

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1510/Mum./2024
(Assessment Year : 2015-16)

ITA no.1509/Mum./2024
(Assessment Year : 2016-17)

ITA no.1506/Mum./2024
(Assessment Year : 2017-18)

&

ITA no.1505/Mum./2024
(Assessment Year : 2018-19)

**M/s Modest and Parsons International Pvt
Ltd**

Unit No. 1006, 10th Floor, Lotus Trade Centre,
New Link Road, Andheri (West),
Mumbai- 400053
PAN – AAACM3569M

..... Appellant

v/s

**Deputy Commissioner of Income Tax,
2(2)(2)**

Jurisdictional Officer, Income Tax Officer 2(2)(1),
Aayakar Bhavan, Maharshi Karve Road, Marine
Lines, Mumbai- 400020

..... Respondent

Assessee by : Shri Anant Pai

Revenue by : Shri Ankush Kapoor, CITDR

Date of Hearing – 18/06/2024

Date of Order – 19/08/2024

ORDER

PER BENCH

The present appeals have been filed by the assessee, challenging the separate impugned orders of even date the 19/02/2024, passed under section 250 of the Income Tax Act ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*"], for the assessment years 2015-16 to 2018-19.

2. Since these appeals pertain to the same assessee and involve similar issues arising out of a similar factual matrix, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the appeal for the assessment year 2015-16 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the appeals for the assessment years 2016-17, 2017-18, and 2018-19.

ITA No. 1510/Mum./2024 **Assessee's appeal – A.Y.: 2015-16**

3. In this appeal, the assessee has raised the following grounds: –

1. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in deciding the Appellant's appeal without admitting and considering vital additional evidence submitted in the appellate proceedings.

This action has led to gross denial of substantial justice to the Appellant, which may please be restored in this appeal.

2. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the addition of Rs. 262,28,55,405/-

made by the learned Assessing Officer in assessment order as unexplained cash credits u/s 68 in respect of advances received by the Appellant from its overseas customers.

The addition of Rs. 2,62,28,55,405/- was unwarranted and requires to be deleted in this appeal.

3. On facts and circumstance of the case and in law, the learned Commissioner (Appeals) also erred in sustaining the disallowance of foreign exchange loss of Rs. 7,09,79,172/- as non-business expenditure.

This disallowances was not justified and may please be deleted in this appeal.

4. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in not allowing credit for tax deducted at source totaling Rs. 1,22,29,586/- claimed by the Appellant.

This credit for aforesaid amount of tax deducted at source was rightly claimed by the Appellant and may please be restored in this appeal.

5. The learned Commissioner (Appeals) erred in passing his order without granting the Appellant an adequate opportunity of being heard.

The order passed by him is in contravention of the principles of natural justice and hence, bad in law.

6. The Appellant reserves the right to add, alter or delete any of the above grounds with permission of the Hon'ble Tribunal

4. The brief facts of the case as emanating from the record are that the assessee is engaged in buying and selling fresh water, diesel, and fuel oil. For the year under consideration, the assessee filed its return of income on 30/10/2015 declaring a total income of Rs.2,95,74,950. The return filed by the assessee was selected for complete scrutiny under the CASS module and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee.

5. During the assessment proceedings on perusal of the balance sheet filed by the assessee, it was noticed that there is a substantial increase in the amount disclosed under the head "*current liabilities*" vide Note no. 8 of the audited financial statements. It was noticed that the advance received from the customers increased by an amount of Rs.237,99,20,133 since the previous year. From the perusal of the balance sheet, it was also observed that the assessee has shown a substantial increase in the amounts given as loans and advances to others and the said increase is to the tune of Rs.205,81,11,150. Accordingly, the assessee was asked to furnish the bifurcations of the details of the nature of the expenses claimed to be advances received from the customers during the year and consequential utilisation for business purposes. The gist of queries raised during the assessment proceedings, vide order sheet noting dated 13/11/2017, are as follows: –

"1. Whether RBI approval was taken in regard to this money (received by assessee from its clients).

2. Justification under section 68 regarding the nature of such huge amounts received from clients.

3. In respect of the amount received of Rs. 262 crores; whether any services were offered by the assessee to the said parties.

4. Proof of services offered by assessee to the parties from whom advance was received along with their confirmations and agreements entered into between these clients and the assessee.

5. Details of services offered by the assessee to these clients in earlier years, If any.

6. Relationship of the assessee company with Varun group of companies (to whom these advances were forwarded).

7. Whether any services were offered by the assessee to Varun group of companies in earlier years and by Varun group of companies to these clients from whom advances are claimed to be received by the assessee.

8. Copies of Agreements with the companies and persons from whom these amounts claimed to be in the nature of advances were received along with agreements with the companies and persons to whom these loans and advances were given.

9. Status of these amounts claimed to be in the nature of advances received from the clients in the next two financial years (2015-16 and 2016-17) with respect to services offered / completed.

10. Nature of loans/advances given to Varun group of companies along with agreements and Ledger account.”

6. The Assessing Officer (“AO”) vide order dated 13/12/2017 passed under section 143(3) of the Act, after perusing the reply of the assessee, noted that the assessee has not submitted the details pertaining to the approval from the RBI, and with respect to the transactions claimed to be in the nature of advances received by the assessee. Further, the AO held that the assessee has nowhere provided any documentary evidence other than a self-generated Excel sheet. The AO held that the assessee has not even provided documentary evidence such as confirmation/agreements with those customers to justify the stand of the assessee that the advances are truly and actually in the nature of advances for the services. Accordingly, the assessee was granted final opportunity vide notice dated 22/12/2017 issued under section 142(1) of the Act to furnish various confirmations, ledger accounts, agreements, approvals and justification for receipt of huge advances during the year under consideration. However, even in response to the aforesaid notice, the assessee did not furnish any

submission/confirmations/ledger accounts/approvals/justification for the loans and advances received from foreign entities. Further, the AO noted that the advances received by the assessee were given as loans to two entities, i.e. Varun Corp Ltd and Varun Global Ltd. The loan given to Varun Corp Ltd was interest-free, while the assessee charged 18% interest from Varun Global Ltd. The AO noted that neither the assessee has any written agreement for such a large amount of money received, which is claimed to be in the nature of advances received by it, nor the advances in the form of loans given to Varun Industries and its other group entities have been given under any agreement. Since the assessee could not submit the necessary documents from banks like FIRC, RBI approvals, agreements, confirmations, the link between money given and taken, the business relationship between the parties to whom money was given, and money taken, etc., despite several reminders and ample opportunities, the AO concluded that the assessee has not been able to satisfactorily prove that the nature of the transaction is the same which it has claimed in its books. Accordingly, the AO made the addition of the entire amount of Rs.262,28,68,888, shown as advance received from customers, under section 68 of the Act. The AO also disallowed the foreign exchange loss amounting to Rs. 7,09,79,172 on the basis that the loss has been accounted by the assessee on account of amounts as reflected by the assessee as "*advances received from customers*" in its financial statements, and the said amount has already been considered to be not in the

nature of any business advance. Therefore, the AO assessed the total income of the assessee at Rs. 272,24,09,527, under normal provisions of the Act.

7. During the appellate proceedings before the learned CIT(A), the assessee filed an application seeking admission of additional evidence under Rule 46A of the Income Tax Rules, 1962 (*"the Rules"*). Upon receipt of the aforesaid application, the learned CIT(A) sought the remand report from the AO. However, despite several reminders, the AO did not submit its remand report till the date of passing of the impugned order by the learned CIT(A). Therefore, the learned CIT(A) proceeded to decide the appeal filed by the assessee based on the material available on record. After perusal of the application of the assessee as well as the paper book containing additional evidence filed by the assessee, the learned CIT(A) held that all the evidence and explanation relied upon by the assessee ought to have been submitted before the AO in the assessment proceedings, and there was no sufficient cause which prevented the assessee from producing the evidence before the AO in the assessment proceedings. Accordingly, the learned CIT(A) did not admit the additional evidence filed by the assessee and the application made under Rule 46A of the Rules was rejected. On merits, the learned CIT(A) upheld the disallowances made by the AO. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, it is evident that the assessee despite

the grant of multiple opportunities by the AO could not furnish the details during the assessment proceedings. It is the plea of the assessee that the customers who have advanced the money to the assessee are big overseas entities, and the assessee has no control over them to enforce compliance in a short time. As per the assessee, the AO placed various queries vide order sheet dated 13/11/2017, as is evident from page no. 3 of the assessment order and the assessment order was passed on 31/12/2017. Therefore, at the fag end of the assessment proceedings, the evidences sought by the AO could not be collected and furnished by the assessee. During the hearing, the learned Authorised Representative ("*learned AR*") referred to the confirmation from the foreign parties, forming part of paper book no. 2, in respect of the money advanced by them. Accordingly, as per the assessee, its case falls under the exception provided in clause (b) and clause (c) of Rule 46A of the Rules, as it was prevented by sufficient cause from producing the evidence which was called upon by the AO and was relevant to the grounds raised in the appeal. Thus, the learned AR submitted that the learned CIT(A) erred in rejecting the application filed by the assessee seeking admission of additional evidence.

9. Having considered the submissions of both sides and perusal of the material available on record, we are of the considered view that the learned CIT(A) should have admitted the application filed by the assessee seeking admission of additional evidence and decided the grounds raised on merits after

considering such evidence, particularly when the AO despite multiple reminders failed to file any remand report in response to the additional evidence. Accordingly, we deem it appropriate to restore the issues raised in the present appeal to the file of the AO for *de novo* adjudication after consideration of additional evidence filed by the assessee. The AO is directed to conduct a thorough examination in respect of all the queries raised during the assessment proceedings as well as in respect of any other query which may arise during fresh consideration of the issues. Further, the AO is directed to examine every transaction of receipt of advance and grant of loan by the assessee. The assessee shall be at liberty to furnish any other document/evidence in support of its claim and is directed to fully cooperate during the assessment proceedings. Needless to mention no order shall be passed without affording a reasonable and adequate opportunity of being heard to the assessee. With the above directions, the impugned order is set aside, and grounds no. 2 and 3 raised in the assessee's appeal are allowed for statistical purposes.

10. In view of the aforesaid findings, ground no. 1 raised in the assessee's appeal is allowed.

11. Ground no. 4 raised in the assessee's appeal pertains to the non-grant of TDS credit. Since the other issues on merits are restored to the file of the AO for consideration afresh, we deem it appropriate to restore this issue also to the file of the AO for adjudication with a direction to grant TDS credit, as per law, after

necessary verification of the relevant details. Accordingly, ground no. 4 is allowed for statistical purposes.

12. Ground no. 5 raised in the assessee's appeal needs no separate adjudication in view of our aforesaid findings.

13. In the result, the appeal by the assessee for the assessment year 2015-16 is allowed for statistical purposes.

ITA No. 1509/Mum./2024
Assessee's appeal – A.Y.: 2016-17

14. In this appeal, the assessee has raised the following grounds: –

"1. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the addition of Rs. 133,70,99,749/- made by the learned Assessing Officer in assessment order as unexplained cash credits u/s 68 in respect of advances received by the Appellant from its overseas customers.

The addition of Rs. 133,70,99,749 /- was unwarranted and requires to be deleted in this appeal.

2. Without prejudice to the above ground, the Appellant submits that the learned Commissioner (Appeals) also erred in losing sight of the fact that a similar addition of Rs. 2,62,28,55,405/- had been sustained by him in appeal for prior year i.e. Assessment Year 2015-16 towards advances received from overseas customers and that these advances of Rs. 2,62,28,55,405/- had been returned during the current year. In these circumstances, the learned Commissioner (Appeals) ought to have, at least, allowed credit for this amount of Rs. 2,62,28,55,405/- against the addition of Rs. 1,33,70,99,749/- relating to the current assessment year on the principle that same income cannot be double taxed.

Had this credit been so allowed, there would not be any addition left to be sustained u/s 68 for the present year in appeal.

The addition of Rs. 133,70,99,749 / was thus, in any case, unjustified and deserves to be deleted in this appeal.

3. The learned Commissioner (Appeals) erred in passing his order without granting the Appellant an adequate opportunity of being heard.

The order passed by him is in contravention of the principles of natural justice and hence, bad in law."

4. The Appellant reserves the right to add, alter or delete any of the above grounds with permission of the Hon'ble Tribunal."

15. The issue arising in grounds no. 1 pertains to the addition made under section 68 of the Act in respect of advances received by the assessee from the foreign entities. Since a similar issue has already been decided in the assessee's own case for the assessment year 2015-16, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis* to the present appeal. Further, it is the plea of the assessee that certain advances were returned by the assessee to the overseas customers during the year under consideration as per the RBI guidelines, however, the credit of the same was not given against the addition made under section 68 of the Act. Since the main issue is restored to the file of the AO for *de novo* adjudication, the AO is directed to examine and verify the aforesaid submission of the assessee while deciding the issue afresh. Accordingly, with similar directions as rendered in the assessee's appeal for the assessment year 2015-16, the impugned order is set aside, and grounds no. 1 and 2 raised in the assessee's appeal are allowed for statistical purposes.

16. Ground no. 3 raised in the assessee's appeal needs no separate adjudication in view of our aforesaid findings.

17. In the result, the appeal by the assessee for the assessment year 2016-17 is allowed for statistical purposes.

ITA No. 1506/Mum./2024
Assessee's appeal – A.Y.: 2017-18

18. In this appeal, the assessee has raised the following grounds: –

"1. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the addition of Rs. 44,19,32,290/- made by the learned Assessing Officer in assessment order as unexplained cash credits u/s 68 in respect of advances received by the Appellant from its overseas customers.

The addition of Rs. 44,19,32,290/-- was unwarranted and requires to be deleted in this appeal.

2. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the addition of Rs. 28,77,31,063/- made by the learned Assessing Officer in assessment order as unexplained cash credits u/s 68 towards Sundry Creditors.

The addition of Rs. 28,77,31,063/- was unwarranted and requires to be deleted in this appeal.

3. Without prejudice to the above ground, the Appellant submits that the learned Commissioner (Appeals) also erred in losing sight of the fact that similar additions of Rs. 2,62,28,55,405/ & Rs. 1,33,70,99,749/- had been sustained by him in appeals for prior years i.e. Assessment Years 2015-16 & 2016-17 respectively towards advances received from overseas customers and that these advances had been subsequently returned. In these circumstances, the learned Commissioner (Appeals) ought to have, at least allowed, credit for these additions of prior years against the additions u/s 68 relating to the current assessment year on the principle that same income cannot be double taxed.

Had this credit been so allowed, there would not be any addition left to be sustained u/s 68 for the present year in appeal.

The additions u/s 68 of Rs. 44,19,32,290 (advances from overseas customers) and Rs, 28,77,31,063 (sundry creditors) respectively were thus, in any case, unjustified and deserve to be deleted in this appeal.

4. The learned Commissioner (Appeals) erred in passing his order without granting the Appellant an adequate opportunity of being heard.

The order passed by him is in contravention of the principles of natural justice and hence, bad in law.

5. The Appellant reserves the right to add, alter or delete any of the above grounds with permission of the Hon'ble Tribunal."

19. The issue arising in grounds no. 1 pertains to the addition made under section 68 of the Act in respect of advances received by the assessee from the foreign entities. Since a similar issue has already been decided in the assessee's own case for the assessment year 2015-16, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis* to the present appeal. Further, it is the plea of the assessee that certain advances were returned by the assessee to the overseas customers during the year under consideration as per the RBI guidelines, however, the credit of the same was not given against the addition made under section 68 of the Act. Since the main issue is restored to the file of the AO for *de novo* adjudication, the AO is directed to examine and verify the aforesaid submission of the assessee while deciding the issue afresh. Accordingly, with similar directions as rendered in the assessee's appeal for the assessment year 2015-16, the impugned order is set aside, and grounds no. 1 and 3 raised in the assessee's appeal are allowed for statistical purposes.

20. The issue arising in ground no. 2, raised in the assessee's appeal, pertains to the addition on account of sundry creditors for goods and services.

21. We have considered the submissions of both sides and perused the material available on record. During the assessment proceedings, from Note no. 7 of the balance sheet, it was observed that the assessee has shown sundry creditors for goods and services of Rs. 29,04,47,726. Accordingly, the assessee was issued

notice to make its submission. However, despite several opportunities being granted to the assessee, neither any details were furnished nor any response was filed on the portal. Accordingly in the absence of the details, the AO concluded that the identity, genuineness and creditworthiness of the creditors cannot be established, and therefore, made an addition amounting to Rs. 28,77,31,063 on account of sundry creditors for goods and services. The learned CIT(A), vide impugned order, upheld the addition made by the AO. During the hearing, the learned AR undertook that if this issue is also restored to the file of the AO for consideration afresh, the assessee will file all the necessary details in support of its claim. Accordingly, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication, with a direction to the assessee to file all the details/evidence pertaining to sundry creditors for goods and services. Needless to mention no order shall be passed without affording a reasonable and adequate opportunity of being heard to the assessee. Further, the assessee is directed to fully cooperate during the assessment proceedings. With the above directions, the impugned order on this issue is set aside, and ground no.2 raised in the assessee's appeal is allowed for statistical purposes

22. Ground no. 4 raised in the assessee's appeal needs no separate adjudication in view of our aforesaid findings.

23. In the result, the appeal by the assessee for the assessment year 2017-18 is allowed for statistical purposes.

ITA No. 1505/Mum./2024
Assessee's appeal – A.Y.: 2018-19

24. In this appeal, the assessee has raised the following grounds: –

"1. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the addition of Rs. 13,96,69,065/- made by the learned Assessing Officer in assessment order as unexplained cash credits u/s 68 in respect of advances received by the Appellant from its overseas customers.

The addition of Rs. 13,96,69,065/- was unwarranted and requires to be deleted in this appeal.

2. On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in sustaining the addition of Rs. 36,89,79,249/- made by the learned Assessing Officer in assessment order as unexplained cash credits u/s 68 towards Sundry Creditors.

The addition of Rs. 36,89,79,249/-- was unwarranted and requires to be deleted in this appeal.

3. Without prejudice to the above ground, the Appellant submits that the learned Commissioner (Appeals) also erred in losing sight of the fact that similar additions of Rs. 2,62,28,55,405/, Rs. 1,33,70,99,749/- & Rs. 72,96,63,353/- had been sustained by him in appeals for prior years i.e. Assessment Years 2015-16, 2016-17 & 2017-18 respectively towards advances received from overseas customers & sundry creditors and that these had been subsequently returned. In these circumstances, the learned Commissioner (Appeals) ought to have, at least allowed, credit for these additions of prior years against the additions u/s 68 relating to the current assessment year on the principle that same income cannot be double taxed.

Had this credit been so allowed, there would not be any addition left to be sustained u/s 68 for the present year in appeal.

The additions u/s 68 of Rs. 13,96,69,065/- (advances from overseas customers) and Rs, 36,89,79,249/- (sundry creditors) respectively were unjustified and deserve to be deleted in this appeal. thus, in any case,

4. The learned Commissioner (Appeals) erred in passing his order without granting the Appellant an adequate opportunity of being heard.

The order passed by him is in contravention of the principles of natural justice and hence, bad in law.

5. The Appellant reserves the right to add, alter or delete any of the above grounds with permission of the Hon'ble Tribunal.

25. Since similar issues have already been decided in the assessee's appeal for the assessment year 2017-18, therefore our findings/conclusions rendered therein shall apply mutatis mutandis to the present appeal. Accordingly, with similar directions, the impugned order is set aside, and grounds no.1-3 are allowed for statistical purposes.

26. Ground no. 4 raised in the assessee's appeal needs no separate adjudication in view of our aforesaid findings.

27. In the result, the appeal by the assessee for the assessment year 2018-19 is allowed for statistical purposes.

28. To sum up, all the appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 19/08/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

MUMBAI, DATED: 19/08/2024

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Shubham P. Lohar

By Order

Assistant Registrar
ITAT, Mumbai