

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2499/MUM/2023
Assessment Year: 2019-20**

Avance Technologies Ltd., Office No.226/227, Majestic Centre, 2 nd Floor, 144, Opera House, Mumbai – 400004 (PAN : AAECA5763B)	Vs.	Deputy Commissioner of Income Tax- 2(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Neeraj Mangla, CA
Revenue : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 07.08.2024
Date of Pronouncement : 28.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-48, Mumbai, vide order no. ITBA/APL/M/250/2023-24/1052872681(1), dated 16.05.2023 passed against the assessment order by the Deputy Commissioner of Income Tax, Central Circle – 2(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 29.04.2021 for Assessment Year 2019-20.

2. Grounds taken by the assessee are reproduced as under:

“1. That the assessment order passed by Ld. AO as well as the appellate order passed by Ld. CIT(A) are bad in law and have been passed in contravention of prevailing law as well as facts of the case, therefore liable to be annulled.

2. That the Ld. AO as well as Ld. CIT(A) grossly erred in law and in facts of the case in holding the assessee company to be beneficiary of certain transactions despite the admitted fact that evidences substantiating contra were available on record.

3. That the Ld. AO as well as Ld. CIT(A) grossly erred in law and in facts of the case in making and upholding addition of Rs. 1,92,98,840/- to the income of the assessee company under Section 68 of the Act.

4. That the appellant seeks leave to amend, alter, change any grounds of appeal or take any further ground at any time even during the course of hearing of instant appeal.

3. Brief facts of the case are that assessee filed its return of income on 23.10.2019 reporting total income at Rs.75,51,700/-. A search had taken place in the case of Shri Naresh Manakchand Jain where from incriminating documents pertaining to assessee were found and seized, based on which ld. Assessing Officer had received information from Investigation Unit, Mumbai alleging the assessee that it had taken accommodation entry of Rs.1,92,98,840/- from Shri Nakoda Vitta (I) Pvt. Ltd. who is engaged in the business of cheque discounting and providing accommodation entries. The details of accommodation entry alleged to be received by the assessee is tabulated as under:

16-08-2018	ICICI Bank	13,00,000
20-08-2018	ICICI Bank	10,00,000
23-08-2018	ICICI Bank	5,50,000
23-08-2018	ICICI Bank	4,05,000
23-08-2018	ICICI Bank	2,45,000
27-08-2018	ICICI Bank	13,00,000
28-08-2018	ICICI Bank	2,08,780
28-08-2018	ICICI Bank	7,91,220
29-08-2018	ICICI Bank	12,00,000
30-08-2018	ICICI Bank	6,75,400
30-08-2018	ICICI Bank	10,00,000
31-08-2018	ICICI Bank	17,62,900
04-09-2018	ICICI Bank	15,10,540
04-09-2018	ICICI Bank	3,60,000
10-09-2018	ICICI Bank	9,98,000
10-09-2018	ICICI Bank	10,02,000
10-09-2018	ICICI Bank	3,20,000
10-09-2018	ICICI Bank	13,25,000
10-09-2018	ICICI Bank	3,45,000
14-09-2018	ICICI Bank	15,01,000
14-09-2018	ICICI Bank	14,99,000
		1,92,98,840

3.1. In respect of the aforesaid tabulated accommodation entries, assessee contends that it is a conduit company operated and maintained for providing accommodation entries. To substantiate the same, it placed on record assessment order for Assessment Year 2017-18 dated 27.12.2019 wherein ld. Assessing Officer had observed that assessee is not engaged in actual business but involved in circular transactions and commission income is to be assessed in its turnover. Accordingly, commission income @ 1% was added to the returned income while completing the said assessment u/s. 143(3) of the Act. Assessee thus, claims that no addition can be made u/s.68 of the Act,

it being a conduit company and therefore only income in the nature of commission on such entries could be added in its hands. Ld. Assessing Officer in the present case had completed the assessment by making addition of the gross amount of accommodation entry of Rs.1,92,98,840/- u/s. 68 of the Act which was confirmed by the ld. CIT(A).

4. Before us, ld. Counsel for the assessee asserted that only commission to the extent of 1% on such amount could be added in the hands of the assessee which is an accepted position by the Department in assessee's own case when the assessment u/s.143(3) was completed for Assessment Year 2017-18 on similar fact pattern. In order to corroborate submission made by the ld. Counsel, specific query was raised to demonstrate that return of income filed by the assessee in the year under consideration included component of commission income on such entries in its financial statements. Assessee furnished audited financial statements for the year ended 31.03.2019. In the statement of Profit and Loss, revenue from operations is reported at Rs.339.82 lakhs and other income as Rs.87.23 lakhs. Notes to financial statements vide note no.17, reports that revenue from operations is from sale of traded goods and other income is in respect of interest received as reported in note no.18. Thus, from these stated facts, it is not discernible whether assessee had been offering commission income on its business of being a conduit company for the purpose of providing accommodation entries as claimed by it in the year under consideration. Since each assessment year is an independent assessment year and is to be assessed independently, in the current facts and circumstances of the case, we find it appropriate to remit the matter back to the Jurisdictional Assessing Officer (JAO) to verify and examine the

financial statements in respect of the claim made by the assessee of earning commission income as a conduit company, operating and maintaining accommodation entries and thereby re-compute the assessed income in accordance with the provisions of law. Needless to say that assessee be given reasonable opportunity of being heard to establish its claim. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 28 October, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 October, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai