

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3465/Mum/2023
(Assessment Year :2021-22)**

M/s. Aspen International Pvt. Ltd. 701/702, Embassy Centre Nariman Point Churchgate Mumbai- 400 021	Vs.	Assistant Commissioner of Income Tax, Central Circle-4(4) Mumbai
PAN/GIR No.AAFCA2740R		
(Appellant)	..	(Respondent)

Assessee by	Shri Rakesh Joshi
Revenue by	Shri R.R. Makwana
Date of Hearing	27/03/2024
Date of Pronouncement	28/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against the order dated 31/07/2023 passed by CIT(A)-52, Mumbai for the quantum of assessment passed u/s.143(3) for the A.Y.2021-22.

2. The only ground raised by the assessee is that ld. CIT (A) has erred in restricting the addition to the extent of Rs.8,02,382/- made u/s.69C of the Act.

3. The brief facts are that the assessee has filed its return of income u/s.139(1) on 08/01/2022 declaring total business loss of Rs.1,08,62,701/- which was also processed u/s.143(1). The case was selected for scrutiny and accordingly, notice u/s. 143(2) was issued on 29/06/2022. A survey action u/s.133A of the Act was conducted in the case of the assessee which is a part of Veritas group on 23/03/2021 at its office premises, during which it was found that assessee was engaged in circular trading through two companies namely, M/s. Yatee Traders Pvt. Ltd. and M/s. Shatranj Trading Pvt. Ltd. Circular trading is kind of issuing of invoices of transaction among multiple companies without supplying of goods. In the survey, statement of Shri Santosh Kumar Singh, Director of M/s. Shatranj Trading Pvt. Ltd was recorded on oath wherein he stated that he received purchases from four parties including assessee and Director of the assessee company is associated with M/s. Veritas group of companies and he has no capital investment in M/s. Shatranj Trading Pvt. Ltd. Secondly, he admitted that there was no physical delivery of goods. Another Director Shri Manish Hasmukh parekh of M/s. Shatranj Trading Pvt. Ltd also confirmed the said statement. Similarly, same *modus operandi* was followed in the case of M/s. Yatee Traders Pvt. Ltd. which was admitted by Shri Ajit Gaikwad in his statement wherein, he

stated that purchase / sale of goods is only done on the paper between the four companies, Hazel Mercantile Ltd; Veritas India Ltd, Aspen International Pvt. Ltd. and Sanman Trade Impex Ltd and no actual purchase of goods and delivery takes place. Finally, statement of Shri Nitin Kumar Didwania, promoter and director of M/s. Veritas group was also recorded who also admitted that there was a circular trading among the four companies, Hazel Mercantile Ltd; Veritas India Ltd, Aspen International Pvt. Ltd. and Sanman Trade Impex Ltd. All these statements have been reproduced in the assessment order. During the course of assessment proceedings, assessee produced evidences in support of its claim in the form of purchase, sales register, inward and outward register and stated there was no circular trading and it has actually purchased and sale goods. Further, during the year assessee has done transaction only with M/s. Shatranj Trading Pvt. Ltd which was as under:-

Sales (Amt) to M/s Shatranj Trading Pvt Ltd	Purchase(Amt) from M/s Shatranj Pvt Ltd	Total
Rs. 8,43,77,475	Rs. 7,60,99,000	Rs.16,04,76,475

4. Ld. AO held that it was nothing but circular trading without any actual delivery of goods and thus applied 1% rate on the sale and purchase transaction made with M/s. Shatranj Trading Pvt. Ltd as unexplained expenditure.

5. The ld. CIT (A) confirmed the observation and the finding of the ld. AO, however, he has reduced the rate of 1% to 0.5%, because according to him in such cases 1% is higher after referring to the various decisions of the Court.

6. Before us, ld. Counsel submitted that assessee has maintained party wise details of purchase in the books of accounts and sales undertaken during the year under consideration and all the purchases and sales were through banking channels. Further, assessee has also produced purchase and sale invoices alongwith delivery challans on sample basis. Thus, onus for proving genuineness of the sale and purchase are duly discharged. Nowhere, ld. AO has doubted the authenticity of these documents submitted by the assessee and has simply relied upon the statement of the parties rather than version of the assessee. Even from those statements, it would be seen that there is anything negative about the assessee. Further, from these statements of the Directors of these companies, it can be seen that they were undertaking genuine third party sales and purchases, wherein there was no requirement to take any physical goods which were to be procured / dispatched and they had admitted that they had done actual business which ld. AO has misinterpreted. Further, M/s. Shatranj Trading Pvt. Ltd had entered into transaction worth hundreds of crores with other entities as well. Therefore, it cannot be held that all these transactions made by the said parties were non-genuine. Thus, commission of 1% of such purchase and sale is uncalled for.

7. On the other hand, ld. DR strongly relied upon the orders of the ld. AO and the ld. CIT (A) and submitted that once in the statement these parties have admitted and they were involved in circular trading then, there is nothing left to treat the entire transaction made by the assessee to be treated as 'genuine'. Accordingly, order of the ld. CIT (A) should be confirmed.

8. After hearing both the parties and on perusal of the impugned orders, we find that on one hand assessee had submitted purchase and sale invoices, purchase and sale registers, bank statements and has disclosed all the transactions in the books of accounts and also forming part of the trading account. On the other hand, ld. AO's case hinges upon survey conducted in the case of M/s. Veritas group, wherein few of the parties were involved for purchase and sale transactions without delivery and admitted that they were also doing circular trading. If that was the case, then onus was on the assessee to show that, for entire purchase made from M/s. Shatranj Trading Pvt. Ltd. there were actual delivery of goods and actual outward of sales of the same stock. Assessee might have done genuine purchase and sale transaction with many parties, but qua this party, assessee should have substantiated the same when these statements were confronted to the assessee and the parties had admitted that they have done circular trading and assessee was one of the co-parties. Thus, we do not find any reason to deviate from such observation and finding of the ld. AO and ld. CIT (A).

9. However, before the ld. CIT (A) assessee had relied upon various judgments of the Tribunal which in turn were based on certain High Court decisions, that in such case, the commission rate which can be estimated ranges between 0.15% to 0.25%. Accordingly, it would be reasonable to reduce the commission to @ 0.25% from 0.5% as applied by the ld. CIT (A). Accordingly, assessee gets part relief.

10 In the result, appeal of the assessee is partly allowed.

Order pronounced on 28th March, 2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai; Dated 28/03/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai