

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

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

| <b>ITA No.</b> | <b>A.Y.</b> | <b>Appellant</b>  | <b>Respondent</b>  |
|----------------|-------------|---|--|
| 2292/Mum/2024  | 2016-17     | Vinay Shravankumar<br>Agrawal,<br>A-209,<br>Agarwal Nagar,<br>Vashi Naka, RC Marg,<br>Chembur<br>Navi Mumbai<br>PAN: ACXPA3337M | Income Tax Officer,<br>National Faceless<br>Assessment<br>Centre,<br>Delhi |
| 2293/Mum/2024  | 2017-18     |   |  |

|                |                             |
|----------------|-----------------------------|
| For Assessee : | Ms. Ritu Kamal Kishore      |
| For Revenue :  | Shri Prashant Barate, Sr.DR |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 11-11-2024 |
| Date of Pronouncement : | 28-11-2024 |

**ORDER**

**PER OM PRAKASH KANT, A.M :**

These two appeals by the assessee are directed against two separate orders, both dt. 19-02-2024, passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Ld.CIT(A)] for the Assessment Years (AYs.) 2016-17 & 2017-18 respectively. As identical grounds have been raised by the assessee in both these appeals, the same were heard together and disposed off by way of this consolidated order to avoid repetition of facts.

2. The grounds raised by the assessee for the AY. 2016-17 are reproduced as under:

*“On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals), Income Tax Department ('CIT(A)'), has erred in confirming the addition made by the Income Tax Officer, National e-Assessment Centre, Delhi, ('Assessing Officer' / 'AO')*

*2 The learned CIT(A) has erred in disallowing business expenditure and making an addition of Rs. 1,15,00,000/-*

*3. The learned CIT(A) failed to consider the fact that the assessment was already completed under 143(3) without any additions being made.*

*4. The learned CIT(A) has failed to provide any corroborative evidence in the name of the appellant or any of the findings of the survey. In fact, there is not a single material evidence has been produced by the Learned AO.*

*5. The learned CIT(A) has failed to appreciate the facts of the transactions and has merely applied a blanket rule.*

*The Appellant prays that the business expenditure be allowed while computing the total income of the Appellant and corresponding tax, interest and penalty be deleted.*

*A Detailed paper book along with case laws will be submitted at the time of hearing.*

*This appeal has been filed on time and may please be allowed in full.*

*The Appellant craves leave to add, amend, alter or cancel any Ground or Grounds before or at the time of hearing of the appeal.”*

3. Briefly stated facts of the case are that the assessee was engaged in the activity of building and developing real estate in the name of proprietary concern, namely M/s. Balaji Symphony. For the year under consideration, the assessee filed his return of income on 16-10-2016 declaring total income at Rs. 8,04,97,010/-. 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, in view of the information received from the DDIT (Inv.) that the assessee availed bogus bills of professional

services from M/s. AGV Consultants, the assessment was re-opened by way of notice u/s. 148 of the Act issued on 31-03-2021.

3.1. In response, the assessee filed return of income, reiterating the same income, which was declared in the original return of income filed. The objections raised by the assessee against the re-opening were disposed off by the Ld. Assessing Officer (Ld.AO) vide letter dt. 10-03-2022. Thereafter, in the re-assessment proceedings, the AO asked the assessee to justify the evidence in support of consultancy services received from M/s. AGV Consultants. The assessee filed confirmation from the said party along with proof of payment through cheque and deduction of tax at source. The assessee also filed communication between the assessee and M/s. AGV Consultants. But the Ld.AO, without considering those documentary evidences, disallowed the professional fee expenses of Rs. 1,15,00,000/- paid to M/s. AGV Consultants. On further appeal, the assessee challenged the validity of the re-assessment proceedings as well as addition on merit. However, could not succeed on both these counts. Aggrieved, the assessee has filed the present appeal before the Income Tax Appellate Tribunal (in short 'the Tribunal), raising the grounds as reproduced above.

4. Before us, the learned counsel for the assessee filed a Paper Book containing pgs. 1 to 86 and also filed a copy of decisions relied upon. In all the grounds raised, the assessee has mainly agitated on the merit of the addition. The brief facts, *qua* the issue in dispute are that the assessee has claimed to have availed professional fee services from M/s. AGV Consultants. During the course of survey action by the Investigation Wing, the Income Tax authorities observed that M/s. AGV Consultants had debited the bogus or fictitious expenses against consultancy services rendered which were not allowable in the hands of the said party. On the basis of the said information, the AO of assessee was of the view that expenses claimed by the assessee towards

professional fee paid to M/s. AGV Consultants are not genuine. The assessee, however, supported the claim of the receipt of services by way of filing a copy of agreement between the assessee and M/s. AGV Consultants, copy of the invoice and bank statement showing the payments made against consultancy services and also a copy of communication between the assessee and M/s. AGV Consultants. A copy of all those documents is available in Paper Book from pgs. 50 to 80C. But, the AO did not consider the submissions of the assessee and disallowed the expenditure. The Ld.CIT(A) after considering the submissions of the assessee, sustained the disallowance, observing as under:

*“7.2 I have perused the assessment order, grounds of appeal and submission filed by the appellant. I find from the assessment order that the case was re-opened on the basis of information received from the DDIT(Inv) Unit-3(1), Mumbai. As per the information it was informed that a survey action u/s 133A was conducted in the case of M/s. AVG Consultants and during survey action it was found that the said firm was making payments which were not allowable expenditure u/s 37(1) of the Act. It was found that the appellant has availed consultancy services from M/s. AVG Consultants and made payments of Rs. 1,15,00,000/-, Based on the said material available on hand, a reasonable belief was formed by the Assessing Officer that income of the assessee of Rs.1,15,00,000/- has escaped the assessment and accordingly notice u/s 148 was issued after obtaining prior approval of the competent authority. During the course of re-assessment proceedings the appellant had raised objection against the re-opening of the assessment which was disposed by the AO vide order dated 10/03/2022. During the course of re-assessment proceedings, opportunities including personal hearing and show cause notice, were provided to the appellant. From the submission filed by the appellant, the AO had noted that the appellant had entered into agreement with M/s. AGV Consultants wherein M/s. AGV Consultants was to assist the appellant in helping to get the compliances related to the several government authorities like MMRDA, Fire department etc, however the appellant could not explain with supporting details/evidences as to how and where the consultancy was provided by M/s. AGV Consultants and details of the application of the same to any projects of the appellant. The appellant failed to prove that the said payments were made for business purpose. Therefore the AO had disallowed the expenses of Rs. 1,15,00,000/- and had completed the assessment.*”

*During the course of appellate proceedings, the appellant has submitted the confirmation letter and affidavit of M/s. AGV Consultants for having provided the consultancy services. However no corroborative evidences/information as to how and where the consultancy was provided and details of the application of the same to any projects of the appellant were not submitted. The appellant failed to prove that the said payments were made for business purpose. Therefore I find that merely filing confirmation and affidavit without supporting details is not adequate to explain the genuineness of the expenditure and to prove that it was incurred exclusively for business purpose. The Hon'ble Supreme Court in catena of judgments including Smt. Sudha Devi v. M.P. Narayanan [7] has clearly held that an affidavit is not an "evidence" as defined under Section 3 of the IEA 1872. Since the appellant failed to prove the genuineness of the expenditure and failed to prove that it was an allowable business expenditure with supporting evidences, the disallowance made by the AO is confirmed and the grounds of appeal raised by the appellant are dismissed."*

4.1. Before us, the learned counsel for the assessee referred to the Paper Book from pgs. 50 to 80C and submitted that the assessee has discharged its onus by way of filing documents, namely, copy of agreement between the assessee and M/s. AGV Consultants (pgs. 52 and 53); copy of invoices (pgs. 56 to 58); copy of bank statement (pgs. 59 to 62); copy of TDS certificate (pgs. 63 to 66); copy of the affidavit filed by the partner of M/s. AGV Consultants (pgs. 67 and 68); various correspondences between the assessee and M/s. AGV Consultants (pgs. 69 to 80C). The learned counsel for the assessee accordingly submitted that the AO did not provide copy of the statement of M/s. AGV Consultants, alleging of providing non-genuine consultancy services to the assessee. The AO did not provide any corroborative evidence gathered during the course of survey action at the premises of M/s. AGV Consultants. According to him, in absence of any such corroborative evidence, no addition could have been sustained in the hands of the assessee.

5. On the contrary, the Ld.DR, relied on the orders of the lower authorities.

6. We have heard rival submissions of the parties and perused the relevant material on record. The issue in dispute in this case is regarding the genuineness of the professional fee expenses of Rs. 1,15,00,000/- paid to M/s. AGV Consultants. The reason for the lower authorities to sustain the addition is that firstly, during the course of survey action on M/s. AGV Consultants, it was found that the expenses claimed by the said party were not verifiable. But, no such evidence allegedly found during the course of survey has been provided to the assessee and to rebut the same. No such evidence has been even produced before us by the Revenue. But secondly, the assessee failed to support with evidences that services were rendered by the M/s. AGV Consultants. In this respect, the assessee has provided the documents as mentioned above, including copy of the agreement between the assessee and M/s. AGV Consultants, copy of the invoice payment through cheque, tax deducted at sources and also provided a copy of the correspondence between the assessee and M/s. AGV Consultants, for assisting the assessee in relation to obtaining NOC and Occupancy Certificate from CIDCO, MMRDA and Fire Department. But the assessee has not filed specific evidence that M/s AG Consultants represented on behalf of the assessee before those authorities. Before us the Id Counsel sought for one more opportunity for providing such evidences. Therefore, we feel it appropriate to set aside the finding of the Id CIT(A) on the issue in dispute and restore the matter back to the Id.AO with the direction to assessee to produce all the evidence in support that M/s AG consultants had provided the service as claimed. Accordingly, the grounds of appeal of the assessee are allowed for statistical purpose.

ITA No. 2293/Mum/2024 (AY. 2017-18):

7. In this appeal, identical issue of disallowance of professional fee expenses paid to M/s. AGV Consultants amounting to Rs. 75,00,000/-

has been challenged. Facts and circumstances in the year under consideration being identical to the facts and circumstances in AY. 2016-17, therefore, following our findings for the AY. 2016-17, the disallowance of professional fee expenses made to M/s. AGV Consultants is set-aside and matter is restored back to the Id.AO for deciding afresh. The relevant grounds of appeal are accordingly allowed for statistical purpose.

8. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 28-11-2024

Sd/-  
(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER

Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER

Mumbai,

Date : 28-11-2024

TNMM

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