

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos. 2930 to 2932/Mum/2023
(A.Ys. 2010-11, 2012-13 & 2014-15)**

Avanti Resources Pvt. Ltd. 413, Autumn Gruve, Lokhandwala Complex Akuli Road, Kandivali (E) Mumbai – 400101	Vs.	ITO, Ward 12(1)(2)/5(1)(1) Aayakar Bhavan, Churchgate, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AACCA9146E		
Appellant	..	Respondent

Appellant by :	Rakesh Joshi
Respondent by :	Manoj Kumar Sinha

Date of Hearing	08.04.2024
Date of Pronouncement	30.05.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

These 3 cross appeals filed by the assessee are pertained to assessment year 2010-11, 2012-13 and 2014-15. These appeals are based on similar issue and identical facts, therefore, for the sake of convenience all these appeals filed by the assessee are adjudicated together by taking ITA No. 2932/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other two appeals wherever it is applicable.

ITA No. 2932/Mum/2023

- “1. In the facts and circumstances of the case and in law, the Assessing Officer erred in passing the assessment order under section 143 (3) read with section 254 without granting adequate opportunity and even after mentioning that is proceeding ex parte under section 144.

2. *In the facts and circumstances of the case and in law, the Assessing Officer erred in adding alleged commission of Rs.16,329,680/- without any verification @ 1% on total purchases and sales made by the appellant.*
3. *In the facts and circumstances of the case and in law, the Assessing Officer erred in disallowing rent of Rs. 6000/- without any verification.*
4. *In the facts and circumstances of the case and in law, the Assessing Officer erred in disallowing preliminary expenses of Rs. 6400/- without any verification.*
5. *In the facts and circumstances of the case and in law, the Assessing Officer erred in adding alleged difference in total income of Rs. 3846/-*
6. *In the facts and circumstances of the case and in law, the Assessing Officer erred in initiating penalty u/s 271(1)(c) and also charging interest under section 234A, 234B, 234C and 234D.*
7. *In the facts of the case and in Law, the learned CIT(A) erred in confirming the additions by rejecting all the grounds of appeal.”*

2. Fact in brief is that return of income declaring total income at Rs.63,080/- was filed on 14.10.2010. The assessment u/s 143(3) of the Act was completed on 15.03.2013 and total income was assessed at Rs.164,09,006/- after making addition of Rs.163,29,680/- being 1% commission estimated on the circular transactions of purchases of Rs.81.64 crores and sales of Rs.81.65 crores made with the same seven parties. The ld. CIT(A) and the ld. CIT(A) has confirmed the addition made by the assessing officer. Thereafter the assessee filed appeal before the ITAT. The ITAT vide order dated 20.06.2018 has set aside the matter to the assessing officer for de novo adjudication after making proper enquiries.

3. In the set aside proceedings the assessing officer stated that assessee has not fully complied with the various notices issued during the course of assessment, therefore, the AO has assessed the income as originally assessed by the assessing officer vide order u/s 143(3) of the Act on 15.03.2013. The assessee has shown purchases of Rs.81.64 crores and sales of Rs.81.65 crores from the same seven parties. The assessee has a paid up capital of Rs.1 lac only and there was no trade debtors or trade creditors. Therefore, the assessing officer concluded

that assessee had actually not effected any purchase or sales and has merely provided accommodation entries and estimated commission @ 1% of such transactions to the amount of Rs.163,29,680/-.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) held that no supporting evidences has been filed to prove the movement of goods to the seller or buyer or could not produce any delivery challan or transfer charges, therefore, the action of the assessing officer in estimating the commission income at 1% of the total turnover by holding the assessee to be engaged in providing accommodation entries was upheld.

5. During the course of appellate proceedings before us the ld. Counsel submitted that in the set aside assessment proceedings the assessing officer has issued notices at the fag end of the time-barred period, therefore, the required details could not be submitted to the assessing officer. However, the complete details along with copies of document were submitted before the ld. CIT(A) as evident from the paper book furnished during the course of hearing of this appeal. However, the CIT(A) without any valid reason has sustained the addition made by the assessing officer. The ld. Counsel placed reliance on the decision of ITAT Ahmedabad in the case of the JCIT (OSD) Vs. M/s Pradip Overseas Ltd. vide ITA No. 790/Ahd/2018 and in the case of M/s Aspen International Pvt. Ltd. vide ITA No. 3465/Mum/2023 wherein in respect of similar nature of circular transaction the disallowance was restricted to the extent of 0.30% and 0.25% of circular trading of such transaction.

On the other hand, the ld. D.R supported the order of lower authorities.

6. Heard both the sides and perused the material on record. During the course of assessment the AO observed that assessee has made the

purchases and sales to the amount of Rs.81.64 crores and Rs.81.65 crores respectively through the very same seven parties. The assessee could not produce any evidence to demonstrate the movement of goods from the seller to the buyer and reason behind making transaction with the aforesaid 7 parties for only of negligible margin. Therefore, the AO has treated these transaction as accommodation entries and estimated commission income of the assessee at the rate of 1% of the sales as well as purchases and made addition of Rs.163,29,680/-. The assessee has filed copies of invoices, copies of bank statement highlighting the payment made to purchase parties and payment received from sale parties, copies of ledger account of the purchase parties and sale parties etc. However, the assessee could not prove the movement of the goods with relevant supporting evidences, therefore, we consider that assessee was involved in circular trading without any actual delivery of goods. In this regard we have also perused the decision of coordinate bench of the ITAT on the similar proposition of involving in circular trading without actual delivery. The relevant extract of the decision in the case of M/s Aspen International Pvt. Ltd. vide ITA No. 3465/Mum/2023 is reproduced as under:

“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 coparties. 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.”

We have also perused the decision of ITAT Ahmedabad in the case of JCIT (OSD) Vs. M/s Pradip Overseas Ltd. vide ITA No. 790/Ahd/2018.

The relevant extract of the decision is reproduced as under:

“6. Heard both the sides and perused the material on record. During the course of assessment, the assessee has admitted that it was engaged in circular trading wherein the bills/invoices changed hands without movement of physical goods. The Assessing Officer has treated such purchase of Rs. 2,83,77,87,618/- as not reliable and disallowed 5% of such purchases which worked out to Rs. 14,18,89,380/- and added to the total income of the assessee. During the course of assessment and appellate proceedings the assessee explained the complete modus operandi of circular trading transaction which was carried out to show better turnover. Without reiterating the facts as elaborated in this order, it is undisputed fact that assessee would make payment to the entity from whom it made purchases, who in turn would make consequent payment and the funds would finally reach back to the assessee. In circular trading the payments were made through cheques and profit on circular trading was disclosed by the assessee in its return of income. In the earlier assessment year, the assessee has gone to Settlement Commission and furnished the circular trading/sample bills and chart which was discussed by the ld. CIT(A) in his findings as supra in this order. The complete particulars of circular transaction in the table of transaction given in the finding of ld. CIT(A) demonstrated that assessee had sold goods worth Rs. 3,31,79,415/- in circular trading through first party who in turn sold such goods to the second party at Rs. 3,32,72,933/- and the last party has sold back to the assessee at Rs. 3,32,72,933/- ultimately the difference in the first sale and the last sale was of 0.28% of circular purchases made by the assessee. The ld. CIT(A) has also referred the decision of the ITAT Ahmedabad on the identical issue of circular transaction in the case of M/s. Arman Fashion Pvt. Ltd. vs. ITO vide ITA 2400 and 2407/Ahd/2012. The ld. CIT(A) has also discussed in his finding that this was not a case of estimation of net profit on circular purchases but this was a case where the assessee had incurred expenses for circular purchases/transaction @ 0.28% and estimated the disallowance @ 0.30% of circular trading purchases. The ld. CIT(A) has also explained in his finding regarding analysis of the transaction made by the assessee that these transactions were carried out in order to show better turnover in financial accounts. The Revenue could not controvert the facts reported by the ld. CIT(A) with any relevant material. Therefore, looking to the above facts and finding, we do not find any infirmity in the decision of ld. CIT(A) in estimating the disallowance @ 0.30% of circular trading purchases of Rs. 2,83,77,87,618. Accordingly, this appeal of the revenue is dismissed.”

7. Looking to the facts of the case and material placed on record and finding of the ITAT in the cases involving circular trading we consider

that it is appropriate to estimate disallowance @ 0.30% of such circular trading transaction, therefore, we direct the assessing officer to restrict the disallowance to the extent of 0.30% as against 1% of circular transaction made by the assessing officer. Accordingly, ground no. 2 of the assessee is partly allowed.

Ground No. 1:

8. This ground is general which is not required any adjudication the same stand dismissed.

Ground No.3: Deleting the disallowance of Rs.6000/- out of rent:

9. The assessing officer has disallowed the claim of rent expenses of Rs.6000/- since the assessee has not filed the copy of any rent agreement to demonstrate that the premises was actually taken on rent. The Id. CIT(A) has dismissed this ground of appeal of the assessee.

10. After hearing both the sides we find that assessee has not filed any copy of agreement showing that premises was actually taken on rent by the assessee, therefore, we don't find any reason to interfere in the decision of Id. CIT(A) therefore this ground of appeal of the assessee stand dismissed.

Ground No.4: Deleting the disallowance of preliminary expenses of Rs.6400/-:

11. During the course of assessment proceedings the AO noticed that assessee has claimed preliminary expenses of Rs.12,800/-. The assessing officer has allowed the claim up to 1/5 of total preliminary expenses which worked out to Rs.6,400/-and the excess amount of Rs.6,400/- was added to the total income of the assessee.

12. The Id. CIT(A) has sustained the disallowance made by the assessing officer.

13. We find that assessee could not demonstrate any infirmity in the decision of ld. CIT(A) in restricting the disallowance to the extent of 1/5 of the preliminary expenditure, therefore, this ground of appeal of the assessee stand dismissed.

Ground No. 5: Deleting the difference of total income of Rs.3846/- :

14. During the course of assessment the assessing officer noticed that there was difference in the income shown in the profit and loss account and the income declared in the return of income. Since, the assessee has not reconciled the difference, therefore, the difference of Rs.3846/- was added to the total income of the assessee.

15. The ld. CIT(A) has sustained the disallowance made by the assessing officer as assessee failed to make any reconciliation.

16. We find that before the ld. CIT(A) the assessee has submitted that the total income as per the computation of income was only Rs.66,926/- whereas the assessee has filed the return of income showing total income of Rs.63,080/-. In this regard the assessee submitted that its authorized representative has inadvertently filed the wrong computation of total income during the course of assessment. After considering the submission made by the assessee before the ld. CIT(A) we consider that this issue is required to be verified by the assessing officer, therefore the same is restored to the file of the Assessing officer for deciding after verification of the submission of the assessee as discussed. Accordingly, this ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 6: Initiation of penalty and charging interest u/s 234A, 234B, 234C and 234D:

17. We find that ground of appeal challenging the initiating of penalty is premature at this stage and charging of interest u/s 234A, 234B, 234C and 234D is consequential and mandatory, therefore, this ground of appeal of the assessee stand dismissed.

ITA No. 2931/Mum/2023

Ground No. 1 & 2:

18. Since we have adjudicated the similar issue on identical facts vide ground no. 2 of ITA No. 2932/Mum/2023 as supra in this appeal therefore applying the finding as mutatis mutandis we direct the Assessing Officer to restrict the disallowance to the extent of 0.30% as against 1% of circular transactions made by the assessing officer. Accordingly, ground no. 1 & 2 of the assessee are partly allowed.

Ground No. 3:

19. Since we have adjudicated the similar issue on identical facts vide ground no. 6 of ITA No. 2932/Mum/2023 as supra in this appeal therefore applying the finding as mutatis mutandis the aforesaid ground of appeal of the assessee is also dismissed.

ITA No.2930/Mum/2023

Ground No. 1 & 3:

20. Since we have adjudicated the similar issue on identical facts vide ground no. 2 of ITA No. 2932/Mum/2023 as supra in this appeal therefore applying the finding as mutatis mutandis we direct the Assessing Officer to restrict the disallowance to the extent of 0.30% as against 1% of circular transactions made by the assessing officer. Accordingly, ground no. 1 & 2 of the assessee are partly allowed.

Ground No.2:

21. Since we have adjudicated the similar issue on identical facts vide ground no. 6 of ITA No. 2932/Mum/2023 as supra in this appeal therefore applying the finding as mutatis mutandis the aforesaid ground of appeal of the assessee is also dismissed.

22. In the result, the appeal of the assessee vide ITA No. 2932/Mum/2023 is partly allowed and ITA Nos. 2930 & 2931/Mum/2023 are also partly allowed.

Order pronounced in the open court on 30.05.2024

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 30.05.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.