

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**SHRI SONJOY SARMA, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 53/Kol/2024
Assessment Year: 2013-14**

Silicon Infracon Pvt. Ltd.,

6B, Bentick Street, Asha Chambers,
Kolkata - 700001

[PAN: AALCS3385C]

.....**Appellant**

vs.

DCIT Central Circle

4(4), Kolkata,

Aayakar Bhawan Poorva,
110 Shantipally, EM Bypass,
Kolkata – 700107

..... **Respondent**

Appearances by:

Assessee represented by : S.S. Gupta, AR
Arvind Agarwal, AR
Department represented by : Akhil Kumar, Sr. DR

Date of concluding the hearing : 12.11.2024

Date of pronouncing the order : 18.11.2024

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), Kolkata-27 (hereinafter referred to as "the Ld. CIT(A)") passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2013-14, dated 22.11.2023, which has been passed against the assessment order u/s 143(3) of the Act, dated 29.03.2016.

1. In this case, the appellant is admittedly an entry provider which fact has been admitted by Mr. Sumit Sharma, Director of the Appellant Company, before the Ld. AO. The single grievance that arises from the

impugned order pertains to an addition of Rs. 3,28,51,000/- added as Short-Term Capital Gain by the Ld. AO and confirmed by the Ld. CIT(A).

1.1 This action of Ld. AO, as confirmed by the Ld. CIT(A), has been challenged through as many as 4 grounds of appeal as under:

“1. That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A), NFAC (hereinafter referred to as CIT(A)) erred in confirming the addition of Rs. 3,28,51,000/-, being Short Term Capital Gain, by the Ld. Assessing Officer (hereinafter referred to as AO) rather than computing commission income.

2. That under the facts and in the circumstances of the case, Ld. CIT(A) erred in accepting two views taken by the Ld. AO i.e., for some transactions the appellant has been treated as accommodation entry provider and for a transaction not accepting the appellant as accommodation entry provider.

3. That under the facts and in the circumstances of the case, Ld. CIT(A) erred in upholding the view taken by the Ld. AO ignoring the decisions passed the Hon'ble Apex Court in the case of CIT Vs Durga Prasad More 82 ITR 540 and in the case of Sumati Dayal vs CIT 214 ITR 801 where revenue authorities are also supposed to consider the surrounding circumstances and apply the test of human probability

4. That the appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time hearing.”

2. Before us, the Ld. AR argued that once it was established, and accepted by the authorities below that the appellant was merely an entry provider, who for small amounts of commission was facilitating transactions for other entities, through an exercise which could be loosely described as laundering money for others, for want of a better phrase. The Ld. AR submitted a paper book and several authorities on the subject that once it was accepted that the assessee was an entry provider then the only way in which income could be assessed was on the basis of commission received from such transactions. The Ld. AR also explained that the transaction in immovable property (impugned) was merely an exercise in facilitating an artificial increase in price of the said asset through routing of money with the appellant company. It was explained that there was no real transaction and thus at best the appellant would suffer an estimation of commission income from the said alleged transaction in immovable property.

2.1 The Ld. DR, on the other hand read out portions from the Ld. AO's order and Ld. CIT(A)'s order to argue that there was specific documentation available with regard to the impugned transaction to establish that some sale or purchase in immovable property actually took place, in which the appellant was definitely involved. The Ld. DR took pains to distinguish this transaction from the other accommodation entry providing work of the appellant.

3. We have carefully considered the arguments and gone through the documents before us. The facts regarding this transaction are that an information was received from the Sub-Registrar, Tehsil Office, Nagpur (Maharashtra) that the assessee had entered into a transaction involving a sale of immovable property of Rs. 91,16,666/- on 02.04.2012. The Ld. AO noticed that no income under the head "Capital Gains" was disclosed in the return of income filed by the appellant. It was also noticed that there was no mention of such property in the balance sheet of the appellant company. Thereafter, the Ld. AO has recorded that Rs. 1 Crore paid to the vendors while acquiring the right to purchase the said property would be considered as the cost of acquisition and thereafter, he proceeded to work out Short-Term Capital Gain at Rs. 3,28,51,000/- (impugned amount). It is seen from the impugned order that in para 6.4.3 it has been recorded that the appellant is trying to disguise a capital asset transaction into one of merely providing an entry. Thus it has been recorded, *"Moreover, the assessee's contention that the discrepant amount of Rs. 3,28,00,000/- was again routed back to M/s Abhijit Realtors & Infraventure Pvt. Ltd. However, no documentary evidence is submitted by the assessee to support its claim."*

3.1 It is evident from the documents placed before us that there is good documentation available to show that it is actually the appellant who is entering into the transaction involving the said property. It is felt that in case, the appellant was to establish that he was merely a name lender or in the words of the Ld. AR, a "consenter" then perhaps an effort could have

been made to show that actually this transaction never belonged to the appellant and more importantly the taxability of the same has been dealt with elsewhere. It needs to be emphasized that the onus to prove that the transaction, as readily visible from the property documents being in the name of the appellant, was not of the appellant but somebody else's, was squarely on the appellant and not on the Ld. AO for proving otherwise. In light of this it is felt that the surrounding facts and circumstances, including the fact that the appellant is an accepted entry provider, this matter needs to be remanded back to the file of Ld. AO to afford another opportunity to the appellant to conclusively prove that the impugned transaction was never his and that it belonged to someone else. For this purpose, the appellant needs to present good documentation to conclusively establish that he is not the beneficiary of the impugned transaction. This appeal is remanded back to the file of Ld. AO to re-verify the facts.

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

Order pronounced in the court on 18.11.2024

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 18.11.2024.
AK, PS

Copy of the order forwarded to:

1. Silicon Infracon Pvt. Ltd., Kolkata
2. DCIT Central Circle 4(4), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches