

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

ITA. No. 469/M/2016

(निर्धारण वर्ष / Assessment Year: 2010-11)

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| M/s. Mayurakshi Realities Pvt. Ltd. Rushab Apartments, Flat No. 1002, 10 th Floor, Dr. Parekh Street, Prathna Samaj, Mumbai-400004. | बनाम/ Vs. | ITO 5(2)(3) Mumbai. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCM1586N | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| Assessee by: | Shri Vijay Mehta |
| Revenue by: | Shri T. A. Khan |

सुनवाई की तारीख / Date of Hearing: 05-07-2018

घोषणा की तारीख /Date of Pronouncement: 31.07.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present against the order dated 16.11.2015 passed by the Commissioner of Income Tax (Appeals) -10, Mumbai [hereinafter referred to as the “CIT(A)”] for the A.Y. 2010-11.

2. The assessee has raised the following grounds: -

“The Ld. CIT(A) has erred in law and in facts in confirming the order passed u/s 143(3) of the Act.

2. The Ld. CIT(A) has erred in facts and in law in passing the said order in gross violations of principles of natural justice.

3. The Ld. CIT(A) has erred in law and in facts in confirming addition of Rs.1,00,00,000/- of unsecured loan u/s 68 of the Act.
4. The appellant craves leave of your honour to add, amend, modify, alter and/ or delete any of the above grounds of appeal.”

3. The brief facts of the case are that the assessee company filed its return of income on 21.09.2010 for A.Y. 2010-11 declaring total income to the tune of Rs.Nil. The return was processed u/s 143(1) of the I.T. Act, 1961. Thereafter, the case was selected for scrutiny. Accordingly, notice u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The assessee company was newly incorporated company on 04.09.2009 to carry on the business in realty sector such as developing and redeveloping of properties, construction etc. The assessee took the loan of Rs.1,00,00,000/- from the shareholder Ms. Simi Kumar Chawla. The assessee was asked to furnish the loan confirmation of the lender. The assessee furnished the copy of loan confirmation. To verify the claim of the assessee, the notice u/s 133(6) was issued to Ms. Simi Kumar Chawla. She did not appear therefore, an amount of Rs.1,00,00,000/- was treated as unexplained cash credit u/s 68 of the Act and added to the income of the assessee and the total income of the assessee was assessed to the tune of Rs.1,00,00,000/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

ISSUE NOs.1 to3:-

4. Under the above said issues, the assessee has challenged the confirmation of the addition of Rs.1,00,00,000/- of unsecured loan u/s 68 of the Act. The assessee has given the loan confirmation letter from the lender but the AO issued the notice u/s 133(6) of the Act and finding no response, the unsecured loan to the tune of Rs.1,00,00,000/- was added to the income of the assessee. The CIT(A) confirmed the order of the AO on account of non-finding of the proper explanation from the lender. The Ld. Representative of the assessee has argued that the sufficient evidence has been given to the AO as well as before the CIT(A) but the said authorities nowhere considered its explanation, therefore, in the said circumstances, the finding of the CIT(A) is wrong against the law and facts and is liable to be set aside. It is also specific argued that the assessee moved an application for additional evidence to produce the return of income of Ms. Simi Kumar Chawla for the A.Y.2010-11 and 2011-12 alongwith the copy of form no. 16 for the A.Y. 2011-12 but the same was not considered, therefore, the finding of the CIT(A) is not justifiable and in view of the said documents unsecured loan has duly been proved on record, hence, the finding of the CIT(A) is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has strongly placed reliance upon the order passed by the CIT(A) in question. On appraisal of the order passed by the authority below and also on appraisal of the record filed by the assessee, we noticed that the assessee has furnished the loan confirmation letter from lender before

the AO. Thereafter, the AO issued the notice u/s 133(6) to Ms. Simi Kumar Chawla who was out of city therefore, the AO proceeded the matter being the matter was going to be barred by limitation. Subsequently, the assessee filed the bank statement of Ms. Simi Kumar Chawla and acknowledgement copy of return of A.Y. 2010-11 & 2011-12 and loan confirmation and form no. 16 and PAN Card and Ledger Account etc. proved the identity and genuineness and creditworthiness of the loan. All the documents have been produced before us which lies at page no. 20 to 33 of the paper book. The remand report dated 07.06.2015 filed by the Assessing Officer is also contained necessary information such as confirming the employment detail of salary earned by the Ms. Simi Kumar Chawla from Indian Hotels Company Ltd. Out of which the loan has been given by Ms. Simi Kumar Chawla to M/s. Mayurakshi Realities Pvt. Ltd. through cheque having sufficient funds in his account. The transaction was completed through banking channel. All the necessary documents were before the authority below. There is no reason to decline the claim of the assessee specifically in the said circumstances when all the necessary details have been furnished before the authority below. Accordingly, we are of the view that the finding of the CIT(A) is not justifiable, therefore, we set aside the finding of the CIT(A) on this issues and decide these issues in favour of the assessee against the revenue.

5. In the result, the appeal of the assessee is **hereby allowed**.

Order pronounced in the open court on 31.07.2018.

Sd/-
(R. C. SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31.07.2018.

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai