

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

**BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.4725/Mum/2024
(Assessment Year:2015-16)**

Jayantilal Dinesh Purohit Room No.114, 5 th Floor, Geetanjali B Building, Dr D.B. Marg, Mumbai PAN: AJSPP3006A	vs	Commissioner of Income Tax (A)- 52, M.K. Road, Marine Lines, Mumbai- 400020 /ITO-20(2)(1), Mumbai
APPELLANT		RESPONDENT

Assessee by : Shri VimalPunmiya
Respondent by : Shri Ashish Kumar Sr.DR

Date of hearing : 30/10/2024
Date of pronouncement : 11/11/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax (Appeals)-52, Mumbai [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2015-16, date of order 11/09/2024. The impugned order was emanated from the order of the Learned Income-tax Officer, Ward-20(2)(1), Mumbai, order passed under section 143(3) of the Act, date of order 28/12/2017.

2. The assessee has taken the following grounds: -

"1. On the facts and circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs. 12.95.911/- u/s 69C of the Act treating the same as unexplained expenditure without appreciating that the total custom duty paid duly reconciled with air information was recorded in books of accounts and added the same to the total income of the assessee.

2 On the facts and circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs. 16,22,489/- u/s 68 treating the same as unexplained cash credits on account of difference between the VAT Report and Audited Profit and Loss Account without appreciating that same was duly reconciled.

3. On the facts and circumstances of the cases, the learned CIT(A) erred in confirming the addition of the total outstanding credit balance amounting to Rs 2.71.80,685/- towards Kushal Trading Enterprise as unexplained cash credit u/s 68 of the act.

4 On the facts and Circumstances of the case as well as in Law the Ld. CIT(A) has erred in charging interest under section 234A,234B and 234C of the act.

5. On the fact and circumstances of the case as well as in Law, the Ld. CIT (A) has erred in initiating the penalty proceeding u/s 274 r.w.s and 271(1)(c) of the Income Tax Act, 1961 for concealment of income and furnishing inaccurate particulars of income.

6. The appellant craves the leave to add, amend, alter and/or delete any of the above grounds of appeal at/or before the time of hearing."

3. The brief facts of the case are that the assessee is a proprietor of M/s Shivam Enterprises engaged in the business of trading in healthcare products. During the impugned assessment year, the assessee filed its return and audited

accounts under section 44AB of the Act and filed Forms 3CB&3CD with the return of income. The assessment was framed under section 143(3) of the Act. The addition was made for unexplained expenditure related to payment of customs' duty amount to Rs.12,95,911/- under section 69C, unexplained cash credit on account of difference between VAT report and the audited P&L Account amount to Rs.16,22,489/-, outstanding credit balance amount to Rs.2,71,80,685/- towards M/s Kaushal Trading Enterprises under section 68 of the Act. The aggrieved assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) passed a speaking order and upheld the assessment order. Being aggrieved on the appeal order, the assessee has filed an appeal before us.

4. The Ld.AR argued the **ground no. 1** where the Ld.AO stated that the assessee imported the goods by paying customs duty. The details submitted in APB page 250A to 274A where the payment was made to the M/s Transpole Logistics Pvt Ltd and the item contained customs duty, stamp duty charges, logistics expenses and agency charges and total amount was paid through banking channel amount to Rs.12,95,911.80. Normally, the amount was paid to the clearing agent and clearing agent paid the amount for releasing the goods imported outside India. But without considering the submission of the assessee the addition was made arbitrarily.

4.1. In **ground no. 2**, the Ld.AR stated that the addition was made due to difference in turnover under VAT report and Trading and Profit and loss account. The difference is due to rate difference, VAT and CST paid. The assessee explained the same during assessment proceeding but without considering the same, the addition was confirmed which is unjustified as per Id. AR.

4.2. About **ground no. 3**, the Ld.AR placed that the sundry creditors which is brought forwarded from earlier years related creditor, M/s Kaushal Trading Corporation, with details of evidence in form of ledger confirmations of Kaushal Trading Corporation for A.Ys. 2013-14, 2014-15 and 2015-16 are enclosed in APB pages 275 to 277 were placed before the revenue authority. He further stated that the tax invoices, acknowledgement of ITR and VAT audit report are enclosed in APB pages 206 to 249. Further, the transaction of the said creditor was added back by the revenue for AY 2014-15 and finally the issue was migrated, and it was decided by the coordinate bench of ITAT, Mumbai in favour of the assessee in assessee's own case bearing **ITA No.5608/Mum/2019** date of pronouncement **03.09.2015** and the bench deleted the addition related to transaction of the said creditor. The Id. AR argued that the issue is squarely covered, and the addition related to the said sundry creditor is unjustified.

5. The Ld.DR vehemently argued and had drawn out attention in the impugned assessment order para 2 of page 1. He stated that the assessee had failed to submit the relevant documents before the Id. AO pursuant to the notice dated 26/12/2017. So, the assessee remained partly uncompiled during assessment proceedings.

6. We heard the rival submission and considered the documents available in the record. Related to the additions of the ground no-1 & 2 we find that the assessee filed the reconciliation and filed the submission related to payment of customs duty and other charges. The relevant bills of the clearing agent were filed in paper book. The Id. AR placed that a letter was filed on dated 27/12/2017 before the Id. AO along with the details of custom duty payment but the said letter was not considered during passing of assessment order. The payment of

custom duty is integral part for importing goods outside India. But in the impugned assessment order it is mentioned that none of the documents were duly filed during the assessment proceeding. In our considered view, we remit the matter to the file of the Ld.AO for further verification of the additions made during the assessment proceedings.

Both the rival parties had not made any objection for remanding the matter to the file of the Ld.AO. Needless to say, that the Id. AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defense shall be admitted by the Id. AO and adjudicated on merits in accordance with law.

Accordingly, the appeal of the assessee in **ground nos. 1 & 2** are allowed for statistical purposes.

6.1. Considering the ground, no-3 we find that the addition was made related to absence of identity of sundry creditor, M/s Kushal Trading Corporation. The closing balance stands on 31/03/2015 amount to Rs. 2,71,80,685/- was added back due to absence of identity. But the issue of identity was already adjudicated in favour of the assessee in assessee's own case by the coordinate bench of ITAT-Mumbai **ITA No. 5608/Mum/2019** (supra) for AY 2014-15. We respectfully rely on the order of the ITAT-Mumbai related identity of the party. The Id. DR was unable to rebut the submission of the Id. AR by submitting any contrary order. We set aside the impugned appeal order related to this issue and the addition amount to Rs. 2,71,80,685/- is deleted.

Accordingly, the appeal of the assessee in **ground no. 3** is allowed.

7. In the result, the appeal of the assessee in **ITA No.4725/Mum/2024** is allowed.

Order pronounced in the open court on 11th day of November 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 11/11/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai