

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 577/MUM/2021
Assessment Year: 2012-13**

ACIT-1(1)(1),
579, Aayakar Bhavan,
M.K. Road,
Mumbai-400020.

Vs. M/s Global Holding
Corporation Pvt. Ltd.,
201A, Janmbhoomi Chambers,
29 Walchand Hirachand,
Ballard Estate, Mumbai-
400038.

Appellant

**PAN No. AAACN 8301 L
Respondent**

Revenue by : Mr. Rakesh Garg, CIT-DR
Assessee by : Mr. K. Shivaram, Sr. Adv. &
Ms. Neelam Jadhav, AR

Date of Hearing : 11/10/2022
Date of pronouncement : 22/12/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the Revenue against the order dated 18th January 2021 passed by the Ld. Commissioner of Income Tax (Appeals) – 48, Mumbai [in short, ‘the Ld. CIT(A)’] for A.Y. 2012-13, raising following grounds:



“1. "Whether on the facts and in circumstances of case, the Ld. CIT(A) erred in quashing the assessment order us 147 by relying on the order of settlement commission without appreciating the fact that the issue of unsecured loans received by assessee from MIs European Trust and Infrastructure Investment Trust was not put forward in the settlement commission proceedings of AY 2012-13?"

2. "Whether on the facts and in circumstances of case, the Ld. CIT(A) erred in not adjudicating the disallowance us 68 amounting to Rs.88,03,50,000/- made by assessing officer without appreciating the facts that the assessee could not prove the creditworthiness and genuineness of the transaction?"

2. Briefly the facts of the case are that the assessee company had filed its original return of income for the year under consideration on 28.09.2012 declaring total income at Rs. NIL. The return was processed u/s. 143(1) of the Income Tax Act, 1961 [in short, “the Act”]. Later, a search and seizure action u/s. 132 of the Act was initiated on GTL Group on 28.09.2010. Further, the assessee filed application before the Hon’ble Income Tax Settlement Commission, Bombay Bench who vide order u/s. 245D(6) of the Act determined loss of Rs.47,78,49,815/-. Subsequently, a search was also carried out in the case of M/s. European Trust and M/s. Infrastructure



Investment Trust regarding very high turnover in the account within a very short span of time and found that the said Trusts received loan from various parties during the F.Y. 2011-12 and the same had been further given to the assessee company. In view thereof, the Assessing Officer reopened the case for A.Y. 2012-13 relevant to F.Y. 2011-12 by issuing notice u/s. 148 of the Act dated 30.03.2019. In response to the notice u/s. 148 of the Act, the assessee filed the return of income on 24.04.2019 declaring total loss of Rs.47,78,49,815/-. In the assessment completed, the Assessing Officer made the addition of Rs. 88,03,50,000/- u/s. 68 in respect of the loans taken from M/s. European Trust amounting to Rs. 30,19,50,000/- and M/s. Infrastructure Investment Trust amounting to Rs. 57,84,00,000/- as the assessee failed to discharge its onus casted u/s. 68 of the Act. Aggrieved by the reopening of the assessment for A.Y. 2012-13 and the additions made by the Assessing Officer, the assessee preferred appeal before the ld. CIT(A) who quashed the reopening of the assessment for the year under consideration for the reason that as per the provisions of section 245D of the Act, if any order is obtained by fraud or



misrepresentation of the facts, the Hon'ble Settlement Commission shall declare the said order as void and the Assessing Officer has no jurisdiction under the law to reopen the case for A.Y. 2012-13. Accordingly, the Ld. CIT(A) held that the reopening of the assessment u/s. 147 is bad in law and hence, no decided the issue on merits of the case. Aggrieved by the order passed by the ld. CIT(A), the revenue is in appeal before us.

3. The ground no.1 relates to challenging the order of the ld. CIT(A) for quashing the reassessment order passed u/s. 147 by relying on the order of the Hon'ble Settlement Commission without appreciating the fact that the issue of amount received by the assessee from M/s. European Trust and Infrastructure Investment Trust was not put forward in the Settlement Commission proceedings for A.Y. 2012-13. In this regard, Ld. Departmental Representative for the revenue argued that the relevant issue of alleged amounts received from M/s. European Trust and Infrastructure Investment Trust was never the subject matter before the Hon'ble Settlement Commission. Neither in the application filed



by the assessee u/s. 245C(1) of the Act before the Hon'ble Income Tax Settlement Commission [in short, "ITSC"] nor the Rule 9 report issued by the Pr. Commissioner of Income Tax refers to the alleged issue of amount received from European Trust and Infrastructure Investment Trust in the year under consideration. Hence, this could not be said to be the matter which has been settled by the Hon'ble ITSC. As a corollary, although the A.Y. 2012-13 was before the ITSC, but the matter involved of alleged loans/share application money received from Trusts was never brought on record by way of submission of any details or explanations or justification before the Hon'ble ITSC. Accordingly, the ld. Departmental Representative for the revenue submitted that the averment of the ld. CIT(A) in para 6.7 of his order that the details of share application etc. received by the assessee from the two Trusts were also part of the details submitted by the appellant before the Hon'ble ITSC is incorrect. Further, in para 6.11 of his order, the ld. CIT(A) has stated that the Assessing Officer had written a letter to the Hon'ble ITSC mentioning the relevant facts of the case and subsequent investigation carried out by the Investigation Wing and issues



relating to above two Trusts. However, the ld. Departmental Representative during the course of hearing specifically denied of any such request to have been made by the Assessing Officer to the Hon'ble ITSC.

4. The Ld. Counsel of the assessee on other hand argued that once the case of the assessee for a particular year is settled by the Hon'ble ITSC then the same cannot be disturbed. In this regard, he relied on the order of the ld. CIT(A) and following case laws:

- (i) **Neetu Agarwal (Smt.) v. UOI (2011) 330 ITR 422 (All HC)**
- (ii) **CIT v. Diksha Singh (2013) 350 ITR 157 (All HC)**
- (iii) **Omaxe v. DCIT (2014) 364 ITR 423 (Delhi HC)**
- (iv) **Komalkant Fakirchand Sharma v. DCIT (2019) 417 ITR 11 (Guj HC)**

5. We have heard the rival contentions and perused the material on record. On a close perusal of the Paper Book containing 1 to 274 pages filed by the assessee, we find that there is no submission of any details or explanations or justification in regard to the alleged share application money received from the abovementioned two Trusts in the application filed before the Hon'ble ITSC or in any



Rule 9 report of the Ld. Commissioner of Income Tax or in the final order of the Hon'ble ITSC passed u/s. 245D(4) for the year under consideration. Hence, apparently, the issue does not appear to have been dealt with by the Hon'ble ITSC. However, the decisions relied upon by the Ld. Counsel of the assessee are in favour of the assessee even in such a case. The provisions of section 245I provides that every order of Settlement passed u/s. 245D(4) shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceedings under this Act or under any other law for the time being in force. Further, section 245D(6) provides that the order passed u/s. 245D(4) shall be void if it is subsequently found by the ITSC that it has been obtained by fraud or misrepresentation of facts. Thus, it is clear that every order of the Hon'ble ITSC passed u/s. 245D(4) of the Act shall be conclusive and no matter covered by such order shall be reopened in any proceedings under this Act.



5.1 In context of the issue involved about “matters stated therein”, we may refer to the relevant extract of the decision of Hon’ble Delhi High Court in the case of Omaxe Ltd. as under:-

“16. It is evident from the rulings of the Supreme Court that orders of Settlement Commission are final and conclusive as to matters stated therein. The “matters” necessarily could comprehend disputed questions, items or heads of income, disallowance, etc. or variants of it, but always with reference to a particular assessment year....”

5.2 Gainful reference in this regard can also be made from the decision of the Hon’ble Gujarat High Court in the case of Komalkant Fakirchand Sharma v. DCIT (supra) on the interpretation of the word “matters stated therein”. The relevant extract of which is as under:-

“7.7 An application under [section 245C](#) of the Act is akin to a return of income, wherein the assessee is required to make a full and true disclosure of his income and the order under [section 245D\(4\)](#) of the Act is in the nature of an assessment order. Therefore, assessment of the total income of the assessee for the assessment year in relation to which the Settlement Commission has passed the order under [section 245D\(4\)](#) of the Act stands concluded and in terms of [section 245I](#) of the Act, such order shall be



conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in Chapter XIXA, be reopened in any proceeding under the Act or under any other law for the time being in force. Therefore, once an order is passed by the Settlement Commission under [section 245D\(4\)](#) of the Act, the same is conclusive insofar as the assessment year involved is concerned. **When the section refers to matters not covered by such order, it refers to matters other than that covered under the assessment, viz. other than determination of the total income of the assessee for that assessment year. There may be matters in respect of the very assessment year which do not touch the determination of the total income of the assessee, like nonpayment of advance tax or the like, which have no direct connection with the determination of the total income for that assessment year, which would not stand concluded by the order of the Settlement Commission.** However, when [section 245C](#) of the Act requires the assessee to make a full and true disclosure of his income for the period in respect of which he has made such application, the order under [section 245D\(4\)](#) of the Act would relate to the determination of the total income of the assessee for that assessment year and such order is conclusive and cannot be reopened except as provided in that Chapter.

[Emphasis supplied externally]



5.3 In view of the above, it is held that the action of the Assessing Officer in reopening the case for A.Y. 2012-13 is not valid. However, it is open to the revenue to move the ITSC for appropriate relief of declaration that its order u/s. 245D(4) of the Act was void if advised so that there is misrepresentation of the fact in relation to the share application money received from the abovementioned two Trusts. Accordingly, this ground of appeal of the revenue is dismissed.

6. The ground no.2 of the appeal relates to the addition of Rs.88,03,50,000/- made u/s. 68 of the Act. However, since the ground no.1 of the revenue is dismissed upholding the quashing of the reassessment order by the ld. CIT(A), we need not adjudicate the issue on merits. Accordingly, this ground of appeal is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 22/12/2022.**

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;



Dated: 22/12/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai