

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

**BEFORE SHRI NARENDRA KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.892/M/2024
Assessment Year: 2016-17**

M/s. KLT Automotive and Tabular Products Limited B-601, Elegant Business Park, Mumbai- 400059. PAN: AAAC T3895R	Vs.	The Deputy Commissioner of Income Tax- Central Circle- 6(4) Air India Building, Nariman Point, Mumbai- 400021.
(Appellant)		(Respondent)

Present for :

Assessee by : ShriAbhishek Khandelwal, A.R.

Revenue by : Shri P. D. Chougule (Addl. CIT) SR. D.R.

Date of Hearing : 05 . 08 . 2024

Date of Pronouncement : 28 . 08 . 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/APL/S/250/2023-24/1059544070(1) Dated 10/01/2024 for the Assessment Year 2016-17.

2. Following grounds of appeal have been raised by the appellant:

1. *“On the facts and circumstances of the case and present law, the Ld. CIT(A) has erred in restricting the addition u/s.69C of the Act to 1% of the alleged non-genuine sales amounting to Rs.6,33,64,813/- made to M/s. Blue Sea Commodities Pvt. Ltd.*
2. *On the facts and circumstances of the case and present law, the Ld. CIT(A) has erred in restricting the addition u/s.69C of the Act to 1% of the alleged non-genuine sales amounting to Rs.37,91,66,766/- made to M/s. Pankaj Metal Centre Pvt. Ltd.*
3. *The Ld. CIT(A) has erred making in aforesaid additions without appreciating that no such commission was paid by the appellant and the same has been added by the Ld. AO on surmises and conjecture.*
4. *On the facts and circumstances of the case and present law, the Ld CIT(A) has erred in not allowing the loss claimed on the sale of investment amounting to Rs.1,21,66,005/- by treating the same as Long Term Capital Loss, without considering the facts and circumstances of the case and position of law.*
5. *The appellant craves leave to add, amend, alter or delete the said ground(s) of the appeal.”*

3. The facts of the case, in brief, are that the assessee filed its return of income on 30/11/2016 by claiming a net loss of Rs.4,84,51,023/- out of which a sum of Rs.4,84,50,750/- was allowed u/s. 143(3) of the Act vide order dated 24/12/2018. Further, it has been stated in the assessment order that the AO received information from the DDIT (Inv.), Unit- 5(1), Mumbai that a survey action u/s. 133A of the Act was conducted in the



case of the assessee on 21/01/2021. During the course of survey operations, the statement of Shri Jubin Kishore Thakkar, Director of the assessee company was recorded on oath u/s. 131 of the Act in which he admitted to have entered into bogus purchases and sales amounting to Rs.6,30,68,175/- and Rs.6,33,64,813/- respectively without any actual movement of goods. The case of the assessee was, therefore, reopened u/s. 147 of the Act for the assessment year under consideration after recording the reasons on 30/03/2021 and getting statutory approval u/s. 151(1) of the Act from the Principal Commissioner of Income Tax (Central)- 3, Mumbai through ITBA system on 31/03/2021. Thereafter, notice u/s. 148 of the act was issued on 31/03/2021 and was served upon the assessee. In response to that, the assessee e-filed its return of income on 06/08/2021 declaring again a net loss of Rs.4,84,51,298/-. The assessee, after going through the reasons recorded by the AO for reopening of the assessment, raised certain objections which were disposed of by the Ld. AO vide its order dated 14/01/2022. Thereafter, statutory notices u/s. 143(2) and 142(1) of the Act were issued from time to time. Through the show cause notice issued u/s 142 (1) of the Act, the assessee was asked to explain the following points: -

- (i) Why commission income of 3% on the entire sales of Rs.6,33,64,813/- should not be taxed in the hands of the assessee company?
- (ii) Why the difference between bogus sales and purchases i.e. Rs.2,96,098/-, should not be treated as unexplained cash credit u/s 68 of the Act?
- (iii) Why loss incurred on sale of investments made in the foreign subsidiary be treated as capital loss and not business loss as claimed by you?
- (iv) Why the sales made to Pankaj Metal Centre Private Limited, amounting to Rs.35,35,66,704/- should not be treated as accommodation entry.

4. Not satisfied with the explanations offered by the assessee, the AO made the following additions: -

- (i) Unexplained commission expenses u/s. 69C on non-genuine transactions of sales and purchases - Rs.19,00,944/-
- (ii) Unexplained commission expenses u/s. 69C on non-genuine transactions of sales and purchases - Rs.1,13,75,002/-
- (iii) Disallowance of loss on sale of investment - Rs.1,21,66,005/-.



The above additions were made by the Ld. AO on the ground that the director of the company has already admitted during the course of survey proceedings that the entire sales and purchases are bogus.

5. Aggrieved by the order of the Ld. AO, the assessee filed appeal before the Ld. CIT(A), who vide the impugned order restricted the addition to 1% as against 3% made by the Ld. AO by following the order of the coordinate bench of ITAT (Mumbai) in the case of

- (i) Goldstar Finvest Pvt. Ltd., Mumbai vs. DCIT [ITA No. 74/Mum/2015],
- (ii) Spanco Ltd. vs. Department of Income Tax [ITA No. 1128/Mum/2012],
- (iii) ITO 10(2)(4), Mumbai vs. Moonlight Electrical [ITA No. 7344/Mum/2016]

Where the Hon'ble ITAT have adopted a profit rate ranging from 0.15% of sales to 2% of the sales estimating the expenses incurred in cases of accommodation entries.

6. Regarding the disallowance of loss claimed on sales of investments amounting to Rs.21,66,005/- made in its foreign subsidiary, the Ld. AO treated this as a long-term capital loss as against the business loss claimed by the assessee. The Ld. CIT(A) confirmed the disallowance made by the

Ld. AO on the ground that the assessee couldn't explain the nature of investment.

7. Aggrieved by the order of the Ld. CIT (A) the present appeal has been filed before us. It was submitted by the appellant that even if the sales and purchases are treated as bogus, a reasonable profit can only be added and considering the low profit margin earned in the trading carried out by the assessee, the minimum profit should be added. We have considered the appellant submission and also the profit margin adopted by the Ld. CIT (A) on the basis of various decisions of the Hon'ble ITAT (supra). Respectfully following the decisions of the coordinate benches of Hon'ble ITAT, we uphold the profit rate of 1% of the sales adopted by the Ld. CIT (A).
8. On the issue of disallowance of claim of loss on the sale of investment amounting to Rs.1,21,66,005/-, the AO did not allow the same by holding that wholly owned subsidiary was reflecting as "investment" in the financials of the assessee and so the profit/loss arising out of the sale of the same ought to be considered as capital gains/Loss. The Ld. CIT (A) confirmed the order of the AO on the ground "*that the assessee has not submitted any documentary evidence to show the nature of such investment. No agreement in respect of the assessment made nor any agreement in respect of the sale of the so called investment has been*



submitted which could prove the nature of the investment made. Thus, the case laws relied upon by the assessee cannot be applied to the present case in the absence of any factual details submitted by the assessee.”

9. We have considered this ground and remand this issue to the file of Ld. CIT (A) to decide the issue afresh after affording the appellant the opportunity of being heard. The appellant is also directed to submit all relevant details and evidences before him so that the Ld. CIT (A) can take a rational view.

10. In the result, the appeal is partly allowed.

Order pronounced in the open court on 28.08.2024.

Sd/-
NARENDRA KUMAR CHOUDHRY
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 28.08.2024.

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.