

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.682 to 685/PUN/2022

निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12 & 2013-14

DCIT, Central Circle-1, Aurangabad.	Vs.	M/s. Partha Multitrade India Pvt. Ltd. (Earlier known as Swift Ventures Pvt. Ltd.), Flat No.1/5, A. S. Yadav Chawl Pada, Nr. Mahakali Mandir, Dahisar, Mumbai-400068. PAN : AALCS3668L
Appellant		Respondent

Revenue by : Shri Ajay Kumar Kesari
Assessee by : None

Date of hearing : 12.10.2023
Date of pronouncement : 30.11.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the Revenue directed against the common order of Id. Commissioner of Income Tax (Appeals)-12, Pune ['the CIT(A)'] dated 30.06.2022 for the assessment years 2009-10 to 2011-12 and 2013-14 respectively.

2. Since the identical facts and common issues are involved in all the above captioned four appeals of the Revenue, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal of the Revenue in ITA No.685/PUN/2022 for the assessment year 2013-14 are stated herein.

ITA No.685/PUN/2022, A.Y. 2013-14 :

4. Briefly, the facts of the case are that the respondent-assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of finance and investment. The Return of Income for the assessment year 2013-14 was filed on 29.09.2013 declaring a loss of Rs.14,50,575/-. Against the said return of income, the assessment was completed by the Asst. Commissioner of Income Tax, Central Circle-1, Aurangabad ('the Assessing Officer') vide order dated 30.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.6,95,00,000/-. While doing so, the Assessing Officer made addition of Rs.6,95,00,000/- being the amount of money stated to have been received on the sale of shares in the companies sold to certain companies, which were alleged to be paper companies. The

details of the shares sold to the five companies were set out by the Assessing Officer at para 6 of the assessment order, which are reproduced hereunder :-

Col. 1	Column 2	Column 3	Column 4	Column 5	Col. 6	Column 7
Sr. No.	Party Name/Purchasers of investments sold by assessee company	Date	Product/Investment	No. of shares	Value	Amount
1	Anratma Tradelinks Pvt. Ltd.	20.06.2012 20.11.2012 20.11.2012 20.11.2012 20.11.2012 26.03.2013	Saltlake Vyapar Ltd. Ekta Dairy Pvt. Ltd. Fair Securities Pvt. Ltd. Span Ispat Pvt. Ltd. Shree Metaliks Pvt. Ltd. Scania Steel & Power Pvt. Ltd.	5000 1000 14000 30000 40000 22000	100 100 100 50 50 100	500000 100000 1400000 1500000 2000000 <u>2200000</u> 1,22,00,000
2	J.M.D. Sounds Ltd.	14.06.2012 08.11.2012 08.11.2012 08.11.2012	Saltlake Vyapar Ltd. Sargam Vintrade Pvt. Ltd. Kalika Liquers India Ltd. Jya Securities Pvt. Ltd.	5000 90000 40000 5000	100 100 10 100	500000 900000 400000 <u>500000</u> 1,85,00,000
3	Sirpur Market Pvt. Ltd.	31.10.2012 31.10.2012 05.11.2012 05.11.2012	Ekta Dairy Pvt. Ltd. Sir Biotech Ltd. Jya Securities Pvt. Ltd. Sudhanil Vanijya Pvt. Ltd.	2000 25000 10000 150000	100 100 100 100	200000 250000 1000000 <u>1500000</u> 1,87,00,000
4	Bonanza Tie-up Pvt. Ltd.	31.10.2012 12.11.2012 12.11.2012	Risewell Suppliers Pvt. Ltd. Ekta Dairy Pvt. Ltd. Suwidha Securities Pvt. Ltd.	18750 6000 9000	400 100 1000	7500000 600000 <u>9000000</u> 1,71,00,000
5	Swift IT Infrastructure Pvt. Ltd.	29.11.2012 29.11.2012	Jya Securities Pvt. Ltd. Satabdi Computers Pvt. Ltd.	5000 25000	100 100	500000 <u>2500000</u> 30,00,000
<i>Grand Total</i>						6,95,00,000

5. During the course of assessment proceedings, the Assessing Officer had sought the information from the purchaser companies u/s 133(6) of the Act. In response to the notice u/s 133(6), only three companies, namely (i) Anratma Tradelinks Pvt. Ltd., (ii) Sirpur Marketing Pvt. Ltd. and (iii) JMD Sounds Ltd. had

responded and the two companies, namely, (i) Bonanza Tie-up Pvt. Ltd. and (ii) Swift IT Infrastructure Pvt. Ltd. had not responded to the notices u/s 133(6) of the Act. Based on the information furnished by these three companies as well as information downloaded from the website of the Ministry of Company Affairs, the Assessing Officer found out that the purchaser companies had very meagre source of income, therefore, disbelieved that this companies had purchased the investments from the respondent-assessee company. Such belief was further confirmed by the statement given by one Mr. Jagdish Prasad Purojit on oath u/s 132(4) of the Act. The statement of said Mr. Jagdish Prasad Purojit was also extracted by the Assessing Officer vide page nos.5 to 14 of the assessment order. The sum and substance of the statement given by the said Mr. Jagdish Prasad Purojit is that he is engaged in the business of dubious activity of creating companies on paper and these companies were used for the business of providing bogus entries to various persons. It is further stated that the names of the five companies, who had purchased the investments from respondent-assessee company, also figure in the list of 246 companies promoted by the said Mr. Jagdish Prasad Purojit. Therefore, based on this information, the Assessing Officer called

upon the respondent-assessee to explain as to why it cannot be held that the respondent-assessee company had received a sum of money of Rs.6,95,00,000/- from the said five companies by paying them equivalent amount of cash along with the commission of entry provider and as to why such sums should not be treated as income of the respondent-assessee company. Despite giving several opportunities, the respondent-assessee had not responded to the notices. However, on 23.03.2016, the Authorized Representative of the respondent-assessee company filed a reply vide letter dated 17.03.2016. The gist of the submission is that the sale consideration of the investments was received through banking channels and the allegation made by the Assessing Officer is merely imaginary and hypothetical and not supported by any material and also denied the allegation of the Assessing Officer. However, the Assessing Officer on analysis of the financial position of the purchaser companies concluded that the entire transactions of sale of investments is nothing but a sham transaction, unaccounted money of the respondent-assessee was brought into the books of accounts, therefore, brought to tax the same.

6. Being aggrieved by the above action of the Assessing Officer, an appeal was filed before the Id. CIT(A) contending that no

addition can be made based on the mere surmises and suspicions since the respondent-assessee had discharged the onus of proving the identity, creditworthiness and genuineness of transactions of sale of investments. The Assessing Officer ought not to have held that the transactions of the sale of investments was bogus mere accommodation entries. The Id. CIT(A) while concurring with the finding of the Assessing Officer held that the entire transactions of sale of investments to paper companies is sham and bogus entries provided by the said companies. This is nothing but dubious entries adopted by the respondent-assessee company to bring into books of account the unaccounted money in the form of bogus transaction of sale of share, however, proceeded to hold that the respondent-assessee merely acted as conduit for the purpose of providing accommodation entries to M/s Mahalaxmi TMT Pvt. Ltd. since the Assessing Officer had made addition in the hands of M/s Mahalaxmi TMT Pvt. Ltd. on substantive basis, the addition made in the hands of the respondent-assessee to the extent of investments made by the respondent-assessee in M/s Mahalaxmi TMT Pvt. Ltd. should be deleted holding it to be a double addition and the addition was only made in the hands of the respondent-assessee on protective basis.

7. Being aggrieved by the direction of the ld. CIT(A), the Revenue is in appeal before us in the present appeal.

8. It is contended that the findings of the ld. CIT(A) were perverse in holding that the addition was made by the Assessing Officer in the hands of the respondent-assessee on protective basis, inasmuch as, the addition was made on substantive basis in the hands of the respondent-assessee. The ld. CIT-DR further submits that since the respondent-assessee had failed to discharge the onus of proving the genuineness, identity and creditworthiness of the purchaser companies to whom the respondent-assessee stated to have been sold the investments, the ld. CIT(A) ought to have upheld addition on account of sale consideration received by the respondent-assessee.

9. On the other hand, when the matter was called on for hearing, despite due service of several notices of hearing on the following dates : 12.01.2023, 13.01.2023, 08.03.2023, 14.03.2023, 11.04.2023, 25.04.2023, 28.06.2023, 09.08.2023, 10.08.2023, 23.08.2022\3, 31.08.2023, 07.09.2023, 13.09.2023, 25.09.2023, 26.09.20232, 09.10.2023, 10.10.2023, the respondent-assessee had failed to cause appearance before this Tribunal. However, the respondent-assessee filed a letter seeking adjournment of hearing.

The adjournment application moved by the respondent-assessee was rejected as the connected matters i.e. SMW Ispat Pvt. Ltd. and M/s. Sangam Infratech Pvt. Ltd. were being heard as the assessee had failed to show the sufficient and reasonable cause for non-appearance. In the circumstances, we proceed to dispose of this matter after hearing the ld. CIT-DR.

10. We heard the ld. CIT-DR and perused the material on record. The solitary issue involved in the present appeal is with regard to the genuineness of the sale consideration received by the respondent-assessee and credited in the books of accounts. Admittedly, the respondent-assessee company had sold certain investments in the form of equity shares of capital held by the five companies, which according to the Assessing Officer, these five companies are shell companies used to provide accommodation entries to various persons. In brief the case set up by the Assessing Officer is that the respondent-assessee company is a beneficiary of bogus entries provided by one Mr. Jagdish Prasad Purojit through the companies promoted by him. The money so received was invested in the equity shares of M/s Mahalaxmi TMT Pvt. Ltd.. During the course of assessment proceedings, the respondent-assessee had failed to discharge the onus of proving the genuineness

of these transactions. In the circumstances, the Assessing Officer drew adverse inference and brought to tax the entire sale consideration stated to have been received from these five companies and credited in the books of accounts.

11. On appeal before the ld. CIT(A), the ld. CIT(A) inferred that the addition in the hands of the respondent-assessee was made by the Assessing Officer on protective basis and since the same amount was taxed in the hands of M/s Mahalaxmi TMT Pvt. Ltd. on substantive basis, therefore, the addition was directed to be deleted in the hands of the respondent-assessee. This finding of the ld. CIT(A) is under challenge before us. On mere perusal of the assessment order, it would reveal that no addition was made in the hands of the respondent-assessee company on protective basis but the addition was made on substantive basis as the respondent-assessee had failed to discharge the onus cast upon it in terms of the provisions of the section 68 of the Act. Even during the course of proceedings before the ld. CIT(A), it appears that the respondent-assessee had never attempted to discharge the onus cast upon it in term of the provisions of section 68 of the Act. In the circumstances, the ld. CIT(A) had upheld the action of the Assessing Officer in bringing to tax the amount of money found to

be credited in the books of accounts in the form of sale consideration of investments received from the said five companies. However, the Id. CIT(A) had fell in serious error in holding that the Assessing Officer made addition on protective basis in the hands of the respondent-assessee and holding further that since the amount already taxed on substantive basis in the hands of M/s Mahalaxmi TMT Pvt. Ltd., the same should be deleted in the hands of the respondent-assessee. The Id. CIT(A) had failed to take cognizance of fundamental principle of taxation that the subsequent application of income in the form of investments in the shares of M/s Mahalaxmi TMT Pvt. Ltd. does not amount to double taxation of same income in the hands of the assessee, as the assessee is different from M/s Mahalaxmi TMT Pvt. Ltd.. Reference can be made to the decision of the Hon'ble Supreme Court in the case of ITO vs. S. Radha Krishnan, 254 ITR 561 (SC). The occasion to make protective assessment would arise, only in case Assessing Officer is in doubt as to the assessee who had received the money. The concept of protective assessment was explained by the Hon'ble Apex Court in the case of Lalji Haridas vs. ITO, 43 ITR 387 as under :-

“..... In cases where it appears to the IT authorities that certain income has been received during the relevant assessment year but it is not clear who has received that income and prima facie it appears that the income may have been received either by A or B or by both together, it would be open to the relevant IT authorities to determine the said question by taking appropriate proceedings both against A and B.”

12. Subsequently, the Hon’ble Gauhati High Court in the case of Jagannath Bawri vs. CIT, 234 ITR 464 also explained the concept of protective assessment as under :-

“As regards the contention of Ms. Hazarika, learned counsel for the petitioners about income-tax returns, on perusal of Annexure-A series it can only be said that those documents are only intimation which is sent to the assessee specifying the sum so payable under section 143(1)(a). At any rate, the assessments made are only protective assessments. Under the law it is open to the department to make assessments on two persons in respect of the same income, where there is some ambiguity as to the liability to charge, such assessments are made to protect the interest of the revenue so much so, unless such protective or alternate assessment is made, assessment proceedings against the party finally found to be liable may become barred by time. It has now become an established practice that in the case of doubt as to the person who will be and deemed to be in receipt of the income, it is open to the department to make protective or alternative assessment.”

13. In the present case, we are unable to discern from the assessment order that the Assessing Officer had entertained any doubt, as to whose hands, income is taxable. The Assessing Officer had rightly brought the amount in question to tax in the hands of assessee before us, as there is no doubt as to who received the money and such money was found credited in the books of account of assessee for the first time.

14. Where an assessee is liable to tax on amount of deemed income u/s 68, cannot escape liability to tax on such income by saying that said income was applied towards investments in the equity shares of a company, in whose hands, said amount of shares capital was held to be taxable in the circumstances of said case, in view of well settled position of law that income is liable to be taxed in the right hands, even if it is taxed in wrong hands as held by the Hon'ble Supreme Court in the case of ITO vs. Ch. Atchiaiah, 218 ITR 239 (SC). Furthermore, on mere reading of assessment order, it would be evident that there is not even whisper in the assessment order that the additions were made on protective basis in the hands of assessee. Thus, the findings of the ld. CIT(A) to this extent are perverse, baseless, contrary to material on record and illegal and does not conform to the settled principles of law. Therefore, the findings of the ld. CIT(A) are reversed to this extent and the appeal filed by the Revenue stands allowed.

15. In the result, the appeal filed by the Revenue in ITA No.685/PUN/2022 for A.Y. 2013-14 stands allowed.

ITA Nos.682 to 684/PUN/2022, A.Ys. 2009-10 to 2011-12 :

16. Since the facts and issues involved in remaining three appeals of the Revenue are identical, therefore, our decision in ITA No.685/PUN/2022 for A.Y. 2013-14 shall apply *mutatis mutandis* to the remaining three appeals of the Revenue in ITA Nos.682 to 684/PUN/2022 for A.Ys. 2009-10 to 2011-12 respectively. Accordingly, the remaining three appeals of the Revenue in ITA Nos.682 to 684/PUN/2022 for A.Ys. 2009-10 to 2011-12 stands allowed.

17. To sum up, all the above captioned four appeals of the Revenue stands allowed.

Order pronounced on this 30th day of November, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th November, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The Pr. CIT, Central, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.