitted that in all the assessment years under consideration, additions are made on a protective basis in the hands of the assessee, since the substantive additions have been made in the case of Mr. Praveen Kumar Jain and the same are also upheld by the coordinate bench of the Tribunal.

Accordingly, it was submitted that the additions made on a protective basis be deleted in the hands of the assessee in the present appeals.

4. On the other hand, the learned Departmental Representative vehemently relied upon the order passed by the lower authorities.

5. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case as emanating from the record are that the assessee has claimed to be engaged in the business of trading in diamonds and other commodities, investment in shares, and money lending. A search and seizure action under section 132 of the Act was conducted by DDIT (Investigation), Mumbai in the case of Mr. Praveen Kumar Jain on 01/10/2013. The assessee is a group company of Mr. Praveen Kumar Jain, therefore the case was centralised. Accordingly, notice under section 153C of the Act was issued and duly served on the assessee on 14/01/2015. In response to the said notice, the assessee filed its return of income under section 153C of the Act. Subsequently, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. On the basis of the various evidence found, facts gathered and statements of various persons recorded during the search action conducted under section 132(1) of the Act on Mr. Praveen Kumar Jain and his associates and related companies, it was found that Mr. Praveen Kumar Jain, through a network of a no. of companies, including the assessee, was involved in the business of providing accommodation entries in the garb of providing unsecured loans, share capital or issuing bogus bills of purchase and sales. During the course of search, the search team located premises at 104, Durga residency, Inderlok,

Phase-III, Bhayander(E), Thane, which was not reflected in any of the official records filed with any of the government agencies and the said premises was a discrete place of operation of Mr. Praveen Kumar Jain. From the said premises various hard disks, pen drives, and documents were found which contain the books of accounts of various concerns in which various persons were shown as directors, partners, or proprietors. From the material found and seized from this premises, it was observed that the books of accounts of 71 concerns, including the assessee, were maintained at this premises, which are shown to be in the name of various persons but actually controlled, managed, and operated by Mr. Praveen Kumar Jain. The Assessing Officer also referred to the statement recorded by Mr. Praveen Kumar Jain, wherein he admitted that these companies, including the assessee, are under his or his close associates'/family members' control. Considering the fact that the transactions recorded by the assessee are only bogus transactions entered into with the specific motive to provide accommodation entries to interested parties against some commission, the book results disclosed by the assessee are found to be not reliable and therefore, the books of accounts were rejected under section 145(3) of the Act. Accordingly, we find that the Assessing Officer computed the net profit of the assessee, inter-alia, at the rate of 2% for the bogus share application, 0.2% for the bogus loans and advances, and 0.2% for the bogus sales and purchases. Since the entire business of providing accommodation entries was run by Mr. Praveen Kumar Jain and the profit/income by way of commission on the turnover through the conduit companies was also enjoyed by him, the income earned on turnover through these concerns, including the assessee, was included as income in the individual case of Mr. Praveen Kumar

Jain. However, the Assessing Officer also assessed this income in the hands of the assessee on a protective basis.

6. We find that vide common impugned order, the learned CIT(A) dismissed the appeals filed by the assessee, inter-alia, in all the assessment years under consideration before us and upheld the addition made by the Assessing Officer on a protective basis in the hands of the assessee.

7. From the perusal of the legal paper book filed by the learned AR, we find that the coordinate bench of the Tribunal vide its order dated 19/01/2023 passed in Praveen Kumar Jain v/s DCIT, ITA No. 7191/Mum./2018 and etc., for the assessment years 2008-09 to 2014-15 upheld the addition made on substantive basis in the hands of Mr. Praveen Kumar Jain, by observing as under:-

"17. It is also brought to the notice of the Bench by the Ld.DR for the Revenue that in hundreds of cases, Shri Pravin Kumar Jain has provided accommodation entry for unsecured loans, bogus share application money, etc. without carrying out any real business, but operating through dummy / paper companies. So in these circumstances, we are of the considered view that the Assessing Officer as well as Ld.CIT(A) have rightly quantified the unaccounted commission earned by the assessee during the year under consideration from 54 companies which is nothing but a huge network of unlawful business to evade the tax for companies operating through them and by the assessee themselves also. Rather, they are in to money laundering.

18. In view of what has been discussed above, we are of the considered view that Assessing Officer as well as Ld.CIT(A) have passed / confirmed legally valid orders to which assessee has failed to controvert by putting in appearance. Assessee has challenged the impugned order passed by Ld.CIT(A) on generic grounds which he has failed to prove by putting in appearance, by producing any evidence and by assisting the Bench despite availing numerous opportunities. Consequently, we find no illegality or perversity in the impugned order passed by Ld.CIT(A), hence, aforesaid appeals filed by both the assessee, namely, Shri Pravin Kumar Jain and Shri Pankaj Jain are hereby dismissed."

8. In the present appeals, it is undisputed that the substantive addition has been made in the hands of Mr. Praveen Kumar Jain and the similar addition,

on a protective basis, is made in the hands of the assessee. Since the substantive addition has already been upheld by the coordinate bench in the case of Praveen Kumar Jain (supra), therefore the similar addition made on a protective basis in the hands of the assessee becomes unsustainable and therefore is directed to be deleted in all the assessment years under consideration before us. We further direct the Assessing Officer that in case the addition made in the hands of Mr. Praveen Kumar Jain is deleted in further appellate proceedings, then the addition made in the hands of the assessee be revived. With the above limited directions, the impugned additions made in all the assessment years under consideration before us are directed to be deleted.

9. In the result, all appeals by the assessee are allowed.

Order pronounced in the open Court on 27/07/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/07/2023

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

True Copy
By Order

Assistant Registrar
ITAT, Mumbai