

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA Nos. 3222, 3220, 3221, 3234, 3233 & 3232/MUM/2023
Assessment Years: 2013-14 to 2018-19**

M/s Ashtech (India) Pvt. Ltd.,
30, Ashtech House, Popat
Wadi Kalbadevi Road,
Mumbai-400 002.

Vs.

The Dy. CIT, Central Circle-
1(4),
902, 9th floor, Pratishta
Bhavan, Old CGO Annexe,
Maharishi Karve Road,
Mumbai-400020.

**PAN NO. AAECA 4133 B
Appellant**

Respondent

**ITA Nos. 3026 to 3028/MUM/2023
Assessment Years: 2013-14, 2014-15 & 2018-19**

Asst. CIT, Central Circle-1(4),
902, 9th floor, Pratishta
Bhavan, Old CGO Annexe,
Maharishi Karve Road,
Mumbai-400020.

Vs.

M/s Ashtech (India) Pvt. Ltd.,
30, Ashtech House, Popat Wadi
Kalbadevi Road,
Mumbai-400 002.

Appellant

**PAN NO. AAECA 4133 B
Respondent**

Assessee by : Dr. K. Shivaram &
Mr. Shashi Bekal
Revenue by : Mr. Manish Sareen, CIT-DR

Date of Hearing : 29/02/2024
Date of pronouncement : 25/04/2024



ORDER

PER BENCH

These appeals by the assessee and the Revenue are directed against a common order dated 30.06.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – 47, Mumbai [in short ‘the Ld. CIT(A)’] for assessment years 2013-14 to 2018-19 respectively. As common issue-in-disputes are involved in these appeals, therefore, same were heard together and disposed off by way of this consolidated order for sake of convenience and avoid repetition of facts.

2. Both parties agreed to take up assessment year 2013-14 as a lead case for arguments and follow the decision in the assessment year *mutatis mutandis* to other assessment years. Accordingly, we take up the appeal of the assessee and Revenue for assessment year 2013-14 for adjudication. The grounds raised by the assessee in its appeal for assessment year 2013-14 are reproduced as under:

“1. On the facts and in the circumstances of the case and law on the subject, the learned Income Tax officer erred in making addition of Rs.9,90,97,267/- being alleged bogus purchase of fuel / diesel & the learned CIT (Appeal) erred in confirming / upholding the disallowance of Rs.99,09,726/- being 10 % of purchases of alleged bogus fuel/ diesel of Rs. 9,90,97,267/-

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

2. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making additions of



Rs.29,54,983/- on account of alleged bogus tyre purchase bills & the learned CIT (Appeal) erred in upholding the addition of Rs.29,54,983/- on account of alleged bogus tyre purchase bills without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

3. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making disallowance of Rs.53,19,316/- on account of unsubstantiated expenses & the learned CIT (Appeal) erred in confirming disallowance of unsubstantiated expenses of Rs.5,31,931/- without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

4. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making disallowance of Rs. 36,79,111/- u/s 40(a)(ia) of Income Tax Act & the learned CIT (Appeal) erred in confirming disallowance of Rs.5,69,535/- u/s 40(a)(ia) without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.”

2.1 The grounds raised by the Revenue in its appeal for assessment year 2013-14 are reproduced as under:

1. i. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of share application money without appreciating the facts that the identity, creditworthiness and genuineness was not established by the assessee with regard to the alleged parties?"

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of unsubstantiated expenses without appreciating the facts that the identity, creditworthiness and genuineness was not established by the assessee with regard to the alleged parties?"

3. Briefly stated facts of the case are that the assessee is a private limited company, engaged in the business of manufacturing of bricks & blocks, crystal marbles, cement etc. and transportation



of ash generated in thermal power stations. For the assessment year 2013-14 , assessment u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 26.03.2015 against the returned income of Rs.10,37,95,810/-. Subsequently, a survey action u/s 133A of the Act was carried out by the Investigation Wing of the Income-tax Department, Mumbai at the premises of the assessee on 13.08.2019 along with premises of other group concerns. During the survey proceedings, statement of various persons including directors of the assessee company were recorded, wherein they admitted of recording of entry of bogus bills of fuel diesel expenses and other expenses etc in books of accounts. In view of the information of entry of bogus expenses booked by the assessee, received from the Investigation Wing, the Assessing Officer reopened the assessment by way of issue of notice u/s 148 of the Act dated 01.02.2021. In responses to the same, the assessee filed return of income on 20.02.2021 and thereafter statutory notices were issued by the Assessing Officer, which were complied with by the assessee. The Assessing Officer completed the assessment u/s 147 of the Act on 26.07.2021 wherein he made various additions to the returned income. The computation of the assessed income is reproduced as under:

"14. Subject to the above discussion, considering the submissions made and information available on record, the total income of the assessee for Assessment year 2013-14 is computed as under.-

Particulars	Rs.	Rs.
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Total Income from Business and Profession (As per assessment order u/s. 143(3) r.w.s. 147 dated 27.12.2016 and ROI filed u/s 147 of the Income tax Act, 1961)		10,35,40,8141/-
Add : Addition on account of bogus fuel/ diesel bills	9,90,97,267/-	
Add: Disallowance of expenses on account of Bogus Tyre Bills	29,54,983/-	
Add: Disallowance of Unsubstantiated Expenses	53,19,316/-	
Add: Disallowance of Prior Period Expenses	1,87,54,463/-	
Add: Disallowance u/s. 40(a)(ia) of the Income tax Act, 1961	36,79,111/-	
Total Additions/ Disallowances	12,98,05,140/-	
Total Income from Business and Profession		23,33,45,954/-
Income from Other Sources (as per ROI)		
Add: Addition of Share Application money received during year u/s. 68 of the Income Tax Act, 1961	11,85,74,000/-	
Total Income under the head Other Sources		11,85,74,000/-
TOTAL INCOME		35,19,19,954/-
ROUNDED OFF TO		35,19,19,950/-

Since tax computed as per provisions of section 115JB of the Act is lesser than the tax under normal provisions, the assessee is liable to pay tax computed as per normal provisions of the Act,”

4. On further appeal, the Ld. CIT(A) sustained part additions in respect of addition made by the Assessing Officer for bogus expenses but deleted the addition in respect of share application money.

5. Aggrieved, both the assessee and the Revenue are in appeal before the Tribunal by way of raising grounds as reproduced above.

6. The ground No. 1 of the appeal of the assessee is related to the disallowance of Rs. 9,90,97,260/- made by the Assessing Officer for bogus purchases under the head ‘fuel/diesel’ purchased from three parties. The facts qua the issue in dispute are that the assessee was registered owner of more than 400 trucks and dumper trucks



during the year under consideration. In the impugned assessment order, the Assessing Officer held the purchases of fuel (diesel) from three parties namely (i) M/s KM Suchak & Company, (ii) M/s Uganda Services and (iii) M/s Ambaji Petroleum as bogus on the basis of the various observations, **firstly** statement of employees of the assessee and partners, directors and supplier companies, **secondly**, entries of purchases from those three concerns not maintained by the assessee on 'E mist' i.e. accounting software used by the assessee. The assessee however submitted that the persons whose statement had been recorded by the Investigation Wing were not responsible for or handling diesel purchase of the assessee and therefore, those statements were not to be relied upon. Further, it was submitted that all those persons had filed affidavit retracting the statement which were recorded u/s 133A/131 of the Act during survey proceedings. Further, it was submitted that statement recorded during survey was not having evidentiary value in view of the decision of the Hon'ble Supreme High Court in the case of **S. Khader Khan Son (2012) 25 taxmann.com 413 (SC)** confirming CIT v. S. Khader Khan Son 300 ITR 157 (Madras). It was contended by the assessee that all the documents including bills, vouchers, bank payment were submitted before the Assessing Officer. The relevant supplier parties also complied the notices issued u/s 133(6) of the Act. Regarding the 'E-mist' accounting software, it was submitted that same was



implemented on trial basis during that period so certain entries could not be done on that software. During appellate proceedings before the Ld. CIT(A), the assessee filed further additional evidences, which were forwarded to the Assessing Officer calling for a remand report. In the remand report, the Assessing Officer admitted the fact that consumption of diesel/fuel cannot be considered excessive as the vehicles cannot run without diesel/fuel. However, he recommended sustaining of disallowance to the extent of 10% of purchase from those three parties for two reasons. **Firstly**, according to him statements, recorded during survey proceedings indicated taking bogus bills by the assessee from those three parties. **Secondly**, the Assessing officer in assessment order made an ad-hoc basis 10% disallowance in respect of bogus tyre purchases, so bogus fuel expenses disallowance might also be restricted to 10% of purchase bills from those three parties. Accordingly, the Assessing Officer in remand report proposed an estimated disallowance of 10% of total fuel/diesel purchased from three parties to be in the nature of bogus fuel/diesel purchase. The Ld. CIT(A) accepted the proposition of the Assessing Officer made in the remand proceedings and sustained the disallowance @ 10% of the total fuel/diesel purchases made from three parties which amounted to Rs.99,09,726/-. The relevant finding of the Ld. CIT(A) is reproduced as under :



“14.6. Findings in the Remand Report of the AO: During the course of present appellate proceedings, since additional evidences are filed by the appellant, these are forwarded for verification and further comments of the AO. The AO, after examining the documents and analysis of the average fuel consumption in different years has categorically given his finding in para 5.3 onwards. He has clearly stated that it does not seem to be logical to conclude that the whole fuel (diesel purchases from the three alleged parties are bogus. In this regard he has verified the bogus fuel/ diesel purchases by verifying the factual data regarding the total running kilometer vs. diesel purchase consumption. He has tabulated the details of diesel expenses including the alleged bogus fuel expenses and running kilometers as submitted by the assessee as under:

	Total (Running) Kilometer	Diesel Purchase in LTR consumption	Average Kilometer per litre
2012-13	76,92,475	38,57,021	1.99
2013-14	71,47,503	32,17,560	2.22
2014-15	70,80,612	32,36,768	2.19
2015-16	77,87,065	38,04,139	2.05
2016-17	76,83,886	37,54,853	2.05
2017-18	71,85,943	34,72,036	2.07

According to the AO, it is apparent from Table that the running average of commercial vehicle is ranging from 1.99 to 2.22 kilometer per litre. For F.Y.2012-13 relevant to A.Y.2013-14, the appellant has total running of transportation of 76,92,475 km and total purchase of diesel/ fuel of 38,57,021 litres making an average of 1.99 kms/litre. According to the AO the quantity of diesel/fuel, as disallowed in the assessment order is 19,41,595 litres which works out to 50.34% of the total diesel purchases in Mumbai region in F.Y.2012-13. The AO has also stated that out of 38,57,021 litres of diesel, as much as 50.34% has been purchased from the three parties, i.e. M/s. Shri Ambaji Petroleum, M/s. Uganda Service Station and M/s. K.M. Suchak & Co. In the opinion of the AO, it is unlikely that purchase of 50.34% of diesel purchases are bogus which appears to be impossible for running such a huge fleet of trucks and heavy vehicles. In para 5.2 of the remand report the AO has mentioned that in order to verify the details of such transactions, notices u/ s. 133(6) of the I.T. Act were issued to the three parties, entire purchase from which are considered as bogus in the assessment order. All these parties submitted their reply along with supporting documents. These were also verified by the AO and found in order.

14.7. It is also reported by the AO in the remand report that on analysis of the documentary evidences revealed that the details of delivery of goods along with Vehicle no., running kilometer, delivery challan no., loading and unloading etc. a contain the details of vehicles employed for the transportation of goods used for business purpose. The AO has also



noted that the assessee has claimed depreciation on the vehicles used for business purposes too.

14.8. In Para 5.4 of the remand report it is reported that the statement of sales made for certain days of April, July and March of 2012-13 are examined and found corroborated with the log book. Based on these, the AO has come to the conclusion that the commercial vehicles have been used for supply and delivery of goods wherein the requirement of diesel/fuel is essential as per running kilometers. The AO has also noted that once the running kilometer is verified and found in order, the consumption of diesel/fuel cannot be denied as vehicles cannot run without consumption of diesel/fuel.”

6.1 Before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has sustained disallowance on ad-hoc basis without any corroborative material and only on the proposition of the Assessing Officer which was based only on the statement of the persons made during the course of the survey proceedings. The Ld. Counsel submitted that those persons have already retracted their statement and the Assessing Officer did not cross-examine those persons, which means Assessing Officer admitted those retractions. Further, he submitted that statements made during survey proceedings could not be admitted as evidence in view of the decision of the Hon'ble Supreme Court in the case of S. Khader Khan & Sons (supra). The Ld. Counsel submitted that in the remand proceedings, the Assessing Officer has duly examined all the bills and vouchers and running of the trucks along with log book on test basis and he himself was satisfied with the evidences. The only basis for sustaining 10% disallowance is the statement of the parties which are not reliable as evidence and therefore, the Ld. CIT(A) is not justified in sustaining the same. He further submitted



that the decision relied upon by the Ld. CIT(A) are factually different from the assessee and therefore, same should be ignored.

6.2 On the contrary, the Ld. DR relied on the finding of the Ld. CIT(A) and submitted that in the statements those parties had clearly stated that against the cheque payment cash was returned back to the employees of the assessee. He submitted that retraction affidavits have been submitted after substantial delay and therefore, no cognizance should be given to those.

6.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The dispute is regarding the genuineness of the bills of fuel/diesel issued by three parties, which the AO disallowed 100 percentile but the Ld CIT(A) restricted to 10 percentile on ad-hoc basis, relying on the report of the AO in remand proceedings. During survey, statements of three persons of the assessee company were recorded including Sh Mandik Vishal Yashwant (person claimed to be engaged in purchase of diesel); Sh Ram Sajjwan Tiwari (claimed to be cashier of assessee company) and sh mahendra Gangan (claimed to be engaged in data entry). Those three persons explained their individual role in the process of bogus billing. In view of the statements of those three persons, the director of the assessee company accepted the fact of bogus bills obtained from those three parties. In the period post survey at the premises of the assessee,



surveys were also conducted at the premises of those three supplier parties and their employee also stated about issue of bogus bills to the assessee. However, all those persons retracted their statement before the Assessing by way affidavit filed but the AO rejected their retraction and relied solely on their statements. We find that in remand proceedings, the Assessing Officer has examined all the bills and vouchers in respect of fuel/diesel expenses. He has also examined the log book of vehicles for the relevant period and corroborated the statement of the sales with the log book. He also examined running of vehicles for the year and thereafter he concluded that consumption of diesel/fuel cannot be considered as excessive. The Ld. CIT(A) has also relied upon above finding of the Assessing Officer. No other documentary evidence was found during the survey proceedings which could lead that assessee was engaged in obtaining bogus bills for the diesel from those three parties except the statements. The Ld. CIT(A) also concurred with the AO on the basis of the statement of the persons recorded and sustained the disallowance to the extent of 10% of total purchase from three parties. We don't find any justification for relying on the statements of those persons for restricting disallowance to the extent of 10%, when the Assessing officer has verified all the documentary evidence in remand proceedings and given clean chit to the assessee. There is no rational behind restricting disallowance to 10% when the complete list of bills and delivery location along with



vehicle numbers used for supplying goods/materials were provided to the Assessing Officer during the assessment proceedings. In our opinion, the Ld. CIT(A) is not justified in sustaining 10% diesel/fuel expenses as bogus merely for the reason that 10% disallowance has been made in respect of bogus tyre purchases by the Assessing officer. In the case of **PCIT Mumbai v. JK Surface Coatings Pvt. Ltd. in ITA No. 1850 of 2017 (Bombay)** relied upon by the Ld. CIT(A), the bogus purchases were undisputedly confirmed and only issue was of the percentage of disallowance. In said case delivery of material was not established whereas in the instant case the Assessing Officer has neither doubted delivery nor doubted consumption of the diesel and therefore, sustaining ad-hoc disallowance, merely on the basis of the presumption, cannot be upheld and accordingly, we set aside the finding of the Ld. CIT(A) on the issue in dispute and delete the addition sustained by him. The ground No. 1 of the appeal of the assessee is accordingly allowed.

7. The ground No. 2 of the appeal relates to disallowance of Rs.29,54,983/- on account of alleged bogus tyre purchase bills sustained by the Ld. CIT(A).

7.1 Briefly stated facts qua the issue in dispute are that during the survey proceedings, survey party noticed two set of bills for purchase of tyres from supplier namely M/s Om Shree Siddhivinayak tyres. The Assessing Officer in the impugned



assessment order has noted that fictitious bills could be differentiated from the genuine once as they did not contain basic information such as description of tyres, tyre number, size etc. He further recorded that in view of factual observation during the course of survey Shri Satish Mandhania, Director of the assessee company voluntarily offered the entire amount of purchases of Rs.99,09,726/- made from M/s Om Shree Siddhivinayak tyres as his income for financial year 2012-13 to assessment year 2015-16. Further, the Assessing Officer observed that during the course of survey proceedings Shri Ram Sajeevan Tiwari, cashier of the assessee company confirmed that some cash was received back on monthly basis from M/s M/s Om Shree Siddhivinayak tyres. During the course of the assessment proceedings also the assessee failed to provide complete set of all the invoices and supporting documents like delivery challans including description of tyres, tyres numbers and etc. Therefore, the Assessing Officer held 10% of the total expenses as bogus and accordingly made addition amounting to Rs.29,51,983/-.

7.2 On further appeal, the Ld. CIT(A) also upheld the disallowance observing as under:

“16. I have carefully considered the findings of the AO and the written submission of the appellant which is reproduced as above. The AO has made the impugned addition of Rs.29,54,983/- on account of non-genuine tyre purchased from M/s. Om Shree Siddhivinayak Tyres during F.Y .2012-13 relevant to A.Y.2013-14. According to the AO, M/s.Om Shree Siddhivinayak Tyres used to issue both genuine as well as bogus bills



with respect to tyres sales. The fictitious bills can be differentiated from the genuine ones as they do not contain basic information such as description of tyres, tyre number, size etc. During the year under consideration the total purchases shown in the books of accounts of the appellant from M/S. Om Shree Siddhivinayak Tyres was Rs.2,95,49,829/-. Out of this, 10% purchases has been treated as bogus. It is observed that in order to come to this conclusion the AO has relied upon the statement of Shri Satish Mandhania, Director of the assessee company, Shri Ram Sajeevan Tiwari, Cashier and Shri Mahendra Gangan, Supervisor in M/s.E-fleet systems Pvt Ltd. In reply to Q.No. 17, Shri Ram Sajeevan Tiwari had stated that he used to collect cash from M/s. Om Shree Siddhivinayak Tyres. He has also indicated range of cash received per month from this vendor. Shri Mahendra Gangan, in his statement has stated in reply to Q.No.20 that he did not enter the data of some of the bills/vouchers/documents of M/s. Om Shree Siddhivinayak Tyres. It is further stated in para 9 of the assessment order that although this vendor has submitted a written submission before the AO but did not attend in compliance to summons issued u/s. 131 of the Act. The AO has also stated that the appellant has failed to provide complete set of all the invoices and supporting documents such as delivery challans including description of tyre no. and bills etc. Finally, the AO has come to the conclusion that 10% of the purchases made during the year is certainly non-genuine and accordingly added to the total income of the appellant.

16.1 In reply, the appellant has stated that M/S. Om Shree Siddhivinayak Tyres is a reputed dealer having distributorship of renowned tyre manufacturer M/S Birla Tyre Limited. They are the vendors of the company for last 20 years. According to the appellant various details, i.e. Ledger Confirmations, Bank statements, invoice & delivery challans were submitted to the AO. The notice u/ s. 133(6) was also issued to the supplier which has been duly responded to. All the payments were made through proper banking channel. According to the appellant when complete details are filed no disallowance should be made by the AO.

16.2 In my considered view, the AO has brought out differentiation between the genuine bills as well as bogus bills issued by this vendor (M/s. Om Shree Siddhivinayak Tyres). In the bogus bills, there are omission of certain basic details viz, description of tyres, tyre no, size etc which were not recorded by the appellant. It has not been explained during appellate proceedings as to why such lacuna exists while preparing some of the bills issued by this vendor. Moreover, not only the Director of the company but other employees have also admitted that some of the purchases from this vendor is non-genuine. Considering these facts, in my opinion, the AO has correctly disallowed 10% of purchases which works out to Rs.29,54,983/-which deserve to be confirmed. The ground of appeal no.3 is dismissed.”

7.3 We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute is regarding



disallowance of 10% of expenses out of expenses on purchase of tyres shown from M/s Om Shree Siddhivinayak tyres during year under consideration. According to the assessee all details like ledger confirmation, invoices and delivery challans were submitted by the assessee before the Assessing Officer. According to Assessing Officer in the course of the survey two type of bills issued by M/s Om Shree Siddhivinayak tyres were found. *Firstly*, where tyre numbers and size etc. were mentioned, and *secondly*, where details of the tyre numbers of size etc. were not available. In view of those observations during the course of the survey, the director of the assessee company Shri Satish Mandhanian admitted fact of the bogus purchase. The cashier of the assessee company also stated of receipt of cash back from M/s Om Shree Siddhivinayak tyres. In view of those statements coupled with failure on the part of the assessee in providing complete details of delivery challans of the bills in respect of M/s Om Shree Siddhivinayak tyres, the Assessing Officer held 10% of the purchases as bogus and accordingly disallowed. The assessee also failed to produce details of delivery challans in respect of purchase bills where tyre numbers and size were not mentioned in the invoices before the Id CIT(A). Before us, also no such details to support that goods were actually delivered in respect of bills where tyre numbers and sizes were not mentioned. In absence of any such supporting documents, the statements get corroborated that part of the purchases from M/s Om Shree



Siddhivinayak tyres are in the nature of bogus. In absence of complete details provided, the Assessing Officer is justified in making estimated disallowance @ 10% of total expenses on tyre purchase. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute and dismiss the ground No. 2 of the appeal of the assessee.

8. The ground No. 3 of the appeal of the assessee relates to disallowance of Rs.5,31,951/- sustained by the ld CIT(A), out of disallowance for unsubstantiated expenses of Rs.53,19,316/- made by the Assessing Officer. The ground No. 2 of the appeal of the Revenue relates to the relief of Rs.47,87,385/- given to the assessee by the Ld. CIT(A) on this issue.

8.1 The facts qua the issue in dispute are that during the course of assessment proceedings, the Assessing Officer shortlisted expenses claimed in respect of six parties and issued summons for verification and genuineness of expenses. Out of six parties, summons were not complied by two parties namely S.V. Takwale & Sons for expenses of Rs.44,15,958/- and Shivaji Maruti Jhambulkar for expenses of Rs,9,03,358/- , totaling to Rs.53,19,660/-. The Assessing Officer observed that S.V. Takwale & Sons had not filed return of income for AY 2013-14 and 2014-15. Further, he noted that Shivaji Maruti Jhambulkar had not shown the amount received from the assessee as his income in the return



of income. In view of observations, the ld. Assessing Officer disallowed those expenses as not genuine. The Ld. CIT(A) allowed part relief to the assessee observing as under:

“20. The Ground of appeal No.4 relates to disallowance of unsubstantiated expenses of Rs.53,19,316/- and pertaining to six entities. It is observed that the issue has been discussed in para 10 of the assessment order. The AO in para 10.4 has stated that notice u/ s. 131 were issued to S V Takwale & Sons and Shivaji Jambulkar with respect to expenses of Rs.44, 15,958/- and Rs.9,03,358/- respectively. In response to summons issued for verification and genuineness of expenses, no compliance/ reply was received. It is also noted by the AO that S V Takwale & Sons has not filed return of income for A.Y.2013-14 and A.Y.2014-15. Further, Shivaji Jambulkar is not showing amount received from the appellant company in his return of income and claiming refund from TDS. Accordingly, the impugned disallowances have been made.

20.1 In this regard, the appellant during the appeal proceedings, has submitted certain additional evidences and stated that Shivaji Jambulkar is an individual. The appellant company has taken property on rent for RMC plant and paid rent of Rs.4,51,670/- during the year. Ledger Confirmation/ Bank statement and copy of agreement were submitted for verification by the AO. Also the payments were made through proper banking channels. As far as S V Takwale & Sons is concerned the appellant submitted that this is a proprietorship firm of Shri Mr. Ramesh S. V. Takawale. He was supplying labour at Pune Project. With respect to this concern too, ledger confirmation/ bank statement and invoice copies were submitted. It is also claimed that payments were made through proper banking channel.

20.2 The AO in the remand report has stated that he issued notice to these concerns u/s. 133(6) of the I.T. Act for furnishing of supporting documents in order to verify the payments made to these two entities. However, no reply was received from these two entities. Hence, the AO has stated that the additional evidence filed by the appellant may not be admitted at the appellate stage. In the rejoinder the appellant has stated that merely because parties are not responding to notice adverse view should not be taken against the assessee when it has produced other supporting documents such as GST No., certificate from banks. On careful consideration full relief with respect to disallowance of Rs. 53,19,316/- cannot be given as existence of these parties have not been fully established. However, at the same time, the genuineness of the transaction has not been denied. There are sufficient documentary evidences produced by the appellant to establish that payments have been made with respect to



rent paid for RMC plant and labour supplied at Pune site. Once AO has not doubted that rent has been paid for RMC plant or labour has been supplied at the Pune project, 100% disallowance is not feasible. No lacuna or defect has been found in the documentary evidences filed during assessment proceedings. Considering the totality of the facts and circumstances and keeping a consistent stand, 10% of the expenses, ie. Rs.5,31,931/- is confirmed while the balance amount of Rs.47,87,385/- is deleted. The AO is directed accordingly. Thus, ground of appeal no. 4 is partly allowed.”

8.2 We have heard rival submission of the parties and perused the relevant material on record. We find that in respect of Shivaji Maruti Jhambulkar, before the Assessing Officer, the assessee claimed that rent of Rs.4,51,670/- was paid during the year towards property taken on lease for running ready mix concrete (RMC) Plant. The assessee filed ledger confirmation bank statement and copy of the agreement with the said party. The bill in respect of S.V. Takwale & Sons was in respect of supply of labour at Pune project. The assessee filed ledger confirmation bank statement and invoice copies in respect of said party. The payment in respect of above parties made through banking channel has not been disputed. The Assessing Officer proposed disallowance in remand proceeding merely for the reason that notices u/s 133(6) of the Act issued to those parties for furnishing supporting documents remained un-responded from those parties. Accordingly, in the remand proceedings, the Assessing Officer stated that the additional evidence might not be admitted. The Ld. CIT(A) has noted that genuineness of the transaction has not been denied. We find that the sufficient documentary evidences have been produced by



the assessee in respect of rent paid for RMC plant and labour supply at Pune before the lower authorities. In our opinion, once the Ld. CIT(A) is satisfied with the documentary evidences maintained in respect of those expenses, particularly when he himself mentioned that no lacuna or defect has been found in documents filed during assessment proceedings, then he is not justified in sustaining disallowance to the extent of 10% of the expenses for the reason that those parties did not respond to the notice u/s 133(6) of the Act. It is not the case that those parties have not been found that their address because, the notice issued u/s 133(6) of the Act has not been claimed to be returned un-served. Once, notice were served it was the duty of the Assessing Officer to enforce their attendance or carry out inquiry by sending Inspector at their site. In absence of any such evidence of non-existence of those parties, the action of the Ld. CIT(A) in sustaining addition @ 10% of the total expenses purely on ad-hoc basis is not justified. The finding of the Ld. CIT(A) on the issue in dispute is accordingly set aside. The ground No. 3 of the appeal of the assessee is accordingly allowed and the ground No. 2 of the appeal of the Revenue is dismissed.

9. The ground No. 4 of the appeal of the assessee relates to disallowance of Rs.36,79,111/- u/s 40(a)(ia) of the Act made by the AO, out of which amount of Rs.5,69,535/- has been sustained by



the Ld. CIT(A). This ground of appeal was not pressed before us and therefore, same dismissed as infructuous.

10. Now we take up the ground No. 1 of the appeal of the Revenue, wherein the Revenue has challenged the deletion of the addition for the share application money amounting to Rs.11,85,74,000/- u/s 68 of the Act. The facts in brief qua the issue in dispute are that during the year under consideration the assessee had received share application money of Rs.11,85,74,000/- from M/s Dhanteras Agency Pvt. Ltd. The Assessing Officer rejected the contention of the assessee in support of onus u/s 68 of the Act and made addition in the hand of the assessee treating money received from M/s Dhanteras Agency Pvt. Ltd. as not genuine. In the course of appellate proceedings before the Ld. CIT(A) the assessee filed certain additional evidences which were forwarded to the Assessing Officer for his comment. The Ld. CIT(A) has reproduced the contents of the remand report sent by the Assessing Officer on page 63 of the of the impugned order. The Ld. CIT(A) deleted the addition observing as under:

“32.4 During the course of present appellate proceedings, the Ld.AR of the appellant has opposed the action of the AO stating that it has submitted sufficient material to establish the identity, creditworthiness and transaction. The transaction was carried out through by authorised banking channel and thus the genuineness of the transaction is proved. No contradictory material has been brought on record by the AO with respect to documentary evidences submitted. The appellant has also relied on the decision in the case of Pr. CIT v. Chain House International Pvt Ltd (2018) 174 DTR 97 (MP)(HC) where it is held that once genuineness, creditworthiness and identity of the investors are



established, no addition can be made as cash credit on the ground that shares were issued at excess premium.

32.5 In the remand report the AO has reported that notice was issued to the appellant as well as the party concerned for detail supporting documents so as to verify the share application money received. The appellant submitted return of income, confirmation account and bank statement for the share application money received in FY.2012-13. The AO has also reported that the same has been repaid in FY,2013-14 for which confirmation account of repayment and bank statement were comm also furnished. According to the AO, on perusal of the financial statement, it is found that the M/S Dhanteras Agency Pvt. Ltd. had total reserve and surplus of Rs. 13,59,22,291/- while share application money given to the appellant was Rs. 11,85,74,000/-. Since, M/s. Dhanteras Agency Pvt. Ltd. was strike off, no reply was received against the notice issued u/s 133(6). In the opinion of the AO, in the remand report, when the reply of the party has not been received and the assessee from his own side has furnished all such required document, acceptance of the additional evidence may be taken on merit basis. In the rejoinder the appellant has again stated that it has proved the creditworthiness, identity and genuineness by filing return of income and bank statement of the parties. Moreover, the appellant has returned the share application money in subsequent year due to dispute. All these transactions have taken place through banking channel. It is also stated that the total reserve and surplus of M/s. Dhanteras Agency Pvt. Ltd. far exceeded the share application money given to the appellant. Hence merely because no reply is received from the company, which is strike off, the assessee cannot be held liable for the same.

32.6 On careful consideration I find that no adverse comment has been given by the AO in the remand report with respect to evidences produced at the time of remand proceedings. It is a fact that share application money received in F.Y.2012-13 was repaid back in F.Y .2013-14. All these transactions reflect in the bank statement furnished during the remand proceedings as well as before the undersigned. The AO in the remand proceedings has also examined the financial statement of M/s. Dhanteras Agency Pvt. Ltd. and found that total reserve and surplus of Rs. 13,59,22,291/- was much higher than the share application money given to the appellant i.e. Rs. 11,85,74,000/- The AO has also highlighted that since M/s. Dhanteras Agency Pvt. Ltd. was strike off by ROC no reply was received from this company and hence no adverse view should be taken on this count. In this regard, I find merit in the above submission of the appellant.

32.7 As far as the argument of the AO that one of the Directors is a non-filer and another one files return of income below exemption limit cannot be factor for the impugned disallowance where the creditworthiness of the company has been examined during remand proceedings. The company filed last balance sheet on ROC for the year ending



31.03.2015. Thereafter it was struck down from ROC. It appears that the AO has considered these factors overlooking the fact that transactions in question happened in F.Y.2012-13 and 2013-14. Moreover, the comment of the AO with respect to bank statement that no bank balance is maintained in bank account, cash deposits or transfer of funds to RTGS immediately after the deposit of money has not been further elaborated. The AO has not cited a single instance that the present share application money of Rs. 11,85,74,000/- have come to the appellant through cash deposit in the bank account of M/s. Dhanteras Agency Pvt. Ltd. He has given a general statement disregarding the bank statement filed by the appellant. The AO in the assessment order has also not given any adverse finding or found any defect in the documentary evidences submitted by the appellant which cannot be summarily rejected. Similarly, the identity of M/s. Dhanteras Agency Pvt Ltd. has been established by the appellant by filing PAN No., ITR copy, balance sheet, profit and loss account and other financial statements. Regarding creditworthiness, the AO in the remand report has certified that the reserve and surplus far exceeds the share application money. Hence, creditworthiness cannot be doubted. As far as genuineness of the transaction is concerned, the same has been done through banking channels and the share application money has been returned bank in the subsequent year as reported by the AO in the remand report. Thus, all the three limbs of section 68 has been complied with and no adverse view has been taken by the AO in remand report. Taking all the factors into account, in my considered view the addition of share application money received from M/s. Dhanteras Agency Pvt. Ltd. is unjustified and deserve to be deleted. Thus, the addition of Rs, 11,85,74,000/- is deleted. Hence, ground of appeal No. 7 is allowed.”

10.1 It is evident that in the remand proceedings no adverse comment has been given by the Assessing Officer in respect of additional evidence produced. The Assessing Officer himself has noted the creditworthiness of the share subscriber and commented that total reserve and surplus of Rs.1,35,92,291/- was much higher than share application money given to the assessee Rs.11,85,74,000/-. The basis for the Assessing Officer in the original assessment proceedings for making addition was **firstly**, that M/s M/s Dhanteras Agency Pvt. Ltd. did not respond to the notices issued u/s 133(6) of the Act. For which the assessee has



submitted during the appellate proceedings that said company has been stricken off by the Registrar of Companies (ROC), therefore, no reply was received. The Ld. CIT(A) is justified in accepting this explanation of the assessee and therefore, no adverse view could be taken on this account. **Secondly**, the Ld. CIT(A) has further rejected the argument of the Assessing Officer in the original assessment order that director of the assessee was a non-filer. In our opinion the status of the director of company as non-filer is not relevant while deciding the identity, creditworthiness and genuineness of the transaction of a company. Thirdly, the AO in assessment order mentioned that cash deposits were made in bank account of said party, however, the Ld. CIT(A) has pointed out that not a single instance has been brought on record by the AO. Before us also no such instance has been brought by the Ld. Departmental Representative. In our opinion, once the Assessing Officer in the remand report has accepted the identity and creditworthiness of the share subscriber and genuineness of the transaction, then, filing of further appeal before the Tribunal on the said issue, is not justified. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground of appeal of the Revenue is accordingly dismissed.

ITA No. 3220/Mum/2023 and ITA No. 3027/Mum/2023



11. Now we take up the appeal of the assessee and Revenue for assessment year 2014-15. The grounds raised by the assessee are reproduced as under:

“1. On the facts and in the circumstances of the case and law on the subject, the learned Income Tax officer erred in making addition of Rs.5,57,28,653/- being alleged bogus purchase of fuel / diesel & the learned CIT (Appeal) erred in confirming the disallowance of Rs.55,72,865/- being 10 % of Rs. 5,57,28,653/- purchases of alleged bogus fuel/ diesel.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

2. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making additions of Rs.29,82,429/- on account of alleged bogus tyre purchase bills & the learned CIT (Appeal) erred in upholding the addition of Rs.29,82,429/- on account of alleged bogus tyre purchase bills without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

3. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making disallowance of Rs.32,57,764/- on account of unsubstantiated expenses & the learned CIT (Appeal) erred in confirming disallowance of Rs.3,25,776/-being 10% of Rs.32,57,764/-on account of unsubstantiated expenses of without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.”

11.1 The grounds raised by the Revenue are reproduced as under:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of share application money without appreciating the facts that the identity, creditworthiness and genuineness was not established by the assessee with regard to the alleged parties?

2 ii. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of unsubstantiated, expenses without appreciating the facts that the



identity, creditworthiness and genuineness was not established by the assessee with regard to the alleged parties?"

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of depreciation on unaccounted sales of old vehicles without appreciating the facts that the genuineness of the purchaser of old vehicles was not established by the assessee?

12. The ground Nos. 1 to 3 of the appeal of the assessee and ground No. 2 of the appeal of the Revenue is identical to the ground Nos. 1 to 3 raised by the assessee and ground No. 2 raised by the Revenue in assessment year 2013-14 except change of the amount. Therefore, facts and circumstances being similar the ground Nos. 1 to 3 of the appeal of the assessee and ground No. 2 of the appeal of the Revenue are accordingly decided *mutatis mutandis*.

19. The ground No. 1 of the appeal of the Revenue relate to deletion by the Id CIT(A) of addition made by the AO in respect of share application money of Rs. 12,11,00,000/- received from M/s Kasturi Nagesh Pal & Co P ltd (in short the 'Kasturi'). The facts in brief qua the issue in dispute are that in the financial year corresponding to the assessment year under consideration, the assessee received share application money of Rs.12,11,00,000/- from 'Kasturi'. According to the Assessing Officer, the source of money in the hands of Kasturi was received from 13 companies, which were controlled and managed by Calcutta based entry operators Mr. Jitendra Mishra, who has stated before the Investigation Wing, Kolkata on 26.09.2014 that said companies



were shell/paper companies. The Assessing Officer further observed that Kasturi has shown nominal rental income in the range of Rs.4,80,000/- to Rs.9,60,000/- during the various years and therefore, the Assessing Officer opined that introduction of share application money through M/s Kasturi was nothing but a colorable device to infuse tax evaded income into the bank of assessee. Accordingly, he treated the said share application money as unexplained cash credit and made addition. Before the Ld. CIT(A) the assessee filed detailed submission along with financial statements, ledger confirmation, bank statement etc of said party. The Ld. CIT(A) after considering the submission of the assessee deleted the addition observing as under:

“38.2 During the course of appellate proceedings, the appellant has submitted that vide letter dated 20.05.2021 it had submitted the financial statement, ledger confirmation, bank statement highlighting the receipts and payments to justify the genuineness of the share application money received during the year under consideration. It has also submitted that the appellant had submitted the name of the parties from which M/s Kasturi had received share application money along with acknowledgement of I.T. return with computation of total income, PAN, financial statement, ledger highlighting bank transactions along with share application confirmation of said parties. The appellant has further submitted that Kasturi has been issued the shares against the share application money received on 28.03.2023. To satisfy this, Form No. PAS-3, list of allottees, valuation report, Form PAS-5, master data of the company and copy of resolution for verification of the undersigned are also submitted. Thus, it is claimed that not only the identity of the creditor but creditworthiness and genuineness have been fully established and hence no disallowance is called for. The appellant has also relied on certain judicial decisions.

38.3 On careful consideration of the submission of the appellant as well as various details brought on record, I find that identity of M/s Kasturi is never doubted by the AO. There is no doubt that share application money has been received through banking channels as copy of bank statements have been verified and found in order. Moreover, the shares were also



allotted on 28.03.2022. As far as creditworthiness of M/s Kasturi is concerned that is also not doubted by the AO as he himself has stated that the source of share application money is out of money received from various entities which are listed in Page 61 of the assessment order. To further establish the creditworthiness, the assessee has submitted the copy of TR, audited accounts, balance sheet and P&L a/c. In my considered view what has been doubted is the share application money received from different entities by M/s Kasturi and not the share application money received by the appellant company from M/s Kasturi. Thus, source of source has been challenged. After examining the entire facts on record, I am of the considered opinion that addition, if any needs to be made, it should be made in the hands of M/s.Kasturi Nagesh Pai & Co. Pvt. Ltd. and not in the hands of the appellant as the appellant has established all the three ingredients, ie. identity of the creditor, creditworthiness and genuineness of the transaction. Hence, the addition of Rs.12,11,00,000/- is deleted in the hands of the appellant. However, the AO is directed to explore taking action in the hands of the lender, ie. M/s.Kasturi Nagesh Pai & CO. Pvt. Ltd. if the source of money in the hand of this company (M/s Kasturi) is in doubt, as per the provisions of the I.T. Act. Thus, the ground of appeal no.6 is allowed.”

20. We have heard rival submission of the parties and perused the relevant material on record. We find that the Assessing Officer has doubted the creditworthiness of M/s Kasturi only for the reason source of money in the hands of said party was share application money from other 13 companies, whose credential were not verified. The assessee has already filed a copy of ITR and other document in respect of said party. The identity of M/s Kasturi has not been doubted by the AO. Regarding creditworthiness, the ld CIT(A) observed that the Assessing officer has not mentioned as what happened in the assessment in the case of Kasturi and those 13 parties, which had been termed as shell companies by the investigation wing of Kolkatta. The ld CIT(A) opined that if source of money is not explained in their hand, then addition warrants in their case and not in the case of assessee. We are of opinion that if



addition has been already made in the case of Kasturi, then no further addition is required in the case of the assessee. In view of above, in principle we do not find any error in the order of the Ld. CIT(A) on the issue in dispute but for verification of the fact addition in respect of source of money has been already done in assessment of Kasturi, we restore the matter back to the Assessing Officer. The ground No. 1 of the appeal of the Revenue is accordingly allowed for statistical purpose.

13. The ground No. 3 of the appeal of the Revenue relates to deletion of disallowance of depreciation of Rs.6,75,000/- by the ld CIT(A) which was made by the AO with respect to old vehicle sold during the year. On the basis of Annexure RM-1 found during the course of survey, the Assessing Officer noted that assessee company had unaccounted sales of vehicles during the assessment year 2018-19. On the basis of such unaccounted sales corresponding to assessment year 2018-19, the Assessing Officer was of the view that in all the probability assessee had received unaccounted sale of old vehicles in other years including the assessment year under consideration. He estimated unaccounted sales of Rs.1,50,000/- per vehicle and accordingly disallowed the depreciation amounting to Rs.6,75,000/-.

13.1 On further appeal the Ld. CIT(A) deleted the addition observing as under:



37. In ground of appeal No.5, the appellant is against the disallowance of depreciation of Rs.6,75,000/- with respect to old vehicles sold during the year. The AO has stated that during the survey proceedings statement of Shri Ravi Shankar M. Patel was recorded u/s.131 of the IT. Act wherein he submitted details of old vehicles sold during F. Yrs 2017-18 and 2018-19. According to the AO, on perusal of the statement, it was seen that assessee company had sold old vehicles against which it received proceeds in cash and in cheque. It is further noted in the assessment order that the Director of the company in his statement offered this amount to tax in respective years. It is further seen by the AO that during the year under consideration the appellant has sold old vehicles. Accordingly, explanation was called from the appellant. The appellant strong objection to the extrapolation made with respect to statement of sale of vehicles to the present year, before the A.O. However, The AO had issued notices u/s.133(6) of the I.T. Act to different parties for different years to whom old vehicles were sold. But none of the parties responded to the AO. The AO has worked out average unaccounted sales per vehicle at Rs.1,62,868/- He has also stated that in A.Y.2014-15 to A.Y.2017-18 accounted sale price of some old vehicles were above Rs.1 lac which was mostly below Rs.1 lac in F.Y.2017-18 and F.Y.2018-19. The AO has also found that in some A. Yrs assessee has accounted for even cash sales of old vehicles. Also make, age and mileage of old vehicles which have been sold is not fully comparable. Considering these facts, the AO has estimated unaccounted sales of Rs.1,50,000/-per vehicle, since for the year under consideration, the assessee was found to have sold 15 vehicles. Therefore, total unaccounted sales have been worked out at Rs.22,50,000/-. The AO has also stated that since these are parts of the block of assets under the head "vehicles" and assessee was claiming depreciation @30% on this block of asset, unaccounted sale from sale of old vehicle is to be reduced from block of assets and accordingly depreciation claimed to that extent was disallowed in the assessment order. Accordingly, depreciation worked out at Rs. 6,75,000/-for A.Y.2014-15 was disallowed by the AO and added back to the total income for the year under consideration.

37.1 During the appellate proceedings, the ld. AR has stated that it has submitted statement containing names of purchaser, PAN, address, sold vehicle registration number along with mode of payment and receipt to the AO for verification. According to the appellant, it has received sale proceeds of vehicles in cheque and bill record of receipts in books of accounts. No lacuna has been found by the AO during the assessment proceedings.

37.2 On careful consideration I find that entire work of the AO for the year under consideration, work and extrapolation of figures related to subsequent years. He has clearly mentioned that

"Assessee has sold vehicle and by extrapolating the findings in F.Y.2017-18 and 2018-19 in these years, the unaccounted sales



on vehicle sold in year under consideration has been determined."

37.3 Thus, it is apparent that no evidence of any unaccounted sales of vehicle has been found for F.Y. 2013-14 relevant to A.Y. 2014-15. Moreover, no statement was recorded indicating unaccounted sales during the year. Hence, the disallowance of depreciation of sale of old vehicle is unjustified and deserves to be deleted. Thus, the addition of Rs.6,75,000/- is deleted. The ground of appeal no.5 is allowed."

13.2 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that only evidence of unaccounted sale of old vehicles has been found in respect of assessment year 2018-19 and no documentary evidences have been found for the year under consideration. The Assessing Officer has merely extrapolated such unaccounted sale on the basis of presumption that assessee would have earned unaccounted cash on the sale of old vehicle during the year under consideration. The Ld. CIT(A) has rejected this contention of the Assessing Officer and deleted the addition made merely on the basis of the extrapolation of the figures of the subsequent year. In our opinion, finding of the Ld. CIT(A) on the issue in dispute is well reasoned and no interference is required on our part. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue and ground No. 3 of appeal of the Revenue is accordingly dismissed.

ITA No. 3221/Mum/2023



14. Now we take up the appeal of the assessee for assessment year 2015-16. The grounds raised by the assessee are reproduced as under:

1. On the facts and in the circumstances of the case and law on the subject, the learned Income Tax officer erred in making addition of Rs.5,35,72,977/- being alleged bogus purchase of fuel / diesel & the learned CIT (Appeal) erred in confirming the disallowance of Rs.53,52,729/- being 10 % of Rs. 5,35,72,977/-purchases of alleged bogus fuel/ diesel.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

2. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making additions of Rs.14,58,745/- on account of alleged bogus tyre purchase bills & the learned CIT (Appeal) erred in upholding the addition of Rs.14,58,745/- on account of alleged bogus tyre purchase bills without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

3. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making disallowance of Rs.12,20,666/- on account of unsubstantiated expenses & the learned CIT (Appeal) erred in confirming disallowance of Rs.1,22,066/- being 10% of Rs.12,20,666/- on account of unsubstantiated expenses of without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

14.1 The ground Nos. 1 to 3 of the appeal being identical to grounds raised by the assessee in assessment year 2013-14 ,therefore, following our finding in assessment year 2013-14, the ground Nos. 1 to 3 of the appeal of the assessee for the year under consideration are decided *mutatis mutandis*.



ITA No. 3234/Mum/2023

15. Now, we take up the appeal of the assessee for assessment year 2016-17. The grounds raised by the assessee are reproduced as under:

1. On the facts and in the circumstances of the case and law on the subject, the learned Income Tax officer erred in making addition of Rs.9,75,79,573/- being alleged bogus purchase of fuel / diesel & the learned CIT (Appeal) erred in confirming the disallowance of Rs.97,57,957/- being 10 % of Rs. 9,75,79,573/-purchases of alleged bogus fuel/ diesel.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

2. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making additions of Rs.24,14,200/- on account of alleged bogus tyre purchase bills & the learned CIT (Appeal) erred in upholding the addition of Rs.24,14,200/- on account of alleged bogus tyre purchase bills without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

3. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making disallowance of Rs.13,64,000/- on account of unsubstantiated expenses.& the learned CIT (Appeal) erred in confirming disallowance of Rs.1,36,400/- being 10% of Rs.13,64,000/- on account of unsubstantiated expenses of without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.”

15.1 The ground Nos. 1 to 3 of the appeal being identical to grounds raised by the assessee in assessment year 2013-14, therefore, following our finding in assessment year 2013-14, the



ground Nos. 1 to 3 of the appeal of the assessee for the year under consideration are decided *mutatis mutandis*.

ITA No. 3233/Mum/2023

16. Now, we take up the appeal for assessment year 2017-18. The grounds raised by the assessee are reproduced as under:

1. *On the facts and in the circumstances of the case and law on the subject, the learned Income Tax officer erred in making addition of Rs.9,74,24,558/- being alleged bogus purchase of fuel / diesel & the learned CIT (Appeal) erred in confirming the disallowance of Rs.97,42,455/- being 10 % of Rs. 9,74,24,558/-purchases of alleged bogus fuel/ diesel.*

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

2. *On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making additions of Rs.34,16,885/- on account of alleged bogus tyre purchase bills & the learned CIT (Appeal) erred in upholding the addition of Rs.34,16,885/- on account of alleged bogus tyre purchase bills without correct appreciation of facts and law on the subject.*

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

3. *On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making disallowance of Rs.4,84,000/- on account of unsubstantiated expenses & the learned CIT (Appeal) erred in confirming disallowance of Rs.48,400/-being 10% of Rs.4,84,000/-on account of unsubstantiated expenses of without correct appreciation of facts and law on the subject.*

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.”

16.1 The ground Nos. 1 to 3 of the appeal being identical to grounds raised by the assessee in assessment year 2013-14 ,therefore, following our finding in assessment year 2013-14, the



ground Nos. 1 to 3 of the appeal of the assessee for the year under consideration are decided *mutatis mutandis*.

ITA No. 3232/Mum/2023 and ITA No. 3028/Mum/2023

17. Now we take up the appeal of the assessee and Revenue for assessment year 2018-19. The grounds of appeal of the assessee are reproduced as under:

1. On the facts and in the circumstances of the case and law on the subject, the learned Income Tax officer erred in making addition of Rs.10,02,72,170/- being alleged bogus purchase of fuel / diesel & the learned CIT (Appeal) erred in confirming the disallowance of Rs. 1,00,27,217/- being 10 % of Rs. 10,02,72,170/-purchases of alleged bogus fuel/ diesel.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

2. On the facts and in the circumstances of the case and law on the subject, the learned assessing officer erred in making additions of Rs.34,58,483/- on account of alleged bogus tyre purchase bills & the learned CIT (Appeal) erred in upholding the addition of Rs.34,58,483/- on account of alleged bogus tyre purchase bills without correct appreciation of facts and law on the subject.

In view of the facts and circumstances of the case and law on the subject, the same may be deleted.

17.1 The ground Nos. 1 to 3 of the appeal of assessee being identical to grounds raised by the assessee in assessment year 2013-14 ,therefore, following our finding in assessment year 2013-14 , the ground Nos. 1 to 3 of the appeal of the assessee for the year under consideration are decided *mutatis mutandis*.

18. The grounds raised by the Revenue in assessment year 2018-19 are reproduced as under:



1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of bogus loan without appreciating the facts that the identity, creditworthiness and genuineness was not established by the assessee with regard to the alleged party .

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in deleting the disallowance of depreciation on unaccounted sales of old vehicles without appreciating the facts that the genuineness of the purchaser of old vehicles was not established by the assessee.

18.1 The ground No. 1 of the appeal of the Revenue relates to addition of Rs.4,74,45,000/- addition of Rs.3,00,82,390/- on account of bogus loan u/s 68 of the Act.

18.2 Briefly stated facts qua the issue in dispute are that the Assessing Officer observed credit from two parties namely M/s Metropolitan Distributors Pvt. Ltd. (Rs.1,35,45,000/- plus interest of Rs. 7,83,45,000/-) and M/s Triumph Texim Put. Ltd. (Rs.1,48,00,000/-plus interest of Rs. 9,54,260/-). According to the Assessing Officer, these credits were loans in nature of accommodation entries because both those companies were controlled and operated by entry provider sh Prakash Jajodia, therefore, he asked the assessee to discharge burden u/s 68 of the Act in respect of those credits under reference. In response the assessee submitted that those two parties were the distributors of the assessee since 2010 and the amount received was as a security deposit under distribution agreement. The assessee also filed copy of the distribution agreements. It was explained by the assessee that the source of the funds in hands of the distributors was by way



of receipt from sale debtors. The copies of the sales registers and bank statement of assessee also submitted along with other documentary evidence to establish identity & creditworthiness of those two concerns and genuineness of the transactions. However, the Assessing Officer was not satisfied with the contention of the assessee. According to him the shareholders of those two concerns were found to be dummy directors controlled by accommodation entry provider Sh Prakash Jajodia. The Assessing Officer referred to the statement of Shri Prakash Jajodia recorded u/s 131 of the Act dated 26.08.2014, the statement of Shri Diparkar Roy, director of M/s Metropolitan Distributors Pvt. Ltd. recorded u/s 131 dated 07.08.2014 and statement of Shri Dilip Bey, director of M/s Triumph Trexim Pvt. Ltd. recorded u/s 131 of the Act dated 07.08.2014. Based on those statements, the Assessing Officer held that both the concerns were accommodation entry providers and accordingly he treated the credit totaling to Rs.2,83,45,000/- received from these two concerns as unexplained cash credit and further interest paid on loans/deposits amounting to amounting to Rs.17,37,390/- was also disallowed. The Ld. CIT(A) however deleted the additions observing as under:

61.3 During appellate proceedings, the appellant has primarily stated that sufficient documentary evidences were submitted during assessment proceedings to establish identity of the two creditors, their creditworthiness and genuineness of transactions. Further, notices issued u/s 133(6) of the Act to these parties were complied with. According to the appellant, these amounts are indeed security deposit from these two distributors and source of source has been explained



and demonstrated before the AO. According to the appellant, when the A.O. has accepted the sales credits received by it as genuine, there is no reason to hold the deposits received from these parties as bogus or non-genuine. Moreover, the sales register of the distributors indicated that the sales are made to reputed public listed company. The appellant has also relied on certain judicial decisions. On careful consideration, I find merit in the submission of the appellant which is well supported by documentary evidences. I agree with the A.O. that when sales credit undertaken by these two distributors are not disturbed by the A.O., there is no reason to doubt the loans/deposits taken from these two concerns. Moreover, no adverse finding has been given by the A.O. with respect to documentary evidences produced to establish identity, creditworthiness of these two parties and genuineness of the transactions.

61.4 Identical issue of taking loan/deposit from M/s Metropolitan Distributors Pvt. Ltd. came for consideration of the undersigned in previous years too. After discussing the merit of the issue in hand, it has been held that the addition of loan/deposit taken from this concern is unjustified. Accordingly, the addition in the appellant's hand was deleted. Same situation exists for this year too. At the same time, I find that loan/deposit taken from M/s Trump Trexim Pvt. Ltd. is also on the same footing and the situation, nature of evidences, findings of the A.O. are also same as that of M/s Metropolitan. Considering totality of facts and circumstances of the issue involved, it is held that addition of unsecured loans/ deposits and interest paid of Rs. 3,00,82,390/- is uncalled for and hence it is deleted. However, the AO may explore the possibility of reopening of the assessments of M/s Metropolitan Distributors Pvt. Ltd. and M/s Triumph Trexim Pvt. Ltd. for the relevant A. Yrs as the A.O. has expressed his doubt about the genuineness of such shareholders. Thus, the ground of appeal no. 6 is Allowed.”

18.3 Before us, the Ld. Departmental Representative (DR) submitted that assessee has failed in discharging its onus u/s 68 of the Act and therefore, the Ld. Assessing Officer is justified in making additions u/s 68 of the Act in view of the statements of the director of the said concerns.

18.4 On the other hand, the Ld. Counsel for the assessee submitted that in respect of both the parties, copy of the income tax return, financial statement and confirmation of the account along with the



bank statement and distribution agreement have already been filed before the Assessing Officer. He further submitted notices issued to the above parties u/s 133(6) of the Act were already complied by those parties and therefore, the assessee has discharged its onus u/s 68 of the Act. The Ld. counsel further relied on the decision of the jurisdictional high court in the case of PCIT v. Ami Industries (India) Pvt. Ltd. (2020) 424 ITR 219 (Bombay) wherein, the appeal of the Revenue was dismissed for the reason that assessee had furnished the copy of the income-tax return as well as copies of bank account in which the share application money was deposited in order to prove the genuineness of the transaction. The Ld. counsel also relied on the decision of the Hon'ble Jurisdictional High Court in the case of **PCIT v. Realvalue Realtors Pvt. Ltd. (2020) 113 taxmann.com 62.**

18.5 We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute is in respect of deposit received from two parties namely M/s Metropolitan Distributors Pvt. Ltd. and Triumph Texim Pvt. Ltd. According to the assessee these two parties are the distributors of the assessee and sum received are deposits against the distribution agreement. The ld counsel for the assessee referred to distributorship agreement with those two parties alongwith their copy of account in the books of the assessee, which are available from page 72 to 132 of the paperbook. As per the distributorship agreement Metropolitan



distributor p ltd was appointed distributor of Fly Ash for the Delhi region and M/s Triump Trexin p Ltd was appointed distributor of Fly Ash for Chennai region. The copy of account of those two parties shows that various transactions of sale are recorded during the year through those two parties. We find that the sums of money received from those parties against the sales have not been doubted by the Assessing Officer and therefore, we do not find any reason for specifying the sum received from those two parties against the deposits for the distribution agreement as unexplained cash credit. Both the parties have filed all the documents to support the identity, creditworthiness and genuineness of the transaction. Further, in respect of statement by the director of the respective parties the Ld. CIT(A) has recommended for taking action of reassessment in their hand. In our opinion there is no infirmity in the finding of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. 1 of the appeal of the Revenue is accordingly dismissed.

18.6 The ground No. 2 of the appeal of the Revenue relates to disallowance of depreciation on unaccounted sales of old vehicles in this regard the relevant finding of the Ld. CIT(A) is reproduced as under:

“59. In this ground, disallowance of depreciation on sale of vehicle during the year under consideration, i.e., Rs.29,30,168/- has been challenged. During the course of survey proceedings statement of oath of Shri Ravishankar M Patel was recorded. He stated that it relates to sale of old



vehicles where cash was received to the extent of Rs.43,10,002/- This amount was not accounted for during the year under consideration. This statement was further confirmed by Shri Satish Mandhanian, Director of the company. It is further stated by the AO in para 8.9 that the assessee company had given details of only 24 vehicles which were sold during the year. Hence, according to the AO even cheque containing sales of remaining 6 vehicles were not accounted for by the assessee company. Thus, the total consideration of these 6 vehicles in cheque was Rs.1,50,000/-. Finally, the AO has computed the total sales receipts from old vehicles which are not accounted for in the books of account at Rs.44,60,002/-. The AO has also stated that notice u/s.133(6) issued to various parties were not complied with. Taking into account these unaccounted sales of old vehicles, the depreciation of Rs.29,30,168/- has been disallowed and added back to the income of the appellant.

59.1 During the appellate proceedings the appellant has stated that the company has sold 24 vehicles only for which various details were given to the AO. These sales proceeds were in cheque and duly recorded in the books of accounts. No further submission/details were provided by the appellant. In my considered view, the AO's action of disallowance of depreciation on sale of old vehicles during F.Y.2017-18 is fully justified as it is based on statement recorded during the course of survey proceedings and there is no guess work or extrapolation. Considering these facts, the disallowance of depreciation of Rs.29,30,168/- is confirmed. Thus, ground of appeal no. 3 is dismissed."

18.7 We find that the Ld. CIT(A) has already sustained the disallowance of depreciation of Rs.29,30,168/- in respect of sale of old vehicles during the financial year 2017-18 and therefore, there is no reason for the Revenue to challenge his finding for the year under consideration. As far as depreciation in relation to sale of old vehicles in earlier years, we have already deleted the depreciation in earlier years and therefore, depreciation in relation to WDV of earlier years also cannot be sustained in the year under consideration. Accordingly, disallowance of depreciation in respect of old vehicles for sale made in earlier years is also deleted. The ground No. 2 of the appeal of the Revenue is dismissed.



19. In the result, the appeals of the assessee from AY 2013-14 to AY 2018-19 are partly allowed , where as appeal of the Revenue for AY 2013-14 is dismissed, appeal for AY 2014-15 is partly allowed for statistical purpose and appeal for AY 2018-19 is dismissed.

Order pronounced in the open Court on 25/04/2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 25/04/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai