

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C”, MUMBAI
BEFORE SHRI. NARENDRA KUMAR BILLAIYA, ACCOUNTANT
MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

ITA NO. 536/MUM/2024 (A.Y.: 2013-14)

DCIT – 17(1)

Room No. 117, 1st Floor, G-Block,
Kautilya Bhavan, Bandra Kurla
Complex, Mumbai – 400051.

(Appellant)

Vs. Parth Constructions

24, Sholapur Street, Dana
Bundar, Mumbai – 400009.

PAN: AAKFP1122A

(Respondent)

C.O. NO. 104/MUM/2024

(Arising out of ITA No. 536/MUM/2024)

(A.Y.: 2013-14)

Parth Constructions

24, Sholapur Street, Dana Bundar,
Mumbai – 400009.

PAN: AAKFP1122A

(Appellant)

Vs. DCIT – 17(1)

Room No. 117, 1st Floor, G-
Block, Kautilya Bhavan,
Bandra Kurla Complex,
Mumbai – 400051.

(Respondent)

Assessee Represented by

: Shri. Rajesh Shah

Department Represented by

: Shri. Krishna Kumar (Sr. DR.)

Date of conclusion of Hearing

: 07.10.2024

Date of Pronouncement

: 08.10.2024



ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. By this order we proposed to decide ITA No. 536/Mum/2024 filed by the Deputy Commissioner of Income Tax against the order dated 11.12.2023 alongwith C.O. No. 104/Mum/2024 filed by the assessee in the said appeal for the A.Y. 2013-14.

2. The department has raised following grounds of appeal:
 1. *“Whether, on the facts and in circumstance of the case and in law, orders of the Ld. CIT(A) erred in deleting the addition of Rs. 1,62,00,000/- made u/s 68 of the Act, relying only on the documentary evidence produced by the assessee while ignoring the key factor that these entities were not traceable at their given addresses and it is well established that the modus operandi of obtaining accommodation entries of unsecured loan had to be considered in the light of surrounding circumstances.*

 2. *Whether, on the facts and in circumstance of the case and in law, orders of the Ld. CIT(A) erred in not appreciating the observations made by the Delhi high Court in Nova promoters and Finlease Pvt. Ltd. 18 Taxmann.com 217 wherein the court has observed that cases of this type cannot be decided only on the basis of documentary evidences and that there is need to take into account the surrounding circumstances?”*

3. The assessee has taken grounds of cross objection in C.O. No. 104/Mum/2024 as under:
 1. *“On facts and circumstances of the case and in law, the learned CIT(A) erred in not adjudicating the following ground:*



- a) *On facts and circumstances of the case and in law, the assessing officer erred in not setting off the loss against the loss to be assessed as per the return filed during the year.*
- b) *The appellant submits that CBDT vide Circular No. 11/2019 dated 19/06/2019 has clearly stated in the said circular that up to assessment year 2016-17 the loss is allowed to be set off. The assessing officer erred in not considering the said set off against the loss of the year.”*

4. During the arguments, the Ld. DR very fairly submitted that the department appeal has become infructuous by virtue of circular no. 9/2024 dated 17.09.2024, wherein the monetary limit for tax effect for filing appeal before Income Tax Appellate Tribunal has been raised upto Rs. 60 lacs. It is submitted that the tax effect in this appeal is below 60 lacs and as such the appeal has become infructuous and same may be disposed off accordingly.

5. We have also heard the Ld. AR on behalf of the assessee with respect to the cross objection, who has supported the submissions of the Ld. DR, and stated that since the appeal is not maintainable and has become infructuous and as such this cross objection may be deemed to be withdrawn.

6. We have considered the submissions and examined the record. In view of the enhancement of the monetary limit for filing the departmental appeal



wherein the tax effect for filing the appeal should be Rs. 60 Lacs or above and the tax effect is this appeal has been shown to be Rs. 50,05,800/-; in view of these facts and the submissions made by the Ld. DR, the appeal filed by the department is accordingly dismissed having become infructuous.

7. In view of the appeal having been dismissed, the cross objection also in view of the submissions made on behalf of the assessee by the Ld. AR are ordered to be dismissed as withdrawn.
8. In the result, appeal filed by the department is accordingly dismissed having become infructuous and the cross objection filed by the assessee are also dismissed as withdrawn
9. The appeal filed by the revenue and cross objection filed by the assessee are dismissed in the above terms.
10. Copy of the order be placed in C.O. No. 104/Mum/2024.

Order pronounced in the open court on 08.10.2024

**Sd/-
(NARENDRA KUMAR BILLAIYA)
(ACCOUNTANT MEMBER)**

**Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)**



**ITA No. 536/Mum/2024 &
C.O. No. 104/Mum/2024
Parth Construction; A.Y. 2013-14**

Mumbai / Dated 08.10.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai