

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.4936/Del/2017
(ASSESSMENT YEAR 2012-13)**

Synergyone Infrastructure & Projects Pvt. Ltd. 2 nd Floor, Divya Dristi Building, Opposite Mithibai College JVPD Scheme Ville Parle (West) Mumbai-400056 PAN:AACCN9843R (Appellant)	Vs.	ACIT Central Circle-27 New Delhi (Respondent)
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Assessee by	None
Respondent by	Shri Dharm Veer Singh, CIT-DR

Date of Hearing	07/05/2024
Date of Pronouncement	12/06/2024

ORDER

PER S.RIFAUH RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-31, New Delhi

["Ld. CIT(A)", for short], dated 03/04/2017 for Assessment Year 2013-14.

2. The Assessee has raised the following grounds of appeal:-

"1) On the facts and in the circumstances of the case and in law the assessment order passed by the learned AO under section 143(3) r. w. s. 153A of the IT Act is illegal, bad in law and null and void as the learned AO made addition on the basis of statement of one Mr. Pravin Agarwal recorded under section 132(4) of the IT Act. The appellant requested for cross examination of Mr. Parvin Agarwal to the learned AO as well as the honourable CIT(A). However, the appellant was denied opportunity of cross examination. The appellant hereby requests your honour to kindly quash the assessment order as illegal, bad in law and oblige.

2) On the facts and in the circumstances of the case and in law the honourable CIT(A) erred and is not justified in enhancing the assessment order by converting the protective addition to substantive addition without issuing notice under section 251(2) of the IT Act. The appellant hereby requests your honour to kindly quash the order as illegal, bad in law and oblige.

3) On the facts and in the circumstances of the case and in law the honourable CIT(A) erred and is not justified in confirming addition of Rs. 78,56,72,985/- (Rs. Seventy Eight Crore Fifty Six Lakhs Seventy Two Thousand Nine Hundred Eighty Five only) made by the learned Assessing Officer on the ground that the appellant has failed to establish genuineness of the development expenditure claimed and has further failed to satisfy the conditions laid down under section 37(1) of the IT Act. The honourable CIT(A) failed to appreciate the fact that the appellant had produced all the details before the learned AO and almost all payments were subjected to Tax Deducted at source and have been made by account payee cheques. The appellant hereby requests the addition may please be deleted."

3. When the case was called for hearing, none appeared on behalf of the assessee. On verification of the order sheet, we observed that Shri Richi Aggarwal AR of the assessee attended on

9th March, 2023 and on 1st May, 2023 an application for adjournment was filed. Subsequently, four times the case was posted for hearing, however, none appeared on behalf of the assessee. RPAD was issued to the assessee for posting the date for hearing on 7th may, 2024 and the same was served on the assessee still none appeared on behalf of the assessee. We proceeded to hear the case with the assistance of the Ld. DR.

4. The Ld. DR brought to our notice basic facts involved in this case and submitted that the search and seizure operation u/s 132 of the Income Tax Act, 1961 (in short 'the Act') was conducted on 20/06/2013 in PACL Group of cases. The assessee was also covered under the above proceedings. Accordingly, 153A notice was issued and served on the assessee. In response, assessee filed return of income declaring the same income that was declared in its original return of income, which was filed on 30/09/2012. Subsequently, notice u/s 142(1) along with questionnaire were issued and served on the assessee. In response, the AR of the assessee contended and submitted information as called for.

5. The assessee is engaged in the business of Promoters, Developers, Civil Contractors, Land Developers and to acquire and sale of freehold & or leasehold land etc. The original assessment u/s 143(3) was completed on 30/03/2015 by making certain disallowances. The Ld. DR further submitted that the addition was made on account of disallowance of expenditure on protective basis and the Assessing Officer has clearly observed in his order that the assessee has paid Rs.125 Cr. on account of sub-contracting and are controlled by Sh. Praveen Aggarwal, a well known Kolkata based entry operator who has been in the business of providing accommodation entries and bogus bills to different companies. On the basis of information collected in search and seizure action u/s. 132 of the Act was conducted on various premises of Sh. Praveen Aggarwal by Directorate of Income Tax (Investigation), Kolkata on 13/09/2013. It was found that the Mr. Praveen Aggarwal has carried numerous paper companies in which various persons were employed as dummy directors based on the statement given on oath. He has agreed that he provided accommodation entries. The Ld. CIT(A) after considering the

detailed submissions of the assessee and remand report as well as statement of Shri Praveen Aggarwal, he decided the issue and partly allowed the appeal filed by the assessee by allowing the addition on account of commission and dismissed the claim of the assessee by observing as under:-

“4.8 The ratio of the aforesaid judgments is clearly applicable to the case under consideration. Since, the appellant did not satisfy the conditions as laid down u/s 37(1) of the Act, the expenditure claimed was clearly disallowable in its hands.

4.9 The Id. AR argued that since the amount has been treated as income in the case of PACL, it should not be disallowed in the case of the appellant. It is a settled position of law that any financial transaction (like the payments made in the course of business etc.), in the context of the Act has two effects in the sense that, depending upon the facts and circumstances of the respective cases, these will need to be given different treatment. That is, though the transaction is one but it belongs to all the parties involved in it. It is possible that on one hand it may be treated to be on the capital account whereas, in the other case it may need to be treated on revenue account. Substantively, the treatment to be given in one case needs to be done independently in the facts and circumstances of that particular case and the treatment given in the other case will generally be not a relevant consideration.

4.10 Undisputedly, in the case in hand, the appellant had failed to establish the genuineness of the expenditure debited in its books of account and when it was so the assessing authority was under a statutory obligation to decide as to what substantive CIT(A)-31, New Delhi treatment was needed to be give in the light of the provisions of the Act Since, the appellant had failed to prove the allowability of expenses debited in its books, the AO was required to disallow it irrespective of the treatment given by the other party connected to the said transaction. Accordingly, Id. AO rightly disallowed the unproved expenses. However, the fundamental premise, which the AO has ignored, when he despite having recorded his satisfaction that the appellant does not have evidences to prove the genuineness of the expenditure debited, is that he was under a statutory obligation to disallow the claim substantively and

not protectively. Since, even in the present appeal proceedings also, the appellant has failed to prove the expenses debited in its books of account, the action of the AO in making the disallowance of Rs. 78,58,72,985/- is upheld but on substantive basis. The AO is directed to give effect to these findings accordingly. Thus, the ground nos. 1 to 3 are rejected.

5. **Commissioner**

The Id. AO has further made an addition of Rs.7,85,673/- as unaccounted commission. The Id. AR argued that this addition has been made purely on estimate basis and surmises and may, therefore, be deleted. On going through the assessment order, I find that no incriminating material or finding has been brought on record while making this addition. The said addition, therefore, has not legs to stand. Accordingly, the same is directed to be deleted and the ground no. 4 is allowed to the appellant.

6. **Unexplained expenditure u/s 69C**

6.1 As per the assessment order, the Id. AO recorded findings that the appellant has incurred an expenditure of Rs.1,57,55,990/- out of the books and accordingly, added back the same u/s 69C with the following observations:

"5. A search u/s 132(1) was carried out at the residential premises of Sh. Prateek Kumar Director of M/s Synergyone Infrastructure & Projects Ltd. I. e. 159, Cloud 9. Mohammedwadi, Pune dated 20.06.2013, some documents were seized from the above premises. After examining the seized documents, it is found that the assessee made following cash transactions made which were not recorded in the books of accounts of the assessee.

During the course of assessment proceedings, the AR of the assessee was asked to explain the above cash transaction made. The AR of the assessee filed reply dated 22.03.2016 vide which he has stated that company he has not claimed the above expenditure in the books of accounts/P & L account. The submission filed by the assessee is not satisfactory as the above documents/papers seized during the course of search from the business premises of the assessee and the documents belongs/pertaining to assessee. The contention of the assessee is not satisfactory as the incriminating documents pertaining to or belonging to the assessee were found or seized during the course of search, therefore, the amount of Rs. 1,57,55,990/- on account unexplained expenditure and is being added to the total income of the assessee u/s 69C of IT Act 1961.

6.2 On this issue, the Id. AR submitted that this amount was not claimed as expenditure and was not debited to the Profit and Loss account. The Id. AR argued that the seized loose sheets belong to PACL India Ltd. and relate to the sales event carried out at the launch of their project and the payments were made by PACL India Ltd. only and further, since these transactions do not pertain to the appellant, they have not been recorded in its books of accounts. The Id. AR contended that the appellant has not claimed these amounts as expenditure and has not debited them to the Profit and Loss Account.

6.3 I have carefully considered the findings recorded by the Id. AO as per the assessment order, the impugned penalty order, the facts of the case on record and the submissions made by the appellant. The Id. AO made the addition on the basis of various documents seized during the search which were in the form of vouchers for cash payment. The appellant contended that these amounts have not been claimed as expenditure and the same were paid on behalf of M/s PACL. However, no evidence to show that these documents belong to the PACL and that the payments were made by them was furnished either during the assessment proceedings or before me. The onus was on the appellant to explain these documents which were found from its premises. Since this onus was not discharged, the provisions of Section 132(4A) are attracted. Accordingly, I hold that the Id. AO has rightly made the addition. The argument that this amount was not claimed as per the Profit and Loss Account supports the stand of the Id. AO, who precisely for this reason i.e. the expenses were not recorded in the books of accounts, added the same u/s 69C treating them as unexplained expenditure. Accordingly, the addition is upheld and the ground no. 5 is dismissed.”

6. Aggrieved with the above order, the assessee is in appeal before us.

7. The Ld. DR relied on the findings of the lower authorities and submitted that the whole transaction of claiming expenditure and declaring sales are bogus and the findings of the lower authorities are just and proper.

8. Considered the submissions of the Ld. DR and material placed on record, we observed that the Assessing Officer has disallowed the sales declared by the assessee on protective basis. He disallowed the expenditure claimed by the assessee u/s 69C of the Act. We observed that Ld. CIT(A) considered the detailed submissions of the assessee and the remand report and has dismissed the grounds raised by the assessee on the basis of findings that the assessee is one of the entities operated by Shri Praveen Aggarwal who was dealing in providing accommodation entries, since, there is no representation on the part of the assessee against the above findings, we are constraint to confirm the findings of the Ld. CIT(A), at the same time, we do not see any reason to disturb the same.

9. In the result, appeal filed by the assessee is dismissed.

Order pronounced on 12th June, 2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated:12/06/2024

Pk/sps

Sd/-

(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI