IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 232 OF 2024

Principal Commissioner Of
Income Tax 6 Mumbai ...Appellant
Versus
Executive Trading Co. Pvt. Ltd.
Ay 2017-18 Ita No 281/Mum/2023 ...Respondents

Mr. Akhileshwar Sharma, for Appellant.

Mr. Devendra H. Jain a/w. Mr. Shashank A. Mehta, for Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 31 JULY 2026

P.C.

1. This Appeal under Section 260A of the Income Tax Act, 1961 is filed by the Appellant–Revenue challenging the judgment and order dated 27 July 2023 passed by the Income Tax Appellate Tribunal, Mumbai Bench. By the impugned order, the Tribunal allowed the Respondent-Assessee's Appeal and set aside the order dated 13 December 2022 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi. The Assessment Year in question is 2017–18.

2. In assailing the impugned order passed by the Tribunal, the Revenue has proposed the following substantial questions of law:

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SUBSTANTIAL QUESTION OF LAW

A. "Whether on the facts and in circumstances of the case and in law, Hon'ble ITAT has erred in reversing the order of the Ld. CIT(A), wherein the Ld. CIT(A) has upheld the action of the AO and thereby confirmed the addition made by the AO u/s. 69C r.w.s. 115BBE of the IT. Act, 1961 at Rs. 104,99,73,370/-?".

B. "Whether on the facts and in circumstances of the case and in law, Hon'ble ITAT erred in not following the precedence set by Hon'ble Jurisdictional High Court in the case of M/s. Pooja Paper Trading Co P. Ltd. Vs ITO 4(3)(1), Mumbai [2019] 104 taxmann.com 95 (Bombay) wherein the Hon'ble Court affirmed the action of the AO in treating the bogus purchase as unexplained expenditure u/s. 69C of the Act?"

C. "Whether on the facts and in circumstances of the case and in law, Hon'ble ITAT erred in not following the precedence set by Hon'ble Jurisdictional High Court in the case of M/s. Shoreline Hotel (P) Ltd. Vs CIT Central-1 [2018] 98 taxmann.com 234 (Bombay) wherein the Hon'ble Court affirmed the action of the PCIT in invoking section 263 of the Act and directing the AO to add entire bogus purchase?"

D. "Without prejudice to the above, whether on the facts and in circumstances of the case and in law, Hon'ble ITAT has erred in deleting the addition made by the AO of Rs. 104,99,73,370/- solely on the ground that provisions of section 69C were not attracted without considering that the concerned transaction being bogus, the amount was even otherwise not allowable?"

3. We have heard Mr. Sharma, learned counsel appearing on behalf of the Appellant–Revenue, and Mr. Jain, learned counsel appearing on behalf of the Respondent–Assessee.

4. Mr. Sharma, learned counsel for the Revenue, submitted that the approach adopted by the Tribunal in deleting the addition of Rs.104,99,73,367/- made by the Assessing Officer under Section 69C of the Income Tax Act, 1961 and the consequential levy of tax thereon at the rate of 60% under Section 115BBE of the Act is legally unsustainable.

5. It is his submission that the Assessing Officer had before him tangible material, on the basis of which he rightly rejected the explanation and documents

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furnished by the Respondent–Assessee. According to the Revenue, the information received pursuant to the 96th meeting of the National Economic Intelligence Council, Mumbai, disclosed that the Respondent–Assessee had obtained Letters of Credit (LCs) from various banks on the basis of bogus purchase transactions. These Letters of Credit were allegedly encashed by the beneficiaries, namely, Mahip Marketing Pvt. Ltd. and Harsh Steel Thread Private Limited, which, according to the Revenue, were entities associated with the Respondent–Assessee. The further case of the Revenue is that the Respondent–Assessee had siphoned off funds from the banks by booking bogus purchase expenditure. Upon consideration of such material, the Assessing Officer formed a bona fide belief that income to the extent of Rs.104,99,73,370/- had escaped assessment. Accordingly, reassessment proceedings were initiated by issuance of a notice dated 13th March 2020 under Section 148 of the Act. The Assessing Officer was of the view that there was sufficient material to believe that income chargeable to tax had escaped assessment on account of the bogus expenditure claimed by the Respondent–Assessee.

6. Mr. Sharma submitted that, after initiating the reassessment proceedings, the Assessing Officer duly followed the procedure prescribed under the Act. A notice under Section 143(2) of the Income Tax Act, 1961 was issued to the Assessee and, after considering the objections raised by the Respondent–Assessee, the Assessing Officer proceeded to pass the reassessment order.

7. The final assessment order dated 29 September 2021 came to be passed under Section 147 read with Section 144B of the Act, whereby the total income of the Respondent–Assessee was assessed at Rs.104,99,73,367/- as against the nil

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income returned by the Respondent–Assessee. The said addition represented the aggregate amount of the outstanding Letters of Credit (LCs) payable to the banks, which, according to the Assessing Officer, constituted unexplained expenditure liable to be added to the income of the Respondent–Assessee under Section 69C of the Act and chargeable to tax at the rate prescribed under Section 115BBE of the Act.

8. Mr. Sharma has invited our attention to the reassessment order, in particular to paragraph 4 thereof, to contend that the Tribunal erred in doubting the approach adopted by the Assessing Officer, especially when the assessment order was affirmed by the Commissioner of Income Tax (Appeals). According to Mr. Sharma, the present case squarely falls within the ambit of Section 69C of the Act, and the amount in question was rightly treated as unexplained expenditure for the purposes of assessment.

9. With the assistance of the learned counsel for the parties, we have perused the record.

10. We find that, although the Assessing Officer has proceeded on the premise that the present case attracts the provisions of Section 69C of the Income Tax Act, 1961, the observations recorded in paragraph 4 of the assessment order (at pages 36 and 37 of the paper book) do not support such conclusion. The Assessing Officer opined that the various Letters of Credit (LCs) opened by the Respondent–Assessee were utilised to enter into transactions with related entities, namely, Mahip Marketing Pvt. Ltd. and M/s. Harsh Steel Private Limited, resulting in the bills under such LCs being discounted by various banks in favour of the beneficiary

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entities without any underlying genuine credit transactions.

11. However, it appears from the record that such reasoning as adopted by the Assessing Officer ignored vital materials. On the one hand, the Assessing Officer has observed that actual movement of goods under the said transactions was not noticed. On the other hand, he has recorded that the bills, tax invoices, delivery challans and lorry receipts produced in support of the transactions were forged and not genuine. These findings necessarily presuppose the existence of materials on verification, examination of the parties who had issued such documents, without such materials it would amount to unilateral view of the Assessing Officer of the document and unsupported.

12. When queried by the Court as to the material on the basis of which the Assessing Officer recorded these findings, Mr. Sharma was unable to point out any independent material or inquiry supporting such conclusions. There is nothing on record to indicate that the beneficiary entities, namely, Mahip Marketing Pvt. Ltd. and M/s. Harsh Steel Private Limited, were examined by the Assessing Officer, or that any evidence was collected from them to verify the nature and genuineness of the transactions.

13. In these circumstances, we are of the opinion that the observations made by the Tribunal are fully borne out by the record. The Tribunal has categorically recorded that the Assessing Officer rejected the documentary evidence produced by the Respondent–Assessee without conducting any independent inquiry or verification. We find no infirmity in such finding as recorded by the Tribunal.

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14. We are also of the view that the present case does not attract the provisions of Section 69C of the Act, as the Respondent–Assessee had furnished an explanation supported by documentary evidence before the Assessing Officer. In the absence of any cogent material to discredit such evidence or any independent investigation by the Assessing Officer, the invocation of Section 69C could not have been sustained. The relevant observations of the Tribunal, which merit reproduction, read thus:

> 12 Ground No. 3 &4
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> 12.1 Ground NO. 3 & 4 are directed against the addition of INR 104,99,73,370/- made by the Assessing Officer under Section 69C of the Act and levy of tax at rate of 60% under Section 115BBE of the Act.
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> 12.2. On perusal of the Assessment Order, we note that while the Appellant has furnished details of stock statement, MVAT assessment, details of purchasers along with corresponding sales with account confirmation given by the parties making purchases from the Appellant, and details of suits for recovery filed by the Appellant in support of the contention that the purchases/sales were genuine and the default made by the Appellant in making payments to banks was on account of genuine hardship caused by the fact that the parties making purchases from the Appellant failed to make payments for goods ·purchased. We find that the Assessing Officer rejected the aforesaid documents/details without making any independent inquiry or verification. The basis of addition made by the Assessing Officer was the charges leveled against the Appellant in the FIR filed by the CBI and the information shared - by the Regional Economic Intelligence Council, Mumbai. Be that as it may we note that the Assessing Officer has made addition of INR 104,99,73,370/- by treating the same as unexplained expenditure under Section 69C of the Act. However, in our view, the provisions of Section 69C of the Act cannot be attracted in the facts and circumstances of the present case. Section 69C of the Act reads as under:
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>> "69C. Where in any financial year <u>an assessee has incurred any expenditure</u> and <u>he offers no explanation about the source of such expenditure</u> or part thereof, or the explanation, if any, offered by him is not, in the opinion of the 82a[Assessing] Officer, satisfactory, <u>the amount covered by such expenditure</u> or part thereof, as the case may be, <u>may be deemed to be the income of the assessee for such financial year</u>.
>>
>> Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."
>
> 12.3. Section 69C of the Act is attracted when an assessee, inter alia, falls provide explanation of source of expenditure incurred by during any financial year. The

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Allegations against the Appellant were that the Appellant has siphoned· of the funds received from the bank and therefore, the source of the funds was admittedly the funds disbursed by the banks· directly to the vendors of the Appellant on encashment of LCs. During the course of hearing, the Learned Authorised Representative for the Appellant had placed on record the decision of the Tribunal in the case of ITO Vs Shri Karsam Nandu : ITA No. 2651/Mum/2016, dated 30/11/2016 wherein the Tribunal had deleted addition made under Section 69C of the Act holding as under:

> "3. In order to appreciate the controversy in the captioned appeal and cross-objection, the following discussion is relevant. The assessee is an individual who is engaged in the business of wholesale trading in readymade garments in a proprietorship concern. For the Assessment Year 2011-12, assessee filed a return of income declaring a total income of Rs.11,81,130/-, which was subject to a scrutiny assessment. In the assessment order, the Assessing Officer has observed that an information was received by him from DGIT(Inv.), Mumbai that the assessee has taken accommodation entries from certain purchase parties. In this context, the Assessing Officer has referred to 7 such parties tabulated in para 6 of the assessment order from whom the total purchases effected amounted to Rs.37,45,965/-. The Assessing Officer has also observed that enquiries were made by him by issuing notices u/s 133{6) of the Act to such parties which revealed that such parties were not available at the given addresses since the notices were returned by the postal authorities with the remarks 'not known', 'left', 'unclaimed', etc. In this background. the assessee was show caused as to why the purchases.'amounting to Rs.37,45,965/- debited to the Profit & Loss Account should not be treated as bogus by invoking Sec. 69C of the Act. In response, assessee furnished a detailed- explanation contesting the stand of the Assessing Officer and such explanation has been reproduced by the Assessing Officer in para 7 of his order. In particular, assessee-also asserted that there was no justification for invoking Sec. 69C of the Act in the present case as assessee had explained the source of expenditure and, therefore, Sec. 69C of the Act was inapplicable. The Assessing Officer was not satisfied with the submissions put forth by the assessee. The Assessing Officer noted that the notices issued u/s 133(6) of the Act to the parties were returned unserved; that the investigations conducted by the Department lead to "doubt regarding the genuineness of purchases"; that assessee would have made genuine purchases from undisclosed sources in cash and to regularise the account books had obtained accommodation entries from the said 7 parties; and, that payments made to the suppliers by account payee cheques was not sacrosanct to establish genuineness of the expenditure. For all the above reasons, the Assessing officer treated the expenditure on purchases of Rs. 37,45,965/- as unexplained expenditure u/s 69C of the Act and added the same to. the returned income.
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> 9. Be that as it may, invoking of Sec. 69C of the Act in the present case is also suspect. Sec. 69C of the Act prescribes that where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation offered by him "is not found to be satisfactory by the Assessing Officer, then the amount covered by such expenditure or part thereof may be deemed to be the income of the assessee for such financial year. In the context of the application of Sec. 69C of the Act what is of importance is that either there is no explanation about the "source of such expenditure" or that the explanation-offered is not found satisfactory. The underlying emphasis is on the explanation in relation

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> to the "source of such expenditure". In the present case, the Assessing Officer has invoked Sec. 69C of the Act to treat the expenditure on purchases of Rs. 37,45,965/- as unexplained'. So however, the assessee has demonstrated that the payments for such purchase have been made through account payee cheques for which there is no repudiation by the Assessing officer thereby impying that the source of expenditure stands explained. In fact, the case of Assessing Officer is that the purchase transactions are "only accommodation entries and not really purchases". thereby. implying that as per the Assessing Officer assessee has not incurred such, expenditure. To hold the transactions as mere accommodation entries and not real purchases is quite different from saying that the sources of expenditure for the purchases from the 7 parties in question have not been explained in the context ofSec. 69C of the Act. Therefore,in my view, invoking of Sec. 69C of the Act in the present case to treat the purchases of Rs.37,45,965/- stated to have been made from the 7 parties in question is on a wrong footing. Thus, on this aspect also, assessee deserves to succeed." (Emphasis Supplied)

12.4. We concur with the above decision of the Tribunal. There is no dispute about the source of expenditure in the facts of the present case. The banks have leveled allegation upon the Appellant for misappropriation/siphoning of funds given by the bank on encashment of LCs in collusion with related parties. Given the aforesaid facts and circumstances, the provisions of Section 69C of the Act cannot be attracted in the present case. Therefore, we delete the addition of INR 104,99,73,370/- made by the Assessing Officer under Section 69C of the Act.

12.5. Before parting we would like to observe that during the course of hearing, the Learned Departmental Representative made an attempt to support the addition made by the Assessing Officer by contending that Assessing Officer has incorrectly mentioned Section 69C in place of Section 68 of the Act as the addition has been made on account of bogus expenditure incurred by the Appellant. However, we are not inclined to accept the same. While the Assessing Officer has, on one hand, observed that the Appellant has booked bogus purchase expenditure, at the same time the Assessing Officer has stated that 'amount of INR 104,99,73,370/- is treated as unexplained expenditure under Section 69C of the Act'. The relevant extract of the assessment order reads as under:

> "Hence, in absence of any sort of explanation, amount of Rs. 104,99,73,367/- is treated unexplained expenditure u/s 69C of the IT, Act, 1961 and is added to total income of the assessee company as bogus expenditure. Provisions of Section 115BBE of the IT Act, 1961are attracted for taxation. Since the addition has been made u/s 69C of the IT Act, the tax is chargeable as prescribed u/s 115BBE of the IT Act and in the same circumstances, penalty proceeding under Sec. 274 read with Sec.271AAC(1) is also initiated.” (Emphasis Supplied)

12.6. On perusal of the above, we find that the Assessing Officer has clearly stated that the provisions of Section 115BBE of the Act are attracted since the addition has been made under Section 69C of the Act. Further, we note that the Assessing Officer has also accepted the sales made by the Appellant. Therefore, we are not inclined to accept the contention advanced by the Ld. Departmental Representative· that addition/disallowance has been made under Section 68 of the Act and that the Assessing Officer has incorrectly mentioned Section 69C instead of Section 68 of the Act while making the addition.

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12.7. In view of the above, Ground No. 3 & 4 raised by the· Appellant is allowed.

15. In view of the above discussion, we are of the clear opinion that no fault can be found with the findings recorded by the Tribunal. The present Appeal does not give rise to any substantial question of law. The Appeal is, accordingly, dismissed. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)

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