

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member  
and Shri Sandeep Gosain, Judicial Member**

**ITA No. 8501/Mum/2010**  
(Assessment Year: 2007-08)

M/s. Vision 49/2358, 1 <sup>st</sup> Floor, Bandra Saikrupa Co-op Housing Society Ltd., Bandra (E) Mumbai 400051	Vs.	A C I T, Circle 19(3) Mumbai
--	-----	---------------------------------

PAN - AAEFV5389H

**Appellant**

**Respondent**

Assessee by:	Shri Naresh Kumar
Revenue by:	Shri Sandeep Goel

Date of Hearing:	28.03.2016
Date of Pronouncement:	13.04.2016

**ORDER**

**Per Jason P. Boaz, A.M.**

This appeal by the assessee is directed against the order of the CIT(A)-30, Mumbai dated 20.10.2010 for A.Y. 2007-08 for A.Y. 2007-08

2. The facts of the case, in brief, are as under: -

2.1 The assessee, a firm engaged as Architects, Designers and Planners, filed its return for A.Y. 2007-08 on 31.07.2007 declaring total income of ₹21,96,770/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was taken up for scrutiny. On the basis of information received from the Financial Intelligence Unit ('FIU') about high value cash transactions observed in bank accounts of certain parties in ICICI Bank and ABN Amro Bank, Mumbai the DDIT (Inv.), Unit VIII(1), Mumbai conducted a survey under section 133A of the Act on 24.06.2008 in the case of M/s. Nupur Management and Consultants P. Ltd. In the course of these investigations, the Department found that Mr. Sandeep Sitani, C.A. was controlling about 20 concerns which were allegedly used to provide accommodation entries.

One of such concerns was M/s. Nova Corporate Service Pvt. Ltd.; whose two Directors Mr. Pradeep Prajapati and Dinanath Yadav were persons of no means, staying in a chawl and were allegedly working at the behest of Mr. Sitani. The details of such transactions were, inter alia, forwarded to the Assessing Officer in this case.

2.2 In the course of assessment proceedings, the Assessing Officer (AO), as per the information received from the DDIT (Inv.), observed that the assessee had made the following payments to M/s. Nova Corporate Services P. Ltd. ('Nova') during the period under consideration: -

S. No.	Date of Payment	Amount Paid (₹)	Type of Services
1	20.02.2007	17,35,568	Professional or Technical Services
2	09.03.2007	31,54,058	Professional or Technical Services

The above payments were made against 11 bills raised by 'Nova' for liasoning services rendered by 'Nova'. The AO called upon the assessee to establish the genuineness of these expenses and in this regard required the assessee to provide various details in this regard like; (i) copies of TDS certificates, (ii) copy of agreement, if any, with 'Nova', (iii) names of the concerned employees of 'Nova' dealing with this matter, (iv) project-wise details of parties, (v) copy of bills raised by 'Nova', etc. In response thereto, the assessee vide letter dated 03.12.2009 furnished details called for which, inter alia, included copy of TDS certificate issued to 'Nova'. It was, also stated that there was no written agreement with 'Nova' and that one Mr. Shoaib Mulla, their former employee, who is no more working with them, was the person interacting with 'Nova' in respect of all work taken up by them. By this letter, the assessee also furnished details in respect of documents showing project-wise requirement of parties, copies of bills raised by 'Nova' for services provided by them, copy of certificate of 'Nova' showing that 'Nova' is eligible to carryout and provide such consultancy/ professional services; copies of bills issued by the assessee to the owners of project, etc. The AO, however, was not satisfied with the explanation furnished by the assessee. The AO was of the view that at least five

persons would be required to executive the work for which the assessee paid 'Nova' charges amounting to ₹48,49,624/- and insisted that the assessee produce five persons for examination in this regard. Since the assessee submitted that only Mr. Shoaib Mulla carried out the work through 'Nova', it could not produce five persons as sought for, the AO concluded that the payments made by the assessee to 'Nova' were not genuine and disallowed the expenditure claimed in this regard observing that *'hence, the entire amount of ₹48,49,624/- is added to the total income of the assessee as unexplained and unproved purchase/investment as per section 69 of the I.T. Act.'* The assessment was accordingly completed under section 143(3) of the Act vide order dated 31.12.2009 wherein the income of the assessee was determined at ₹70,86,390/- as against returned income of ₹21,96,770/-, in view of the disallowance of claim of payments to 'Nova' amounting to ₹48,49,624/-.

2.3 Aggrieved by the order of amt for A.Y. 2007-08 dated 31.12.2009, the assessee preferred an appeal before the CIT(A)-30, Mumbai. Before the learned CIT(A) it was argued that the genuineness and existence of 'Nova' was not in doubt, that all payments to 'Nova' were made by cheque. It was also submitted that for the services rendered by 'Nova', the assessee has billed its various clients and the genuineness of the bills to its customers and receipts thereof have been accepted by the AO. It was further submitted that 'Nova' had shown/declared above receipts from the assessee in its return of income. It was also submitted that statutory dues like service tax, etc. have been paid in relation to these transactions. The learned CIT(A), however, did not accept the arguments put forth by the assessee and proceeded to confirm the AO's order vide the impugned order dated 20.10.2010.

3. Aggrieved by the order of the CIT(A)-30, Mumbai dated 20.10.2010 for A.Y. 2007-08, the assessee has preferred this appeal before the Tribunal raising the following grounds: -

**"1. Addition u/s. 69 - for the disallowance of alleged professional payments - Rs. 443,624/-**

a) *The Id. CIT(A) erred in confirming the disallowance of recurring*

*professional and other committed payments made during the course of rendering professional service by treating the same as alleged bogus accommodation entries. As payments made are backed by evidences which had been subject to TDS and through cheque payments and the party is identified, the disallowance u/s. 69 is uncalled for and may be deleted.*

- b) The Id CIT (A) ought to have appreciated that when the recipient is assessed to tax with its PAN (AACCN3660Q) and services rendered had been proved beyond doubt by furnishing the supportings and the recipient company is not a related concern within the meaning of Sec. 40A2)(b), disallowance made out of surmises and conjectures is not justified and the same may be deleted.*
- c) Without prejudice to above, Sec. 69 has no application on the facts of the case.*
- d) As the recipient is assessed to tax and relevant evidences are in record, the addition u/s. 69 is not justified. Merely on the ground that the C.A. of the recipient Company is absconding when inspite of having knowledge of all events the Assessing Officer has not provided cross-examination of any of the third parties, it is not sufficient to confirm the disallowance. Hence, the disallowance may be deleted.*
- e) Without prejudice to the above, as the alleged deficiency has not prompted the Assessing Officer to invoke Sec 145, on merits, the disallowance has no base. The same should be deleted*

2. **LEVY OF PENAL INTERESTS**

*The appellant, on merits, denies its liability to penal interest.*

- 3. *The Appellant craves leave to add, amend or alter all or any of the above Ground of Appeal.”*

4. **Ground No. 1(1) to (e) - Disallowance of Service Charges paid - ₹48,89,624/-**

4.1 This is the only substantial ground of appeal, which relates to the disallowance of professional payments amounting to ₹48,49,624/- made by the assessee to ‘Nova’ for rendering of professional services by treating the same as unexplained/unproved purchase/investment under section 69 of the Act.

4.2 The learned A.R. for the assessee was heard in support of the grounds raised at S.No. 1(1) to (e) (supra). At the outset, the learned A.R. for the assessee contended that from the orders of the authorities below, it appeared that neither the AO nor the learned CIT(A) are clear as to under which section to impugned disallowance of professional fees of ₹48,49,624/- paid to ‘Nova’

has been made, since it is held to be unexplained/unproved purchase/investment, when the legal requirements of each of them is quite different. The learned A.R. for the assessee contended that the provisions of section 69 of the Act could not have been invoked in the case on hand because there are no investments outside the assessee's books of account. All entries in respect of the payment for professional services rendered by 'Nova' are properly recorded in the assessee's books of account, are made by cheque, confirmed by 'Nova' to having been received by them, declared in their return of income for the relevant year, etc. and therefore the invoking of the provisions of section 69 of the Act was not justified.

4.2.2 The learned A.R. for the assessee then assailed the AO's making the disallowance of payment for professional services amounting to ₹48,49,624/- as unproved purchases contending that the AO's conclusion was not supported by facts. It was submitted that the AO had not rejected the assessee's books of account, that all payments are made by cheque to 'Nova' who is not a related party; that the existence of 'Nova' has been proved beyond doubt; that 'Nova' has filed confirmation for having received the above amounts totalling ₹48,49,624/- and also declaring these amounts as receipts in its return of income for the relevant period; that statutory dues like TDS, Service Tax, etc. in respect of the impugned amount has been paid. It was submitted, by the learned A.R. for the assessee, that in view of the above facts of the matter the disallowance made is required to be deleted and in this regard placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Nikunj Eximp Enterprises (P) Ltd. (2013) 373 ITR 619 (Bom), which he submitted was in similar fact situation on the issue of unproved purchases.

4.2.3 The learned A.R. for the assessee submitted that the AO himself agrees that the work carried out by the assessee for its clients could not have been done by one person and that the assessee had employed only one person in this regard, viz. Shri Shoaib Mulla. It was submitted by the learned A.R. for the assessee that it was precisely for this reason that the assessee required the professional services of 'Nova' to carry out the work on its behalf for its various clients. The learned A.R. for the assessee, in

this regard, further stated that the AO has not brought on record any material to show that any money paid by the assessee to 'Nova' has been received back by him. The learned A.R. for the assessee submitted that the facts of the case on hand are identical to the facts of the case in CIT vs. Mundra Port and Sez Ltd. (2014) 45 taxmann.com 361 (Gujarat) where the Hon'ble Gujarat High Court, on identical facts, confirmed the order of the ITAT deleting the disallowance on account of consulting charges. The learned A.R. for the assessee prayed that in the light of the above factual and legal situation, the disallowance of the assessee claim for payment of professional charges of ₹48,49,624/- to 'Nova' for services rendered made and confirmed by the authorities below ought to be deleted as it is based only on suspicions and surmises being factually and legally unsustainable.

4.3 Per contra, the learned D.R. for Revenue strongly supported the orders of the authorities below. It was submitted that the AO, after having made the required enquiries arrived at the conclusion that the payments to 'Nova' amounting to ₹48,49,624/- was nothing but accommodation entries. The learned D.R. placed reliance on the decision of the Hon'ble Apex Court in the case of Sumati Deyal vs. CIT (214 ITR 801) (SC) to urge that by applying the test of 'human probabilities' it is difficult to believe that 'Nova' could render the services allegedly rendered. It was therefore placed that the orders of the authorities below be upheld.

4.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. Admittedly 'Nova' exists and is assessed to tax. There is also no dispute that all the payments, made by the assessee to 'Nova' for professional services rendered, are by cheque and that 'Nova' has shown all these receipts from the assessee in its return of income and has offered the same for tax. We find that the AO has not been able to bring on record any material evidence to prove that the professional services were not rendered by 'Nova' or that any money in respect of the payments to 'Nova' had flown back to the assessee. The AO has also not been able to controvert or rebut the evidence filed by the assessee to show that various customers were billed by it for the services rendered by 'Nova' on behalf of

the assessee. The books of account of the assessee were also not rejected. On an appreciation of the material on record, we are of the considered view that the AO has disallowed the amount of ₹48,49,624/-, paid by the assessee to 'Nova' for professional services rendered merely only on suspicion that 'Nova' may not have rendered the concerned services since the employees of 'Nova' were not produced for examination. We find that a similar factual situation, as in the case on hand, has been held in favour of the assessee in the case of Nikunj Eximp Enterprises (P) Ltd. (2013) 372 ITR 619 (Bom), wherein at para 7 it has been observed and held as under: -

*"7. We have considered the submission on behalf of the revenue. However, from the order of the Tribunal dated 30.04.2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement, but also in view of the other facts. The Tribunal records that the Books of Accounts of the respondent assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department i.e. Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were infact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent--assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. No fault can be found with the order dated 30.04.2010 of the Tribunal."*

4.4.2 A similar issue had come up before the Hon'ble Gujarat High Court in the case of CIT vs. Mundra Port and Sez Ltd. (2014) 45 taxmann.com 381 (Guj.), wherein the Mundra Port had paid consultancy charges to various parties which were disallowed by the AO for want of confirmation. At paras 5 to 7 thereof the Hon'ble Gujarat High Court, after reproducing the findings of the learned CIT(A) (at para 5) and ITAT Ahmedabad Bench (at para 6) in favour of the assessee, at para 7 upheld the issue in favour of the assessee and dismissed Revenue's appeal holding us under: -

*"7. .... However, when payment was through the channel of bank and tax also was deducted at source and N.M. Consultants is not*

*found to be related to the respondent assessee, both the authorities concurrently and rightly addressed the issue.*

*8. Essentially based on facts when no perversity is visible in the order, we find no question of law much less substantial question of law arises in this appeal. The same is therefore dismissed.”*

4.4.3 We find that the factual matrix of the assessee's in the case on hand to be similar to the facts of the above mentioned cases and therefore respectfully following the decision of the Hon'ble Bombay High Court in the case of CIT vs. Nikunj Eximp Enterprises (P) Ltd. (2013) 372 ITR 619 (Bom) and of the Hon'ble Gujarat High Court in the case of CIT vs. Mundra Port and Sez Ltd. (2014) 45 taxmann.com 381 (Guj) we hold in favour of the assessee and direct the AO to delete the disallowance of ₹48,49,624/- claimed by the assessee as payment for professional services rendered by Nova Corporate Services P. Ltd. and consequently allow the assessee's claim. Assessee's grounds raised at S.No. 1 ('a' to 'e') is allowed.'

5. **Ground No. 2:** In this ground the assessee denies itself liable to be charged interest under section 234A, 234B, 234C and 234D of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H. Ghaswala (252 ITR 1) (SC) and we therefore uphold the action of the AO in charging the said interest. The AO is, however, directed to recompute the interest chargeable, if any, while giving effect to the findings in this order.

6. **Ground No. 3** is general in nature and therefore no adjudication is called for thereon.

7. In the result, the assessee's for A.Y. 2007-08 is allowed.

Order pronounced in the open court on 13<sup>th</sup> April, 2016.

Sd/-  
**(Sandeep Gosain)**  
**Judicial Member**

Sd/-  
**(Jason P. Boaz)**  
**Accountant Member**

Mumbai, Dated: 13<sup>th</sup> April, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -30, Mumbai*
4. *The CIT - 19, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar  
ITAT, Mumbai Benches, Mumbai*

n.p.