

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6097/M/2016
Assessment Year: 2013-14**

Income Tax Officer- 12(3)(4), Room No.147A, 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. M.S. Infraproject Pvt. Ltd., G Wing, Flat No.3, Ground Floor, Sumer Nagar Building, S.V. Road, Behind Ajanta Party Hall, Borivali (West), Mumbai - 400 092 PAN: AABC17701C
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anil Thakrar, A.R.
Revenue by : Shri V. Vidhyadhar, D.R.

Date of Hearing : 12.04.2018
Date of Pronouncement : 29.05.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 29.07.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The grounds raised by the Revenue are as under:

"1. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting the addition of Rs.29,87,000/- made u/s. u/s.68 of J.T. Act without appreciating that the assessee had miserably failed to discharge onus case on it u/s.68 of the Income Tax Act.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the assessee had produced confirmation of the lenders before the

Assessing Officer despite the fact that no such confirmation was produced by the assessee during the course of assessment proceedings making the order of Ld.CIT(A) factually erroneous.

3. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding that assessee had discharged the onus u/s.68 of the I.T. Act as the assessee neither produced details relating to Bank Statement of assessee and the lenders nor produced copy of returns of income, confirmation of the lenders, which were specifically called for by the Assessing Officer vide notice u/s. 142(1) dated 02.12.2015.

4. On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting the entire disallowance of business expenses of Rs.20,69,525/- ignoring that:

- (i) The assessee company by not having any business income during the relevant period and even subsequent years evidencing that the assessee had closed down the business activities.
- (ii) In light of facts, effects of the case extent of business expenses claimed by the assessee during the relevant previous year were way about the expenditure essential running a company.

5. The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the A.O. be restored.

6. The appellant craves leave to add, amend or alter all or any of the grounds of appeal.”

3. The common issue raised in ground No.1, 2 & 3 is as regards the deletion of addition of Rs.29,87,000/- by the Ld. CIT(A) as made by the AO under section 68 of the Act without appreciating the fact that assessee has failed to discharge the onus on it under section 68 of the Act.

4. The facts in brief are that in the assessment proceedings the AO observed from the balance sheet that assessee has shown unsecured loans amounting to Rs.42,22,200/- as on 31.3.2011 and therefore, he called upon the assessee to file the details along with confirmations in respect of the said loan creditors. The assessee vide written submissions dated 05.02.2016 submitted the details which have been reproduced

in para 6.2 of the assessment order. The AO observed that assessee has borrowed Rs.29,87,000/- out of the total Rs.42,22,200/- in the current financial year for which no confirmation was filed. The AO again vide order sheet note dated 09.02.2016 called upon the assessee to furnish the confirmations along with requisite details which the assessee failed to file and ultimately the AO added the same to the income of the assessee under section 68 of the Act on the ground that assessee was not able to prove loans with evidences such as confirmations from creditors, source of advances to the assessee and bank statement etc.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

“4.6 I have gone through the assessment order and submissions made by the appellant in this regard. In this regard it is noted that assessee has filed confirmation of fresh loans taken during the year. The assessee is in real estate business for which loans are required to be taken and repaid in normal course of business. The assessee has received loans in the books of accounts for which confirmations were filed before A.O giving name, PAN address etc. of the loan creditor. The money has come from banking channel and no cash loans were involved. The A.O. has not doubted the identity and creditworthiness of the loan creditors but made the addition by holding that genuineness of transaction is not established. It is noted that the books of accounts of assessee were duly audited without any adverse remarks about the loans taken by assessee. It is seen that the A.O. had made addition without making further enquiry. It is also seen that the loans were subsequently repaid by the assessee in F.Y. 2014-15 and 2015-16. All these facts establish that the loans taken were genuine loans from persons whose identity and creditworthiness were not doubted by the A.O. Having regard to full facts of the case the addition made by the A.O. on account of unexplained cash credit u/s.68 of 29,87,000/- is found to be without much basis which cannot be sustained in appeal and is directed to be deleted. Accordingly this ground of appeal is allowed.”

6. The Ld. D.R. submitted before the Bench that assessee has failed to file any details qua these loans of Rs.29,87,000/- and therefore the same were rightly added by the AO.

However, the Ld. CIT(A) has erred in granting the relief to the assessee by not appreciating the fact that the loan transactions were totally unexplained as assessee has not filed any confirmations, bank statements, copies of accounts from the parties etc. The Ld. CIT(A) has simply noted that the identity and creditworthiness of the party were not in doubt and ordered the deletion of addition of Rs.29,87,000/-. The Ld. D.R. finally prayed that the order of Ld. CIT(A) may kindly be reversed and that of the AO be restored.

7. Per contra, the Ld. A.R. submitted that all the confirmations, PAN numbers and other evidences such as bank statements were filed to prove the transactions and amounts received from various parties. The Ld. A.R. contended that the AO did not doubt the identity and creditworthiness of the parties but merely made the addition on the ground that the assessee has failed to file necessary evidences. The Ld. A.R. submitted that since the Ld. CIT(A) has given the finding of facts and verified the necessary evidences as filed by the assessee during the appellate proceedings and noted that the AO has not doubted the identity and creditworthiness of the parties then how the addition under section 68 of the Act could be made in such circumstances.

8. We have heard the rival contentions and perused the materials placed before us carefully. We find from the records before us that the assessee filed all the evidences before the CIT(A) such as confirmations, PANs and bank statements etc. The Ld. CIT(A) has recorded a finding in the appellate order

that these loans were subsequently repaid during the financial years 2014-15 and 2015-16. Thus we are in agreement with the conclusion drawn by the CIT(A) on this issue as the Id CIT(A) given detailed findings and reasoning in the appellate order. We are, therefore, inclined to uphold the order of the Ld. CIT(A) and dismiss the grounds raised by the Revenue.

9. The issue raised in ground No.4 by the Revenue is against the deletion of disallowance on account of business expenses of Rs.20,69,525/- by Ld. CIT(A) as made by the AO on the ground that assessee was not having any income during the year and even the business of assessee was closed in the subsequent years.

10. During the course of assessment proceedings the AO noticed that assessee has received income from other sources of Rs.22,76,433/- against which the assessee has claimed expenditure of Rs.19,35,859/-. The AO found the receipts to be on account of interest income and accordingly issued show cause notice to the assessee as to why the expenses should not be disallowed as there was no business activity in the company during the previous year. However, the assessee did not comply with the show cause notice and ultimately the AO disallowed Rs.20,69,525/- under section 37(1), 32 & 36(1)(iii) of the Act as there was no business activity during the year.

11. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

“5.4. I have perused the assessment order and submissions made by the assessee in this regard. It is noted that assessee being artificial juridical person, it

needs to incur certain expenditure to keep itself afloat and have its continued existence. The assessee company can only operate through its Directors and employees and has to maintain an establishment. It is not a case of A.O. that the expenses claimed were excessive or unreasonable. The books of accounts were fully audited during the year. The mere fact that no business could be procured does not lead to the conclusion that business operations of assessee were closed. The Hon'ble Mumbai ITAT in the case of Tansay Investments Pvt. Ltd ITA No.3722/Mum/09 has vide order dt 24-11-2010 held that unless the business is abandoned or closed and even if the business is at a dormant stage waiting for proper market conditions to develop, the expenditure incurred in the course of such business is to be allowed a deduction. It is noted that the facts of present case are similar to facts in the case of Tansay Investments Pvt. Ltd as discussed above and ratio of the decision of the Hon'ble ITAT Mumbai (supra) is applicable. Respectfully following the above judgment of ITAT Mumbai the addition made by the AO. by disallowing the claimed business expenses of Rs.2069525/- is found to be without much basis which cannot be sustained in appeal and is directed to be deleted. Accordingly this ground of appeal is **allowed.**"

12. Having heard the rival submissions of both the parties and perused the material on record, we find that assessee was not carrying any business activity during the year and eventually closed the company after two years without doing any business. From the perusal of order of AO and Ld. CIT(A) we find that the assessee has not submitted any details of expenses claimed. It is also true that assessee was not carrying any business activity during the year and ultimately it was closed after two years. In our opinion, the assessee is entitled to claim the expenses even if no business is done during the year and hence, only those expenses which are necessary to run the office of the company have to be allowed. In the present case, the assessee has filed details of expenses as under:

i.	Cost of raw material consumed	Rs.2,11,800
ii.	Employment benefit expenses	Rs.14,55,300/-
iii.	Financial cost	Rs.9,032.97
iv.	Depreciation & amortized cost	Rs.1,77,167/-
v.	Other administrative expenses	Rs.82,560/-

A perusal of the P & L Account reveals that the assessee has received only interest income on refund to the tune of Rs.22,76,433/- whereas incurred several expenses such as cost of material, huge employment cost and also depreciation which appeared to be not necessarily incurred in order to keep the assessee company alive. In our opinion when there is no activity how the stock can be consumed to the tune of Rs.22,76,433/-. Similarly, depreciation amount of Rs.1,77,167/- were claimed. The assessee has not filed any details before the AO but even then the Ld. CIT(A) allowed the appeal by passing a cryptic order. In our opinion, the issue needs to be examined and verified at length especially in view of the fact that the company was closed after two years without carrying on any business. We, therefore, restore the matter to the file of AO to examine the issue afresh and decide the matter as per law and facts on record denovo after affording a reasonable opportunity of being heard to the assessee. The assessee is directed to co-operate in the proceedings before the AO. The ground is allowed for statistical purposes.

13. In the result, appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced in the open court on 29.05.2018.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.05.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.