

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 2324/Mum/2023

(Assessment Year: 2013-14)

The Dy. Commissioner of Income
Tax,
Central Circle 5(1),
Room No.1928, 19th Floor, Air
India Building, Nariman Point,
Mumbai-400 021

(Appellant)

Vs.

Ms Speco Infrastructure
C-110, Shyam Kamal, 27,
Tejpal Road, Agarwal Market,
Ville Parle, East
Mumbai-400 057

(Respondent)**PAN No. ACEFS4960M**

Assessee by : Shri Jaiprakash Bairagra, AR
Revenue by : Shri Ram Krishna Kedia, SR. AR

Date of hearing: 12-01-2024**Date of pronouncement :** 22.01.2024**ORDER****PER PRASHANT MAHARISHI, AM:**

01. This appeal in ITA No.2324/Mum/2023 for A.Y. 2013-14, is filed by Dy. Commissioner of Income Tax, Central Circle 5(1), Mumbai (the learned Assessing Officer) against the appellate order passed by Commissioner of Income-tax (Appeals)-53, Mumbai [the learned CIT (A)] dated 26th April, 2023, wherein e-appeal filed by the assessee against the assessment order passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) dated 28th March, 2023, was partly allowed and the learned Assessing Officer is aggrieved on following three grounds:-



"1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 3,26,000/- on account of bogus purchase ignoring the facts that the assessee failed to prove the genuineness of purchases?"

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,90,00,000/- u/s 68 of the Act in respect of unsecured loans ignoring the facts that the assessee has not proved the genuineness of the transaction, the identity of most of the creditors, and credit-worthiness of the parties to the satisfaction of the AO, so as to discharge the primary onus?"

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 32,13,591/- u/s 37(1) of the Act in respect of interest expenses on unsecured loans ignoring the facts that the assessee has not proved the genuineness of the transaction, the identity of most of the creditors, and credit-worthiness of the parties to the satisfaction of the AO, so as to discharge the primary onus?"

4. "The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal if need be."

02. The brief facts of the case shows that assessee is a partnership firm filed return of income on 30th September, 2013, declaring total income of ₹76,24,110/-, which was assessed under Section 143(3) of the Act on 21st March,



2016, at the total income of ₹82,63,100/-, consequently, on the basis of appeal effect orders passed the total income of the assessee was assessed at ₹80,63,100/-.

03. Subsequently, a notice under Section 148 of the Act was issued on 3rd June, 2021. After that the decision was rendered by the Hon'ble Supreme Court in case of Union Bank of India Vs. Ashish Agarwal. Notice under Section 148 of the Act was issued in assessee's case on 30th June, 2021, which was deemed to be a show cause notice under Section 148A(b) of the Act. Accordingly, notice under that section was issued on 30th May, 2022. The reopening was made based on information received from Dy. Director of Income tax investigation, Mumbai through insight portal, wherein the assessee was found to be engaged in trading of penny stocks. The trade value was found to be ₹2,13,11,667/-. The assessee filed its return under Section 148 of the Act on 22nd August, 2022 at a total income of ₹80,63,100/-. Notice under Section 143(2) of the Act was issued on 28th September 2022.
04. The search was carried out under Section 132 of the Act on RPS Infra projects limited and related entities on 6th November 2019. That group is a civil contractor of the Government. During the search, it revealed that assessee and their group companies have been involved in systematic over invoicing bogus bill and in accommodation entry for unsecured loan from various entities. The assessee partnership firm engaged in the business of construction of roads and buildings undertaking the



contract from BMC and other group agencies. It was found that assessee has bogus purchases from Nidhi Enterprises of ₹3,26,000/-, unsecured loans of ₹2,22,13,591/-. The show cause notice was issued and thereafter an assessment order after enquiry was passed where it was found that unexplained expenditure on account of bogus purchases of ₹3,26,000/- unexplained cash credit under Section 68 of the Act on account of unsecured loan of ₹1.90 crores and bogus interest expenditure disallowed of ₹2,22,13,591/- resulted into the assessment order dated 28th March, 2023, determining the total income of the assessee at ₹3,06,02,900/-.

05. Assessee aggrieved with that assessment order challenged the same before the learned Commissioner of Income tax (Appeals). The assessee challenged the reopening of the assessment was dismissed. The addition with respect to the bogus purchase of ₹3,26,000/- was deleted on the basis of identical order in case of the assessee for A.Y. 2013-14 passed by the learned CIT (A). With respect to the addition under Section 68 of the Act, also the issue was identical wherein the learned CIT (A) has passed the order. Accordingly, it was also deleted. Thus, the appeal of the assessee was allowed. Against this appellate order, the learned Assessing Officer is in appeal before us.
06. At the time of hearing, the learned Authorized Representative submitted that identical issue arose in the case of the sisters concern of the assessee wherein similar additions were made and it were deleted by the co-



ordinate benches. He submitted that similar additions made in the case of the assessee for A.Y. 2014-15 to 2018-19, which were deleted by the learned CIT (A), and subsequent appeal filed by the learned Assessing Officer before the co-ordinate Bench has been dismissed. He submits that the learned CIT (A) has deleted all these three additions relying on the decision of his predecessors passed in the case of Group companies for A.Y. 2013-14 and appeal was filed by the learned Assessing Officer before the Tribunal has also been dismissed. It was further stated that identical issue arose also in case of Preeti Construction, wherein the appeal filed by the Revenue for same assessment year before the co-ordinate bench has also been dismissed. He therefore, submitted that there is no change in the facts and circumstances compared to these orders and therefore, these issues are squarely covered in favour of the assessee and against the Revenue and therefore, the appeal filed by the learned Assessing Officer is to be dismissed.

07. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer.
08. During the course of hearing, the assessee was asked to submit the remand report filed by the learned Assessing Officer for all these assessment years, wherein it is stated that the learned Assessing Officer has accepted the same in appellate proceedings. The assessee submitted the remand report filed by the learned Assessing Officer for A.Y. 2013-14 to A.Y. 2019-20, which was submitted



separately. By that letter, it was further stated that the learned CIT (A) in paragraph no.8.3 at page no.92 to 107 have been considered the remand report and thereafter accepted the claim of the assessee in those groups. During the course of hearing the assessee relied upon the co-ordinate Bench decision in assessee's own case for A.Y. 2014-15 to 2018-19 in ITA No.2706/Mum/2022 and others, dated 31st March, 2023. He extensively referred to the paragraph no.7 to 14 of that order. He further referred to ITA No.2781/Mum/2022 for A.Y. 2013-14 in case of RPS infra projects limited wherein identical issue including the parties were considered and the appeal of the Revenue was dismissed vide order dated 3rd May, 2023. He further referred to the decision of the co-ordinate Bench in ITA No.2780/Mum/2022 for A.Y. 2013-14 in case of Preeti Construction, wherein also identical issue and parties involved and the appeal of the learned Assessing Officer was dismissed as per order dated 3rd May, 2023. In the result, it was submitted that the issue is squarely covered by the decision of the co-ordinate Benches by all the above orders and therefore, the appeal of the learned Assessing Officer deserves to be dismissed.

09. On question to the learned Departmental Representative, that is there any difference between the facts and circumstances of the case including the parties in all these orders and the co-ordinate bench are similar or not, the learned CIT Departmental Representative did not point out any dissimilarity.



010. We have also called for the remand report submitted by the ld AO before CIT (A). On perusal of the same, we did not find any dissimilarity in the case of the assessee and other decisions of the coordinate benches cited before us. The LD DR also could not point out any.
011. We have carefully considered the rival contentions and perused the orders of the lower authorities. We first come to the decision of the co-ordinate Bench in assessee's own case for A.Y. 2014-15 to 2018-19, wherein in ITA No.2706/Mum/2022 and other appeals the orders were passed under Section 153A of the Act and the co-ordinate Bench has deleted the addition and quashed the assessment order. However, it was also mentioned that on merits of the case, the learned CIT (A) has relied on the remand report of the learned Assessing Officer and granted the relief. The co-ordinate bench has categorically held in paragraph no. 14 that the order of the learned CIT (A) deleting the addition is a reasoned and a conclusive order and bench agreed with the same. Coming to the order of the co-ordinate Bench in ITA no.2781/Mum/2022 for A.Y. 2013-14, wherein the assessment order were passed under Section 143 read with section 147 of the Act. The co-ordinate Bench in paragraph no.6 and 7 after considering the remand report upheld the order of the learned CIT (A) with respect to bogus purchase and addition under Section 68 of the Act. Similarly, in case of the sisters concern in ITA No.2780/Mum/2022 for A.Y. 2013-14 in case of Preeti Construction dated 3rd may, 2023, the assessment order was passed under Section



143 read with section 147 of the Act making identical additions deleted by the learned CIT (A) were upheld by the co-ordinate Bench. The Ld DR could not show us any reason to deviate from the above findings of the coordinate benches in the above cases on identical facts and circumstances of the cases. Therefore respectfully following the above decisions of the coordinate benches, we dismiss all the grounds of appeal of the LD AO.

012. In the result, Appeal of the LD AO is dismissed.

Order pronounced in the open court on 22.01.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.01. 2024

Sudip Sarkar, Sr.PS/ Dragon

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai