

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4333/MUM/2024
(Assessment Year: 2009-2010)**

**Deputy Commissioner of Income
Tax 1(1)(1), Mumbai**

Room No.533/579, Aayakar Bhavan,
M. K. Road, Mumbai – 400020,
Maharashtra.

..... **Appellant**

Aver Software Technologies Limited

B-26, Aver House, Opp. Citi Mall,
New Link Road, Andheri - West,
Mumbai – 400053. Maharashtra.
[PAN:AACCA2889A]

Vs

..... **Respondent**

Appearance

For the Appellant/Department : Shri Ram Krishn Kedia
For the Respondent/Assessee : Shri Pravin Navandar
Shri Parth Navandar

Date

Conclusion of hearing : 05.12.2024
Pronouncement of order : 04.03.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Revenue is directed against the order, dated 28/06/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 30/03/2015, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2009-10.
2. The Revenue has raised following grounds of appeal :
 - "1. On the facts and circumstances of the case and in law, the Ld.

CIT(A) erred in deleting the addition made u/s.69 of the I.T. Act, on account of bogus purchase to the tune of Rs.11,72,002/- and unexplained investment of Rs.17,36,618/-

- 2. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made on account of depreciation claimed on non-existing assets.*
 - 3. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of interest paid to bank u/s.24(b) of the I. T. Act, without appreciating the findings of the Assessing Officer that the loan amount was not used for construction of building.*
 - 4. The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the AO be restored."*
3. The relevant facts in brief are that the Assessee, a company engaged in the business of software, digital equipment and LED lights, filed return of income for the Assessment Year 2009-2010 on 17/08/2009 declaring total income of INR.23,69,950/-. The return was processed under Section 143(1) of the Act. Subsequently, the case of the Assessee was reopened under Section 147 of the Act by issuing notice, dated 26/03/2014, under Section 148 of the Act. The reassessment proceedings culminated into passing of the Assessment Order, dated 30/03/2015 under 143(3) read with Section 147 of the Act assessing taxable income of the Assessee at INR.101.40 Lacs after making (a) addition of INR.29.08 Lacs under Section 69 of the Act, (b) disallowing of depreciation of INR.3.51 Lacs and (c) disallowance of interest of INR.45.07 Lacs under Section 24(b) of the Act. Being aggrieved, the Assessee preferred appeal against the Assessment Order passed under Section 143(3) read with Section 147 of the Act before the CIT(A). Vide order, dated 28/06/2024, the CIT(A) allowed the appeal preferred by the Assessee. Therefore, being aggrieved, the Revenue has preferred the present appeal before the tribunal on the grounds reproduced in paragraph 2 above which are taken up hereinafter in seriatim.

Ground No.1

4. Ground No.1 raised by the Revenue is directed against the CIT(A) deleting the addition made by the Assessing Officer under Section 69 of the Act.
5. The Assessing Officer had made addition of INR 11,72,002/- on account of bogus purchase of computer and INR 17,36,618/- on account of unexplained investment under Section 69 of the Act. The aforesaid addition aggregating to INR.29.08 Lacs was deleted by the CIT(A). Being aggrieved, the Revenue is in appeal before the Tribunal on this issue.
6. We have heard both the sides and have perused the material on record in relation to this issue.
7. A bare perusal a Section 69 of the Act would show that the provisions contained therein are attracted in case of investments not recorded in the books of accounts maintained by an assessee and such assessee offers no explanation about the nature or sources of the said investment. We note that the CIT(A) had deleted the addition made under Section 69 of the Act by the Assessing Officer holding that the transaction under consideration and the assets concerned were recorded in the books of accounts, and therefore, the provisions of Section 69 of the Act were not attracted. The aforesaid finding returned by the CIT(A) has gone uncontroverted during the appellate proceedings before this Tribunal. In absence of any material on record to persuade us to take a different view of the matter from the one taken by the CIT(A), we dismiss Ground No.1 raised by the Revenue.

Ground No.2

8. Ground No.2 raised by the Revenue is directed against the order of the CIT(A) deleting disallowance of depreciation claimed by the

Assessee in respect of computer.

9. While framing assessment, the Assessing Officer disallowed depreciation of INR.3,51,600/- claimed by the Assessee under Section 32 of the Act in respect of computer purchased from M/s Vasant Impex Private Limited for a consideration of INR.11,72,002/- holding the same to be bogus purchase on the basis of information received from the Sales Tax (VAT) Department, State of Maharashtra. In appeal, the CIT(A) deleted the disallowance of depreciation holding that the Assessee had provided all the relevant documents and details. Merely because M/s Vasant Impex had not filed return of income, would not lead to a conclusion that the purchase was bogus. Being aggrieved the Revenue has carried the issue in appeal before the Tribunal.
10. We have heard both the sides and have perused the material on record.
11. We find that the Assessee had furnished the following documents to support the transaction of purchase of computer from Vasant Impex (a) purchase invoice, (b) delivery challan, (c) receipt for part payment of INR.5.72 Lacs and Bank Statement showing payment of entire purchase consideration through bank account. However, during the course of assessment the Assessee was confronted with the fact that the notice issued under Section 133(6) of the Act on 15/01/2015 to M/s. Vasant Impex Pvt. Ltd. calling for details in relation to aforesaid purchases claimed to have been made by the Assessee, was received back un-served from the postal authorities with the postal remarks "not known". In view of the above, the Assessing Officer has doubts about the genuineness of the purchase transaction. Therefore, the Assessee was asked to provide the following further details and documents:
 - (a) Copy of purchase order, original stamped tax invoices & Challan No. V/489 & V/719, installation certificate, gate

pass, receipt note;

- (b) Copies of Manufacturer's warranty certificates, model number, machine number and bar code number of the same;
- (c) Photographs of the server machine – The Assessing Officer noted that vide letter dated 09/09/2014, the Assessee had stated that the Assessee had submitted photographs. However, the same were not found attached by the Assessing Officer
- (d) Fixed Asset Registers showing description/Model/ID No. and situation/location of the fixed assets – Assessing Officer noted that Annexure to audit report provided that the Assessee did not maintain quantitative details & situation of fixed assets as regards to furniture & fixtures, office equipments & computers.

12. We note that the Assessing Officer has recorded that during the assessment proceedings the Assessee was provided copies of statement & affidavit filed by Mr. Suresh Kumar P. Jain, Director of M/s. Vasant Impex Pvt. Ltd. (i.e. selling dealer) before Maharashtra VAT Authority. The Assessing Officer has recorded that in the aforesaid affidavit and statement, Mr. Suresh Kumar P. Jain has confessed that M/s. Vasant Impex Pvt. Ltd. has neither purchased nor sold any material of any sort; and M/s. Vasant Impex Pvt. Ltd. merely issued sale bills without actual delivery of any material. We note that the Assessee did not provide the details sought by the Assessing Officer and filed response in relation to which the Assessing Officer has, in paragraph 10 of the Assessment Order, recorded as under:

"The assessee, in response to the above and vide its letter dated 05.03.2015, submitted as under:

Point (I to IV) we have already submitted vide our letter dated 2nd September 2014

- a) Purchase invoice from Vasant Impex Pvt. Ltd. for Laptop Sony Invoice No. V/489 and Invoice for prompt*

Computers IBM model Invoice No. V/719

- b) Delivery challan of Lap Top Sony V 10*
- c) Receipt for Rs. 5.72 lacs from Vasant Impex*
- d) Bank statement showing payment to Vasant Impex by account payee cheque is highlighting*

Point No 1 is regarding fixed assets

The movable assets are located at registered office address only.

In respect of purchase made from Vasant Impex Pvt. Ltd.:

Working of depreciation claimed of Rs. 3,51,600/-on these fixed assets purchase is attached. As the assets have purchase post 30th September 50% depreciation has been claimed during the year.

No set-off of VAT claimed in respect of aforesaid purchases."

13. After taking into consideration the response of the Assessee, the Assessing Officer concluded that the Assessee had failed to prove the genuineness of the purchase transaction under consideration. Accordingly the Assessing Officer rejected the claimed depreciation of INR.3,51,600/- holding that the Assessee had claimed depreciation on non-existing assets.

14. In appeal preferred by the Assessee, the CIT(A) overturned the decision of the Assessing Officer holding as under:

"7.5 The appellant submitted that Vasant Impex is the Company registered under the Companies Act, 1956 and is having all the documents of incorporation and that the same were also submitted to AO. The appellant submitted that the initial onus is on appellant to prove that it is for the purpose of business which shifts to A.O. to contradict claim of the appellant and that it had discharged their initial onus by giving various proof and evidence. The appellant further submitted that just because the counter party has not filed the required return or may not have paid the taxes after recovering the same from it, it should not be punished in this regard. In view of the above discussion in Ground No C, where the addition of Rs.11,72,002 has been deleted, the disallowance of Depreciation of

Rs.3,51,600 is not sustainable and is directed to be deleted.”

15. On perusal of record we find that the additional documents sought by the Assessing Officer were not furnished by the Assessee during the assessment proceedings. In our view, the onus to prove genuineness of transaction shifted back to the Assessee when the Assessee was confronted with the copies of statement & affidavit filed of Mr. Suresh Kumar P. Jain, Director of M/s. Vasant Impex Pvt. Ltd. (i.e. selling dealer) wherein it was stated that M/s. Vasant Impex Pvt. Ltd. has neither purchased nor sold any material of any sort; and had merely issued sale bills without actual delivery of any material. The Assessing Officer had noted that the Assessee had failed to provide photographs of the computers as well as description/Model/ID No. of the computers. It was also observed by the Assessing Officer that as per the audit report the Assessee did not maintain quantitative details & situation of fixed assets as regards to furniture & fixtures, office equipments & computers. All the aforesaid findings of the Assessing Officer were not considered by the CIT(A). Further, the CIT(A) proceeded on incorrect understanding that the only allegation against M/s. Vasant Impex Pvt. Ltd. was that it had not filed the required return or had not paid the taxes after recovering the same from the Assessee. Where the allegation against M/s. Vasant Impex Pvt. Ltd. was that it was engaged in providing bogus bills without delivery of goods and its director had confessed to the same by way of affidavit filed before the Maharashtra VAT Authorities. The summons issued by the Assessing Officer under Section 133(6) of the Act were also returned un-served. Therefore, we are of the considered view the Assessing Officer was correct in rejecting the purchase transaction under consideration as non-genuine and rejecting the Assessee's claimed depreciation of INR.3,51,600/- in respect of the same. Accordingly, we set aside the order passed by the CIT(A) and reinstate the disallowance of depreciation of INR 3,51,600/- made by

the Assessing Officer. Thus, Ground No.2 raised by the Revenue is allowed.

Ground No. 3

16. Ground No.3 is directed against the order of the CIT(A) deleting the disallowance of INR.45.07 Lacs made by the Assessing Officer in respect of interest paid to bank invoking provisions contained in Section 24(b) of the Act.
17. The Assessing Officer noted that during the relevant previous year the Assessee had claimed deduction for interest of INR.10,72,526/- paid to on borrowed capital while computing business profits, and deduction of INR.45,07,791/- under Section 24(b) of the Act while computing house property income. According to the Assessing Officer the loan facility availed by the Assessee was for part-financing the cost of the project envisaging manufacturing of digital printers/setting up of software development centre. The Assessing Officer observed that the Assessee had not furnished certificate from banks to prove that said borrowings were utilized towards construction of house property yielding rental income in terms of 3rd Proviso to Section 24 of the Act. Therefore, the Assessing Officer made disallowance of interest INR.45.07 Lacs.
18. In appeal before the CIT(A), the Assessee furnished details submission and supported the same with relevant documents and details. The CIT(A) has recorded the submissions of the Assessee in paragraph 8.1 to 8.4 of the order impugned. After examining the details/documents, the CIT(A) accepted disallowance made by the Assessing Officer returned following findings:

"8.5 The Interest Paid during the construction stage of building of Rs. 1,71,76,323 has been capitalised and 1/5th of the same is claimed in the Current Year i.e., Rs. 34,35,265. Further, Rs.10,72,526 Incurred during the CY as post construction period

interest has been claimed as deduction from House Properly income and added to Income from Business head.

It is seen that initially, the term loan of Rs. 400 Lakhs was availed by the appellant from Canara Bank, Versova branch. The Loan was utilised for the construction of the building on the said Plot B-13, owned by the appellant. Canara Bank Internal correspondence dated 11.10.2002 for the term loan of Rs.400 lacs clearly states that company has approached for term loan for purchase of plot and construction of own building. The Chartered Accountant certificate of cost incurred for project and payments made till 03.07.2003 clearly states that the cost has been incurred towards the acquisition of land and construction of "software house software house project" at Plot B-13. Therefore, the aforementioned documents gives a clear evidence of the loan availed COR for construction of building on property Plot 8 13 being owned by the appellant company.

8.6 Later on in the year 2004, as Corporation Bank agreed to fund the term loan amount in foreign currency loan for an enhanced amount of Rs. 700 lakhs; the appellant transferred its loan account from Canara Bank to Corporation Bank. The Corporation Bank Loan Sanction Letter Dated 21.07.2004 states that the purpose as 'project envisaging manufacturing of digital printers and setting up of software development centre at an estimated cost of Rs. 1419 lakhs and security against the same is Plot B 13.

8.7 As the property over plot B-13 has been given on rentals, the income therefrom was shown under sec 22 as Income from House Property. The details of House Property Income as per the computation of the Income as submitted by the appellant company and as assessed by the AO is as follows

xx xx

8.8. xx xx

8.9 It is seen from the fixed assets schedule forming part of financial statements the total cost of Land and Building is Rs. 15,63,66,063 (Freehold land value Rs. 1,54,44,035 plus Building worth Rs. 11,09,22,028) while the total loan sanctioned / availed is Rs. 700 Lakhs only. Further, the appellant has no other major assets for which term loan can be sanctioned/utilised. The Total fixed assets of the company as on 31.03.2009 is Rs. 18.20 crores and the total of Land and Building is 15.40 crores. I find that for the AY 13 14, the appellant was allowed interest u/s. 24(b).

8.10. xx xx

8.11 The AO referred to 3rd proviso to section 24 which I find is only applicable in case of self occupied house property income where incentive is granted and not for commercial property rented. I find that the loan was availed during the construction stage of building and the interest paid thereon was capitalized along the cost of construction and building was not in use. The Term Loan availed is used for additions to fixed assets only. I find that the entire loan amount has been used for construction of building over plot No. B-13 as no other loan has been taken by the appellant and no other immovable Property is owned by the appellant and hence it proves that entire term loan has been utilized for said property construction at B-13. The Rental Income are from Building over Plot No. B-13. "Aver Plaza". The Bank sanction letter clearly state the purpose that is project envisaging manufacturing of digital printers and setting up of software development centre at an estimated cost of Rs. 1419 lakhs. The company availed term loan and constructed software development centre on plot No. B-13 Link Road and instead of using /occupying the same the same has been giving on rentals. The rentals income have been offered for Taxation and the same has been accepted by AO. In view of the above facts and discussion, I am of the considered view that the

disallowance of interest u/s 24(b) of the Act of Rs 45,07,791 is not sustainable and is directed to be deleted. The appeal on this ground is thus allowed.” (Emphasis Supplied)

19. We find the above findings are based upon the material furnished by the Assessee before the Assessing Officer and the CIT(A) which has also been placed before this Tribunal as part of the paper-book filed by the Assessee. We have perused, inter alia, the following documents:
- (a) Canara Bank internal correspondence dated 11.10.2002 (Page 240)
 - (b) Canara Bank correspondence of 07.07.2004 (Page 243)
 - (c) Corporation Bank Loan Sanction Letter dated 21.07.2004 (Page 262-270)
 - (d) Relevant pages of Audited Balance Sheet of Company with Auditor Report. (Page 310-316)
 - (e) Year wise working of interest & Finance Cost, Term Loan Schedule, Building Capitalisation Schedule (Page 317-319)
 - (f) Corporation bank letter dated 20.08.2015 confirming the loan availed and the interest paid (Page 363)
20. From the above material it emerges that the interest paid during the construction stage of the building amounting to INR.1,71,76,323/- was capitalised and 1/5th of the same (i.e. INR.34,35,265/-) was claimed as interest cost during the relevant previous year. Further, interest cost of INR.10,72,526/- incurred during the relevant previous year and pertaining to post construction period was claimed as deduction while computing income under the head 'Income from House Property' and the same was added back while computing income under the head 'Profits & Gains of the Business or Profession'. Thus, clearly no double deduction of interest expenses of INR.10,72,526/- was claimed by the Assessee. It is also

clear that Initially, the term loan of INR.400 Lakhs was availed by the Assessee from Canara Bank for construction of building. In the year 2004, Corporation Bank agreed to provide foreign currency term loan of INR.700 Lakhs to the Assessee for construction/setting up of the office building [i.e. Software Development Centre].

21. On perusal of the Fixed Assets Schedule forming part of Financial Statements of the Assessee for the relevant assessment year we find that the total cost of Land and Building is recorded at INR.15,63,66,063/- (including Building at INR.1,09,22,028) whereas the loan sanctioned and utilized was availed INR.700 Lakhs only (*as the earlier loan of INR.400 Lacs from Canara Bank was taken over by Corporation Bank*). Therefore, we find merit in the contention advance on behalf of the Assessee that not only the entire loan amount availed but even the company's own contribution has gone into construction of building. The CIT(A) has returned a finding that the loan was utilized for the construction of building. The CIT(A) has recorded that the Assessee had one term loan and one major asset (apart from miscellaneous assets like computers, cars, furniture etc.). This also supports the contention of the Assessee that loan funds were utilised for the construction of building. Before the CIT(A) it was contended on behalf of the Assessee that the loan funds were disbursed by the bank directly the vendors/suppliers. Nothing has been placed before us by the Revenue to show that there was misappropriated the loan funds by the Assessee. The Revenue has failed to point out the alternate utilisation of funds, while the Assessee has supported its contention by placing reliance on the financial statements and loan documents. It is admitted position that the building was constructed and leased out. Rental income earned by the Assessee has been offered to tax as income from house property. Therefore, the Assessee has claimed deduction for interest cost under Section 24(b) of the Act read with Explanation thereto. We note that the Assessing Officer

had also referred to 3rd Proviso to Section 24 of the Act while making the disallowance of interest. The CIT(A) has concluded that the said proviso is applicable in case of a self-occupied house property and in the case of commercial property which has been let-out. We find that the 3rd Proviso to Section 24 refers to 2nd Proviso which in turn refers to 1st Proviso to Section 24(b) of the Act. First Proviso applies to property referred to Section 23(2) of the Act (i.e., a self occupied house property). Therefore, we concur with the CIT(A) that 3rd Proviso to Section 24 would not apply to the facts of the present case.

22. In view of the above, we do not find any infirmity in the order passed by the CIT(A) on this issue. Ground No. 3 raised by the Revenue is dismissed.
23. In result, the present appeal preferred by the Revenue is partly allowed.

Order pronounced on 04.03.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 04.03.2025
Divya Nandgaonkar ,Stenographer

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
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6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai