

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.3286/Mum/2023
(Assessment Year: 2012-13)

PNK Space Development Private Limited 601, Purva Plaza, Shimpoli Road, Borivali West, Mumbai-400 092	Vs.	Income Tax Officer, Ward 13(1)(4) Mumbai
PAN/GIR No. AAFCP 7042 M		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Ms. Kakoli Ghosh
Date of Hearing	:	31.01.2024
Date of Pronouncement	:	28.02.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13.

2. The assessee has raised the following grounds of appeal:

1.	<i>On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in approving the legality of re-opening of assessment. while doing so he did not appreciate that; A. The assessing officer has not applied his mind to have reason to believe that assessable income has escaped assessment and the assessment was re-opened entirely on the basis of inquiries done and findings reached by the DCIT Central Circle 3(3), Mumbai who had made assessments in search cases of some of the cases belonging to the Bharat Shah Group. B. The Ld. AO had not taken into consideration of the facts that the evidences taken into consideration were held unreliable and</i>	Rs.15,26,502/-
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	<i>having no evidentiary value by the Hon'ble Settlement Commission in the order passed by them in Bharat Shah Group of cases and such orders of the Settlement Commission were not challenged before High Court and had been impliedly accepted by the department.</i>	
2.	<p><i>2. On the facts and circumstances of the case and in law, The CIT (A) was erred in confirming that Addition of Rs. 44,70,1 80/- made u/s. 69C of The Act ,1961 by relying on the bald statement given by Mr.Daxesh Parmar and 4GB croma pen drive seized during the search and seizure operation at the premises of Mr. Daxesh Parmar. In doing so he did not appreciate that;</i></p> <p><i>A. Mr. Daxesh Parmar is neither an employee nor the agent of the of the appellant; he has been found to be involved in activities detrimental to the interest of the appellant and appellant company has filed police complaint against him</i></p> <p><i>B. The appellant company was not given the opportunity to cross examine Mr. Daxesh Parmar even after specific request Tax effect relating to each Ground of appeal was made by the appellant company and thereby violating the principle of natural justice</i></p> <p><i>C. From the data of the se ized pen drive as reproduced in the order of the CIT(A) and Assessing officer it is not evidentthat the same is pertaining to the appellant company.</i></p> <p><i>D. Hon'ble Settlement Commission in its order dated 20/08/2014 passed u/s 245D(4) of The Act, 1961 in case of M/s Strawberry Construction Private Limited it was held that no reliance can be placed on the material found from the premises of Mr. Daxesh Parmar. Further this order was not challenged by the department.</i></p>	Rs.13,41,054/-
3.	<i>On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming disallowance of depreciation made u/s 32(1)(ii) of The Act, 1961 of Rs. 6,18,160/-.</i>	1,85,448/-
4.	<i>On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming disallowance of Rs.1,16,04,799/- pertaining to interest on loan and reducing the same from the amount of work in progress.</i>	Nil

3. As there was no representation on behalf of the assessee, we hereby proceed to dispose of this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record.

4. The brief facts are that the assessee is a Private Limited Company engaged in the business of real estate development and had filed its return of income dated 28.09.2012,

declaring total loss at Rs.1,91,689/- and the same was processed u/s. 143(1) of the Act. The assessee's case was then reopened vide notice u/s. 148 of the Act dated 30.03.2017 based on the information from the DCIT, Central Circle-3(3), Mumbai pursuant to search action u/s. 132 of the Act dated 03.03.2014 in the case of Bharat Shah Group where it was found that the assessee was one of the beneficiary of accommodation entries provided by the said group concerns which was evident from the pen drive seized from the residents of Shri Daxesh Parmar which is corroborated further by the statement of Shri Daxesh Parmar recorded u/s. 132(4) of the Act. The reasons recorded for reopening were furnished to the assessee and after duly disposing of the objection raised by the assessee, the Id. A.O. passed the assessment order dated 29.12.2017 u/s. 143(3) r.w.s. 147 of the Act where the total income was determined at Rs.48,96,650/- after making additions/disallowances u/s. 69 of the Act on unexplained cash credit amounting to Rs.44,70,180/- and depreciation u/s. 32(1)(ii) of the Act amounting to Rs.6,18,160/-.

5. The assessee was in appeal before the Id. CIT(A) who vide order dated 19.07.2023 upheld the addition made by the Id. A.O. on the ground that the assessee has failed to substantiate its claim inspite of sufficient opportunity given.

6. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

7. The learned Departmental Representative ('Id.DR' for short) for the Revenue contended that the assessee has been non compliant before the lower authorities and failed to substantiate its claim by any documentary evidences. The Id. DR further stated that the assessee's case was reopened based on incriminating materials seized from

Bharat Shah Group by the Investigation Wing where it has been found that the assessee was one of the beneficiaries of accommodation entries provided by the said group. The ld. DR further contended that the assessee has failed to discharge the primary onus casted upon it in case of the additions made on unexplained expenditure, disallowance on the depreciation claimed and the interest on loan amounting to Rs.1,16,04,799/-. The ld. DR relied on the orders of the lower authorities.

8. We heard the learned Departmental Representative ('ld. DR' for short) and perused the materials available on record. It is observed that ground no. 1 raised by the assessee pertains to challenging of the reopening of the assessment which according to the assessee was without applying the mind of the ld. A.O. and merely on the basis of the enquiries and findings in the case of Bharat Shah Group. The assessee has also contended that the lower authorities have failed to consider the orders of the settlement commission which has held that the evidence in the case of Bharat Shah group of cases is unreliable and have no evidentiary value. The assessee also stated that the said order of the Hon'ble Settlement Commissioner was not challenged before the Hon'ble High Court meaning that it has attained finality. It is observed that the assessee's case was reopened based on the incriminating material seized/impounded by the Investigation unit in the case of Bharat Shah group where documents relating to unaccounted purchase was found. It was further corroborated by the statement of Shri Daxesh Parmar. The ld. CIT(A) by placing reliance on the decision of the Hon'ble Apex Court in the case of *ITO vs. Purshottam Das Bangur* 90 taxmann.com 541 (1997) held that the ld. A.O. had tangible material to believe that income chargeable to tax has escaped assessment and further relied on the

decision of the Hon'ble Apex Court in the case of *Raymond Wollen Mills Ltd. vs. ITO* [1999] 236 ITR 34.

9. From the above observation, we deem it fit that the Id. A.O. had rightly invoked the provision of section 147 in assessee's case and has reassessed the income of the assessee. We find no infirmity in the order of the Id. CIT(A) and we, therefore, dismiss ground no. 1 raised by the assessee.

10. Ground no. 2 pertains to the addition of Rs.44,70,180/- made u/s. 69C of the Act as unexplained expenditure. The assessee has contended that the said addition was merely made on the basis of the statement given by Shri Daxesh Parmar and the pen drive seized during the search and seizure operation without proving the nexus between the assessee and Shri Daxesh Parmar. The assessee has further stated that the assessee has filed the police complaint against the said person and the lower authorities have failed to give an opportunity to the assessee to cross examine Shri Daxesh Parmar whose statement was solely relied upon by the Id. A.O. The assessee further contended that the seized pen drive does not belong to the assessee and relied on the order of the Hon'ble Settlement Commissioner u/s. 245D(4) of the Act dated 20.08.2014 in the case of M/s. Strawberry Constructions Pvt. Ltd. which has held that reliance would not be placed on the material seized from the premises of Shri Daxesh Parmar. The assessee also stated that the said order has not been challenged by the department.

11. The Id. CIT(A) has held that the assessee has not furnished the copy of the order of Hon'ble Settlement Commissioner which has stated that the department should not reopen any case on the basis of the material covered from the search operation of Bharat

Shah Group. The assessee has neither furnished the said copy of the order before the lower authorities nor before us. In the absence of such documentary evidence which has been extensively relied upon by the assessee, we deem it fit to uphold the addition made by the lower authorities. The Id. CIT(A) has also given a finding that when all the evidences relied upon by the department are readily available to the assessee which are in support of the assessee then not giving an opportunity to cross examine would not be detrimental to the assessee. The Id. CIT(A) has relied on the decision of the Hon'ble Allahabad High Court in the case of *Moti Lal Padampat Udyog Ltd. vs. CIT* 160 Taxman 233 and Hon'ble Punjab and Haryana High Court in the case of *Kusum Lata Thakari* 327 ITR 424 (P & H).

12. From the above observation, we find not infirmity in the order of the Id. CIT(A). In the absence of any contradicting materials available to us, ground no. 2 raised by the assessee is dismissed.

13. Ground no. 3 pertains to the disallowance of depreciation made u/s. 32(1)(ii) of the Act amounting to Rs.6,18,160/-. It is observed that the lower authorities have observed that the assessee has made an addition to the fixed assets during the year under consideration for which the assessee has claimed depreciation of Rs.6,18,160/- u/s. 32(1)(ii) of the Act. The assessee has failed to furnish the copy of bill, invoice, payment details and installation certificate in support of its claim neither before the lower authorities nor before us. In the absence of such documentary evidence, we find no reason to interfere with the order of the lower authorities. Hence, ground no. 3 raised by the assessee is dismissed.

14. Ground no. 4 pertains to the disallowance of Rs.1,16,04,799/- pertaining to the interest on loan which the assessee claims to reduce from the amount of work-in-progress. The assessee has stated that the closing WIP of Rs.5,11,69,996/- under the S-G 'Inventories' includes the interest expenses of Rs.1,52,93,475/- where the assessee company has utilized the interest bearing funds for non business purpose. The amount of Rs.1,16,04,799/- is reduced from the closing work-in-progress amounting to Rs.5,11,69,996/- and had computed the C/F of eligible amount of WIP at Rs.1,16,04,799/-. The lower authorities have disallowed the said claim pertaining to interest on loan which are to be reduced from the amount of work-in-progress for the reason that the assessee has failed to make its submission along with the supporting documentary evidences before the lower authorities. It is pertinent to point out that even before us, the assessee has not filed any evidences in support of its claim. In the absence of which, we deem it fit to uphold the order of the lower authorities. Hence, ground no. 4 raised by the assessee is dismissed.

15. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 28.02.2024

Sd/-

(Om Prakash Kant)
Accountant Member

Sd/-

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 28.02.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai