

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

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.4107/MUM/2023
Assessment Year 2012-13
ITA NO.4108/MUM/2023
Assessment Year 2013-14**

M/s. Synergy Infrastructures,
1, Bharat Villa, Bhogilal Fadia Road,
Kandivali (West), Mumbai 400 067.
PAN:ABJFS-3371-A

- Appellant

Vs.

The Deputy Commissioner of Income Tax,
Circle-42(1)(1), Mumbai,
Kautilya Bhavan, C-41 to C-43, G Block,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051

- Respondent-

Appellant by : Shri Shreyash Shah &
Shri Kunal Shah

Respondent by : Shri Suresh D. Gaikwad, Sr.AR

Date of Hearing : 15/05/2024

Date of Pronouncement : 15/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed these appeals challenging the orders passed by Id.CIT(A)-51, Mumbai and they relate to the assessment years 2012-13 and 2013-14. Since the issues urged in these appeals are identical in nature, they were heard together and are being disposed of by this common order, for the sake of convenience. In both the appeals, the assessee is aggrieved by the decision of Id.CIT(A) in confirming the validity of reopening of assessments and

also in confirming the additions made by the Assessing Officer u/s. 68 and 69C of the Act.

2. The facts relating to the case are stated in brief. The assessee is a Builder and Developer. The Revenue had carried out survey action u/s. 133A of the Act in the hands of JPV Group and it was noticed that the said group was engaged in the business of providing accommodation entries in the form of non-genuine purchase bills, loan entries etc. It was noticed that the assessee has availed loan from the concerns belonging to the above said group. Accordingly, the Assessing Officer reopened the assessments of both the assessment years under consideration u/s 147 of the Act.

3. In the year relevant to the assessment year 2012-13 the assessee had taken loan of Rs.50,00,000/- each from M/s. Nikhil Gems Pvt. Ltd. And M/s. Rajat Diamond Exim Pvt. Ltd. The Assessing Officer assessed aggregate amount of Rs.1.00 crore as unexplained cash credit u/s. 68 of the Act.

3.1 In the appellate proceedings, the Ld CIT(A) deleted the addition of Rs.50.00 lakhs relating to the loan taken from M/s Rajat Diamond Exim P Ltd and confirmed the remaining addition of Rs.50.00 lakhs relating to loan taken from M/s Nikhil Gems P Ltd.

4. In assessment year 2013-14, the assessee had taken loan from following three companies:-

(a) M/s. Frontline Diamond Pvt. Ltd	-	100.00 lakhs
(b) M/s Rajat Diamond Exim P Ltd	-	15.00 lakhs

(c) M/s Nikhil Gems P Ltd - 15.00 lakhs

However, the Assessing Officer had already assessed Rs.1.00 crore received from M/s. Frontline Diamond P Ltd and Rs.15.00 lakhs received from M/s Rajat Diamond Exim P Ltd as unexplained cash credit u/s. 68 of the Act in the original assessment order dated 29-03-2016 passed u/s. 143(3) of the Act. Hence, the AO assessed the remaining loan amount of Rs.15.00 lakhs received from M/s Nikhil Gems P Ltd as unexplained cash credit u/s 68 of the Act in the present reassessment proceedings. In the original assessment proceedings passed u/s 143(3) of the Act, the corresponding interest expenditure of Rs.27,123/- and Rs.3,29,055/- claimed on the loans taken from M/s Fronline Diamond P Ltd and M/s Rajat Diamond P Ltd was omitted to be disallowed, even though the loans were assessed u/s 68 of the Act. Hence, the AO disallowed the above said interest expenditure u/s 69C of the Act in the reassessment proceedings. It is the case of the AO that the assessee has also claimed interest expenditure of Rs.3,29,055/- on the loan taken from M/s Nikhil Gems P Ltd. The AO disallowed the said interest expenditure also. Accordingly, the aggregate amount of interest expenditure disallowed by the AO worked out to Rs.6,85,233/-.

4.1 In the appellate proceedings, the Ld CIT(A) confirmed both the additions. Hence the assessee has filed appeals for AY 2012-13 and 2013-14.

5. It is the submission of Ld A.R that the assessee has not taken any loan from M/s Nikhil Gems P Ltd in the years relevant to AY 2012-13 and 2013-14. It is submitted that the AO has erroneously presumed that the assessee has taken loan of Rs.50.00 lakhs and Rs.15.00 lakhs respectively in the years

relevant to AY 2012-13 and 2013-14. Accordingly, the Ld A.R submitted that the AO could not have made addition u/s 68 of the Act in respect of an imaginary loan. In this regard, the Ld A.R invited our attention to the financial statements placed in the paper book in order to demonstrate that the sundry creditors list does not contain the name of M/s Nikhil Gems P Ltd. The Ld A.R further submitted that the addition of Rs.1,15,00,000/- made by the AO u/s 68 of the Act in the original assessment proceedings passed u/s 143(3) of the Act is under challenge before Ld CIT(A). Accordingly, he submitted that the issue relating to disallowance of interest relating to the above said loans may be restored to the file of the Ld CIT(A), so that the decision taken by him on the addition of loan of Rs.1.15 crores will have impact on the interest expenditure disallowance also.

6. The Ld D.R, on the contrary, submitted that the assessee has not furnished any document to prove the genuineness of loan taken by it. Accordingly, he supported the orders passed by Ld CIT(A).

7. We heard rival contentions and perused the record. In AY 2012-13, the assessee is disputing the addition of loan amount of Rs.50.00 lakhs alleged to have been taken from M/s Nikhil Gems P Ltd. It is the contention of the assessee that it has not taken any such loan from M/s Nikhil Gems P Ltd. In support of this contention, the Ld A.R took us through the Balance sheet and Trial Balance in order to show that there was no outstanding balance in the name of M/s Nikhil Gems P Ltd. In this regard, it may be pertinent to note that the loans taken and repaid during the course of year will not be reflected in the

Balance sheet and Trial Balance. We notice that the Ld CIT(A) has confirmed the addition on the reasoning that the assessee has failed to prove the loan taken from M/s Nikhil Gems P Ltd. In that regard Ld A.R submitted that there was no necessity to prove genuineness of any loan, which was not taken by the assessee.

8. If the assessee has not taken loan from M/s Nikhil Gems P Ltd, then there was no requirement of making any addition u/s 68 of the Act, since the said section will apply only to the cash credits actually received. However, it is not discernible from the assessment order as to whether the AO has examined the books of accounts or not. Accordingly, we are of the view that the above said contention of the assessee needs to be verified vis-a-vis books of accounts/bank statements. Accordingly, we set aside the order passed by Ld CIT(A) in confirming the addition of Rs.50.00 lakhs relating to the alleged loan taken from M/s Nikhil Gems P Ltd in AY 2012-13 and restore the same to the file of the AO for examining it afresh with reference to the books of accounts/bank accounts of the assessee. If the assessee had not taken the loan of Rs.50.00 lakhs from M/s Nikhil Gems P Ltd during the year relevant to AY 2012-13, then the question of making any addition shall not arise. Accordingly, after examining the books of accounts/bank accounts, the AO may take appropriate decision in the light of discussions made supra.

9. In AY 2013-14, the facts relating to the addition of Rs.15.00 lakhs remain the same. In this year, the AO has made interest disallowance also. The issue relating to interest disallowance is required to be restored to the file of the Ld

CIT(A), since the dispute relating to addition of corresponding loan is pending before Ld CIT(A) in the appeal filed against the original assessment proceedings. In view of the above, we prefer to restore the issue relating to the addition of Rs.15.00 lakhs also to the file of Ld CIT(A). Since the assessee claims that it has not received loan of Rs.15.00 lakhs from M/s Nikhil Gems P Ltd during the year relevant to AY 2013-14, the said claim requires verification vis-a-vis books of accounts/bank accounts. The Ld CIT(A), if required, may call for a remand report from the AO in this regard. Accordingly, we set aside the order passed by Ld CIT(A) for AY 2013-14 on the above said two issues and restore both the issues to his file for adjudicating them afresh in the light of discussions made supra.

10. In the result, both the appeals of the assessee are treated as allowed.

Order pronounced in the open court on 15th May, 2024.

Sd/-

[Justice (Retd.) C V Bhadang]
President

Sd/-

(B.R. Baskaran)
Accountant Member

Mumbai, Date : 15 May, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai