

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

ITA No. 05/Mum/2024

(Assessment Year: 2014-15)

Dy. CIT
Circle 41(4)(1)
Room No.425, Kautilya
Bhavan, G Block, BKC,
Bandra East, Mumbai-400 051

Vs.

Aryan Investments
Opp. Kalpateru Estate,
JVL Road,
Jogeshwari East,
Mumbai-400 060

(Appellant)

(Respondent)

PAN No. AARFA5365M

Assessee by : Shri Anand Kanse, AR
Revenue by : Shri R.R. makwana, DR

Date of hearing: 05.06.2024
Date of pronouncement : 09.07.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Dy. Commissioner of Income Tax, Circle 41(4)(1), Mumbai for A.Y. 2014-15 against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)], Delhi dated 2nd November, 2023, wherein the appeal filed by the assessee against the assessment order dated 31st March, 2022 passed under Section 147 read with section 144B of the Income-tax Act, 1961 (the Act), was allowed.

02. The learned Assessing Officer is aggrieved and has preferred this appeal for following grounds:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting

the addition made by the AO ignoring the facts of the case, that the assessee has inflated the book profits for the purpose of making enhanced claim of remuneration to partners?

2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in quashing the assessment holding that once the basis of reassessment is gone other additions cannot be sustained, ignoring the fact that addition has been in this case on excess remuneration to partners which is the very reason for which reassessment proceedings were initiated and hence the basis of re- assessment is not gone?"*

03. Brief facts of the case shows that assessee is a company, who filed its return of income on 17th November, 2014, at a total income of ₹28,40,684/-. Subsequently, an assessment under Section 143(3) of the Act on 31st, October, 2016, was passed. Thereafter, the case was reopened under Section 147 of the Act wherein it was found that ₹4,98,70,180/- on account of diminution in the value of investment was credited to the P & L Account. The assessee has computed allowable remuneration to the partners on this sum. According to the reasons this could not be taken for the computation of remuneration to the partner. Therefore, assessee was asked to file return of income. The assessee did not file any return of income in response to notice under Section 148 of the Act but intimated vide letter dated 5th January, 2022, that the return of income filed originally treated as response to the notice. The assessee was asked to explain why the book profit should be considered including the above adjustment for the purpose of computing remuneration to the partners. The assessee

explained that while computing the book profit the above amount is required to be considered which is credited to the Profit and Loss account. The learned Assessing Officer rejected the explanation of the assessee and computed the remuneration allowable by reducing the above sum from the book profit. Accordingly, the remuneration allowable to the assessee is computed at ₹26,82,919/-, whereas the assessee has computed the remuneration allowable at ₹44,78,356/-. Thus, the learned Assessing Officer made an addition of ₹17,95,437/- and computed the total income at ₹ 46,36,117/- as per reassessment order dated 31st March, 2022.

04. The assessee challenged the reopening of assessment stating that it is merely change of opinion and once the addition has already been considered same cannot be repeated. The learned CIT (A) held that the learned Assessing Officer has incorrectly taking the book profit and therefore, he allowed the appeal of the assessee.
05. The learned Assessing Officer is in appeal before us. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer. The learned Authorized Representative supported the order of the learned Commissioner of Income-tax (Appeals).
06. We have carefully considered the rival contentions and perused the orders of the lower authorities. The brief controversy in this appeal is that while calculating book profit whether the amount credited by the assessee to the Profit and Loss account of ₹4,98,70,180 on account of diminution in the value of investment is required to be considered as part of book profit or not. **Looking into the computation of total income, The assessee has already reduced**



the above amount while computing the book profit and after that the book profit was computed at ₹73,13,927/-. Therefore, once again reducing the same would amount to double reduction of book profit. The computation of total income reproduced by the assessee in answer to letter dated 25th march, 2022, reproduced at Para no.7 of the assessment order clearly shows the same. Therefore, we do not find any infirmity in the order of the learned CIT (A) and both the grounds of appeal of the learned Assessing Officer are dismissed.

07. In the result, the appeal of the learned Assessing Officer is dismissed.

Order pronounced in the open court on 09.07. 2024.

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.07. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai