

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.4073/Mum/2023
Assessment Year: 2014-15**

ACIT, -16(1), Mumbai	Vs.	Selvel Publicity And Consultants Private Limited LTD 4 th Floor, Ravindra Annex, 194 Dinshaw Vatcha Road, Reclamation Churchgate, Mumbai- 400020. PAN: AAACS 6699 A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rajiv Khandelwal, CA & Shri Akash Kumar
Revenue by : Shri B. Laxmi Kanth, Sr. DR

Date of Hearing : 10.07.2024

Date of Pronouncement : 30.07.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

The appeal of the revenue for the assessment year 2014-15 is directed against different order passed by the Id. CIT(A), NFAC, Delhi. The revenue has raised the following grounds of appeal:

"i. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition made by the assessee officer of Rs.4,47,95,169/- on account of bogus transactions with parties who neither have PAN or TAN,"

2."Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition relying on the Hon'ble Supreme court's decisions as the said decisions are distinguishable on fact of assessee's case."

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition made by the Assessing Officer of Rs.4,47,95,169/- on account of bogus transactions and the

conclusion drawn by the Ld. CIT(A) while granting relief to the assessee are clearly erroneous, contrary to the materials on record and have been arrived at without taking into consideration relevant material and placing reliance on distinguishable decisions of fact of case,"

2. Fact in brief is that assessee has filed return of income for the A.Y. 2014-15 on 29.11.2014 declaring total income of Rs. 3,92,61,830/-. The assessment u/s 143(3) of the Act was completed on 19.12.2016 assessing the total income as returned by the assessee. Subsequently, on the basis of information received from the Investigation Directorate, Mumbai that various transactions of the assessee-company were not genuine in respect of claim of expenses to the amount of Rs. 4,47,95,169/-. Based on the information, the assessment for the A.Y. 2014-15 was reopened by issuing of notice u/s 148 of the Act on 30.03.2021. The Assessing Officer has pointed out that assessee has made transactions with various parties who neither have PAN or TAN totaling to the amount of Rs. 4,47,95,169/- as mentioned at para no. 9 of the assessment order. On query, the assessee explained that it was an established company with primary objective of outdoor advertising with presence mainly in Mumbai, Pune, Goa and it has tie-up of business relationship with many international advertising agencies and caters to the outdoor advertisement requirement of large companies through these agencies. The AO has asked the assessee to furnish details i.e. name, address, PAN, e-mail address, date of transaction and detail of product, mode of payment etc. relating to thirteen parties with whom it had claimed that there were business transactions and so made payment and claimed as expenses in the profit and loss account. The AO has noticed discrepancies in the reply of the assessee given in respect

of the thirteen parties for not giving the above mentioned complete information in respect of the thirteen parties as mentioned at para six of the assessment order. Therefore, the Assessing Officer has treated the amount of Rs. 4,47,95,169/- as unexplained expenditure u/s 69C of the Act as per the draft assessment order dated 27.03.2022 issued to the assessee. Along with the draft assessment order, the AO has also issued a show causes notice to the assessee. In response assessee submitted that the said amount of Rs. 4,47,95,169/- was in fact have written back in the books of the assessee on 31.12.2020 and reflected in the profit & loss account for the year ended 31.03.2021 for A.Y. 2021-22. The assessee further explained that the said amount was written back much before the notice u/s 148 of the Act sent to the assessee along with reason for reopening dated 16.02.2022. The assessee has also submitted the copy of the relevant ledger account evidencing written back of the alleged amount in the books of account as on 31.12.2020. The assessee had also filed the relevant copies of audited financial statements filed from the Registrar of Companies. The assessee explained that the same amount has already been offered for tax in A.Y. 2021-22 and taxing the same again will tantamount to double taxation as tax has already been paid on the said amount. However, the AO has not agreed with the submission of the assessee and stated that assessee should have written back the expenditure by filing the revised return for the A.Y. 2014-15 or in the next A.Y. by making the adjustment in the return of income for the A.Y. 2015-16. The AO has again added the amount of Rs. 4,47,95,169/- to the total income of the assessee as unexplained expenditure u/s 69C of the Act.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee holding that income offered on account of write back off un-payable liability in A.Y. 2021-22 has been accepted by the department. The ld. CIT(A) also stated that department has also accepted similar write back off un-payable liability pertaining to A.Y. 2013-14 in A.Y. 2021-22.

4. During the course of appellate proceedings before us, the ld. DR has supported the order of the Assessing Officer and submitted that AO has correctly disallowed the expenses which were not genuine. The ld. Counsel submitted that the said amount was already offered to tax by way of writing back the creditors in the A.Y. 2021-22 before issuing the notice u/s 148 of the Act. Therefore, adding back the same amount by the Assessing Officer is unjustified and same is amount to double taxation of the income. The ld. Counsel also submitted that similar kind of write off pertaining to A.Y. 2013-14 was also carried out by the assessee in the A.Y. 2021-22 and the Assessing Officer has accepted the submission of the assessee and did not make any addition in the order passed u/s 147 r.w.s. 144B of the Act on 23.05.2023. The ld. Counsel has also referred the decision of Hon'ble Madras High Court in the case S. Hastimal vs CIT dated December 18, 1962.

5. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above in this order, the Assessing Officer has treated the expenses of Rs. 4,47,95,169/- claimed by the assessee from the 13 different parties as unexplained expenditure u/s 69C of the Act. However, the assessee has written back creditors to the extent of Rs.

6,77,87,798/- in the A.Y. 2021-22 on 30.12.2020 including the aforesaid amount of Rs. 4,47,95,1696/- pertaining to A.Y. 2014-15 before issuing of notice u/s 148 of the Act on 30.03.2021 and also paid the due taxes. It is evident from this undisputed fact that amount disallowed and added to the income of the assessee by the Assessing Officer in the order passed u/s 147 r.w.s. 144B of the Act has already been offered in A.Y. 2021-22 which has been accepted by the department. We consider that adding the same amount to the income of the assessee is amount to double taxation. It is further noticed that on similar reason the case of the assessee was subject to reassessment on the reason that outstanding credit balance in respect of 7 parties amounting to Rs. 1,43,60,457/- pertaining to A.Y. 2013-14 was written back in A.Y. 2021-22 however no addition was made in the assessment order passed u/s 147 r.w.s. 144B of the Act pertaining to A.Y. 2013-14 dated 23.05.2023 on the similar ground that the amount has already been offered for tax by the assessee on its own motion in A.Y. 2020-21.. The ld. CIT(A) has considered all these facts and circumstances along with the decision of the Hon'ble Supreme Court in the case of Laxmipat Singhania vs CIT 72 ITR 291 (SC) and other decisions before arriving to the conclusion that such addition made by the Assessing Officer will lead to double taxable of the same amount. The relevant extract of the ld. CIT(A) is reproduced as under:

“5.1 Ground No. 2 & 3

5.1.1 The impugned order of assessment as well as detailed reply submitted by the assessee has been carefully perused. In order to understand the facts and circumstances of the case and the legal position

of taxation of the income under dispute, it is profitable to reiterate, in brief, the facts relevant for the present appeal.

i. The Impugned order has been passed u/s 147 read along with 144B. The reason for assumption of the jurisdiction to reassess the income of the assessee for AY 2014-15 is receipt of information by the AO from Investigation Directorate that various transactions undertaken by the assessee in assessment year 2014-15 are not genuine. The amount of expense involved in such alleged bogus transaction was Rs. 4,47,95,169/-, from 13 different parties. In arriving at the decision that the transactions under taken by the assessee are bogus, the investigation wing, as it appears from para 2 and para 2.1 of recorded reason, have solely relied upon the fact that the parties from whom the purchase to the extent of Rs. 4,47,95,169/- has been made do not have either PAN or TAN. There is no comment on the existence or otherwise of the parties in the recorded reasons.

ii. During the course of assessment proceedings the assessee informed the AO that in A.Y. 2021-22 the assessee has on its violation written back Rs. 6,77,87,798/- from among the outstanding creditor. In various papers submitted by the assessee the reason for such write off have been repetitively explained. This reason for write off was also explained to the AO as it is apparent from para 6 of the impugned order. In order to understand the reason for write off as explain by the assessee, the following averment is being extracted from the memo of appeal submitted by the assessee-

it may please be taken cognizance of the fact that the assessee Selvel Publicity and Consultants Pvt. Ltd was managed by Late Managing Kekoo Nicholson who passed away due to unfortunate circumstances on 18th February, 2018 and thereafter the Management of the Company was bequeathed by the late Managing Director to his nephew Farhan Ichhaporia, then a minor, and this deponent in this unfortunate circumstances, who was otherwise a housewife accepted the position as an Executive Director of the Assessee Company.

In this situation aforesaid this deponent on going through the affairs of the company had come to her notice the list of parties who had to be paid for supply of goods could not be located as the Late Kekoo Nicholson had died suddenly and in no way it could be questioned as Dead men tell no tales.

This deponent as Executive Director was then advised in law to write back amounts and expenditure with the aforesaid parties amounting Rs. 6,77,87,798/- on 31st December 2020, as income for Assessment Year 2021-22 and paid taxes on it accordingly through TDS amounting to Rs. Thirty

Lacs and Twenty six Thousand, which was paid by the Assessee and accepted by the Department without a demur by 31st march 2021."

According to the assessee this amount of write back amounting to Rs. 6,77,87,798/- in assessment year 2021-22 includes the amounts outstanding as liability to the various parties which are subject matter of addition in the impugned assessment order. The facts narrated by the assessee in above averment have not been found to be incorrect by the AO.

iii. While explaining the amount of the write back from one of the parties namely M/s. Trimurthy Enterprise the assessee has categorically stated that during the relevant assessment year 2014-15 there was no transaction from the said party. The assessee further states that purchases from Trimurthy Enterprises were made before 01.04.2013 which amounted to Rs. 44,44,114/-. During the year under consideration the assessee had only paid some amount to the party. In subsequent years also payments were made to the said party and the closing credit balance from the party was Rs.

26,79,169/- which was part of the write back undertaken by the assessee in AY 2021-22.

iv. In his submissions the assessee had also submitted documents which prima-facie evidences payment through banking channel to some of the parties from whom alleged bogus purchase was made. It is admitted fact that address of these parties could not be submitted by the assessee despite specific direction of the AO in notice issued by him u/s 142(1). Therefore, the AO could not independently verify the genuineness of these parties or genuineness of the transactions under taken by the assessee with these parties.

5.1.2 In the above factual background the AO concludes at para 8 of page 11 of his order as follows:

"As per the above information the assessee had incurred Rs. 4,47,95,169/- towards Advertisement and Hoarding expenditure. Since these parties does not have PAN & TAN and hence, the transaction claimed to be carried out with these parties cannot be said as genuine. This transaction happened during the F.Y.2013-14 relevant to the Asst Year 2014-

15. The assessee has stated that the amount have been written back in the books of the Assessee on 31.12. 2020 and reflected in the Profit & loss A/c for the year ended 31/03/2021 When the assessee had the intention of writing back the expenditure incurred towards hoarding and Advertisement expenditure the assessee should have done the same by filing the revised

return for the Asst Year 2014-15 or in the next Asst Year by making the adjustments in the return of income for the Asst Year 2015-16. But the assessee had not done the same.

The assessee had stated that she had made the adjustments in the books as on 31.03.2020 i.e., in the return of Income filed for the Asst Year 2021-22 which cannot be accepted since the due date for filing the return of income for the Asst year 2021-22 falls on 30.09.2021 for Auditable cases. Hence it is clear that it is an afterthought of the Assessee. Hence the assessee claim that he written back the expenditure incurred toward Advertisement as income for the Asst Year 2021-22 could not be accepted.

The assessee had stated that he income was included in the Profit & loss for the year ended 31.03.2021 and which was approved by the Board of Directors of the Assessee Co., on 9th September 2021.

Subsequently the return of income in response to the Notice u/s 148 was filed on 15/09/2021 and the return of income for the Asst Year 2021-22 was filed on 23.02.2022. Hence it is clear that it is an afterthought of the assessee. Hence the assessee's contention could not be accepted."

From the conclusion drawn by the AO it is apparent that he has concluded that these parties are non-genuine as the assessee has failed to give their addresses, their PAN & TAN. The argument of the assessee and the admitted position which lead to the write back, specifically inability of the assessee to trace these parties after death of Kekoo Nichalson who was chairman and MD of the assessee company in the impugned A.Y., has not been contradicted or even commented upon by the AO in his order. From the reason given by the AO it is also apparent that he is not closed to the idea that this amount could be written back as income in subsequent years as apparent from highlighted portion of the decision of the AO extracted in this paragraph. The entire decision of the AO that the amount of Rs. 4,47,95,169/- was added back in the impugned A.Y. only on the basis of the conclusion that the decision of the write back the amount of Rs. 6,77,87,798/- in A.Y. 2021-22 was a decision taken as afterthought and subsequent to the issuance of notice 147 of I.T. Act. For his contention the AO highlights that return of income for A.Y. 2021-22 was filed on 23.02.2022 a date subsequent to 06.02.2022 on which the reason for re-opening was communicated to the assessee. While it has been argued by the assessee that reason for re-opening of the assessment was communicated only on 16.02.2022 which is a date much after the actual date on which the financial account for A.Y. 2021-22 was finalised. As per the submission of the assessee the balance sheet & P&L Account were audited on 09.09.2021 itself which is also recorded in the submitted audited financial of the assessee. In the impugned order the AO has completely by passed the fact of finalization

of account and its audit which predates the communication of reason to believe to the assessee.

5.1.3 So far as addition for bogus purchase from Trimurthy Enterprises is concerned the AO has ignored the submission made by the assessee only on the basis of the information received from investigation wing. It is repeated that assessee had pointed out to the AO that no purchase from Trimurthy Enterprises made during the year. On the contrary during the year certain payments were made to this party.

5.1.4 For almost identical reason to believe proceedings for re-assessment were also initiated in the case of the assessee for A.Y 2013-14. In that year on the basis of information received from the investigation wing that purchases of Rs.1,43,60,457/- were made from the parties who did not have either PAN or TAN the AO had re-opened the assessment on the believe that these purchases were bogus. During the course of assessment the assessee had informed the AO that outstanding credit balance in respect of all seven parties from whom alleged bogus purchases amounting to Rs1,43,60,457- was shown as payable was written back in A.Y. 2020-21. The plea of the assessee was accepted and there was no addition made in A.Y. 2013-14. The return of income filed by the assessee was accepted.

5.1.5 In the above facts and circumstances the moot questions that needs to be decided are-

i. Can same income be taxed twice in different A.Y. in the case of an assessee.

ii. The year in which the credit balance in respect of a party is to be treated as income of the assessee if the credit balance is decided to be non-payable.

5.1.6 It is trite law that same receipt/income cannot be taxed twice. Hon'ble Supreme Court in Laxmipat Singhania vs. CIT 72 ITR 291 (SC) had decided the law that it is fundamental rule of the taxation that, unless otherwise expressly provided, income cannot be taxed twice. The same income cannot be taxed twice, once in hand of one person and again in hands of another person or for that matter in the hands of same person in two different Assessment years. In other words, same income cannot be doubly taxed. The assessee has also relied on the authority of Hon'ble Supreme Court in the case of Mahavir Kumar Jain vs. Commissioner of Income-tax [2018] 404 ITR 738 (Sc) in order to argue that taxing statue should not be interpreted in such a manner that its effects will be cast burden twice over for payment of tax on taxpayer

unless the language of statute is so compelling that court has no alternative then to accept double taxation. In the present case the doubtful credit balances appearing in the books of the assessee to the extent of 6,77,87,798/- was written back by the assessee in A.Y. 2021-22 on his own. This amount was offered to tax in A.Y. 2021-22 which included the amount of 4,47,95,169/- which has been proposed to be taxed in Assessment Year 2014-15 by the AO in the impugned order. This has resulted in double taxation of Rs. 4,47,95,169/- in two different assessment year once in assessment year 2021-22 and another time in assessment year 2014-15. This double taxation is certainly not mandated by any provision of I.T. Act. Therefore, the decision on second issue framed in para 5.5 becomes central for decision of the present appeal.

5.1.7 From the interpretation of wording of the AO in the impugned order extracted and highlighted in para 5.2 above it is evident that AO himself was not against declaring the income on these non-payable credits in assessment year subsequent to 2014-15 as write back. However, his only objection was that assessee has written back this amount an offer to tax in A.Y. 2021-22 as an afterthought. For the sake of the argument, even if we take the decision of AO to be correct, the provisions of section 41(1) does not prohibit any assessee to write back any amount which has become non-payable for any reason after he has come to know the same on being pointed out by the department. In addition to the above the assessee has successfully demonstrated the decision to write off precedes the issuance of show cause notice as the accounts of A.Y. 2021-22 were finalized by

09.09.2021, while the reason for re-opening was. communicated to the assessee on 16.02.2022.

5.1.8 The jurisdictional High Court in the case of Palkhi Investment & Trading Co. Pvt. Ltd. vs. ITO (2016] 71 taxmann.com 322 (Bom.) while deciding the case of levy of penalty u/s 271(1)(c) in the case where quantum addition was confirmed u/s 41(1) has made the following observation at para 3 of its order-

"For the subject assessment year in the quantum proceedings, the AO made an addition of Rs. 1.26 crores to the total income declared by the appellant assessee. This addition was in respect of trade liabilities which had ceased to exist and represented income in terms of section 41(1) of the Act. Being aggrieved the assessee carried the issue in appeal to the CIT (Appeal), who confirmed the same. On further appeal, the Tribunal reduced the addition u/s 41(1) of the Act from Rs. 1.26 crores to Rs. 1.05

crores. The assessee carried the issue in further appeal to this Court. This court by order dated 16th November 2010 dismissed the appeal inter-alia recording as under:

"The tribunal also recorded a finding that one of the creditors had even denied that any amount was due to it from the assessee. The tribunal has also recorded a finding of fact that some of the creditors named by the assessee were not found available at the addresses given by the assessee.

The appellant filed SLP to the Supreme Court and the same was also dismissed.

Thereafter review petition was filed before this court seeking to review the High Court order dt. 16th November 2010. However, it was also dismissed on 4th August 2015."

5.1.9 From the above ratio decided by jurisdictional High Court (The decision of High Court in quantum addition dt. 16.11.2010 appears to be non-reportable as the same could not be located on google search. Therefore, the above extract has been made from the decision of the High Court in penalty case for same assessment year.), it is apparent that on coming to know about a credit in the books of account which is not payable even if it relates to a party which may not exist or whose address could not be given by the assessee the outstanding credit is to be written back as and when the knowledge comes to assessee or the AO that credit entry is no longer payable. Similar decision was also taken by Hon'ble Rajasthan High Court in the case of Rama Steel Rolling Mill & General Engg. Works Vs. ITO [2013] 35 taxmann.com 262 (Raj.)

5.1.10 From perusal of these two authorities it is apparent that the non-payable credit can be written back as income in the year in which the assessee or the AO Comes to know about its status of being non-payable. The assessee has in his memo of appeal extracted earlier in this order has given the sequence of events which led him to conclude that Rs. 6,67,87,798/- was not payable as on 31.03.2021. Accordingly, he had offered the sum as income for assessment year 2021-22. The AO has not found the argument of the assessee to be factually incorrect. Therefore, in the given facts and circumstances and also according to the ratio decided by Hon'ble Jurisdictional High Court in the case of Palkhi Investment & Trading Co. Pvt. Ltd. vs. ITO permits the taxation of 4,47,95,169/- in A.Y. 2021-22 which the assessee has himself declared. Taxing the same amount in A.Y, 2014-15 on the basis of prima-facie evidence of the same being bogus expenditure is not permissible as it will be lead to double taxable of the same amount.

5.1.11 It is also to be highlighted that the income offered on account of write back of un-payable liability in A.Y. 2021-22 has been accepted by the department. The department for the A.Y. 2013-14 has also accepted write back off un-payable credit entries pertaining to A.Y. 2013-14 in subsequent A.Y. 2020-21. In that year the genuineness of credit entries was also under similar cloud. Even by the rule of consistency the facts and circumstances for the present A.Y. are not different enough to allow totally new interpretation of year of taxation of un-payable credit on the basis of the debatable, if not incorrect, believe of the AO that such write back was an afterthought. While deciding so I rely upon the ratio of the Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT [1992] 193 ITR 321.

5.1.12 In terms of the discussion in para 5.1.1 to para 5.1.11 ground no. 2 and 3 are decided in favour of the assessee.”

6. It is demonstrated from the facts and findings as discussed supra that the same income has already been taxed in the assessment year 2021-22 before issuing of notice u/s 148 of the Act by the Assessing Officer therefore, we do not find any reason to interfere in the finding of the ld. CIT(A) holding that taxing the same u/s 147 of the Act for A.Y. 2014-15 will lead to double taxation of the same income. Accordingly, all the grounds of appeal of revenue are dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 30.07.2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 30.07.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai