

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1472/Mum/2023 (A.Y. 2016-17)

&

ITA No. 1471/Mum/2023 (A.Y.2017-18)

Pratik Technologies Pvt. Ltd.

2501, 25th floor, Planet Godrej,
Electra Tower 3, 30 K K Marg,
Mahalaxmi, Mahrashtre
Pin-400 005

..... Appellant

Vs.

DCIT - CC,

658, 6th floor, Aayakar Bhavan,
Maharishi Karve Road,
Mumbai-400 020
PAN – AADCP8419N

..... Respondent

Appellant by : Shri Vimal Punmiya, Ld. AR
Respondent by : Ms. Madhu Malti Ghosh, CIT-DR

Date of hearing : 21/09/2023
Date of pronouncement : 22/09/2023

ORDER

PER GAGAN GOYAL, A.M:

These appeals by assessee are directed against the order of Ld. CIT (A)-50, Mumbai dated 10.03.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the

Act') for A.Y. 2016-17 and 2017-18 respectively. The assessee has raised the following grounds in ITA No. 1472/Mum/2023 for AY 2016-17:-

1. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals)-50 Mumbai has erred in passing the appeal order by confirming the addition of Rs. 13,87,00,000/- u/s. 68 and also confirmed disallowed of bad debts Rs. 3,11,452/- u/s. 36(2)(1) of the income tax Act

2. The learned CIT Appeal has not considered all the relevant required documents were submitted during assessment proceeding by the authorized representative of appellant.

3. The learned CIT Appeal failed to appreciate that all the transactions are recorded in the books of appellant are supported with, ledger, account bank statement also submitted details of expense and loan amount which is received is nothing but money transferred by the assessee to other parties and same amount again received by the assessee as a unsecured loan which is nothing but your own money.

4. The appellant submit that under IT act there is no scope for assumption and presumptions or anything can be implied. Disallowance cannot be sustained on the basis of preponderance of probabilities, Suspicion however strong it cannot form basis of addition. Addition cannot be made merely on suspicion surmises and conjectures in the hands of the Appellant.

5. Appellant therefore pray that assessing officer may be directed to delete addition of Rs.13, 87,00,000/- u / s 68, and bad debts of Rs. 3,11,452/- u/s. 36(2)(1). Even state bank of India already filed personal insolvency case against promoters of appellant.

2. The Brief facts of the case are that A search & seizure action u/s. 132 of the Act was carried out in the case of M/s. Trimax IT Infrastructure & Services Ltd. (TIISL) (Subsidiary of the assessee company) on 08.12.2017. Assessee was also covered by this search operation vide search warrant no. 72, Dated: 07.12.2017.

Notice u/s. 153A of the Act was issued in the case of the company vide dated: 14.06.2019, in response to this assessee filed its return of income at Rs. NIL vide Dated: 22.06.2019. Further Notices u/s. 142(1) and 143(2) of the Act was also issued to the assessee vide Dated: 01.08.2019 and 28.08.2019 respectively.

3. During the course of assessment AO observed that assessee received unsecured loans from other parties amounting to Rs. 13,87,00,000/- as per Para 3 of the assessment order, wherein the names, PAN No., Address and amount received mentioned as under:

Name of the Co.	PAN No.	Addresses of the Co.	Amount Received
Jain IT Solutions Pvt. Ltd.	AADCJ0314Q	MB-84, Vikas Kunj, New Delhi	1,05,00,000/-
Kampan Linksys Pvt. Ltd.	AAECK6462H	76, Vinayak Complex, 3 rd Floor, Vijay Block, Laxmi Nagar, Delhi	3,45,00,000/-
Khush IT Network Pvt. Ltd.	AAFCK6221K	A/1/58, Jaipunit Nagar, S.V. Road, Polsar Bus Depot, Borivali (W)	3,25,00,000/-
Servenet Links Pvt. Ltd.	AASCS5285L	B-3-B, Shiv Shakti Com., East Vinod Nagar	1,83,00,000/-
Topwell Infotech Pvt. Ltd.	AAECT7701J	76, Vijay Block, Laxmi Nagar, Delhi	1,04,00,000/-
Vallabh Technologies Pvt. Ltd.	AAECV8406E	384/L, Jitendra Nagar, Dabholkar Wadi, R. No. 19, 3 rd Floor, Kalbadevi Road, Mumbai	3,25,00,000/-
Total			13,87,00,000/-

4. AO found the same to be bogus and added the same u/s. 68 of the Act as unexplained cash credits in the books of the assessee. Assessee being aggrieved with the same, preferred an appeal before the Ld. CIT (A), who in turn confirmed

the additions made by the AO. Assessee being further aggrieved preferred present appeal before us. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee. In our observation following facts emerged out of various documents referred above as under:

- Assessee received loans from various parties mentioned (supra) amounting to Rs. 13.87 Cr. and in turn the same funds immediately credited/transfer to the subsidiary of the assessee, i.e., M/s. TIISL;
- Vide Volume 1 of Paper Book (Factual), Page No. 106 (Bank Statement of M/s. Jain IT Solutions Pvt. Ltd. (JISPL), it is observed that M/s. JISPL received a sum of Rs. 1.07 Cr. from M/s. TIISL on 15.01.2016 and on the very same date transferred also an amount of Rs. 1.05 Cr. To assessee;
- Vide Volume 1 of Paper Book (Factual), Page No. 117 (Bank Statement of M/s. Kampan Linksys Pvt. Ltd. (KLPL), it is observed that M/s. KLPL received a sum of Rs. 6.28 Cr. (75 Lacs + 85 Lacs+ 90 Lacs + 85 Lacs + 65 Lacs + 127 Lacs + 101 Lacs) from M/s. TIISL on 15.12.2015 onwards and on the very same date transferred also an amount of Rs. 88Lacs To assessee, then Rs. 82 Lacs on next day and 75 Lacs on 17.12.2015 and so on amounting in total Rs. 3.45 Cr;
- Same is the modus operandi for other four parties also namely Khush IT Network Pvt. Ltd., Servenet Links Pvt. Ltd., Topwell Infotech Pvt. Ltd., Vallabh Technologies Pvt. Ltd.;
- During the assessment proceedings also vide Para 12.2.1, assessee itself confessed that these whole transactions are camouflage to subscribe the shares of its subsidiary M/s. TIISL. The Bank transactions discussed (supra) clearly establishes that it's a case of circular trading, where main company,

i.e., M/s. TIISL parted with money to various entry operators in the guise of Purchase/loans and then in turn they pass on the money to the holding company, i.e., assessee. Assessee in turn, subscribed the shares of its subsidiary, i.e., M/s. TIISL;

- The same modus operandi, Ld. Counsel of the assessee himself discussed and accepted during the hearing of the matter and we find the same is being corroborated with the bank statements of assessee and lender companies also. This finding of fact is there on record and not controverted by the revenue;
- It's a case where someone else is beneficiary and in between all the entities are simply conduits to carry these transactions on the behest of M/s. TIISL.

5. We have gone through the assessment order of M/s. TIISL also, wherein it is reflected that the firm from whom assessee received loan, are shown as vendors for the purposes of bogus purchase of equipment etc. All the transactions with these vendors including other companies have already been disallowed and added back to the income of M/s. TIISL. Concerned vendors namely above also in their statements recorded that transactions are bogus and no actual delivery of goods has been done. Vide Page No. 25 of the Assessment Order of M/s. TIISL, Parties categorically confirmed the trail of transactions entered into by M/s. TIISL and accepted that money received is being transferred back-to-back to the Holding Company, i.e., assessee.

6. Same modus operandi is being applied not in the case of assessee, but also through personal accounts of the directors also amounting to Rs. 9 Cr. and added

back to their income in their individual capacity on substantive basis and the same is added back in the income of M/s. TIISL on protective basis. Now, in the light of above facts it is crystal clear that assessee was not the real beneficiary of the amounts received; rather whatever the amount received through other parties (Vendors of M/s. TIISL) is being transferred immediately to the account of M/s. TIISL as subscription of shares.

7. As a settled legal position is there, that tax is to be charged from real beneficiary and not from the conduit parties. Conduit parties can be charged for their commission earnings but the whole amount can't be added back to their income. In this case also as discussed (supra) amount rotated by M/s. TIISL has already been dis-allowed in their hands and tax has been charged, no addition in the hands of assessee can be made, especially where department, assessee and conduit parties already accepted this fact and addition in the hands of beneficiary assessee, i.e., M/s. TIISL has already been made by department relying on this theory, otherwise it will tantamount to double addition. **In the result Ground Nos. 1-4 raised by the assessee are allowed**, as far as Ground No. 6 is concerned, we have gone through the orders of authorities below and submissions of the assessee. On this ground we restore the matter back to file of AO for fresh adjudication based on submissions of the assessee along with relevant financial ledgers and proofs to be produced by the assessee to substantiate their claim. **In the result, Ground No. 6 is allowed for statistical purposes.**

8. **In the result, Appeal of the assessee is allowed for statistical purposes.**

ITA No. 1471/Mum/2023 for AY 2017-18

9. Since we have already decided the similar grounds of appeal raised by the assessee in ITA No. 1472/Mum/2023 for AY 2016-17 and the facts of this appeal are exactly similar and are applicable mutatis mutandis to this appeal also. **Hence, this appeal of assessee is also allowed for statistical purposes**

10. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 22nd day of September, 2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 22/09/2023

Sr. PS (Dhananjay)

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai