

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1688 /Chny/2024, Assessment Years: 2015-16

आयकर अपील सं./ITA No.1796 /Chny/2024, Assessment Years: 2017-18

Assistant Commissioner of Income
Tax,
Corporate Circle-1(1),
Chennai.

A.S.Cargo Movers Private Limited,
New No.173, Old No.103, 9th Floor B
Block, Navins Presidium,
Nelson Manickam Road,
Aminjikarai,
Chennai-600 029.
[PAN: AAACA7739D]

आयकर अपील सं./CO No.56 /Chny/2024
निर्धारण वर्ष /Assessment Year: 2015-16

A.S.Cargo Movers Private Limited,
New No.173, Old No.103, 9th Floor B
Block, Navins Presidium,
Nelson Manickam Road,
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Chennai-600 029.
[PAN: AAACA7739D]

Assistant Commissioner of Income
Tax,
Corporate Circle-1(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri N.Quadir Hoseyn, Advocate

प्रत्यर्थी की ओर से /Revenue by

: Shri K.N.Dhandapani, CIT

सुनवाई की तारीख/Date of Hearing

: 04.12.2024

घोषणा की तारीख /Date of Pronouncement

: 24.01.2025

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

The appeals raised by Revenue vide ITA No.1688/Chny/2024 for AY
2015-16 vide order bearing DIN & Order No.ITBA/NFAC/S/250/2023-

:- 2 -:

24/1062081250(1) dated 06.03.2024 and ITA No.1796/Chny/2024 for AY 2017-18 vide No.ITBA/NFAC/S/250/2023-24/1062078129(1) dated 06.03.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi. Through the aforesaid appeal the Revenue has challenged orders u/s 250 passed by NFAC, Delhi and assessee vide CO No.56/Chny/2024 for AY 2015-16 has contested order No.ITBA/NFAC/S/250/2023-24/1062081250 dated 06.03.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi for AY-2015-16. For the purposes of convenience all the aboves appeals are taken by way of this common order.

2.0 It has been noted that there is a delay of 24 days each in both the appeals vide ITA nos.1688 and 1796 in filing of this appeal by the Revenue. It has been pleaded that the concerned officer was handling additional charges and was overwhelmingly preoccupied with time barring assignments leading to delay in timely filing of this appeal. Upon considering the facts we are satisfied with the sufficiency of reasons and proceed to condone the delay and adjudicate this appeal

ITA No.1688 /Chny/2024, Assessment Years: 2015-16

3.0 The first issue arising from the appeal of the Revenue is regarding decision of the Ld. CIT(A) in deleting addition made by the Ld. AO by disallowing amounts written off by the assessee. The Ld. Counsel for the assessee submitted that the Ld. AO has discussed the issue in para 8 on page-3 to 9.3 on page-4 of his assessment order. The Ld. AO noted that the assessee had written off capital advance of Rs.15,48,82,294/- paid to a related party namely M/s. Punit Reach Logistic Pvt. Ltd. The assessee explained to the Ld.AO that it had constructed, a first of its kind, multilevel warehouse project in Bangalore which for unforeseen reasons could not be effectively, commercially exploited. Consequently, the assessee was compelled to sell this project at a loss to one M/s. Aster Logistics Pvt. Ltd. for Rs.115 Crs. The assessee had earlier given loan to M/s. Punit Reach Logistic Pvt. Ltd. Thus, it was explained that the difference was on account this capital loss happening. The Ld. Counsel for the assessee stated that out of the amount of Rs.15,45,82,294/-, an amount of Rs.10,78,13,729/- is interest component accumulated from 2009-10 onwards. The assessee claimed that it had admitted interest income

and paid tax and had also effected TDS thereupon. The Ld. AO observed that in AY-2014-15 also assessee had shown an amount of Rs.10,78,13,729/- out of debit entry of Rs.21,86,23,998/-. Thus, the Ld. Counsel argued that the Ld. AO has drawn a wrong conclusion that the assessee is claiming twice deduction in respect of Rs.10,78,13,729/-. The Ld.Counsel submitted that the Ld. CIT(A) rightly deleted the impugned addition by discussing this issue on page 14 & 15 of his order.

4.0 We have heard rival submissions in the light of material available on records. The Ld. DR would like to make us believe on the correctness of the order of Ld AO and vehemently argued in its favour. The Ld. CIT (A) has comprehensively analyzed the issue in the appellate order. He has noted that impugned write off is not in respect of same party for AY-2014-15 and AY-2015-16 as alleged by the Ld.AO. He had rightly concluded that had it been so there would have been no balance standing in the balance sheet for write off. The Ld. CIT(A) has noted that the present loan written off was against M/s. Punit Logistics. We have also noted that the difference in parties is apparent since the amount of Rs. 10,78,13,729/- extracted by the Ld. AO in para 9.2 of his order is actually in reference of a party called Merillinch. We have also noted that the reliance of Ld. CIT(A) upon

the decision of Hon'ble Apex Court in the case of TRF Limited 323 ITR 397 is also in order. In the referred decision it has been held that mere write off in the books of account is sufficient to claim of amount of write off of bad debt. We have also found force in the argument that the Ld. AO had not rejected its books of accounts u/s 145 while observing the above anomaly. Thus, we are of the view that there is no infirmity in the order of the Ld.CIT(A) which requires any intervention at this stage. **Accordingly we confirm the order of the Ld.CIT(A) and dismiss the grounds of appeal in respect of write off of bad debts raised by the Revenue.**

5.0 The next issue raised by the Revenue is regarding the action of Ld.AO in treating the income offered under the head house property as business income amounting to Rs. 9,26,96,682/-. The Ld. Counsel of the assessee submitted that before the Ld.AO the assessee had explained that its business is to construct ware houses and lease it to the customers. The Ld. AO has discussed the issue in para 10 to para 10.3 of his order of page 5 and 6. Before the Ld. AO, the assessee had explained that he is in this business for a long time and had been consistently offering income as income under the head house property and not as a business income because no deductions like depreciation, salary, travel etc have been claimed. The Ld. Counsel

explained that the Ld. AO rejected the arguments that because it is the business of the assessee to rent or lease ware houses therefore income thereof needs to be of taxed as business income. Consequently the Ld. AO disallowed deductions available u/s 23 / 24 of the act and proceeded to disallow the loss of Rs. 4,62,20,750/- claimed by the assessee under income from house property and made final addition of Rs.9,21,96,682/-. The Ld.Counsel submitted that the Ld.CIT(A) has rightly reversed the decision of the Ld.AO as discussed by him in page 16 & 17 of his order. The Ld. DR argued that the action of the Ld. AO is correct and deserves to be upheld.

6.0 We have heard rival submissions in the light of material available on records. The Ld. Counsel for the assessee submitted that in the original assessment proceedings the impugned income was treated as income from house property and that it was only under subsequent reassessment proceedings the disturbance was made. The Ld. CIT(A) has rightly concluded that the appellants income have been consistently accepted as arising from house property and hence during the year no disturbance can be made without any valid hypothesis. The Ld. Counsel for the assessee also has submitted that the local high pitched assessment committee had held assessment order for AY-2015-16 as high pitched qua additions made therein. The Ld.

CIT(A) has rightly held that the principle of consistency deserves to be followed unless held otherwise. In support of his contentions he has rightly relied upon the decision of Hon'ble Apex Court in the case of Shri Parasuram Pottery Works Company Ltd. 106 ITR 1 Supreme Court.

7.0 We have also found force in the argument that the Ld. AO had not rejected its books of accounts u/s 145 while observing the above anomaly. Thus, we are of the view that there is no infirmity in the order of the Ld.CIT(A) which requires any intervention at this stage. **Accordingly we confirm the order of the Ld.CIT(A) and dismiss the grounds of appeal in respect of holding income from house property as business income raised by the Revenue.**

CO No.56 /Chny/2024, Assessment Year: 2015-16

8.0 Through its CO No.56 the assessee has challenged the initiation of reassessment proceedings u/s 147 r.w.s. 148. It has been contended that as the proceedings are invalid the consequent assessment order would fail. It is the case of the assessee that notice u/s 148 was issued by the Revenue on 25.03.2021 that is beyond a period of four years mandated in law and hence the reopening was unsustainable. The Ld. DR argued that the Revenue's case is

protected by contemporaneously applicable TOLA guidelines stipulated by the Hon'ble Apex Court in view of Covid-19 epidemic.

9.0 We have considered the matter and are of the view that there is no merit in the CO raised by the assessee. The assessee has not been able to place on record any material to demonstrate correctness of its stand. We have also noted that the Revenue's case is covered by the TOLA guidelines. **Accordingly, all the grounds of appeal raised by the assessee vide the CO No.56 are dismissed.**

ITA No.1796 /Chny/2024, Assessment Years: 2017-18

10.0 The first issue raised by the Revenue is regarding the Ld. CIT(A) not granting an opportunity of examining the additional evidences and documents submitted by the assessee during the course of appellate proceedings and thus violating provisions of section 46A of the act. Upon hearing the rival parties in the light of material available on records, we are of the view that there do not exists any merit in the arguments of the Revenue. The need for admission for additional evidences, inter-alia, arises only in situations when the Ld. AO asks for certain details and the same are not provided by the assessee, but were submitted before the appellate authority or the appellate authority decides to admit certain evidences which in its opinion are necessary for the judicious adjudication of the dispute. We have noted from the order of the Ld. AO that there is

not even a whimper that any evidence / detail called for by the Ld. AO was not provided by the assessee. The order has also been passed u/s 143(3) and not u/s 144. Similarly we have noted from the order of the First Appellate Authority that there is nothing to indicate as to whether the assessee had requested for admission of any additional evidences under rule-46A nor the Ld.CIT(A) decided that there was a need for any such evidences. It has been noted that the relief has been accorded by the Ld.CIT(A) after considering the same set of documents and evidences which were provided to the Ld.AO. Merely because the Ld.CIT(A) has not subscribed to the line of thinking adopted by the Ld.AO, would not make him guilty of violating any provisions of Rule-46A. **Accordingly, the ground of appeal raised by the Revenue on this issue is stands dismissed.**

11.0 The next issue raised by the Revenue is regarding the fit out rent addition of Rs.57,12,276/- deleted by the Ld.CIT(A). The Ld. DR informed that the Ld.AO has discussed this issue on page 7 to 10 of his order. The Ld. AO noted that assessee had offered income from house property of Rs.14,07,24,253/- as against the amount of Rs.14,64,36,528/- available in his service tax returns, thus, leaving a balance of Rs.57,12,276/-. The assessee submitted before the Ld. AO that it had entered into lease agreement with a company called Caterpillar India Pvt

:- 10 :-

Ltd and that as per the terms of the agreement, the assessee is entitled to receive fit out rent which is in the nature of return on capital assets investments made by the assessee in the leased property. Before the Ld. First Appellate Authority the assessee argued that the fit out rent was different from the normal rent as it was received to only compensate for the amount spent by the assessee on capital equipments on behalf of the lessee company. Upon examination of documents and evidences referred by the assessee, the Ld.CIT(A) concurred and deleted the addition. We have noted that the fit out rent is indeed in the nature of periodical reimbursement of the cost of capital asset provided by the assessee and Ld. CIT (A) has rightly held it to be a income of non-revenue nature. We have noted contents of para 4.4 of the lease agreement between the assessee and the lessee available at page 9 of the order of Ld. CIT (A) as under:-

“...Fit-out Rent – in addition to the lease rent, the lessee would be responsible for payment of the following amount towards the Fit outs being provided by the lessor (“Fit Out Rent”). The said amount is calculated on an investment of Rs.1,33,98,379/-.

a. Rs.4,76,023/- (Rupees four lakhs seventy six thousand and twenty three) is payable monthly on account of fit out rent based on the mutually agreed amortization schedule.

The above referenced Fit Out Rent shall be computed on the Demised Premises i.e. 66,084 s.ft and shall only be payable during the initial period of 27 (Twenty seven) months from the Rent commencement date i.e. 1st May-2016.

The Fit Out Rent is exclusive of serve tax and the lessee shall be liable to pay along with the Fit-Out Rent every month.

In the event of premature termination of this Deed by the Lessee before 27 (Twenty Seven) months from the date of Rent commencement date due to the breach of the lessee, the lessee undertakes to and shall be liable to pay the Fit-out Rent for the remainder of the 27 (Twenty Seven) months....”

12.0 The contents of above agreement upon examination clearly uses the phrase “...in addition to the lease rent, the lessee would be responsible for payment of the following amount towards the Fit outs being provided by the lessor (“Fit Out Rent”). The said amount is calculated on an investment of Rs.1,33,98,379/-...”. Thus the emphasis is on the “word in addition to lease rent” which indicates that the amount of fit out rent was over and above the lease rent. Again the emphasis on the word “*following amount*” and “calculated on an investment” was referred indicating that the fit out rent was not a part of the overall lease rent and that it was indeed a return on capital investments made by the assessee. The order of the Ld. AO has been found to be totally non-speaking order devoid of any plausible reasoning. Accordingly after considering the specific provisions of the lease agreement, we are of the view that there is no case made out for any intervention to the order of the Ld.First Appellate Authority at this stage as the same has been found to be based upon correct understanding of the facts of the case. **Accordingly, the order of the Ld. First Appellate Authority is**

confirmed and the grounds of appeal raised by the Revenue are dismissed.

13.0 Another issue raised by the Revenue pertains to denial of assessee's claim of interest of Rs.8,45,03,079/- u/s 24(b) qua income from house property. The Ld. AO has discussed the issue from page 2 to page 7 of his order. The Ld. DR informed that the Ld.AO had noted that assessee had paid interest to various banks and had shown rental income of various properties tabulated on page -3 and 4 of his order. The Ld. AO noted that the assessee was not earning rental income from all the properties. He proceeded to premise that the assessee was entitled for allowance of interest only in respect of that property from which the rental income was offered. Consequently he withdrew interest claim of Rs.8,45,03,079/- and reworked the income from house property. The Ld. DR submitted that the Ld. CIT(A) has deleted the addition of Rs.8,45,03,079/- made by the Ld. AO and discussed the same on page-9 to 12 of his order. The Ld. DR vehemently argued in favour of the action of the Ld. AO.

14.0 We have heard rival submissions in the light of material available on records. The Ld. Counsel for the assessee submitted that even the high pitched committee of the department, while holding the assessment as a high pitched one had held that the action of the Ld. AO was not

supported by facts on record. The order of the Ld. AO has been found to be totally non-speaking order devoid of any plausible reasoning. The Ld. CIT(A) noted that as per the scheme of the act, deduction u/s 23 / 24 of the act would available even if the property was vacant. For the purpose he placed reliance upon the decision in the case of Smt.Poonam Sawhney (2008) 20 SOT 69 Delhi and Premsudha Exports Pvt Ltd 17 SOT 293 (110 ITD 158) of Hon'ble ITAT Mumbai. It is trite law that the words "property is let out" in the statute does not corresponds to actual letting out of the property. We therefore do not find any infirmity in the order of the Ld. First Appellate Authority. **Accordingly, the order of the Ld. First Appellate Authority is confirmed and the grounds of appeal raised by the Revenue are dismissed.**

15.0 The next issue raised by the Revenue is regarding an addition of Rs. 15 Crs made by the Ld. AO on account of unexplained expenditure u/s 69. The Ld. DR submitted that the Ld. AO has discussed the issue on page 10 to 19 of his order. The Ld. AO noted that assessee had invested Rs.15 Crs for purchase of shares of an associate party M/s. AS Carrier Pvt Ltd from one M/s. L & W holdings Ltd a Mauritius based company. As regards the source of the investment, the assessee had received an amount of Rs.15 Crs from the said M/s. AS Carrier Pvt Ltd as advance for purchase of property at Chennathur (the sale deal was

:- 14 :-

reportedly pending conclusion). The Ld. AO doubted the impugned arrangement holding that as per agreement the assessee was to receive Rs. 16,08,42,384/- from M/s. AS Carrier Pvt Ltd as against total agreed consideration of Rs.64,33,69,536/- on or before 31.03.2014 and hence there was no connection between the two amounts. The Ld. AO further argued that the amount of Rs. 16,08,42,384/- also found mention in the assessee's audited financial for AY-2014-15. The Ld. AO premised that the transaction of purchasing of shares of M/s. AS Carrier Pvt Ltd from M/s. L & W holdings Ltd a Mauritius based company through funds procured from M/s. AS Carrier Pvt Ltd was a dubious and therefore unexplained transaction. The Ld. AO also doubted the valuation of shares made by the assessee under Rule-11A qua this transaction holding that it has been conveniently valued to match the overall surplus available in the balance sheet. According to the Ld.AO the entire transaction has been done to avoid payment of dividend tax by M/s. AS Carrier Pvt Ltd u/s 115O and also because capital gains was exempt under the contemporaneous India and Mauritius treaty. He opined that shares were purposefully valued at high price and that the entire transaction was a sham transaction done to evade taxes. He proceeded to add Rs. 15 Crs u/s 69 as an unexplained expenditure.

15.1 The Ld. DR submitted that the relief accorded by the Ld. CIT(A) is excessive and erroneous. The Ld. Counsel for the assessee submitted that the Ld.CIT(A) has rightly held that section 69C is applicable only in cases where source of an expenditure is unexplained. The Ld. Counsel for the assessee submitted that the remittances paid to the Mauritius party was duly approved RBI. It was submitted that the source for this remittances qua M/s. AS Carrier Pvt Ltd is fully documented. Consequently invocation of section 69C is incorrect. As regards the hypothesis of sham transaction, the Ld.CIT(A) held that the transaction may be tax motivated but not a sham transaction since the source is explained and the investment has also been clearly placed on records. The Ld. CIT(A) placed reliance upon the decision of Hon'ble Supreme Court in the case of Aditya Birla Telecom (2021) 125 taxman.com 85 holding that where investment was made by a Mauritius based company with the permission of Government of India, it could not be branded as sham transaction. The Ld. DR filed written submissions also, vehemently arguing in favour of the addition made by the Ld. AO.

16.0 We have heard rival submissions in the light of material available on records. The principal controversy is as to whether the purchase of shares by the assessee from the Mauritius based company is sham transaction or not. The Ld. AO has primarily made the impugned

addition on the basis of conjectures and premises. The assessment order clearly alludes that no enquiry was done to establish authenticity of the presumptions drawn by the Ld. AO. It is a clear fact on records that the investment of Rs. 15 Cr s had direct connection with the amount of monies received by the assessee from the M/s. AS Carrier Pvt Ltd. Thus there is no doubt on the source of the investment. The acquisition of shares from the Mauritius based company is also not doubted since the entire process happened post approval of RBI. As regards the hypothesis raised by the Ld.AO qua exaggerating the share price to match the overall figures is concerned the same is a figment of imagination and suspicion of the Ld. AO not supported by cogent evidences. Addition u/s 69C was not warranted if he was not satisfied with the valuation. Therefore, we are of the opinion that the order of the Ld.CIT(A) is based upon of correct understanding and appreciation of the facts on records and cannot be said to be perverse and since we do not find any infirmity in the impugned action of the Ld.CIT(A), we confirm it, **and the grounds of appeal raised by the Revenue are therefore dismissed.**

:- 17 :-

17.0 In the result, the appeal of the Revenue and assessee are decided as under:-

ITA Nos / CO Nos.	Appeal By	Assessment Year	Result
ITA No.1688 /Chny/2024	Revenue	2015-16	Dismissed
ITA No.1796 /Chny/2024	Assessee	2017-18	Dismissed
CO No.56 /Chny/2024	Revenue	2015-16	Dismissed

Order pronounced on 24th, January-2025 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 24th, January-2025.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF