

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 3756/Mum/2023**

(Assessment Year: 2012-13)

Truevalue Projects Private  
Limited  
Office No.II-B, Mezzanine floor,  
289 EMCA House, S.B.S Road,  
Fort, Mumbai-400 001

Vs.

Dy. CIT  
Circle 1(3)(2)  
Aaykar Bhavan  
Maharshi Karve Road,  
Mumbai-400 020

**(Appellant)**

**(Respondent)**

**PAN No. AACCT5333Q**

**Assessee by** : Ms. Rekha Pandey, AR  
**Revenue by** : Shri P.D. Chougule, DR

**Date of hearing:** 29.02.2024

**Date of pronouncement :** 29.02.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 3756/Mum/2023 is filed by Truevalue Projects Pvt. Ltd, against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2012-13 dated 24<sup>th</sup> August, 2023, wherein the appeal filed by the assessee against the assessment order passed by the Dy. Commissioner of Income Tax, Circle 1(3)(2), Mumbai (the learned Assessing Officer) dated 29<sup>th</sup> December, 2019, under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) making an addition on unexplained cash credit under Section 68 of

the Income-tax Act, 1961 (the Act) of ₹1,25,00,000/-, was dismissed.

02. The assessee has raised following grounds of appeal: -

"1. On the facts and circumstances of the case and in Law the Ld CIT (A) erred in reopening the case u/s 147 which is bad in Law.

2. On the facts and circumstances of the case and in Law the Ld CIT (A) erred reopening the case u/s 147 as there was no escapement of income for the year under appeal Secondly there is no live link or close connection between the formation of belief of income escaping assessment and material referred to for issuing notice u/s 148 of the Act.

3. On the facts and in the circumstances of the matter in the law, the Ld. CIT(A) without giving an adequate/reasonable opportunity, wrongly concluded that the appellant has not effectively pursued the appellate proceedings. Whereas, every facts of the case were fully explained in statement of facts alongwith Form 35 being an application for appeal of the Commissioner of Income tax (Appeals).

4. On the facts and circumstances of the case and in Law the Ld CIT(A) erred in not providing cross examination of the person whose statements were used against the assessee. The Id CIT(A) violated the principles of natural justice.

5. On the facts and circumstances of the case and in Law the Ld CIT(A) erred in not providing materials

*and statements which used against the assessee, though a specific request was made for it.*

*6. On the facts and circumstances of the case in Law the Ld CIT(A) erred in adding Rs. 1 25 00 000 to the income of the assessee invoking the provisions of section 68 of the act.”*

03. Brief facts of the case shows that assessee is a company, who filed its return of income on 29<sup>th</sup> September, 2012, declaring income of ₹nil. The return was picked up for scrutiny. Subsequently, information was received from DCIT, Central Circle 3(1), Kolkata, in respect of receipt of bogus accommodation entries by the assessee from a shell company, M/s Natural Housing Private Limited. This information was received during the search operation under Section 132 of the Income-tax Act, 1961 (the Act) on Shri Pravil Agarwal and his group companies on 13<sup>th</sup> September, 2012, being an entry operator. In his statement, he has accepted on oath that he has registered number of paper companies with bogus share capital etc. and has given entries on bogus expenses etc. As per information vide letter dated 4<sup>th</sup> March, 2019, assessee was found to have entered into transaction with Natural Housing Pvt. Ltd. of accepting loan on 6<sup>th</sup> February, 2012 and 7<sup>th</sup> February, 2012, of ₹75 lacs and ₹50 lacs respectively. Therefore, assessee is the beneficiary of loan transaction of ₹1,25,00,000/- from that company. The verification of return of income was made. For verification of the above transaction, the learned Assessing Officer issued notice under Section 133(6) of the Act to the



assessee to furnish certain information which was not furnished. Therefore, the reasons were recorded and notice under Section 148 of the Act was issued on 30<sup>th</sup> March, 2018. The assessee filed return of income on 16<sup>th</sup> April, 2019. On 23<sup>rd</sup> October, 2019, reasons were supplied to the assessee on 7<sup>th</sup> November, 2019. Assessee filed an objection which was disposed off by an order dated 21<sup>st</sup> November, 2019. The assessee was asked by issue of notice to explain the unsecured loan of ₹1,25,00,000/- received from Natural Housing Pvt. Ltd. The assessee submitted copy of the company master data, annual accounts, income tax return and loan confirmation of the same. Assessee also asked for the statement of Mr. Pravin Agarwal, which was also given to the assessee on 18<sup>th</sup> December, 2019. On 20<sup>th</sup> December, 2019, assessee asked for cross examination of Shri Pravin Agarwal. Therefore, commission was issued to Income Tax Authorities of Kolkata for arranging cross examination. The assessee was summoned and also Mr. Pravin Agarwal. Neither the Director of the company nor Mr. Aggarwal appeared before the ADIT Investigation, Kolkata. His report was received to that effect. Subsequently, also the directors of the assessee company despite their own request did not appear before the ADIT, Kolkata. Subsequently, also the assessee was granted opportunity for cross examination but assessee did not make available its director for cross examination. The learned Assessing Officer further examined the annual accounts of Natural Housing Private Limited and found that company does not

have any fixed assets and does not found to be engaged in any business. The turnover shown by that company was also not supportive of the fact that it is being in any business. It was found that it has a huge share capital premium and loans and advances which were the modus operandi, explained by Mr. Pravin Agarwal. Accordingly, the learned Assessing Officer made the addition under Section 68 of the Act of ₹1,24,00,000/- and passed an assessment order on 29<sup>th</sup> December, 2019 at a total income of ₹1,24,00,000/-.

04. The assessee preferred the appeal before the learned Commissioner of Income-tax (Appeals). The assessee was given several opportunities; however, assessee except seeking adjournment did not make any submission. The learned CIT (A) held that as assessee is not forthcoming for pursuing its appeal, he decided the issue on the merits of the case and confirmed the addition under Section 68 of the Act of loan taken from Natural Housing Pvt. Ltd. In his appellate order, he further held that mere facts mentioned in form no.35 cannot be considered without any supporting documentary evidences. Accordingly, the appeal of the assessee was dismissed.

05. Assessee aggrieved with the same is in appeal before us. Miss Rekha Pandey, appearing before us submitted that

i. assessee is having at present no business and only two directors are there. The notices given by the learned CIT (A) firstly could not be complied with because of COVID period and subsequently, adjournment request on

21<sup>st</sup> August, 2023, was rejected by the first appellate authority. Therefore, assessee did not have any proper opportunity of hearing.

Ii She further submitted that the assessee has stated in form no.35 that assessee has submitted complete details of the company from whom the loans are taken. This was not considered by the learned CIT (A).

Iii It was further stated merely on the statement of Mr. Pravin Agarwal and his employees, the addition has been made. Therefore, the order of the learned CIT (A) is not sustainable.

Iv She further submitted that proper opportunity was not given for hearing before the learned Commissioner of Income-tax (Appeals).

06. The learned Departmental Representative submitted that assessee was given all the opportunities before the learned Assessing Officer for cross examination of Mr. Pravin Agarwal and at least on four occasions' assessee did not make himself available. Therefore, the argument of non-availment of opportunity for cross-examination is devoid of any merit. He further submitted that assessee has taken bogus accommodation entry from Mr. Pravin Agarwal and himself has stated that it is an accommodation entry. Further, the assessee has not produced any of the evidences in the form of directors, etc of the lender company and therefore, mere relying on the paper documents addition could not have been deleted.

Therefore, he supported the orders of the lower authorities.

07. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has filed the return of income which was not picked up for scrutiny. Subsequently, on account of search at the residence of Mr. Pravin Agarwal, it was found that assessee is a beneficiary of one of the bogus entities run by Mr. Pravin Agarwal for providing accommodation entries. Mr. Pravin Agarwal and his employees confirmed annual statement that company loan is merely an accommodation entry. The learned Assessing Officer further verified the return of income and therefore, issued notices to the assessee. Such notices were not complied with. Therefore, reasons were recorded and the assessment is reopened. Thus, there is a tangible material and *prima facie* reason formed by the learned Assessing Officer does not suffer any infirmity. Further, the learned CIT (A) provided opportunity of hearing in the month of March 2020 and further last opportunity in the month of August 2023, the claim of the assessee that in all the period there was an impact of COVID. It is also the claim of the assessee that it does not have any staff and only two directors are there. Therefore, this was the reason for non-appearance. Looking to the facts and circumstances of the case, we find that there is some substance in argument of the assessee for not appearing before the learned Commissioner of Income-tax (Appeals). Further, as the learned CIT (A) granted adjournment in earlier



cases on earlier date, the adjournment was refused in August, 2023. It is further the finding of the learned CIT (A) that whatever is stated in form no.35 cannot be considered without supporting the same with the evidences. For this reasons, the learned CIT (A) upheld the order of the learned Assessing Officer in absence of the assessee.

08. Looking at the circumstances and facts of the case, we find that if one more opportunity is given to the assessee to present its case before the learned CIT (A), no harm would be caused. Accordingly, we restore the appeal of the assessee back to the file of the learned CIT (A) with a direction to the assessee to submit whatever details it wants to submit before him and not to seek any further undue adjournments. The learned CIT (A) on pursuance of these submissions may decide the issue afresh. In view of this, we allow all the grounds of the appeal of the assessee to be decided afresh now by the learned Commissioner of Income-tax (Appeals).
09. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.02.2024.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.02.2024

*Sudip Sarkar, Sr.PS*



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai