

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “E”, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER
ITA No. 4195/M/2023
Assessment Year: 2013-14**

M/s. Harivardhan Steel & Alloys Pvt. Ltd. B/104, 1 st Floor, Ostwal Ornate Bldg. No. 2, Jesal Park, Bhayander (East), Thane- 401105. PAN: AABCH6483J	Vs.	Income Tax Officer- 2(1) Room No. 225, 6 th Floor, Ashar IT Park, Wagle Industrial Estate, Thane (West) – 400604.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rahul K. Hakani, A.R.
Revenue by : Shri P. D. Chougule, (Addl. CIT), SR. D.R.

Date of Hearing : 05 . 06 . 2024
Date of Pronouncement : 25 . 06 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the ‘Act’ in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1057106845(1) Dated 16/10/2023 for the Assessment Year 2013-14.

2. The following grounds of appeal have been raised by the appellant:-

I. “Reopening of assessment and issue of notice u/s. 148.

1. *In the facts and circumstances of the case and in law, the Ld. A.O. had erred in issuing notice u/s 148 of the I.T. Act on the basis of information from the Investigation wing only without application of mind and analysing the basic facts of the case. The notice issued on the basis of borrowed satisfaction is illegal and void and consequently, assessment based on such notice may kindly be quashed.*

1.1. *That the Ld. CIT(A) has also erred in confirming the action with regard to reopening of the case without considering the fact that the Assessing Officer has not applied his mind and has no independent satisfaction with regard to reopening of the case u/s 148 and, as such, proceedings u/s 148 are liable to be quashed.*

II. Addition u/s.68 of Rs 1,68,00,000/- being share-application money received from M/s. Shyam Alcohol & Chemicals Ltd.

2. *The Ld. AO erred in making addition of share application money of Rs 1,68,00,000/- received from M/s. Shyam Alcohol & Chemicals Ltd. As unexplained cash credit u/s.68 without appreciating the fact that the said amount was repaid during the subsequent years due to not allotment of shares and hence, addition u/s.68 of Rs.1,68,00,000/- may be deleted.*

2.1. *Without prejudice to above, the Ld. AO erred in making the addition on the basis of statement of Vipul Vidur Bhatt without appreciating that Assessee had proved the identity, creditworthiness and genuineness of the party by filing documentary evidences and Vipul Vidur Bhatt has retracted his statement and hence, addition u/s.68 of Rs.1,68,00,000/- may be deleted.*

2.2. *The Ld. CIT(A) erred in confirming the addition of Rs.1,68,00,000/- on the basis of statement of Vipul Vidur Bhatt without appreciating that the Ld. AO did*

not provide cross examination of Mr. Vipul Vidur Bhatt thereby violating principles of natural justice and hence, addition u/s 68 of Rs.1,68,00,000/- may be deleted.

2.3. The Ld. CIT(A) erred in confirming the addition of Rs.1,68,00,000/- without admitting additional evidences u/s. 46A though Assessee had given cogent explanation for admitting the additional evidences and hence, addition u/s. 68 of Rs.1,68,00,000/- may be deleted.

III. Addition u/s 68 of Rs. 11,00,000/- being unsecured loan received from M/s P. Saji Textiles Ltd.

3. The Ld. AO erred in making addition of unsecured loan of Rs.11,00,000/- received from M/s. P. Saji Textiles Limited as unexplained cash credit u/s. 68 without appreciating the fact that the said amount was repaid in the subsequent years and hence, addition u/s. 68 of Rs.11,00,000/- may be deleted.

3.1. Without prejudice to above, the Ld. AO erred in making the addition on the basis of statement of Vipul Vidur Bhatt without appreciating that Assessee Company had proved the identity, creditworthiness and genuineness of the party by filing documentary evidences and Vipul Vidur Bhatt has retracted his statement and hence, addition u/s.68 of Rs.11,00,000/- may be deleted.

3.2.The Ld. CIT(A) erred in confirming the addition of Rs. 11,00,000/- on the basis of statement of Vipul Vidur Bhatt without appreciating that the Ld. AO did not provide cross examination of Mr. Vipul Vidur Bhatt thereby violating principles of natural justice and hence, addition u/s.68 of Rs.11,00,000/- may be deleted.

3.3.The Ld. CIT(A) erred in confirming addition of Rs.11,00,000/- without admitting additional evidences u/s. 46A though the Assessee Company had given cogent explanation for admitting the additional evidences and hence, addition u/s.68 of Rs.11,00,000/- may be deleted.

4. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”

3. The facts of the case, in brief, are that the assessment u/s. 143(3) was completed in this case on 29/02/2016 assessing total income at Rs.1,45,980/-. Subsequently, the information was received from the DDIT (Inv.), Mumbai that a search and seizure action u/s.132 of the Income Tax Act was conducted on 05/02/2016 in the case of Mr. Vipul Vidur Bhatt, Mumbai and his related entities.
4. During the course of search, the statement of Mr. Vipul Vidur Bhatt was recorded u/s.132(4) of the Income Tax Act, 1961, in which he had accepted that he was an entry operator and all the related entities controlled by him were used for providing bogus accommodation entries to various beneficiaries for getting commission. Mr. Vipul Vidur Bhatt also accepted that he was a director in these companies and the rest of the directors are dummy directors appointed by him only. He further accepted that he controlled the entire activities/affairs of these related entities and these companies were incorporated only for providing bogus accommodation entries. He also admitted in his statement that he controlled, managed and operated as many as 347 such bogus entities for providing bogus entries to various beneficiaries for earning commission.
5. During the course of search conducted u/s. 132 of the Act, the entire books of accounts and other documents relating to income tax, ROC,

VAT/Sales Tax etc. belonging to all 347 bogus entities were found from some undisclosed premise at 1407, 14th floor, New Jaiphalwadi, Police Colony, Tardeo, Mumbai- 400034. When Mr. Vipul Vidur Bhatt was asked to explain why all the said documents, books of accounts, computer etc. were kept in the said premises, he stated *“Sir, I am into business of providing accommodation entries and I am managing and controlling various entities for this purpose. As this work is illegal, hence I am maintaining the books of account of these entities at my back office at 1407, 14th Floor, New Jaiphalwadi, Police Colony, Tardeo, Mumbai-400034.”*

6. During the course of hearing before us, the appellant informed this Bench that in the case of the appellant itself, the Hon'ble ITAT 'H' Bench vide ITA No.3302/M/2019 for the assessment year 2014-15 has already decided the issues of bogus share capital/loans taken in favour of the appellant and has directed the AO to delete the additions on these grounds by setting aside the order of the Ld. CIT (A). However, it appears from the order of the Ld. CIT (A) that the aforesaid decision of the Hon'ble ITAT 'H' Bench has not been considered by the Ld. CIT (A) while passing the impugned order dated 16/10/2023.
7. Thus, without going into the merit of the case, we think it proper to restore the matter back to the file of the Ld. CIT (A) to consider the

decision of the Hon'ble ITAT 'H' Bench (supra.) and decide the grounds accordingly.

8. In the result, the appeal is allowed in aforesaid terms.

Order pronounced in the open court on 25.06.2024.

**Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 25/06/2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.