

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ , अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1098/AHD/2023
निर्धारण वर्ष / Asstt. Year: 2013-2014

The A.C.I.T, Circle-3(1)(1), Ahmedabad.	बनाम Vs.	Omshiv Fabricshub Pvt. Ltd., 204, Abhiraj Complex, 68/B Swastic Society, Ahmedabad-380009. PAN: AAACP1841R
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(अपीलार्थी /Appellant	(प्रत्यर्थी /Respondent)
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Assessee by :	Shri Tushar Hemani, Sr. Advocate with Shri Parimalsinh B Parmar, AR
Revenue by :	Shri RN Dsouza, CIT. DR

सुनवाई की तारीख/**Date of Hearing** : **24/10/2024**
घोषणा की तारीख/**Date of Pronouncement**: **09/12/2024**

आदेश/O R D E R

PER SUCHITRA KAMBLE, JM:

The captioned appeal has been filed at the instance of the Revenue against the order dated 27.10.2023 passed by the Learned Commissioner of Income Tax (Appeals), Gandhinagar, arising in the matter of assessment order passed under s. 143 r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal:

1. The Ld. CIT (A) has erred in law and on facts in restricting the disallowance made on account of unexplained bank deposit and withdrawal u/s.68 of IT Act of Rs.88,83,16,516/- to Rs.16,67,100/- @ 0.30% of total Circular Trading Transaction of Rs.55,57,00,000/-

2. The Ld. CIT (A) has erred in law and on facts in holding that the circular trading is not a case of estimation of net profit on circular purchase but it was a case where the assessee had incurred expenses of circular purchases but it was a case where the assessee had incurred expenses of circular purchases being intermediately charges not for the

purpose of business, ignoring the fact that AO had safely concluded that the purchase were not reliable and the extent of such purchases could not be ascertained not the assessee came forward to explain the same.

3. The Ld.CIT(A) has erred in law and on facts in not considering that all the concerns through which the assessee had entered into circular trading transactions would show bogus purchases, bogus sales and bogus expenditure to accommodate the assessee.

4. The appellant craves leave to add, alter and/or to amend all or any of the ground before the final hearing of the appeal.

3. The assessee is engaged in the business of trading of raw cotton. The assessee filed its original return of income for A.Y. 2013-14 on 31.10.2013 declaring total income of Rs. Nil. The case of the assessee was selected for scrutiny u/s 143(3) of the Income Tax Act, 1961 and the assessment was completed on 30.03.2016 thereby assessing the total loss at Rs. 76,31,653/-. The information was received from the ADIT(Inv.) Unit-1(2) Ahmedabad sharing information in the case of Sanjay Agrawal for the F.Y. 2012-13 relevant to A.Y. 2013-14. In pursuance to Section 147 of the Act, notice u/s 148 of the Act was issued on 31.03.2020 and the same was served upon the assessee. The assessee filed return in response to notice u/s 148 of the Act on 18.02.2021. Further notice u/s 142(1) and show cause notice u/s 129 of the Act dated 23.09.2021 were also issued and served upon the assessee. The assessee filed the response vide reply dated 25.09.2021. The Assessing Officer observed that during the search in the case of Sanjay Govindram Agrawal various documents relating to financial transactions, most of which were in cash, were also found and seized. During search/post search action 8 name mentioned in para 4 of the Assessment Order who were employees of the Sanjay Govindbhai Agrawal and the bank accounts opened in their name which was stated as accommodation entries provided. The statement u/s 131 of Act was also taken as mentioned in assessment order. During the search proceedings, statement of Sanjay Tibrewal was recorded under Section 132(4). The Assessing Officer further observed that the inquiry report of

the ADIT (Inv.) Unit 1(2) Ahmedabad found that the assessee company has taken accommodation entries totaling the tune of Rs. 88,83,16,516/- (credit and debits) for A.Y. 2013-14, and that such amounts are non-genuine entries entered in the books of accounts. Therefore, the Assessing Officer observed that the assessee company has taken accommodation entry of Rs. 88,83,16,516/- from entity controlled by Sanjay Tibrewal. The Assessing Officer further observed that the assessee has not submitted any document including cash flow statements, bank account statements etc. to substantiate its assertions. Thus, the Assessing Officer held that these entities are paper concerns and engaged in providing accommodation to various unrelated concerns. No underlying business activity has been carried out against the bank transactions made by these entities/ST Group with various entities bogus sales/purchases, bogus share premium or unsecured loans might have provided by the ST Group. The Assessing Officer made addition of Rs. 88,83,16,516/- as unexplained cash credit u/s 68 of the Act.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that Sanjay Tibrewal / Sanjay Agarwal is an entry operator and all the persons mentioned in para 3 of assessment order are the employees of Sanjay Tibrewal and are involved in cheque discounting. Besides this all the bank account statements of these persons have common parties for debit and credit transactions. The Ld. DR also relied upon the original assessment under Section 143(2) of the Act wherein the accommodation entry trail was also mentioned and therefore, as regards to 0.30% restricting the original trading transaction on part of the CIT(A) is not justifiable. The Ld. DR further

submitted that the assessee has incurred expenses of circular purchases being intermediately charges not for the purpose of business, ignoring the fact that the Assessing Officer had concluded that the purchases were not reliable and the extent of such purchases could not be ascertained nor the assessee came forward to explain the same. Thus, the assessee entered into circular trading transactions which shows it as bogus purchases, bogus sales and bogus expenditure to accommodate the assessee. The Ld. DR submitted that the CIT(A) relied upon the order of the Hon'ble Settlement Commission which cannot be the sole criteria to restrict the disallowance.

6. The Ld. AR submitted that the assessee is engaged in the business of trading in grey cloth on wholesale. The assessee filed original return of income for the AY 2013-14 on 31-10-2013 declaring total Income at Rs. NIL, paying taxes of Rs 3,35,563/- under MAT, claiming refund of Rs 63,150/- and carried forward loss and unabsorbed depreciation (UAD) of (-) Rs. 88,41,300/- to the next year. The Ld. AR submitted that the case of the assessee was selected for scrutiny u/s 143(3) of the Act and Assessment Order u/s 143(3) was passed on 30-03-2016 by DCIT, Central Circle 1(4), Ahmedabad, assessing loss at (-) Rs.76,31,650/- by making addition of Rs. 12,09,647/- and allowing carry forward of loss of Rs. 76,31,650/-. He further submitted that the assessee filed appeal against order u/s. 143(3), the same was decided and final assessed income was at loss Rs. (-) 86,33,417/-, and thereafter, the case of the assessee was reopened vide notice u/s 148 dated 21-03-2020. He submitted that the case was reopened on the basis of search action on Sanjay Govindram Agrawal (Sanjay Tibrewal "ST") on 12-04-2019 wherein ADIT (Inv) Unit-1(2), Ahmedabad observed that ST was in the business of providing accommodation entries and based on the inquiry report of ADIT, (Inv) Unit-1(2) and assessee took accommodation entries totaling to tune of Rs. 88,83,16,516/-. It was also submitted by the ld.

AR that the Assessing Officer, while reopening the case, relied on letter of DDIT (Inv.) Unit 1(2), Ahmedabad dated 14-03-2020, date wise transaction details & bank statement, and statements of Shri Sanjay Tibrewal, Shri Pradeep Agrawal, Shri Harish M. Purohit, Shri Hasmukh Purohit, Ms. Alpa Shah, Ms. Jigna Shah Sandeep Parmar, Shri Vivek Agrawal, Shri Nitantan Makwana, and Shri Pradeep Agrawal. The Ld. AR also submitted that the Assessing Officer, except reasons for reopening, not provided any document/evidence/statement; and merely relied upon and acted upon borrowed information from DDIT (Inv) Unit-1(2), Ahmedabad.

6.1 The Ld. AR submitted that the Assessing Officer issued notice u/s. 143(2) on 22-09-2021 and he disposed-off objection filed by assessee vide letter dated 23-09-2021, but has not provided documents, evidences, bank statements and statements of persons and issued show-cause notice dated 23-09-2021, which is against the principles of natural justice.

6.2 It is also submitted by the Ld. AR that as the time-barring date was 30-09-2021 and last date to reply to the show-cause notice was 26-09-2021, the Chartered Accountant of the assessee attended to the office of the Assessing Officer, (DCIT, Circle 3(1)(1), Ahmedabad) on 24-09-2021 and requested him to provide relevant documents, evidences, bank statements, statements of persons and date wise transactions of deposit and withdrawals in bank accounts of ST (Sanjay Tibrewal) Group. The Assessing Officer shown his unwillingness to provide any documents, evidences, bank statements and statements of persons, etc.

6.3 The Ld. AR submitted that in the spirit of co-operation and with the intention to put correct facts before Income-tax Dept., the assessee explained nature of transactions with ST Group and stated that these transactions are not accommodation entries, but simply these are

transactions for Circular Trading done by Pradip Overseas Ltd. (POL) (other concern in the same group) to show better turnover and all these entries are on paper, which are traveling from POL to POL through conduit as OFSPL and squared off through cheque entries i.e. He further submitted that the accommodation entries were against paper purchases and sale transactions. He also submitted that all such transactions of taking accommodation entries are recorded in books against sale transactions, where against paper sale transaction, cheque through accommodation entry is taken such cheque was issued by POL against paper purchases and rotate back in books/bank through entry provider. However, funds for such transactions are provided by POL to entry provider, entry provider rotate it internally through OFSPL and finally funds revert back in the books/bank of POL. He also submitted that the assessee also placed reliance on its own Assessment Order dated 30-06-2016 wherein the then Assessing Officer already discussed facts related to circular trading made by the assessee, placed reliance on settlement order passed by Settlement Commission (ITSC) for AY 2006- 07 to AY 2012-13 in the case of M/s Pradip Overseas Ltd. (Main beneficiary of the circular trading of the same group) and placed reliance on order of Hon'ble ITAT Ahmedabad vide order dated 16-09-2021 in the case of Pradeep overseas Ltd. for AY 2013-14 confirming the *modus operendi* of circular trading, disregarding alleged addition of accommodation entries by Income tax department and made addition of transaction charges / brokerage as expenses incurred for circular trading. The Ld. AR submitted that, in spite of the above, the Assessing Officer disregarding the above facts and circumstance, without providing evidences on which the case was reopened and, merely on the borrowed information, made addition of total deposits of cheques issued by the assessee to ST group of Rs. 33,26,16,516/- and total cheques issued by ST group to the assessee of Rs. 55,57,00,000/-, totaling to Rs. 88,83,16,516/- as unexplained cash credit u/s 68 of the Act vide order

u/s 147 of the Act dated 29-09-2021. The ld. AR relied upon the order of the ld. CIT(A), more particularly paragraph Nos. 5.7 to 5.10 of his order.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has mentioned that the Circular Trading resorted relating to various sales bills which were issued and circulated amongst these fictitious concerns and finally ended up in sales to M/s. Pradeep Overseas Ltd. by the last entity. This observation has been made by the Assessing Officer in paragraph No.5.1 of the assessment order of assessee M/s. Pradip Petrofils Pvt. Ltd. for AY 2013-14. The Tribunal in the case of M/s. Pradip Overseas Ltd. in paragraph No.6 (ITA No. 790/Ahd/2018, order dated 16.09.2021) observed that M/s. Pradip Overseas Ltd. admitted that it was engaged in Circular Trading wherein the bills/invoices changed hands without movement of physical goods. The Tribunal has categorically observed that this was not a case of estimation of net profit on circular purchases, but this was a case where the assessee has incurred expenses for circular purchases/transactions @ 0.28% and estimated disallowance @ 0.30% of circular trading purchases. Thus, the Tribunal has dismissed the Revenue's appeal. In the present case, the ld. CIT(A) has also taken cognizance of the decision of the Tribunal in other party's cases as mentioned in paragraph No.5.1 of the assessment order of M/s. Pradip Petrofils Pvt. Ltd. In assessee's case, the Assessing Officer has observed that Shri Sanjay Tibrewal has provided entries to thousands of entities during the specific period. The fact remains that these entities are paper concerns and engaged in providing accommodation to the various unrelated concerns. That was never disputed by the Revenue at any point of time, but in assessee's case, the Revenue's stand/contention that the expenses of circular purchases, being intermediately charges not for the purpose of

business, appears to be not tenable as the assessee has clearly given the records showing as to how the Circular Trading has been conducted, and the ld. CIT(A) has rightly made the observation that 0.30% of Circular Trading transactions have to be charged to inter-mediatory not for the purpose of business as mentioned in the case of M/s. Pradip Overseas Ltd and, therefore, deleted the remaining addition and sustained 0.30%, i.e. 16,67,100/-. There is no need to interfere with the same. Besides, the Revenue's contention that the Settlement Commission Order is relied upon, but the fact remains that the ld. CIT(A) has given independent finding relating to the assessee's case and, therefore, there is no need to interfere with the findings of the ld. CIT(A).

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 9th December, 2024 at Ahmedabad.

Sd/-

(MAKRAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

(True Copy)

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

अहमदाबाद/Ahmedabad,

दिनांक/Dated 09/12/2024

Manish, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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