

IN THE INCOME TAX APPELLATE TRIBUNAL

"H - SMC" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA Nos. 3647 & 3648/MUM/2024

(Assessment Years :2015-16 & 2018-19)

Abans Realty and Infrastructure Pvt Ltd,

36, 37, 38A Nariman Bhavan,
Backbay Reclamation, Nariman Point,
Mumbai, Maharashtra- 400021.
PAN: AAKCA1843Q

..... Appellant

v/s

ACIT, Central Circle – 4(3),

19th Floor, Air India Bldg,
Ramesh Pradhan Road,
Mumbai, Maharashtra - 400021

..... Respondent

Assessee by :Shri Suyog Bhave

Revenue by : Shri PushkrajBhange Patil, Sr.DR

Date of Hearing – 18/10/2024

Date of Order - 22/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 21/05/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-52, Mumbai [*learned CIT(A)*], for the assessment years 2015-16 and 2018-19.

2. Since both the appeals pertain to the same assessee arising out of a similar factual matrix, therefore these appeals were heard together and are being decided by way of this consolidated order.

ITA No. 3647/Mum./2024
Assessee's Appeal – A.Y. 2015-16

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

"1(a). On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income tax (Appeals) 52, Mumbai [the Learned CIT(A)] has erred in upholding the initiation of reassessment and issue of notice u/s 148 of the income Tax Act, instead of quashing the same.

1(b). The Learned CIT (A) failed to address specific facts brought to his notice showing that the report of the investigation wing forming the basis for reopening of assessment was contrary to the facts in our case such as:

a. Assessment order u/s 143(3) was passed earlier on 22/12/2017 wherein all the details were available on record and no addition in relation to alleged business loss or alleged commission was made. There is no new tangible material.

b. SEBI interim order dated 20.08.2015 referred in the Assessment order was in regards to illiquid stock options only. However our case relates to currency derivatives. Even that SEBI interim order was subsequently vacated.

c. The exchange involved in the case of Aryav Securities Pvt Ltd was BSE, however in our case the alleged trading is related to United Stock Exchange.

d. In para 6.9 of the Order u/s 250 the Learned CIT(A) state that "The assessee has also not produced any evidence to show that this transaction was adequately disclosed and explained earlier" where infact the assessee has provided details alongwith documentary evidences of Profit/Loss in Commodities and derivative contracts in a reply dated 27/01/2022 against Notice dated 20/01/2022.

e. Project falcon refers to trading on BSE whereas our trading is on United Stock Exchange.

2. The Learned CIT(A) failed to consider the specific submission and explanation filed by the appellant;

a. In para 9.1 Learned CIT(A) stated that "the appellant has not been able to adequately explain the reason for huge difference in traded price of stock options to the deficiencies pointed out by the AO" but in the submission made to CIT(A) dated 18/04/2023 the

appellant has clearly explained on Pg No. 15 the reasons with an example. b. The assessing officer has selectively picked up transactions in which profit was incurred out of several derivative transaction carried out during the year.

c. The assessing officer has not appreciated that on exchange based trading counter party is not known nor has he conducted any inquiry relating to any counter party.

d. In Para 7.1.1 (d) of the order u/s 250, Learned CIT(A) stated that "it is seen that by trading in each of the 10 contracts enumerated in the table above, the assessee has overall profit

of Rs.2,30,63,250/- in the above contracts which becomes non-genuine gain for other counter parties in the form of accommodation entries" without application of mind.

e. Further the Learned CIT(A) has also ignored to address the judgement cited passed by the ITAT Delhi Bench 'D' in the case of 'Kundan Rice Mills Ltd v. ACIT which related to illiquid options. As per the judgement since both the orders of the SEBI relied upon by the Assessing Officer have been vacated by the SEBI vide order dated 05/04/2018, there was no material available with the authorities to conclude that assessee has entered into any dubious or other transactions deliberately to show business loss.

3. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in sustaining the addition of Rs 1,46,172/- under section 69C of the Act of deeming 0.25% of the buy and sell trades aggregating to Rs 5,84,69,150/- as cash commission instead of deleting the same.

a. The Learned CIT(A) completely ignored the fact that there was an action u/s 133A in the office premises of our group companies including Abans Securities Pvt Ltd on 03/12/2019 and no evidence relating to any manipulation of these alleged trades or unaccounted cash commission payment, etc were found during the course of such actions.

b. The Learned CIT(A) has erroneously relied upon the case of 'Vijay Kumar Kheria vs ACIT', facts of which the case are entirely different from the Appellants case. In case of 'Vijay Kumar Kheria vs ACIT', the assessee himself has agreed that he was receiving commission for providing bogus entries, where in our case fact that no evidence was found related to alleged receipt of commission even during the action u/s 133A.

c. The Learned CIT(A) has erroneously relied on the case of 'CIT v. Alag Securities Pvt Ltd', Facts of which are entirely different in as much as in that case evidence of change of commission was found but no such evidence was found related to any alleged payment of commission during the survey action u/s 133A or otherwise in our case.

4. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in levying interest of under section 234B, 234C and 234D of the Act in the case of the Appellant;

5. *The Appellant craves leave to add, to alter or to amend any of the grounds of appeal mentioned herein above.*"

4. On merits, the only grievance of the assessee is against the addition on account of the notional commission expenses.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of purchase and sale of immovable properties, renting of immovable properties and trading in derivatives and securities. The assessee is a part of Abans Group. For the year under consideration, the assessee filed its return of income on 25/09/2015 declaring a total income of INR 11,08,840. The return filed by the assessee was selected for scrutiny and vide order dated 30/11/2011 the total income of the assessee was assessed at the returned income. Subsequently, information was received under "*Project Falcon*" from the DGIT (Investigation), Mumbai regarding coordinated and premeditated trading on the Bombay Stock Exchange by engaging in reversal trades in illiquid stock options resulting in non-genuine business profit/gains to the beneficiary. As per the information, the assessee is the party of such manipulation and has purchased stock options for an aggregate premium value amounting to INR 1,77,02,950 and sold the same for an aggregate premium value of 4,07,66,200, resulting in a profit of INR 2,30,63,250. Thus, it was alleged that the assessee has benefited from engaging in reversal trades in illiquid stock options on the stock exchange resulting in non-genuine profit amounting to INR 2,30,63,250, which has been set off against other income. Accordingly, on the basis of aforesaid information

notice under section 148 of the Act was issued on 31/03/2021 on the assessee. In response to the aforementioned notice, the assessee filed its return of income on 23/04/2021 declaring a total income of INR 11,08,840. During the reassessment proceedings, it was observed that the assessee has undertaken trades through its broker M/s Abans Securities Ltd. After observing the following, the Assessing Officer ("AO") vide order dated 11/03/2022 passed under section 147 of the Act concluded that the trade of the assessee in reversal trades in illiquid stock options has resulted in non-genuine profit amounting to INR 2,30,63,250 by depleted trading stock options on the stock exchange and this cannot be part of the regular business activity of the assessee in trading/derivatives in shares/securities commodities/currency: -

"The assessee has traded in 10 unique contracts and has undertaken both sell as well as buy trades in each of the contracts. It is relevant to note that the buy quantity and sell quantity for each of the 10 contracts in which trades have been undertaken by assessee is identical.

Also, it is to be noted that each of the trades have been squared within the same day and also there is large difference between that the buy rate and sell rate. Further, upon data analysis, it may be noted that the time-gap in buy and sell trade ranges in minutes and seconds only.

Also, it is seen that by trading in each of the 10 contracts enumerated in the table above, the assessee has consistently recorded profits for each contract.

Also, it is seen that by trading in each of the 10 contracts enumerated in the table above, the assessee has overall profit of Rs.2,30,63,250/- in the above

contracts which becomes non-genuine gain for other counter parties in the form of accommodation entries.

Further, upon data analysis, it is seen that identical quantities of contracts are traded with the same counterparty for both the buy trade and sell trade. Also, it is to be noted that each of the trades have been squared within the same day and also there is large difference between that the buy rate and sell rate."

6. Further, the AO concluded that in such kind of accommodation entries, generally an unaccounted commission amounting to 2% on the buy and sell turnover is usually paid by the clients in cash, for availing non-genuine profit. Thus, after perusal of the material available under Project Falcon and the ITBA, and from the perusal of the statement of Shri Arun Shah, Director of one of the share broking firms, M/s Aryav Arthur Securities Ltd., the AO computed the commission expenses of INR 11,69,323 @2% for availing non-genuine profit of INR 2,30,63,250 from trading in illiquid stock options and providing of non-genuine profit and added the same to the total income of the assessee under section 69C of the Act.

7. The learned CIT(A), vide impugned order, partly allowed and restricted the addition on account of commission expenses @0.25% as compared to 2% adopted by the AO and restricted the addition to INR 1,46,172. 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. We find that the coordinate bench of the Tribunal in a batch of cases pertaining to the assessee's sister concern in Abans Commodities (I) Pvt. Ltd. v/s ACIT, in ITA No. 3315/Mum./2024, etc., vide order dated 30/09/2024, while deciding a similar issue deleted the addition on account of non-genuine profit/loss in illiquid options and consequently also deleted the notional addition of commission under section 69C of the Act. The relevant findings of the coordinate bench are reproduced as follows: –

"13. We have heard both the parties at length and also perused various materials referred to before us and the relevant finding given in the impugned orders. From the perusal of the assessment order, it is seen that Id. AO has solely relied upon the report of Investigation Wing known as 'project falcon'. He has not carried out any independent enquiry or any investigation, whether the assessee had entered into any such transaction and has ignored all the evidence placed before the AO in support of all the trade transactions. One very important fact which has been brought on record by the Id. Counsel for the assessee that assessee had done many trades during the year in currency derivatives and commodity derivatives, out of which only couple of trades have been selected by the Id. AO holding it to be non-genuine only because in such trades assessee has incurred loss and under same trade where assessee has shown profit has been accepted. As submitted by the Id. Counsel, assessee is engaged in screen based electronic trading wherein it is not possible to choose or even know the counter party involved in any trade and the identities of the counter parties are not displayed on the screen at the time of the trading. Unlike in the case of stock market that the SEBI has circuit breakers limits (10%, 15% and 20%), however, no such limits are there in derivative markets and therefore, derivative markets are more volatile than the traditional stock market. Further, assessee had produced all the relevant information in respect of all the trades carried out in the united stock exchange to prove the genuineness of the transaction, however, Id. AO has even failed to take note of such contract notes. Further, assessee had submitted that since the trade was executed through sister concern M/s. Abans Securities Pvt. Ltd., there was no question of paying the commission to its own entity. Further, Id. Counsel submitted that there was an action u/s.133A in the office premises of group companies on 03/09/2019. However, in the comprehensive survey action not a single evidence relating to any manipulation of his alleged trades or unaccounted cash commission, the payments were found in the course of such actions.

14. On the other hand, Id. DR strongly relied upon the order of the Id. AO submitted that there was a specific report that they were manipulating reversal trading by the parties to book fictitious and non-genuine losses and few of the trades of the assessee were also highlighted by the AO and accordingly, the order of the Id. AO should be sustained.

15. From the perusal of the assessment order it is seen that, the entire basis of the Id. AO is based on 'Project Falcon' report passed on by the Investigation wing which admittedly pertains to stock option trading carried out on the Bombay Stock Exchange, which has no connection with the assessee as assessee trading was in currency options in United Stock Exchange and it has carried out various opportunities in which assessee had shown profit. All those trades in which assessee disclosed profit has not been disturbed or adversely viewed except for few transactions of losses. For instance in A.Y.2014-15 there were 11 trades in United Exchange segment, some in futures and some in options, out of which only two trades of currency options have been alleged by the Id. AO. Similarly, in A.Y.2015-16, the alleged trades in question which were executed in April 2014. The assessee had declared trading profit of Rs.6,72,64,310/- in A.Y.2014-15 and the alleged non-genuine loss which has been picked up by the Id. AO is only Rs.7,20,400/-. Similarly, in A.Y.2015-16 assessee had declared trading profit of Rs.2,50,52,106/- and alleged non-genuine trading loss is of Rs.12,47,500/-. Over and above assessee had declared total income of Rs. 1,61,99,415/ in A.Y.2014-15 and Rs.1,84,72,074/-

in A.Y.2015-16. Thus, on these facts it cannot be inferred that assessee was engaged in booking of loss through dubious devise only for two transactions when all the transactions were done in same manner in currency options have been held to be genuine. Ld. AO should have at least analysed all the transactions and how come only two transactions are fictitious and rest all the other transactions conducted in which assessee had declared profit from the same stock exchange conducted in the same manner are genuine and only two transactions in which assessee had incurred minor loss are non-genuine. This shows that AO has just misinterpreted the Report to apply in assessee's case without independent analyzing the transactions. At least Id. AO should have conducted some enquiry qua these transactions on which assessee had claimed loss instead of blindly relying upon the Project Falcon' report which has nothing to do with trades in USE. Once the transactions are based on screen based electronic trading and the identities of the buyers and sellers are not displayed, then to presume that the transactions have been manipulated are non-genuine cannot be upheld. Thus, prima facie, there is no material that trade transactions in which assessee had incurred losses (that is, in two transactions) is non-genuine especially when assessee had declared huge profit and income from such trade in similar transactions, which has not been doubted. There has to be basis and inquiry to arrive to any conclusion that out of many transactions, few were manipulated to show fictitious loss and were non-genuine. Accordingly, the additions on account of non-genuine loss and illiquid options are deleted.

16. Now coming to the notional addition of commission u/s.69C for non-genuine losses, it is seen that same is based on statement of Shri Arun Shah of M/s. Aryav Securities allegedly recorded in the course of 'Project Falcom'. However, nowhere in such statement there is any reference of the trade carried out by the assessee or involvement of the assessee. Further, if such statement was to be relied, then law provides that same should have been confronted with the assessee to rebut or cross examine. Ultimately, the addition has been sustained by applying adhoc commission rate of 2% which has been scaled down to 0.25% by the Id. CIT(A) that assessee might have incurred such expenditure in cash. There is no evidence brought on record that assessee had actually paid such expenses outside the books and the entire addition is based on conjecture. In any case we have already held that the transactions in which assessee has incurred loss are genuine, therefore, there is no question of imputing any kind of adhoc commission. Accordingly, addition of Rs.4,718/- in A.Y.2014-15 and addition of Rs.4,881/- in A.Y.2015-16 is deleted.

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27. In the appeal for A.Y.2014-15 the only issue is commission of non-genuine trades in liquid options of Rs.10,950/-. Since the facts are similar in the case of Abans Commodities (I) Pvt. Ltd., therefore, in the above finding given therein, the addition of Rs.10,950/- is deleted."

9. In the absence of any contradictory material on facts and law being brought on record since the issue arising in the present appeal is similar to the issue already considered by the coordinate bench of the Tribunal in

a similar factual matrix in the case cited supra, therefore respectfully following the same, the addition on account of commission expenses under section 69C of the Act is deleted.

10. In this appeal, the assessee has also raised the grounds challenging the validity of reassessment proceedings under section 147 of the Act. Since we have deleted the addition made on merits, therefore, the legal issues raised before us have been rendered academic and are kept open.

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

ITA No. 3648/Mum./2024
Assessee's Appeal- A.Y. 2018-19

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

"1. On the facts and circumstances of the case, the Learned Commissioner of Income tax (Appeals)

- 52, Mumbai [the Learned CIT (A)] erred in upholding the reopening of the Assessment under section 147 of the Income Tax Act 1961 (the Act) instead of quashing the same;

2. On the facts and in the circumstances of the case and in law, the Learned CIT (A) has erred in upholding the initiation of reassessment proceedings under section 148 by passing an order under section 148A (d) instead of quashing the same.

a. The Original assessment order dated 15.09.2021 was after the survey action, the report of which formed the basis for reopening.

b. The notice u/s 148A (b) did not enclose the material to support the allegations and reporting was done with a prejudicial mind

3. On the facts and in the circumstances of the case, the Learned CIT (A) erred in upholding the decision of treating purchases of Rs. 37,69,79,890/- from identified parties as non-genuine and sustaining an addition of Rs. 9,42,450 /- on account of deemed profit @ 0.25% on purchases made by the Appellant from the said certain identified parties during the financial year 2017-18 without making any verification and merely relying on information received from DDIT(Inv.)- Unit 6(3), Mumbai instead of quashing the same.

4. The Learned CIT(A) failed to consider the specific submission and explanation filed by the appellant;

a. The appellate was never provided with documents or information based on which the Learned AO has framed his judgement. In fact the statements provided and mentioned by the Learned AO in Order u/s 148A(d) dated 27.03.2022 were statements taken during the survey proceedings u/s 133A.

b. The Learned AO has not mentioned any section of the Act under which the addition is made.

c. The AO did not carry out any investigation and merely relied upon the conclusions of the

investigation officer during and post survey u/s 133A, which fell during the Covid pandemic; d. No evidence was found for any commission paid during the extensive survey and past survey investigations and despite no evidence on record, addition of unaccounted estimated commission was made purely on the basis of conjecture.

e. The Learned CIT(A) has erroneously relied upon the case of 'PCIT v/s JMJ Essentials Oil Company', Facts of which are entirely different from the appellants case. In case of PCIT v/s JMJ Essentials Oil Company the facts are related to cash sales and the appellant case is related to purchases which is done through electronic mode where that no evidence was found related to alleged non genuine Cash purchases during the action u/s 133A.

f. The Learned CIT(A) has erroneously relied upon the case of 'CIT vs Sri Kamlekar Shankar Lal of which are entirely different from the appellants case. In case of CIT vs Sri Kamlekar Shankar Lal the estimated rate of profits is on Turnover whereas appellant case the estimated rate of addition made is on alleged non-genuine purchases that to on selected entities.

8. The Learned CIT(A) has erroneously relied upon the case of 'Chhagan Chandrakant Bhujbal vs ITO', facts of which are entirely different from the Appellants case. In case of 'Chhagan Chandrakant Bhujbal vs ITO' assessee opposed the reopening at the very end when show cause notice was issued, the decision of the High Court was mainly based upon this fact. In appellant's case this point was raised in the objection to reasons for reopening.

h. The Learned CIT (A) failed to address that additions are made only on alleged non genuine purchase and sales of the appellant are not considered bogus.

5. The Learned CIT(A) failed to consider the specific facts of each alleged non-genuine entities:

A) Manmish Traders Pvt Ltd.

a. The name of the directors and shareholders mentioned in para 7.3.3 and para 7.3.4 were not the directors or shareholders of the company in AY 2018-19.

b. The Learned CIT (A) has ignored the fact that the actual director of the company Mr. Hardik Gandhi did attend the summon. This fact is not commented upon by investigation wing in their report as appears from the extracts incorporated in the assessment order.

6. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in upholding the decision of the Learned AO to merely speculate that 0.25% commission has been paid without any evidence in support, search and survey action did not unearth any such evidence of any such payment;

7. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in levying interest of under section 234B and 234C of the Act in the case of the Appellant;

8. The Appellant craves leave to add, to alter or to amend any of the grounds of appeal mentioned herein above."

13. On merits, the only grievance of the assessee is against the addition on account of non-genuine purchases.

14. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration the assessee filed its return of income on 31/10/2018 declaring a total income of INR 20,90,580. The return filed by the assessee was selected for scrutiny and vide order dated 15/09/2021 the total income of the assessee was assessed at the return income. Subsequently, information was received from the DDIT (Investigation)-Unit 6 (3), Mumbai that M/s Asterpetal Trade and Services Private Limited and M/s Manmish Traders Private Limited were not carrying out any genuine business activities and were engaged in providing entries to various beneficiaries. As per the information, the assessee is one of the beneficiaries of such accommodation entry. Accordingly, based on aforesaid information, notice under section 148 of the Act was issued to the assessee on 31/03/2022. In response, the assessee filed its return of income on

26/04/2022 declaring a total income of INR 20,90,580. On 03/12/2019, a survey under section 133A of the Act was also conducted on the Abans Group, wherein it was found that there are certain entities from whom purchases have been made by the assessee and these entities were found to be non-genuine parties. The details of the purchases made by the assessee from these entities for the year under consideration are as follows: –

<i>Name of Entity</i>	<i>Amounts</i>
<i>Asterpetal Trade & Service Pvt Ltd</i>	<i>18,84,70,940</i>
<i>Manmish Traders Pvt Ltd</i>	<i>18,85,08,950</i>
<i>Total</i>	<i>37,69,79,890</i>

15. During the reassessment proceedings, it was found that M/s Asterpetal Trade and Services Private Limited does not have any sufficient source of funds to support such a huge turnover with a very low percentage of profit. Further, the shareholders of this company holding 50% of its shares are persons of little means and their financial position does not support the acquisition of this company. It was also noticed that all the activities like filing of ITR and even the handling of emails are being done from the premises of Abans Group of companies. Accordingly, this company was found to be not carrying out any genuine business activity. Similar, facts were noted in the case of M/s Manmish Traders Private Limited. Since the assessee was found to be one of the beneficiaries, which has received non-genuine purchase entries in its books of accounts during the year to the extent of INR 37,69,79,890 and the assessee failed to prove the genuineness of the purchase transaction with the above-mentioned entities, the AO vide order dated 09/02/2023 passed under section 147 of the Act made a disallowance @0.25% of the total purchase amount, which works

out to INR 9,42,450 (0.25% of INR 37,69,79,890) and added the same to the total income of the assessee. The relevant findings of the AO, in this regard, are as follows: –

"In view of the above and taking into account the submissions made by the assessee that goods purchased from these entities have been further sold by the, the only fair conclusion that can be reached is that the assessee is a beneficiary of the accommodation bills issued by the above mentioned entities. However, at the same time, the sales made during the year have been claimed by the assessee to be genuine. Considering the same, it can be seen that there cannot be sales without purchase but at the same time as per the discussions made above, it is also proved purchases made from these non-genuine entities are not verifiable and hence it can be fairly concluded that the concerned purchase transactions recorded in the books of accounts do not reflect the true picture of the profits of the assessee. It is a known fact that as per the market practice the commission rate for obtaining such entries is around 0.25% of the entry provided. Therefore, considering facts and circumstances of the case, the additional net profit of the assessee from the above bogus transactions of business is estimated at 0.25% of the total purchase from non-genuine entities appearing in the assessee's books of accounts which is equivalent to the commission or services charges prevailing in the market for providing such accommodation entries.

3.2.6 Considering the facts and circumstances of the case as discussed above, disallowance @ 0.25% of the total purchase amount from the above mentioned non-genuine entities is worked out to Rs. 9,42,450/- (0.25% of Rs. 37,69,79,890). This amount of Rs. 9,42,450/- is brought to tax in the hands of the assessee as additional profit on account of such non-genuine purchases made during the year. Penalty proceeding u/s. 270A(1) is separately initiated for underreporting of total income. Further, since the assessee has not made the actual Purchases from the aforesaid entity, the said entry in the books maintained by the assessee will tantamount to being "a false entry" within the meaning of explanation (c) to sub section 1 of section 271AAD of the I.T. Act. Hence, penalty proceedings u/s. 271AAD is separately initiated."

16. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the addition made by the AO. Being aggrieved, the assessee is in appeal before us.

17. We have considered the submissions of both sides and perused the material available on record. We find that the coordinate bench of the Tribunal in a batch of cases pertaining to the assessee's sister concern in

Abans Commodities (I) Pvt. Ltd. (supra), vide order dated 30/09/2024, while deciding a similar issue deleted the addition on account of non-genuine purchases. The relevant findings of the coordinate bench are reproduced as follows: –

"24. We have heard the rival submissions and also perused the materials placed on record. It is seen that the Id. AO had treated the purchases from 6 entities as non-genuine and has applied profit rate of commission on such purchases @0.25%. He has accepted that these purchases are duly recorded in the books of accounts, and has not disturbed the purchases. However, according to him as per market practice there is commission rate of obtaining such entry at @ 0.25% which needs to be added. First of all in so far as the transactions of purchases from these parties are concerned, the same had not been doubted for the reason that ultimately the Id. AO's allegation is that assessee might have earned commission on such purchases as these are non genuine parties with no credentials and on inquiry by the investigation wing various facts have emerged about their credibility. If the purchases are from the books and source of purchases are not in doubt and assessee has produced all the evidences to prove the purchases then how can on such purchases adhoc addition on account of commission can be made. Before the AO assessee has submitted following details to prove the purchases:

(i) Purchase invoices;

(ii) Warehouse receipts showing physical receipt of the goods in the warehouse;

(iii) Delivery Orders;

(iv) Bank statements demonstrating payment towards the purchases;

(v) GST returns showing receipt of the goods and availment of input tax credit on such purchases.

If these documents have not been doubted then where is the question of making adhoc addition of commission on such purchases.

25. Coming to the various allegations made by the AO and the rebuttal given by the assessee before the AO as well as before the CIT(A), it is seen that one of the allegations of the AO was that the source of funds in capital of these entities are less compared to the turn over. What was required to be seen is whether there was actual trading or not as trading does not require large own capital but what are the source of funds in their balance sheet. Another allegation regarding e-mail was only by the Abans group. There was nothing which has been brought on record by the Id. AO that e-mail was actually being handled by the Abans group nor he has mentioned who was operating the said e-mail. Assessee had already countered that e-mail and ITR of the company was not operated from the office of the Abans group and had given detailed explanation before the Id. CIT(A) also which was not even being committed upon. In so far as ITR filed from the premises of Abans group from a

particular IP address, assessee has categorically denied that it is incorrect and no such ITR has been filed from the IP mentioned in the order but from some other IP address which was provided before the Id. CIT (A). This has not been rebutted by the department when assessee brought on record that the IP address which has been mentioned by the Id. AO were different. In so far as the shareholders were not men of means, already it has been brought on record that they were filing their regular income tax returns and have shown investment of share capital from their own sources. In any case, this cannot be the ground for treating the transaction as non-genuine.

25.1 Now, coming to the summons issued to the Directors, it has been stated that the summons were issued during the peak Covid 19 lockdown period and directors had actually responded their inability to attend due to lockdown which has been ignored. If the Id. AO has simply relying upon the comments of the investigation wing and he did not ask the assessee during the course of assessment proceedings to file their confirmations and he could have independently verified once the assessee had stated that all the Directors were available at the premises and Id. AO can ask for their attendance which Id. AO had failed to do so. In so far as books of accounts found in the audit report from the premises, the assessee's contention was that neither, the Investigation Wing nor the Id. AO had provided the evidence in support of such allegation nor any details of content of date and period to which it pertain was provided or found. Thus, such ground cannot be adversely viewed. Similarly, with regard to every allegation, counter submissions as noted above has not been dealt by the Id. CIT (A) specifically when they were duly explained through various documents and facts. Once these facts were brought on record, Id. AO should have at least himself carried out any enquiry or verification rather than blindly apply and relying upon the investigation report. Thus, in view of the aforesaid submissions given by the assessee and rebuttal given against various allegations of the AO are liable to be accepted. In any case, the case of the Id. AO is that assessee might have earned commission from such purchases of 0.25% which cannot be sustained as Id. AO has applied commission of 2% and reduced to 0.25% by CIT (A) are on mere conjecture. It is not a case where the entire purchases have been added, albeit Id. AO has presumed that assessee might have earned commission on such purchases made from non-genuine parties. Accordingly, such adhoc application of commission of 0.25% is deleted.

26. Similar issue of application of commission of 0.25% has been applied for the A.Y.2016-17, 2018-19 and 2020-21, therefore, in view of the finding given hereinabove, such addition on account of adhoc commission are deleted. Accordingly, appeal for A.Y.2015-16, 2016-17, 2018-19 and 2020-21 are allowed.

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46. Here again the addition has been made from purchases made from five entities namely, Asterpetal Trade & Services Pvt. Ltd., Mavaiya Enterprises Pvt. Ltd., Manmish Traders Pvt. Ltd., Yogdarshan Commercial Trading Pvt. Ltd. and Trishna Trading Services Pvt. Ltd., and assessee had submitted all those documents proving the evidence of the purchases which are as under:-

(i) Purchase invoices

- (ii) Warehouse receipts showing physical receipt of the goods in the warehouse*
- (iii) Delivery Orders*
- (iv) Bank statements demonstrating payment towards the purchases*
- (v) GST returns showing receipt of the goods and availment of input tax credit on such purchases*

47. Again, Id. AO has made some allegations with regard to all the entities which has been dealt earlier. Accordingly, in view of our finding given in the other appeals, addition on account of alleged commission of 0.25% of such purchases are deleted."

18. In the absence of any contradictory material on facts and law being brought on record since the issue arising in the present appeal is similar to the issue already considered by the coordinate bench of the Tribunal in a similar factual matrix in the case cited supra, therefore respectfully following the same, the addition on account of non-genuine purchases is deleted.

19. In this appeal, the assessee has also raised the grounds challenging the validity of reassessment proceedings under section 147 of the Act. Since we have deleted the addition made on merits, therefore, the legal issues raised before us have been rendered academic and are kept open.

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

21. To sum up, both appeals by the assessee are allowed.

Order pronounced in the open Court on 22/10/2024

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

MUMBAI, DATED: 22/10/2024