

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA Nos. 4792, 4791 & 4790/MUM/2024
Assessment Years: 2012-13, 2013-14 & 2014-15**

Axtron Tex-Chem (India) Pvt. Ltd.,
Bldg. No. 17/19, 2nd floor, Champa
Galli, Zaveri Bazar,
Mumbai-400002.

**PAN NO. AAFCA 4592 H
Appellant**

Vs. Dy. CIT Central Circle-6(1),
Aayakar Bhavan,
Mumbai-400020.

Respondent

Assessee by : Mr. Suresh Otwani &
Mr. Sunil Talreja
Revenue by : Mr. Ram Krishn Kedia, Sr. DR

Date of Hearing : 21/01/2025
Date of pronouncement : 30/01/2025

ORDER

PER BENCH

The captioned appeals by the assessee are directed against orders, all dated 22.07.2024, passed by the Ld. Commissioner of Income-tax (Appeals) – 54, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2012-13, 2013-14 and 2014-15 respectively.



2. As identical grounds have been raised in these appeals, therefore, same were heard together and disposed off by way of this consolidated order for the sake of convenience. The grounds raised in assessment year 2012-13 are reproduced as under:

1. The FAA i.e, CIT(A) - 54 Mumbai erred in not accepting the additional ground filed before CIT(A) -54 Mumbai wherein it was claimed that From AY 2012-13 to AY 2014-15 proceedings U/s 153C(1)(b) was not applicable abinitio. Additional Ground is reproduced hereunder :-

4th Additional Ground- In view of Ground No 5 in the Original Grounds of Appeal we would like to add that A.O erred in coming to conclusion that Appellant is connected with SVP Group on whose premises Search took place on 22.08.2017 as far as this financial year is concerned. A.O erred in adopting the percentage of estimation on turnover of sales and purchase which is not the case in this year.

2. The FAA i.e, CIT(A)-54 Mumbai erred in directing the A.O in restricting the estimation @ 1% on bogus trading of sales and purchase as against pleaded @ 0.05% on SVP Group of Companies only.

3. The Appeal is in time and order.

4. The Appellant craves leave to add, alter or amend any of the grounds on or before the final date of hearing.

3. Briefly stated facts of the case are that the assessee filed its regular return of income on 29.09.2012 declaring total income at Rs.2,69,239/-.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, a search action u/s 132 of the Act was carried out in the case of 'Shreevallabh Pittie'(SVP) Group on 22.08.2017. Consequently, a survey action u/s 133A of the Act was also carried out in the case of the assessee. During the course of the search



action at the premises of the SVP Group it was found that SVP group had made various payments to other entities against bogus purchases as well as bogus expenditure on capital goods. The Assessing Officer noted that payments made against both expenditure were received back by the group either by way of unsecured loan, share premium etc. The Assessing Officer has recorded that during the course of the search u/s 132 at the premises of the SVP group at 97 & 99, 9th floor, Maker Tower “F” Cuffe Parade, Mumbai certain incriminating documents/computer data back up in annexure A-6, A-9, A-12 were seized which were related to the assessee i.e. Axtron Tex-Chem India Pvt. Ltd. In view of incriminating material related to the assessee, a notice u/s 153C of the Act was issued in the case of the assessee and assessment was completed on 20.12.2019 u/s 153A r.w.s.153C of the Act, wherein 2% of the total purchase transactions amounting to Rs.31,83,73,353/-, which was worked out to Rs.66,67,471/-, has been brought to tax in the hands of the assessee by invoking section 145(3) of the Act.

4. On further appeal before the Ld. CIT(A), the assessee challenged validity of the reassessment proceedings u/s 153C of the Act as well as the addition on merit. The Ld. CIT(A) though upheld the addition on merit but did not give any finding on the ground challenging validity of section 153C of the Act which was raised by way of additional ground before the Ld. CIT(A).



5. Aggrieved, the assessee is in appeal before the Tribunal by way of grounds raised as reproduced above.

6. The ground No. 1 of the appeal before us is related to challenging the validity of the proceedings u/s 153C of the Act. The Ld. counsel for the assessee submitted that there is no material related qua the year which has been found in the course of the search of the SVP group and therefore, in absence of any incriminating material qua the year, proceedings u/s 153C of the Act for the year under consideration is *void-ab-initio*. The Ld. counsel further submitted that there is no material except statement during the course of the survey which being not part of the search proceedings, the proceedings u/s 153C invoked in the case of the assessee is liable to be quashed.

6.1 On the other hand, the Ld. Departmental Representative (DR) submitted that though there is no purchase or sale from the SVP group qua the year under consideration but in the survey statement at the premises of the assessee it was explained that assessee was engaged in providing bogus accommodation entry bills. Thus, the statement is having bearing on the purchase and sales made to parties other than the SVP group during the year under consideration and thus 153C proceedings have been correctly initiated in the case of the assessee.



7. We have heard rival submissions of the parties and perused the relevant materials on record. The issue in dispute in the case of the assessee is whether any incriminating material was found qua the year under consideration. We find that the Ld. CIT(A) called for a remand report from the Assessing Officer regarding the contention of the assessee that there was no transaction of the purchase and sale of SVP Group during the year under consideration. Said remand report has been reproduced by the Ld. CIT(A) in the impugned order. On perusal of the relevant part of the remand report, we find that there are no purchase and sales from the SVP group entities during the assessment year 2012-13 to assessment year 2014-15. Thus, it is undisputed that there was no incriminating material found from the search of the SVP group qua the assessment years 2012-13 to 2014-15. The Ld. DR referred to the statement of Shri Rathod recorded during the course of the survey proceedings u/s 133A of the Act at the premises of the assessee and submitted that he had arranged cash for several parties from the market and got commission @ 0.05% for arranging the said cash. The Ld. DR accordingly submitted that this part of his statement having bearing on the purchase and sales with the parties other than the SVP group, therefore proceedings u/s 153C of the Act was justified. However, we are of the opinion that this statement is recorded in the course of the survey u/s 133A of the Act and not under the search proceedings u/s 132 of the Act, therefore it is irrelevant whether the statement was incriminating



material or not unless it found during the course of the search. In absence of any incriminating material found during the course of the search qua the issues, no addition could have been made in case of completed assessment as held by the Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd [58 taxmann.com 78] (Bombay HC) and the ratio which have been upheld by the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. in Civil Appeal No. 6580 of 2021. As search in the case of SVP group was conducted on 26.08.2017, the assessment year under consideration was not pending and therefore falling in the unabated assessments. Accordingly, following the ratio of the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra), we hold that no addition could have been made otherwise than incriminating material. The addition made in respect of commission from transaction with the parties other than the SVP group is accordingly deleted. The grounds of appeal are accordingly allowed.

8. The ground raised in assessment years 2014-15 and 2015-16 are identical to the legal ground raised in assessment year 2012-13. Therefore, following our finding in assessment year 2012-13, the legal ground is allowed in favour of the assessee. The grounds raised on the merit of the appeal not required to be adjudicated upon at this stage and are left open.



9. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open Court on 30/01/2025.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/01/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai