

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 5022 & 5023/MUM/2024
Assessment Years: 2016-17 & 2017-18**

Danco Enterprises India Pvt. Ltd.,
11, Apollo Industrial Estate, Off
Mahakali Caves Road, Chakala
MIDC,
Mumbai-400093.
PAN NO. AAECD 1889 M
Appellant

ITO-9(3)(1),
Room No. 419, 4th floor,
Vs. Aayakar Bhavan,
Maharishi Karve Road,
Mumbai-400020.
Respondent

Assessee by : Mr. Suchek Anchaliya
Revenue by : Mr. R.R. Makwana, Sr. DR

Date of Hearing : 17/12/2024
Date of pronouncement : 30/01/2025

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the assessee are directed against orders, both dated 29.07.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2016-17 and 2017-18 respectively. As identical issues in dispute are involved in these appeals



therefore same were heard together and disposed off by way of this consolidated order for the sake of convenience.

2. Firstly, we take up the appeal of the assessee in ITA No. 5022/Mum/2024 for assessment year 2016-17. The grounds raised by the assessee are reproduced as under:

1. *On the facts and in the circumstances of the case and in law the Ld. NFAC erred in not considering the fact that the assumption of jurisdiction by the Ld. Assessing Officer is bad in law as the conditions laid down under the Act for initiating reassessment proceeding u/s 147 of the Act have not been fulfilled.*
2. *On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in confirming entire addition of Rs. 9,37,20,787/- under section 69C of the Act on account of purchases of various materials from M/s Basant Marketing Private Limited by treating them as alleged bogus purchases without appreciating the facts that the appellant has made genuine purchases for the electrical turnkey project in the regular course of business.*

3. Briefly stated, facts of the case are that the assessee, a private limited company was engaged in the business of electrical turn key projects, contracts and trading of the goods. During the year under reference, the assessee filed return of income on 29.11.2016 declaring total income at Rs.63,60,965/-. Subsequently, the Assessing Officer received information that a search action was carried out in “One World group” on 08.02.2020 . In said search proceedings, it was found that “One World group” entities were engaged in the business of providing bogus entries and the assessee being one of the beneficiary of receiving bogus/accommodation



entry from 'One World group' concern of bogus purchases amounting to Rs.9,37,20,787/- in the period relevant to the assessment year under consideration. Accordingly, the Assessing Officer recorded reasons to believe that income escaped assessment and issued notice u/s 148 of the Act on 31.03.2021. In response, the assessee filed return of income on 15.12.2021 declaring total income at Rs.63,60,970/-. In the course of the reassessment proceedings, the assessee filed detail of purchase invoices, letter of credit, party ledger, delivery challans, lorry receipt, payment details etc. and explained as why the purchases had increased to 160% as compared to last year. The Assessing Officer further called for details supporting transportation for purchase and relevant copies of document but same were not submitted. Then, Assessing Officer referred to statement of Shri Rajesh Mehta, CEO M/s Basant Marketing Ltd. which is one of the concern of the One World group. The relevant finding of the Assessing Officer is reproduced as under:

"14. On further verification of information and Invoices submitted by the assessee, 90% of the submitted invoices were from M/s. Basant Marketing Limited. During the search proceedings in the case of M/s.Oneworld group in Mumbai, a statement was recorded from Shri. Rajesh Mehta on 08.11.2019 the CEO of M/s. Basant Marketing Limitedl. In his statement, Shri. Rajesh Mehta had admitted as under:

" There is no business carried out in these companies. The companies exist on paper and are used by several persons to generate bogus sales and bogus purchases. I get a commission in the range of 54 paisa per 100Rs. Transaction for letting other persons to use my companies"



15. *It is very clear from the above statement from CEO of M/s. Basant Marketing Limited that their company had provided bogus bills for purchases. In this instant case, out of the total purchases, purchases amounting to Rs.9,37,20,787/-were made from M/s.Basant Marketing Limited.*

16. *In response to show cause notice issued, the assessee has requested for personal hearing through Video conference and the assessee was heard on 30.03.2022@ 6.20 PM. The assessee explained with regard to the issue and also requested not to consider the purchases as bogus purchases.*

17. *The explanation of the assessee were carefully examined. The same cannot be accepted as it is very clear from the above discussion that the purchases amounting to Rs. 9,37,20,787/-were bogus purchases only.*

18. *On the above circumstances, the purchases made from M/s. Basant Marketing Limited by the assessee is to be treated as bogus purchases and the same were treated as unexplained expenditure u/s.69C of the Act and added to the returned income of the assessee.*

4. On further appeal, the assessee submitted that in response to the show cause notice issued by the Assessing Officer, the assessee stated that there were no transactions with 'One World group.' Further submitted that during relevant period purchases were made through agents who used to set up deals and contact the supplier and in return to used gets commission either from the purchaser or the seller or the both. The assessee submitted that assessee had purchased the goods through agents and not directly. Further, it was submitted that corresponding sales were also made. The Ld. CIT(A) however rejected the contention of the assessee and upheld the disallowance observing as under:

"6.3.4 During the course of present appellate proceedings, the assessee has failed to rebut the findings of the AO. As from the



above discussion, as the company M/s. Basant. Marketing Limited had provided bogus bills for purchases, I am of the considered opinion that the AO rightly made the impugned addition of Rs.9,37,20,787/- warranting no interference of the appellate authority. Therefore, the Grounds raised by the assessee on this issue are dismissed.”

5. Before us, the Ld. counsel for the assessee filed a Paper Book containing pages 1 to 127.

6. The ground No. 1 of the appeal of the assessee relate to validity of the reassessment. The assessee has mainly contested that jurisdiction as assumed by the Assessing Officer is bad in law as the condition laid down under the Act for initiating proceedings u/s 147 of the Act have not been fulfilled. The Ld. counsel for the assessee referred to Paper Book page 40, which is a copy of the reasons recorded and submitted that the Assessing Officer has not referred to M/s Basant Marketing Pvt. Ltd. in the reasons recorded and only referred to One World group concern. The Ld. counsel submitted that the detail of the One World group were not provided to the assessee during the reassessment proceedings, in spite of specific request made to the Assessing Officer vide letter dated 18.03.2022. The Ld. counsel further referred that even in the show cause notice issued also there was no reference of M/s Basant Marketing Pvt. Ltd. Accordingly, he assailed the reasons recorded and submitted that reasons recorded are vague and based on the presumptions only, hence reassessment proceedings are bad in law and need to be quashed.



6.1 On the contrary, the Ld. Departmental Representative (DR) submitted that 'sufficiency' or the 'correctness' of the material relied upon for reopening is not to be seen at the stage of recording reasons and matter could be examined during the reassessment proceedings. He submitted that during the reassessment proceedings, the assessee was duly intimated the name of the entity M/s Basant Marketing Pvt. Ltd. from whom the assessee had made purchases which were under the cloud. Therefore, he rejected the contention of the assessee.

6.2 We have heard rival submissions of the parties and perused the relevant materials on record. The reasons recorded in the case of the assessee as available on Paper Book page 40 are reproduced as under:

"Sir/ Madam/ M/s,

Subject: Re-opened assessment proceedings u/s.147 of the Act - in your case - PAN : AAECD1889M - AY : 2016-17- Regarding.

Ref: Your letter dated 15.12.2021.

Sub: Submission of Information and documents.

With reference to the above-mentioned notice u/s 144 of the Income-tax Act, 1961 ,we hereby state submit & request before your good-self as under:

- 1. " As per the information and details available with this office, the assessee has taken accommodation entry of bogus purchase of Rs.9,37,20,787/- during the financial year 2015-2016 from One world group concerns who is engaged in the business of bogus entries and the group companies are paper companies and there were no real business activities and has shown bogus purchases and bogus sales.*



Hence, reason to believe that this amount of Rs.9,37,20,787/- chargeable to tax has escaped from assessment within the meaning of sec. 147 of the IT Act".

With reference to the above we would like to state that we have not made any purchases/sales amounting to Rs.9,37,20,787/- from One World Group."

6.3 On perusal of the above, we find that the Assessing Officer has recorded reasons based on the information received during the course of the search proceedings at the premises of the one-word group. It is noted that M/s Basant Marketing Pvt. Ltd. is one of the group of the One World group, thus, the information is not factually incorrect to that extent. The Assessing Officer has mentioned the purchase amount in the reasons recorded which is also referred in the books of account of the assessee corresponding purchase from M/s Basant Marketing Pvt. Ltd. In the circumstances, we do not find any vagueness in the reasons recorded, therefore, the ground challenging validity of reassessment is accordingly dismissed.

6.4 The next ground is in respect of merit of addition. Before us, the Ld. counsel for the assessee has filed an application under Rule 29 of the Income-tax Rules, 1962 (in short 'the Rules') for admitting the additional evidence. The relevant part of the application is reproduced as under:

2. The circumstances which prevented the appellant from producing the said documents before the Learned Assessing Officer ('Ld. A.O.') and the Ld. Commissioner of Income Tax (Appeals) ['Ld. CIT(A)'], during the course of proceedings before the said authorities are explained below:



3. In 2017, the appellant company was incurring business losses and the bank account of the company was overdrawn and declared as Non-Performing Asset. A notice was also issued on the company under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act). Accordingly, the appellant company was occupied in complying with banking irregularities and other proceedings.

4. Further, the relevant financial records and documents of the appellant company for the year under consideration were scattered due to the various ongoing proceedings before various authorities.

5. In 2021-2022, when the impugned assessment proceedings were ongoing, the appellant company did not have its financial records and documents relating to A.Y. 2017-18 on hand and accordingly, it could not adequately reply to the notices issued.

6. Even during the pendency of the appeal before the Ld. CIT(A), the appellant was unable to locate its relevant financial records and documents and therefore, could not produce the same before the Ld. CIT(A).

7. Recently, on completion of the other proceedings before authorities, the appellant was able to collate its records and documents for F.Y. 2016-17, relevant to A.Y. 2017-18.

8. Accordingly, the appellant has compiled the following documentary evidences in a paperbook, which it would like to submit in the form of additional evidence before the Hon'ble IT AT:

Sr. No.	Particulars	Page No.	Whether available with lower authorities
1.	ITR Acknowledgment and Computation of Income for A.Y. 2017-18	1-3	NO
2.	Notice u/s 148 of the Act, dated 31.03.2021	4	YES
3.	Notices issued u/s 142(1)	5-10	YES
4.	Show cause notice dated 12.03.2022	11-13	YES
5.	Reply to show cause notice filed on 17.03.2022	14-17	YES
6.	Details of Basant Marketing Limited		



	a. Ledger Account	18-19	NO
	b. Purchase Invoices and Delivery Note	20-31	NO
	c. Bank Statement reflecting payment to purchase parties	32-36	NO
7.	One to one mapping of alleged bogus purchase with corresponding sales	37	NO

9. Therefore, considering facts and circumstances of the case, your Honours are requested to kindly admit the additional evidences, which are important and plays a vital role in disposing the present appeal in hand.

10. The provision of Rule 29 of of the Income-tax (Appellate Tribunal) Rules, 1963 are reproduced as under:

"Production of additional evidence before the Tribunal.

29. *The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or , if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced."*

11. *The right of the Hon'ble Tribunal to admit additional evidence in accordance with Rule 29 of the Income Tax Appellate Tribunal Rules, has fallen for consideration before a Division Bench of Madras Court in the case of CITv. Ku. Pa. Krishnan [2012] 345 ITR 38/25 taxmann.com 130 (Mad.). It has considered the matter and found that when Rule 18(4) is read with Rule 29 of the aforementioned Rules, there would not be any difficulty in holding that in terms of Rule 29, the additional evidence can also be produced before the Tribunal.*

12. *As can be seen from the peculiar facts of the present case the appellant had a bonafied reason to not file the aforesaid additional evidence before the lower authorities. It is therefore, a humble prayer of the appellant to kindly admit the additional evidence."*



6.5 In view of the circumstances referred by the assessee in the application as well as in view of fact that documents filed are crucial for determination of the issue in dispute involved in the grounds related to merit, therefore, we feel it appropriate to restore this issue back to the file of the Assessing Officer for deciding afresh in the light of the evidences filed by the assessee before us. The ground challenging merit of the addition i.e. ground No. 2 of the appeal is restored back to the file of the Assessing Officer for deciding afresh.

7. In the assessment year 2017-18 in ITA No. 5023/Mum/2024 also identical grounds have been raised except change of amount and therefore the grounds raised in assessment year 2017-18 are also decided mutatis mutandis.

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

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

**Sd/-
(SUNIL KUMAR SINGH)
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