

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No. 535/Mum/2024
(Assessment Year: 2007-08)**

Swastika Investment Ltd. 18, 2 nd Floor, North Wing Madhaveshawar Co-op. Housing Society Ltd., Madhav Nagar 11/12, S.V. Road, Andheri (W), Mumbai-400058. PAN : AABCS6585J	Vs.	ACIT-4(2), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant/Assessee by : Ms. Nisha Lohati-CA & Vijay
Bansal-CA

Revenue/Respondent by : Shri Mahesh Parwani, Sr. DR

Date of Hearing : 06.06.2024

Date of Pronouncement : 11.06.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)-1, Coimbatore [for short 'the CIT(A)] dated 07.12.2023 for the AY 2007-08. The assessee raised the following grounds of appeal:

“1.On the facts and circumstances of the case and applicable law Ld. CIT(A) erred in sustaining the order passed by Ld. AO u/s 143(3) which is contrary to the material on records and provisions of the Act, unjustand bad in law.

2. On the facts and circumstances of the case and applicable law Ld. CIT(A) erred in sustaining the disallowance made on depreciation of software purchased of Rs. 9,75,000

3. On the facts and circumstances of the case and applicable law Ld. CIT(A) erred in sustaining the disallowance made on depreciation of software purchased of Rs. 9,75,000 merely on assumption that the company from whom the software has been purchased is not in existence.

2. The assessee is a company engaged in the business of share broking and is registered as stock broker with Bombay Stock Exchange & National Stock Exchange. The assessee filed the return of income for AY 2007-08 on 31.10.2007 declaring the income of Rs. 79,29,246/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) during the course of assessment noticed that the assessee has purchased software from one M/s Monalisa Infotech Ltd. In order to verify the genuineness of the purchases the AO deputed an Inspector to make enquiry on the vendor. Based on the report of the Inspector that the party does not exist in the premises, the AO proposed to treat the software purchased as bogus and issued a notice to the assessee calling for evidences. The assessee submitted that the software purchased from M/s Monalisa Infotech Ltd. is used by the assessee to protect the network from hackers and unauthorized use of data and that there is no question of denying the existence of the party or the genuineness of the purchases since the vendor is registered with Sales Tax Department which is evidenced by the sales tax / CST numbers quoted in the invoices. The assessee further submitted that the payment towards purchase of software was done through banking channel and submitted before the AO the copies of invoices, purchase order, ledger copy, bank statement etc. The AO however, did not accept the submissions of the assessee stating that the assessee has not discharged the onus of producing the party for verifying the

identity and genuineness of the party. The AO further held that no documentary evidences to establish the existence of the vendor and the genuineness of the transaction were produced by the assessee. The AO also held that the Inspector has reported that no such entity existed in the building and that the telephone number at the vendor's factory address at Daman is also not in existence. The AO therefore, treated the amount of software purchase as not genuine and accordingly made a disallowance towards depreciation amounting to Rs. 9,75,000/- by applying the rate of 60% on the alleged bogus purchases. The AO also made addition of Rs.12,04,913/- towards non-deduction of TDS and Rs.10,66,407/- towards depreciation on BSE Card.

3. Aggrieved the assessee filed further appeal before the CIT(A). In the first round of appeal, the assessee neither appeared and nor made any submissions before the CIT(A) and therefore the CIT(A) passed an ex parte order. However, in the ex parte order the CIT(A) considered the materials on record and the judicial precedents and gave relief to the assessee towards the additions made on account of non-deduction of TDS and depreciation on BSE Card. The CIT(A) thus sustained the disallowance of depreciation made by the AO. Both the assessee and the revenue went on further appeal before the Tribunal and the Tribunal restored both the appeals by the assessee and the Department back to the CIT(A) since the CIT(A) has passed an ex-parte order. The CIT(A) in the second round of appellate proceedings gave relief to the assessee towards non-deduction of TDS and sustained the additions made by the AO towards depreciation on BSE Card and also disallowance of depreciation on software. The assessee is in appeal before the Tribunal for the second time contending only the issue of disallowance of depreciation on software.

4. The Id. Authorized Representative (AR) at the outset submitted that the amount of Rs.16,25,000 stated by the AO towards software purchase is incorrect and that the actual amount of software purchase from M/s Monalisa Infotech Ltd. is Rs. 18,50,000/-. Our attention in this regard was drawn to the break up of the software purchase as given in the assessment order. The Id. AR further submitted the assessee has produced all the necessary documents such as invoice copies, purchase order, bank statement evidencing payment etc. before the AO and the AO did consider any of these documentary evidences while making the disallowance and the Id. AR also pointed out that the AO did not record any adverse finding on the documents submitted by the assessee. The Id. AR also submitted that the Inspector's report based on which the addition was made by the AO was not shared with the assessee so that the assessee could controvert the findings given therein. With regard to the contention of the AO that the onus was not discharged by the assessee by not producing the party, the Id. AR submitted that the assessee could not produce the party since there was a gap of more than 3 years after executing the transactions and that the AO could have summoned the parties by exercising power under section 133(6) of the Act which the AO failed to do. The Id. AR also submitted that the AO made the disallowance merely based on the report of the Inspector that the vendor is not existing in the building but failed to consider the fact that the vendor is registered with the Sales Tax Department which is evident from the Sales Tax and CST number mentioned in the invoice raised by the vendor.

5. The Id. AR with regard to the AO's contention that the vendor did not exist, drew our attention to the below finding of the CIT(A) –

“5.7 The appellant has not filed any fresh evidence other than what was filed before the AO. The copy of bills, account copy in the books of the appellant and

supplier, evidence for payment through bank etc is all usually maintained correctly on bogus transactions. There is no third-party evidence to support the transaction. The appellant claims that AO could have also verified the existence of the company from the Sales Tax department also. But the appellant has not filed any evidence of the existence of the appellant and whether the appellant has filed statutory returns. The appellant is admitting that Mumbai looking to the cost of running an office, they might have shared the office with some other companies. The issue relates to FY 2005-06 and it will be difficult to verify old evidence now. But on a verification, it is seen that this is a limited company listed in stock exchange. The website www.moneycontrol.com shows that the share was last traded at a market value of Rs 0.35 on 07-09-2006. The site describes the activity of the company as "Monalisa Infotech Ltd. (MONINFO) was incorporated in 1994. They are engaged in the manufacture, import, and export of plastic molded products and internet-related software products. The site does not exhibit any final accounts filed with Stock exchange for a long time. Hence it can be assumed that the company is not in existence now. The data available in internet also do not support the claim that this is a genuine company trading in software. The appellant has not filed any fresh evidence to support the claim in the set aside proceedings and the secondary information available in internet is against the appellant. The decision taken by the AO and CIT(A)-8, Mumbai in their orders referred above are upheld. The grounds are dismissed and the addition is upheld."

6. The Id AR argued that from the said findings of the CIT(A) it is clear that the existence of the party has been acknowledged by the CIT(A) and therefore the addition made merely on the basis that the party did not exist is not sustainable. The Id. AR submitted the latest report from Website of Ministry of Corporate Affairs (MCA) to substantiate that the company is in active status as on date also.

7. The Id. Departmental Representative (DR) on the other hand argued that the Inspector made a personal visit to the vendor's premises and has given a categorical report that the party did not exist in the said premises. The Id. DR further submitted that the documentary evidences in support of the transaction such as the purchase

order, invoices etc. are computer generated with no signature and therefore they are self-serving documents that cannot be considered as evidence. The ld. DR drew our attention to the dates in one of the purchase orders and the invoices to submit that the date in purchase order is later than the date of invoices that goes to prove the documents submitted could not be relied upon to test the genuineness of the impugned transactions. With regard to the contention of the assessee that the Inspector's report was not shared the ld. DR submitted that there is nothing on record to show that the assessee made a request for the copy of the report and therefore, such a claim is not correct. Accordingly the ld. DR supported the order of the lower authority.

8. We have heard the parties and perused the material available on record. The assessee has purchased software from M/s Monalisa Infotech Ltd. the break up of which is as under:

Sr.no.	Bill no.	Date	Amount	Particular of product
1	MIL/2006-07/5/014	25.5.2006	2,25,000	Software for virus fire walls
2	MIL/2006-07/5/006	25.5.2006	5,00,000	Software for risk Management
3	MIL/2006-07/5/013	25.5.2006	2,25,000	Software for virus fire walls
4	MIL/2006-07/5/011	25.5.2006	2,25,000	Software for virus fire walls
5	MIL/2006-07/5/008	25.5.2006	2,25,000	Software for virus fire walls
6	MIL/2006-07/5/012	25.5.2006	2,25,000	Software for virus fire walls
7	MIL/2006-07/5/010	25.5.2006	2,25,000	Software for virus fire walls
			18,50,000	

9. From the above break up it is clear that the total amount of software purchase is Rs. 18,50,000/- and not Rs. 16,25,000/- as stated in the AO's report. The AO in order to verify the genuineness of the above transaction deputed an Inspector and based on the report that the vendor was not in existence in the building treated the entire transaction as non-genuine. We notice that the assessee to substantiate the genuineness of the purchase has submitted various documentary

evidences in the form of purchase order, invoices, bank statements evidencing the payment, ledger copy of the party, etc. before the AO (page 89 to 100 of PB). We further notice that the AO did not give any adverse finding with regard to the documentary evidences submitted by the assessee but has proceeded to make the addition stating that no evidence supporting the existence of the vendor was produced and that the onus of producing the party for verification was also not discharged by the assessee. We also noticed that besides relying on the report of the Inspector, the AO did not bring any adverse finding on record for the purpose of treating the transaction as non-genuine. From the findings of the CIT(A) as extracted in the earlier part of this order, it is clear that the company was in existence as of 07.09.2006 and is also engaged in the business of internet related software products. This is further substantiated by the fact that the party is registered with Sales Tax Department (refer invoices for Sales Tax and CST Number) and the latest report from MCA Website which is extracted below –

6/5/24, 1:26 PM

Ministry Of Corporate Affairs - MCA Services

Ministry Of Corporate Affairs

Date : 05-06-2024 1:25:25pm

Company Information

CIN	U25209DD1994PLC001584
Company Name	MONALISA INFOTECH LIMITED
ROC Name	ROC Goa
Registration Number	001584
Date of Incorporation	09/05/1994
Email Id	shaikh_mujahid@hotmail.com
Registered Address	PLOT NO 31 DAMAN INDUSTRIALESTATE SOMNATH ROAD, DAMAN, Daman and Diu, India, 396210
Address at which the books of account are to be maintained	-
Listed in Stock Exchange(s) (Y/N)	No
Category of Company	Company limited by shares
Subcategory of the Company	Non-government company
Class of Company	Public
ACTIVE compliance	ACTIVE Non-Compliant
Authorised Capital (Rs)	12,00,00,000
Paid up Capital (Rs)	8,72,43,000
Date of last AGM	-
Date of Balance Sheet	-
Company Status	Active

Jurisdiction

ROC (name and office)	ROC Goa
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10. In view of these discussions and considering the fact of the present case, we are of the considered view that the disallowance made merely for the reason that existence of the vendor is not substantiated by the assessee without taking into consideration the other documentary evidences submitted by the assessee is not tenable. Therefore, we hold that the AO is not correct in making a disallowance of Rs.9,75,000/- towards depreciation on software and the said disallowances is hereby deleted.

11. The ld AR during the course of hearing submitted that the assessee had claimed depreciation on software at the rate of 25% whereas the AO while making the disallowance, has computed depreciation at 60%. Since we have deleted the entire disallowance made by the AO, these contentions of the ld AR have become academic not warranting any specific adjudication.

12. In the result, the appeal is allowed.

Order pronounced in the open court on 11-06-2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai