

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.713/Bang/2023
Assessment year : 2015-16

The Assistant Commissioner of Income Tax, Circle 4(1)(1), Bangalore.	Vs.	M & M Equipments Private Ltd., No.242, 11 <sup>th</sup> Main, 2 <sup>nd</sup> Cross, III Phase, Peenya Industrial Area, Bengaluru – 560 058. <b>PAN: AAGCM 4491A</b>
APPELLANT		RESPONDENT

CO No.12/Bang/2023 [in ITA No.713/Bang/2023]
Assessment year : 2015-16

M & M Equipments Private Ltd., No.242, 11 <sup>th</sup> Main, 2 <sup>nd</sup> Cross, III Phase, Peenya Industrial Area, Bengaluru – 560 058. <b>PAN: AAGCM 4491A</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 4(1)(1), Bangalore.
CROSS OBJECTOR		RESPONDENT

Revenue by	:	Shri S. Annamalai, Advocate
Assessee by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.01.2024
Date of Pronouncement	:	30.01.2024

**ORDER**

*Per Bench*

This appeal by the revenue and CO by the assessee is against the order dated 28.06.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2015-16.

2. The grounds of appeal raised by the revenue is as under:-

“1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in considering an amount of Rs.11,59,30,375/- as the opening balance and allowing the same.

2. The Ld. CIT(A) erred in holding that Rs.11,59,30,375/- was the opening balance and addition cannot be made in the current AY 2015-16 (year under appeal).”

3. At the outset, there is a delay of 26 days in filing the appeal by the revenue for which petition for condonation of delay has been filed stating that the delay is due to heavy workload associated with time barring scrutiny assessment proceedings coupled with acute shortage of manpower. Also since there was Annual General Transfers (AGT) in the department, the officers and officials got transferred from this office who had updates of day to day office work. As such, under the circumstances, condonation of delay of 26 days in filing of appeal before the ITAT is requested. After hearing both the sides, we note that there is sufficient cause in the reason submitted by the revenue and following the judgment of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, delay in filing the appeal before the Tribunal is condoned.

4. The brief facts of the case are that the assessee filed return of income for AY 2015-16 on 30.09.2015 declaring a loss of Rs.8,62,90,825. The assessee is engaged in the business of manufacturing industry (engineering goods). The case was processed u/s. 143(1). Later on, the case was selected for scrutiny and statutory notices were issued to the assessee. During scrutiny proceedings, a questionnaire was issued on 29.11.2017 asking the assessee company to furnish ledger account, confirmations for other payables of Rs.12,68,30,375. The assessee filed confirmation of other payable on 31.03.2015 which is as under:-

<i>Description.</i>	<i>Amount Outstanding (In Rupees)</i>
<i>Shree Lakshmi Industries</i>	<i>34,00,000.00</i>
<i>Satish Engineering</i>	<i>75,00,000.00</i>
<i>Share Application Money Pending allotment (Mr. B. Ravi Kumar Reddy)</i>	<i>11,59,30,375.00</i>
<i>Total</i>	<i>12,68,30,375.00</i>

5. Further the assessee in response to show cause notice filed reply. On verification of the reply, the AO noted that from the ledger account of B. Ravi Kumar Reddy for the period from 01.04.2013 to 31.03.2014 that the opening balance of Rs.12,56,83,162 shown on 01.04.2013, that there are no bank transactions which conclusively prove that Sri B. Ravi Kumar Reddy has lent money to the assessee company to the extent of Rs.12,56,83,162 outstanding as on 01.04.2013. On verification of the bank statement of Sri B. Ravi Kumar Reddy, the AO noted that the closing balance as on 31.03.2013

is Rs.12,56,83,162 and on verification of bank transaction prior to 31.03.2013 in case of B. Ravi Kumar Reddy the closing balance and the amount lent to the assessee company does not tally. The bank transactions show the amount lent at Rs.6,34,89,550 upto 31.03.2013 whereas the closing balance of B. Ravi Kumar Reddy in the books of assessee is Rs.12,56,83,162 which shows a deficit of Rs.6,21,23,612. After examining the submissions of the assessee the AO made addition of Rs.11,59,30,375 u/s. 68.

6. The assessee filed appeal before the CIT(Appeals). The CIT(A) after examining in detail allowed the appeal of the assessee on merits, holding as under:-

“5.3. The contention of the Appellant, Grounds of appeal, the statement of facts, online submissions of the appellant and the case laws relied upon and the assessment order have been considered. The argument of the appellant that the addition made of the sum of Rs.11,59,30,375/- was the opening balance and no transaction pertained to the current AY 2015-16 (year under appeal) has been considered. The appellant has also argued without prejudice, that no addition can be made in respect of the opening balances as on 1.4.2014. The appellant has also stated that there was an assessment order passed under section 143(3) of the Act for the AY 2013-14 and the assessment order was passed on 29.01.2016 wherein, the AO had accepted the closing balance as on 31.03.2013 in respect of the account of Sri. B. Ravi Kumar Reddy. The appellant has further argued without prejudice that no addition of Rs.11,59,30,375/- was warranted under section 68 of the Act as the transactions are genuine and addition made under section 68 of the Act as income of the appellant is not in accordance with the provisions of the I T Act. The appellant has submitted that the director Sri. B. Ravi Kumar Reddy had given the loan of Rs.11,59,30,375/- and was having proper source and the same were disclosed before the Income-Tax Department in his individual capacity in the relevant assessment years.

5.3.1. It is seen that the amount of Rs.11,59,30,375/- was the opening balance and addition cannot be made in the current AY 2015-16(year under appeal). In view of the facts of the case, appeal on ground Nos. 4 to 13 are allowed. Ground No. 3 is dismissed as the appellant has not filed any evidence substantiating the claim that the order was dispatched after the limitation period.”

7. Aggrieved from the order of the CIT(Appeals), both the revenue and assessee by way of CO are in appeal before the Tribunal.

8. The Id. DR relied on the order of the AO and submitted that in the previous AY, the transactions recorded in the directors loan account is not reflected in the bank statement and assessee has not substantiated the same. The CIT(A) has merely stated that since the addition made by the AO is a previous year's transaction and therefore the opening balance cannot be added as income of the current year, without going into the merits of the case that the transactions of the previous year does not tally with the bank statements which will effect in the opening balance. She therefore argued that the order of the AO is to be upheld.

9. On the other hand, the Id. AR relied on the order of the CIT(A) on merits of the case and filed a written synopsis and further submitted that the transactions were undertaken in the previous year and referred to the Paperbook filed by the assessee with the ledger account and copy of bank statements. The AO has wrongly made additions of the

transactions carried out in the previous assessment year. He tried to reconcile the transactions of ledger account with bank statements. He has also filed paperbook containing pages 1 to 459. He also relied on the following case laws :-

Sl. No.	Particulars	Page No
1.	CIT v/ s. Parameshwar Bohra (2003) 131 Taxman 145 (Raj)	1-3
2.	M/s. Sooraj Leathers Vs. ITO ITA No.305/Mds/2016 dated 22.04.2016 [ITAT-Chennai].	4-12
3.	DCIT v. M. Aja Babu in ITA No. 1755, 1757/Hyd/2012 dated 23/04/2013. (Tri-Hyd)	13-29
4.	K N R Roofing Pvt. Ltd., v. ACIT in ITA No. 3125/Bang/2018 dated 20/09/2019 (Tri-Bang)	30-37
5.	Ivan Singh v. ACIT (2020) 116 <a href="http://taxmann.com">taxmann.com</a> 499 (Bombay).	38-41
6.	CIT v. Jagatkumar Satishbhai Patel (2014) 45 <a href="http://taxmann.com">taxmann.com</a> 441 (Gujarat).	42-43
7.	M/s. Maharaja Shopping Complex Vs. DCIT No.832/2008 dated 14.10.2014. (HC-Kar)	44-50
8.	CIT Vs. BJN Hotels Limited (2017) 79 <a href="http://taxmann.com">taxmann.com</a> 336 (Karnataka)	51-53
9.	M/s. Globe Transport Corporation Vs. ACIT in ITA No.629 to 631/Bang/2014 and connected matters dated 04/01/2019	54-63

10. Considering the rival submissions, we note that the AO has made addition for director's loan ledger account of Sri B. Ravi Kumar Reddy appearing in books of account of assessee company of Rs.11,59,30,375 u/s 68 on the reason that the transactions are not matching with previous year's financial statements. In this regard, the assessee stated that the transactions did not pertain to this assessment year and it relates to previous assessment year. We find substance in the submissions of the Id. AR that the previous year's transaction cannot be considered as income in the current assessment year. We

note that the transactions pertain to FY 2012-13 to 2013-14 and the AO has passed assessment u/s. 143(3) for AY 2013-14 on 29.01.2016 wherein the AO has accepted the closing balance of the ledger account of Sri B. Ravi Kumar Reddy. We note from the ledger account of Sri B. Ravi Kumar Reddy that there is a credit of Rs.12,40,74,520 and money has been transferred through bank account and only Rs.9,00,000 has been credited towards director's remuneration. The AO has completed the assessment for the current AY 2015-16 by considering the transactions of the assessee made in the previous assessment year. We also note that the AO has passed order u/s. 143(3) for AY 2013-14 on 29.01.2016 considering the transactions pertaining to FY 2012-13 and 2013-14 wherein the AO has considered the closing balance of this ledger account. The AO cannot consider the opening balance in the current assessment year for making addition. In this regard, we rely on the judgment of the jurisdictional High Court in the case of CIT v. Sridev Enterprises reported in (1991) 59 Taxman 439 / 192 ITR 165 (Kar). Therefore, we do not find any infirmity in the order of the CIT(Appeals) deleting the addition of Rs.11,59,30,375.

11. In the result the appeal by the revenue is dismissed.

12. The assessee in the CO has raised the ground that the assessment order passed u/s. 143(3) dated 29.12.2017 is barred by limitation and the CIT(Appeals) was not justified in dismissing this issue on the reason that the assessee has not filed evidence substantiating the same. Since the revenue's appeal is dismissed, therefore the CO filed by the

assessee on this issue is not required to be adjudicated and is left open.  
It is ordered accordingly.

Pronounced in the open court on this 30<sup>th</sup> day of January, 2024.

Sd/-  
( GEORGE GEORGE K. )  
VICE PRESIDENT

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 30<sup>th</sup> January, 2024.

*/Desai S Murthy /*

Copy to:

1. Revenue
2. Assessee
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.