

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA No. 1287/MUM/2024 : A.Y. : 2012-13
C.O. No. 172/MUM/2024 : A.Y. : 2012-13
(Arising out of ITA No. 1287/M/24)

Income Tax Officer,
Ward-7(2)(1),
1st Floor,
Aayakar Bhavan,
M.K. Road, Church Gate,
Mumbai.
(Appellant)

Vs. Monarch Technobuild Private
Limited,
39/18, Circle House,
Bhaudaji Road,
Matunga, Mumbai.
PAN : AAGCM4332G
(Respondent/Cross Objector)

For Assessee : Shri Snehal Shah
For Revenue : Shri Sunil A. Umap, CIT-DR

Date of Hearing : 12-11-2024
Date of Pronouncement : 27-11-2024

ORDER

PER OM PRAKASH KANT, A.M :

This appeal by the Revenue and Cross Objection by the assessee are directed against order dated 25-01-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [in short 'Ld.CIT(A)'] for the Assessment Year (AY.) 2012-13.

2. The grounds raised by the Revenue in its appeal are reproduced as under:

“1 a) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by deleting the addition of Rs. 10 cores made by the Assessing Officer.

2 b) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by not appreciating the fact that the genuineness of the transaction of Rs. 10 crores had not been conclusively established by the assessee, as brought out by the Assessing Officer in his Assessment Order.

3 c) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by not appreciating the fact that the addition made in the case of M/s. Global Buildcon Pvt. Ltd. was made under sections which differed from the addition u/s 68 made in the case of the assessee.

4 d) On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the alternative stand of the assessing officer that the unexplained receipt of Rs. 10 crores was liable for addition u/s. 69A.”

3. The grounds raised by the assessee in Cross Objection are reproduced as under:

“1. The notice issued under section 148 is bad in law, void-ab-initio and ultra-vires the provisions of the Income-tax Act, 1961.

2. The Learned Assessing Officer has erred in appreciating the fact that he had no jurisdiction to issue the notice in the name of the Respondent since the jurisdiction of the Respondent was with Ward 20(1)(1), Mumbai. Without Prejudice to the same, the Learned Assessing Officer has erred in not transferring the case of the Respondent despite intimating him vide letter dated 04.12.2019.

3. The Respondent reserves the right to amend, alter or add to the grounds of cross objections.”

4. Briefly stated facts of the case are that the assessee filed return of income for the year under consideration on 24-09-2012, declaring total income at Rs. NIL. The return of income filed by the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short ‘the Act’). Subsequently, the Assessing Officer (AO) re-opened the assessment by way of notice u/s. 148 of the Act dt. 29-03-2019 and completed the

reassessment on 26/12/2019, wherein the AO made addition u/s. 68 of the Act for a sum of Rs. 10 crores received from M/s. Global Buildcon Pvt. Ltd. On further appeal, the assessee challenged the legality of the re-assessment on many counts, including – **firstly**, challenging the making of assessment on non-existing entity, **secondly**, no fresh tangible material for initiating re-assessment proceedings, **thirdly**, no link between the material and the formation of belief and **lastly**, the sanction obtained by the AO from the Ld.PCIT was bad in law. The assessee also challenged the addition on merit. The Ld.CIT(A) though dismissed the grounds challenging the validity of the re-assessment, however, deleted the addition on the merit. Aggrieved with the dismissal of grounds, challenging the validity, the assessee is before the Tribunal by way of Cross Objection; whereas by way of deleting the addition on merit, the Revenue is in appeal before the Tribunal.

5. In support of the grounds raised in the Cross Objections, the learned counsel for the assessee filed a paper book containing pages 1 to 141 and submitted that the assessee-company, namely, M/s. Monarch Technobuild Private Limited, was converted into an LLP on 26-11-2014 and, therefore, on the date of issue of notice u/s. 148 of the Act, the said company never existed. Hence, service of notice of non-existing company is bad in law and accordingly, entire re-assessment proceedings need to be quashed. The learned counsel for the assessee further submitted that there was no tangible material before the AO for re-opening of the assessment and he reviewed the completed assessment. He referred to the reasons recorded available at Pg. No. 54 of the Paper Book and submitted that the AO has nowhere referred as under which investigation, he came to notice the bank account of M/s. Monarch Technobuild Private Limited. He submitted that in absence of any such trigger, re-appreciation of the records available with the AO would amount to review of the assessment, which he is not permitted under the garb of re-assessment. The learned counsel for the assessee

further submitted that there was no fresh tangible material for re-initiating the assessment proceedings. The learned counsel for the assessee also submitted that the assessee had time and again called for a copy of the sanction granted by the Ld.PCIT for reopening of assessment, but the same was not provided. The learned counsel for the assessee referred to the copy of the objections raised before the AO on 13-08-2019 available at Pg. No. 55 to 57 of the Paper Book and submitted that in the said objection also, the assessee had asked for providing a copy of the sanction/approval by the Ld.PCIT-7, Mumbai, but not such sanction/approval was provided to the assessee. The learned counsel for the assessee submitted that in absence of any such approval, the re-assessment proceedings are bad in law.

6. On the contrary, the Ld.DR, relied on the findings of the Ld.CIT(A) on the issue in dispute and submitted that as far as the issue of notice on the non-existing entity is concerned, the Ld.CIT(A) has held it to be a curable defect u/s. 292B of the Act. As far as the grounds challenging the validity of re-assessment, the Ld.DR submitted that information was received from Investigation Wing of the Department regarding the high value transaction carried out by the assessee and as no corresponding income was reported by the assessee, therefore, the AO re-opened the assessment. According to him, there existed tangible material. As far as sanction/approval of the Ld.PCIT is concerned, the Ld.DR filed a copy of the same in the course of hearing with a copy to the respondent-assessee. And submitted that the grounds challenging absence of the sanction/approval of the Ld.PCIT was accordingly, not sustainable.

7. As regards grounds raised by the Revenue in the appeal, the Ld.DR submitted that the Ld.CIT(A) failed to appreciate that in respect of receipt of Rs. 10 crores from M/s. Global Buildcon Pvt. Ltd., the assessee not only failed to establish identity and creditworthiness of the party, but also failed to establish the genuineness of the transaction and the Ld.CIT(A) deleted the addition, without appreciating the facts of

the case. Further, the Ld.DR submitted that the addition in the case of M/s. Global Buildcon Pvt. Ltd., was made u/s. 36(1)(iii) of the Act, which was different from the addition u/s. 68 of the Act. Further, he submitted that the Ld.CIT(A) has not considered the alternative stand of the AO, for treating the un-explained receipt of Rs. 10 crores as for addition u/s. 69A of the Act.

7.1. On the contrary, the learned counsel for the assessee submitted that in the course of assessment proceedings in the case of M/s. Global Buildcon Pvt. Ltd., the issue of extending money to the assessee has been held to be a loan transaction and addition has been made for the disallowance of interest u/s. 36(1)(iii) of the Act. This itself established that identity, creditworthiness and genuineness of the loan transaction has not been disputed by the Department and once in the case of M/s. Global Buildcon Pvt. Ltd., the fact of transaction has been established to be transaction of loan, no addition could be made in the hands of the assessee under section 68 of the Act treating the same as unexplained cash credit. Therefore, the Ld.CIT(A) has rightly deleted the addition. He further submitted that once the transaction has to be treated as 'genuine loan transaction' in the case of M/s. Global Buildcon Pvt. Ltd., no addition u/s. 69A of the Act is warranted as an alternative by the AO.

8. We have heard rival submissions of the parties and perused the relevant material on record. First, we take up the merit of the addition. We find that the AO in the reasons recorded has mentioned that the assessee had received Rs. 10 crores from M/s. Global Buildcon Pvt. Ltd., on 20-08-2011 as advance received against the property. In the re-assessment proceedings, the assessee explained that the said amount was received against execution of a re-development project. The said explanation of the assessee was not accepted and the AO concluded as under:

“6.0. Besides the above, in a case of cash credit, as per judicial pronouncements, three well established tests to be satisfied are (i) Identity (ii) Capacity and (ii) Genuineness of transaction. In the present case, the first two tests could be satisfied. But, on perusal of the material on record and as per the discussion in foregoing paragraphs, it is obvious that much water has flown down the river Ganga. Records do not show any serious steps being taken in furtherance of the money received as early August, 2011. Thus, third test namely genuineness of the transaction or character of the receipt in the hands of the assessee is not explained satisfactorily.

6.1. After carefully considering the facts and surrounding circumstances in their entirety, I hold that the amount of Rs.10 crores is unproved cash credit and is accordingly assessed u/s 68 of the Act. Penalty proceedings are separately initiated u/s 271(1)(c) r w Explanation 1 there-under, for furnishing inaccurate particulars income. (Alternatively, the amount could also fall u/s 69A of the Act, as the money is not explained in the hands of the assessee.)

With the above remarks, the assessment is made as under.

Total income as per Return of income. NIL

Add: Addition u/s 68 of the Act, as discussed above. Rs. 10,00,00,000

Total income Rs. 10,00,00,000

Assessed accordingly u/s 143(3) r.w, sec 147 of the Act. DN and challan are issued after allowing credit for pre paid taxes if any, after verification. Interest is charged u/s. 243A, 2348 and 234C of the Act. Penalty proceedings are separately initiated u/s 271(1)(c) r w Explanation 1 there-under for furnishing inaccurate particulars income.”

8.1. On further appeal, the Ld.CIT(A) deleted the addition, observing as under:

“I have perused the facts of the case, the assessment order and the submission made by the appellant. The main argument put forward by the Assessing Officer for making the addition is that the ingredients of Section 68 regarding identity, creditworthiness and the genuineness of the transaction has not been satisfied. The Assessing officer has argued that since the genuineness of the transaction with GBPL is not fully established, the same is required to be added u/s 68 of IT Act.

The Appellant has submitted that it is engaged in the business of acquiring and developing lands and buildings which were suitable for commercial and residential purposes through construction of flat, tenements, premises shops etc. GBPL was engaged in the business of purchasing, trading developing, marketing of land and real estate in

Mumbai. Thus the appellant entered into an Joint Venture with GBPL for acquiring and redeveloping the property bearing C.S. No.479/10 of Matunga Division owned by Shri Ashok Trivedi which had a potential of generating revenue that shall not be less than Rs 300 Crores provided all other formalities and clearances are obtained. The appellant also submitted the copy of MOU and other related documents to establish its claim during the appellate proceedings.

It is perused from Para 6 of the Assessment order that while examining the ingredients of Section 68 of IT Act in the transaction, the Assessing Officer was satisfied with the identity and creditworthiness of the party ie GBPL which had advanced the money. However the Assessing Officer argued that it was not possible that an amount of Rs 10 Crore could be advanced for such a long period without any further activity. Therefore the genuineness of the transaction is doubtful and the character of receipt in the hands of the appellant was not explained.

It is perused that the appellant is in a business of redevelopment of property and the contention of the appellant that in the business in which it operates, it not easy to convince majority of tenants to vacate the premises and convince them for alternative accommodation coupled with various terms and conditions is quite genuine reason.

Perusal of the copy of Para 1 of the MOU is as under :-

"Simulatenously upon execution hereof GBPL has paid MTPL a sum of Rs 10,00,00,000/- (Rupees Ten Crore only) the payment and receipt whereof MTPL does hereby admit and acknowledge towards the purchase of properties in and around Mumbai Metropolitan Region"

Thus it is clear that the amount of Rs 10,00,00,000/- has been received by the appellant in lieu of this agreement only. Further, the genuineness of the transaction is also proved after considering the fact that the assessment order u/s 143(3) in the case of M/s Global Buildcon Pvt Ltd (PAN AABCG4162B) had also been passed on 14.03.2016 wherein the department had treated the loan advanced by M/s GBPL of Rs 10 Crore as genuine loan. The Assessing Officer held that since the same was given interest free advance, an amount an of Rs 1.84.62.329/- was added in the hands of GBPL u/s 36(1)(iii) of the IT Act

The CIT(A) vide Order No. CIT(A)-13/ITO/7(1)(1)/726/2015-16 dated 26.7.2018 had decided that the MOU between M/s Global Buildcon Pvt Ltd and the appellant was a genuine document and the amount of Rs 10 Crore paid by M/s Global Buildcon Pvt Ltd was for a business venture. Thus the Joint Venture between the Appellant and the GBPL is very much in existence and the contention of the Assessing Officer that the transaction is not a genuine transaction is without any basis. Therefore Ground 3 & 4 are accordingly allowed.

4. Ground 5 of the appellant is regarding the alternative stand taken by the Assessing Officer that in case the addition is not considered u/s 68, then the same may be considered u/s 69A.

This is also an ground inter related to Ground 3 & 4 and the decision in Para 3 holds for this issue also. Since it has been established that the source of money is M/s GBPL, which have been reflected in the audited books of account, this contention of the Assessing Officer to alternatively make addition u/s 69 is without any basis. Thus Ground 5 of appellant is accordingly allowed.

The Appeal is 'Partly Allowed'”

8.2. The Ld.CIT(A) has relied on the assessment order u/s. 143(3) of the Act in the case of M/s. Global Buildcon Pvt. Ltd. In the case of M/s. Global Buildcon Pvt. Ltd., the concerned AO examined the transaction of Rs. 10 crores. The AO rejected the contention of the assessee that was a business transaction under the commercial expediency. The relevant findings of the AO in the case of M/s. Global Buildcon Pvt. Ltd., is reproduced as under:

“5.4 After considering MOUs dated 20/8/2011 and 16/10/2012 and submission of the assessee company, it is clear and undisputed that the assessee company made interest free advance to MTPL of Rs.10 Crores out of interest bearing loan of Rs 25 crores. The assessee company mainly contended that it was a business advance and covered under commercial expediency. "Commercial expediency" point is examined as under:

- i. The MOUs are between related parties and In MOUs, no third party is involved. Therefore, these are prepared for self serving purpose.*
- ii. These documents are not legally enforceable in respect of immovable property transactions.*
- iii. As per clause 3 of MOU dated 20/8/2011, each of parties has to pay in equal proportion but MTPL did not pay anything till date.*
- iv. As per clause 6 of MOU dated 20/8/2011, in case of MTPL is unable to use the funds of Rs.10 crores within five years (four year plus one year extended) i.e. 20/08/2016. MTPL is required to repay basic amount of Rs.10 Crores without any interest accretion or the like.*
- v. As per clause 6 of MOU dated 20/8/2011, the assessee company paid Rs.10 Crores in 2011 but its share will remain equal to MTPL when they acquire an immovable property.*

- vi. *As per clause b of MOU dated 16/10/2012, a property at Matunga was identified but vide order sheet dated 12/03/2015. the AR submitted that no payments have been made till date.*
- vii. *MTPL's Balance sheet as on 31/3/2012 do not show any other transaction except loan transaction of Rs.10 Crores with Assesse Company. Profit & Loss account for FV 201-12 show no entry of credit of receipt or debit of any expenses. Thus, it declared total income at NIL for AY 2012- 13. In conclusion. MTPL does not have any resource or expertise or similar nature / volume transaction. This is a fledgling company.*
- viii. *Utilization of funds in such cases is very important and it is the onus of the assessee company to prove business use of the funds. In spite of specifically requisition of bank statements of MTPL and utilization of funds in the hands of MTPL vide order sheet dated 26/02/2015, the assessee company did not provide any such details.*

5.5 In the facts and circumstances discussed in the above mentioned paras, it is held that the assessee company did not make the payments to MTPL, its sister concern, for the business purpose and there was no commercial expediency to make such payments. Further, the MOUs are self serving documents prepared between two related parties in order to reduce tax liability. The assessee company failed to prove commercial expediency. Therefore, an amount of Rs.1,84,62,329/- is disallowed for expenses claim purpose in the current year or as a part of Work in progress u/s 36(1)(iii) of the Act.

I am satisfied that this is a fit case for initiation of penalty proceedings u/s 271(1)(c) and accordingly. penalty proceedings are initiated on this ground for furnishing inaccurate particular of income u/s 271(1)(c) of the Act.”

8.3. In view of the above, it is evident that the identity, creditworthiness and genuineness of the transaction is not in dispute when the transaction has already been established to be a genuineness transaction between the parties, though the AO disputed that said transaction had promoted business interest of M/s. Global Buildcon Pvt. Ltd. and made disallowance for not charging interest on said loan transaction to the assessee. But that in any way does not impact on the genuineness of the transaction between the assessee and M/s. Global Buildcon Pvt. Ltd., and it cannot attract the provisions of either section

68 or 69A of the Act. Accordingly, the grounds raised by the Revenue are dismissed.

8.4. Since we have already dismissed the appeal of the Revenue on merit and, therefore, the grounds raised by the assessee in Cross Objection, challenging the validity, are rendered merely academic, which we are not adjudicating upon at this stage and are left open and accordingly, the same are dismissed as infructuous.

9. In the result, the appeal of Revenue as well as the Cross Objection of the assessee, are dismissed.

Order pronounced in the open court on 27-11-2024

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai,

Date : 27-11-2024

TNMM

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai