

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1198/Mum/2024 (A.Y. 2016-17)

M/s. Allied Computers
Intl. Asia Limited
Office No. 8, 5th Floor
Block A, Aidun Building.
1st Dhobi Talao Lane
Mumbai-400 002.

Vs.

ACIT, CC-2(2)
8th Floor, Pratishtha Bhavan
M. K. Road
Mumbai-400 020.

PAN : AADCA4412E
(Appellant)

(Respondent)

Assessee by
Department by
Date of Hearing
Date of Pronouncement

None
Shri R.R. Makwana
13.06.2024
24.06.2024

ORDER

1. This appeal is filed by the assessee Allied computers International Limited [the Assessee/ Appellant] for assessment year 2016 – 17 against appellate order passed by the CIT – A – 48, Mumbai (the learned CIT – A) wherein the appeal filed by the assessee against the assessment order passed by the learned assessing officer was dismissed on merits.
2. The assessee aggrieved with the same is in appeal before us and has raised several grounds. The main ground of the appeal is that the assessment order passed is high-pitched, expertise, not granting credit of tax deducted at source, holding that it is operated by an accommodation entry provider Mr. Shirish C Shah and confirming the penalty proceedings initiated.

3. Brief facts of the case show that in this case, the assessee filed return of income on 31.03.2017, declaring net loss of Rs.15,33,796/- . However, the assessee paid tax under MAT provisions u/s.115JB on book profit of Rs.23,68,820/-.
4. Subsequently, the case was selected for scrutiny under CASS. Notice u/s 143(2) of the I.T. Act was issued on 19.09.2017. Further, notice u/s.142(1) of the I.T.Act was issued from time to time, calling for various details, and the assessee furnished some replies.
5. A search u/s 132 of the Income Tax Act 1961 was carried out in the case of Shri Shirish C. Shah who was the main persons engaged in providing bogus accommodation entries like long term capital gain, share capital with huge share premium, turnover, loan etc. Shri Shirish C Shah directly and indirectly controlled 212 companies which include some of the public limited companies also. Assessee is also one of those companies.
6. Ld. AO held that the assessee was engaged in providing accommodation entries to various parties in association with Shri Shirish C. Shah. It does not have any business activity in substance.
It is therefore held that the assessee is not engaged in any actual business activities but was involved in issuing accommodation entries. It is very apparent that the transactions were carried out at the instances of Shri. Shirish Shah and the fact that the Directors of the assessee company were merely tools in the hands of Shri. Shrish Shah who only knew all the affairs of company, the real income from these transactions is assessable in the hands of the Shri. Shirish Shah. Ld. AO also held that intimations are being sent separately to the AOs of the beneficiaries with whom the assessee company has made accommodation entry transactions. Since the assessee failed to explain and justify & explain purchase as well as sales and other

transaction in P & L account and submit any evidence to show that the assessee company was actually engaged in business activities, the business loss & income u/s 115JB is considered as NIL. However, interest income is taxed as income from other sources. Since the assessee is not engaged in any actual business activities but was involved in issuing bogus accommodation entries, the TDS claim of Rs.23114988/- was not allowed. Assessment order was passed u/s 143(3) of the Act on 22/12/2018.

7. On Appeal before Ld. CIT (A) confirmed the action of the learned assessing officer as before him assessee did not submit any further information despite 7 opportunities granted. The learned CIT – A also confirmed all the findings of the learned assessing officer and confirming that assessee company is a conduit company wherein one accommodation entry provider Mr. Shirish C Shah is operating this company. Thus, as the income and expenditure recorded in the books of account of the assessee were fictitious, the income arising therefrom and tax deducted at source from such income are not the income of the assessee, the assessee is not entitled to the benefit of tax deducted at source. Accordingly, the appeal of the assessee was dismissed.
8. Assessee has preferred appeal before us however despite notice, none appeared before us. This is also the conduct of the assessee before the lower authorities. It shows that assessee is agitating the issue by filing the appeals before the first appellate authority as well as before us but hiding itself to controvert any finding of the learned assessing officer that the company is merely a conduit company operated by an accommodation entry provider. Thus, looking at the conduct of the assessee and the facts of the case we decide the issue on the merits as per facts available on record.

9. The learned departmental representative vehemently supported the order of the learned lower authorities. He submitted that the assessee is an accommodation entry provider owned company. It does not have any purchases and sales. The beneficiaries are other people. The learned assessing officer has given an intimation about the beneficiaries to the respective authorities for taking necessary action. This is the case where an accommodation entry provider, Mr. Shirish C Shah is filing all the papers but failed to appear before any of the authorities. He extensively read the order of the learned assessing officer. He further stated that the only grievance of the assessee is not granting credit for tax deducted at source. He submitted that when the assessee does not have any income, how the assessee is eligible for claiming tax credit. He referred to several provisions of the law wherein if there is an income to the assessee chargeable to tax under section 4 and 5 then only the assessee is eligible for a refund of tax deducted at source on such income. Here the income etc. does not belong to the assessee and therefore the assessee does not deserve credit for this tax. He also submits that all the transactions appear to be money laundering activities of Mr. Shirish C Shah and beneficiaries are also being investigated as per order of the Id AO. He submits that the lower authorities have correctly decided the issue.
10. We have carefully considered the rival contention and perused the orders of the lower authorities.
11. Ground number 1 & 2 of the appeal of the assessee is that the assessment order and the appellate orders are passed in contravention of prevailing law as well as on the facts of the case and therefore liable to be vacated. We find that the learned lower authorities have given enough opportunities to the assessee to

present its case but on all the occasions the assessee has not presented the case before them and therefore there is nothing wrong in the orders passed by the lower authorities. They have also provided enough opportunities to the assessee and therefore the passing of the ex parte order by the learned lower authorities cannot be found fault with. Accordingly ground number 1 and 2 of the appeal is also dismissed.

12. Coming to ground number 3 wherein it is stated that the order passed by the learned lower authorities is illegal being high-pitched, the assessee has not given any evidence that why it is a high-pitched assessment the income of the assessee is assessed merely at Rs 256,184/- and therefore same is not high-pitched. Accordingly ground number 3 of the appeal is dismissed.
13. Ground number 4 of the appeal is with respect to not granting the credit of tax deduction at source of Rs 2,31,14,988/-. Before the lower authorities assessee has not shown that the income belongs to the assessee and the TDS also belongs to the assessee and therefore the lower authorities have not given any credit for tax deducted at source. We find that as the TDS certificates are issued in the name of the assessee it should generally be granted credit for TDS claimed. During the course of assessment proceedings, it is submitted that assessee is providing manpower services and cost of sales is back to back bills of manpower services received by the assessee. Thus, all the persons who have paid manpower services to the assessee, has deducted tax at source. The Id. AO should verify from each of such person to confirm whether the TDS made by them is correct and such services are rendered by the assessee by issuing summons u/s 131 or by issue of notices u/s 133 (6) of the act. Ld. AO may also examine them. As huge TDS is outstanding which

needs to be refunded to the assessee, Ld. AO may also issue summons to the parties u/s 131 based on the TDS details available in form no 26AS also. If those parties confirm that they have paid the amounts to the assessee and necessary services have been provided by the assessee, the assessee should be granted credit for such taxes paid. This direction is necessary in order to verify whether the claim of TDS refund of the assessee is genuine or not in view of allegation of the Id. AO which were not disproved by the assessee. In case Id. AO finds that there are no services provided by the assessee then in those circumstances, Id. AO may take any action against the beneficiaries of such bogus bills and also against the assessee company. As assessee failed to substantiate its return before Id AO and CIT (A), We direct the assessee to produce before Id AO the directors of the company along with books of accounts to show that TDS belongs to the company for rendering necessary services with all the TDS certificates, copies of the bills and nature of services and how those services are rendered, within 90 days of receipt of this order. If the Id. AO is satisfied with such a huge claim of TDS of the assessee, same should be granted to assessee along with interest. Accordingly ground number 4 of the appeal is allowed with above directions.

14. Ground number 5 of the appeal of the assessee is with respect to the finding of the lower authorities that this is a conduit company operated by one accommodation entry provider. This is the finding of the fact arising on the basis of search. No contrary evidence is provided before us. However, in the interest of justice we set aside this ground of appeal back to the file of the Id AO with direction to the assessee to prove before the Id AO by producing directors of the company, necessary proof of services rendered, necessary proof of

all kind of transactions entered by the assessee, along with the list of creditors, debtors stating their address PAN and where those are assessed. In view of this we allow Ground no 5 of the appeal with above directions.

15. Ground number 6 is with respect to the initiation of penalty proceedings under section 271 (1) (c) of the act which is premature and hence same is dismissed.
16. In the result appeal is partly allowed.

Order pronounced in the open court on 24th June, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS