

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM ]

I.T.A No. 406/Kol/2017

Assessment Year : 2012-13

ITO, Ward-1(1), Kolkata

(Appellant)

-vs- M/s Artlink Vintrade Pvt. Ltd.

[PAN: AACCA 1533 H ]

(Respondent)

For the Appellant : Shri G. Hangshing, CIT

For the Respondent : Shri Manoj Kataruka, Advocate

Date of Hearing : 02.07.2018

Date of Pronouncement : 01.08.2018

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-9, Kolkata [in short the Id CIT(A)] in Appeal No. 235/CIT(A)-9/Wd-1(4)/2016-17/Kol dated 26.12.2016 against the order passed by the ITO, ward-1(1), Kolkata [ in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 24.03.2014 for the Assessment Year 2012-13.

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the addition made towards loans received by the assessee in the sum of Rs 64,04,20,000/- in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee had filed its return of income for the Asst Year 2012-13 on 28.9.2012 declaring total loss of Rs 14,750/-. During the course of assessment proceedings, the authorized representative of the assessee appeared and produced the books of accounts and other relevant details & documents and the same were test checked by the Id AO. The Id AO observed that in the balance sheet as on 31.3.2012, the assessee had advanced short term loans and advances and called for the details of the same, which were furnished by the assessee . From the said details, the Id AO observed that the assessee had actually received a loan of Rs 13,27,20,000/- and had netted off the same with the loans given by it in the balance sheet. This sum of Rs 13,27,20,000/- was received by the assessee as loan from M/s Database Software Technology Pvt Ltd. Apart from this, the Id AO observed that the assessee had taken laon from another party M/s Indigo Edutainment Pvt Ltd to the tune of Rs 50,77,00,000/-. Hence the subject matter of verification of loans received were in respect of Database Software Technology Pvt Ltd and Indigo Edutainment Pvt Ltd. The Id AO observed that the assessee filed the details partly such as loan confirmation etc. He later observed that the assessee company had not produced the full details as well as directors of the alleged loan creditors companies to substantiate the identity and creditworthiness of the loan creditors and genuineness of the loan transactions. Accordingly, he concluded that the unsecured loans received from these two parties remain unexplained and hence to be taxed u/s 68 of the Act in the sum of Rs 64,04,20,000/- by holding that the said sum is nothing but assessee's own money conduited under the garb of unsecured loans into its books of accounts.

4. The assessee pleaded before the Id CITA that both the loan creditor companies supra belong to the same group to which the assessee belongs to. The Directors of the three companies during the relevant period are as under:-

a) Artlink Vintrade Pvt Ltd

Shri Sudhir K Kambale  
Miss Loveleen Braganza  
Shri Mahendar Khirodwala

b) Indigo Edutainment Pvt Ltd

Shri Sudhir K Kambale	- resigned on 31.1.2012
Shri Vilas R Darpe	- resigned on 31.1.2012
Shri Arun K Dalmia	- resigned on 31.1.2012
Shri Satyanarayan R Agarwal	
Smt Radha Karsan Chitroda	
Shri Hemant Narendra Sampat	- resigned on 24.9.2012

c) Database Software Technology Pvt Ltd

Shri Arjun Lal Saini	- resigned on 31.1.2012
Shri Mahendar Khirodwala	- resigned on 31.1.2012
Shri Krishna Shripati Desai	- Appointed on 27.10.2011
Shri Pandurang Ramchandra Navkhane	- Appointed on 27.10.2011

4.1. It was submitted that all these directors are residents of Mumbai. The assessee stated that it had discharged its onus by furnishing its bank account and the ledger account of the creditors in its books of accounts together with letter of confirmation from the creditors confirming the loan transactions. The loan creditors have sufficient sources in their kitty to advance loans to the assessee and hence their creditworthiness cannot be doubted. Since the parties had given loan confirmation and are regularly assessed to income tax, their identities cannot be in question. The transactions had been routed through regular banking channels and hence the genuineness of the transactions cannot be in question. It was also argued that the assessee cannot be asked to prove the source of credit or the origin of the credit and that it is not bound to explain whether the creditor of its creditor had the capacity to make the advance or not, neither any such information is expected to be in its knowledge. The assessee placed reliance on various decisions in this regard. Hence it was argued that the loan creditors having received

advance before advancing the credit to the assessee company is of no consequence in so far as the credits appearing in the books of the latter company , that is the assessee, is concerned. The entire details regarding the income tax particulars of the loan creditor companies were indeed filed before the Id AO which was not considered at all by the Id AO. The loan transactions were duly reflected in the books of accounts of loan creditor companies and duly audited. It was also submitted before the Id CITA that the scrutiny assessments for the Asst Year 2012-13 were completed in the case of M/s Database Software Technology Pvt Ltd and M/s Indigo Edutainment Pvt Ltd u/s 143(3) of the Act dated 31.3.2015 and 23.3.2015 respectively. In these assessment orders, no adverse inference was drawn by the assessing officer of those loan creditor companies with regard to their capacity to advance loans to the assessee company herein. The only reason which the Id AO had adduced in his order for disbelieving the loans is failure of producing the directors before him. In this regard, it was submitted that the directors of the loan creditors companies are situated at Mumbai and not in Kolkata and hence they could not be produced before the Id AO in Kolkata. Moreover, at that relevant point of time, since the loan creditor companies were also undergoing scrutiny assessments in Mumbai , the directors had to be present in Mumbai and accordingly they could not be produced before the Id AO in Kolkata. It was argued that the Id AO had not spelt out the purpose for which he wanted these directors to be produced before him , neither did he spell out that any additional documents are needed to be produced to establish the creditworthiness in addition to what was already produced before him. It was finally argued that if the Id AO had considered that the production and consequential examination of the directors are absolutely compelling, then he ought to have issued commission to his counterparts in Mumbai to do the needful, which was not done in the instant case.

5. The Id CITA granted relief to the assessee by observing as under:-

**“4. Conclusion:**

*It is seen that the addition of Rs. 64,04,20,000/- made u/s 68 is because the directors of loan creditor companies did not attend before the AO. However, the PAN and other details were filed. The loan creditor companies are group companies of the appellant and their assessments for the relevant assessment years have been completed u/s 143(3) by their AOs in Mumbai. The AO is directed to delete the addition and inform the AOs of loan creditor companies at Mumbai for necessary action in their hands.”*

6. We have heard the rival submissions. We find that the assessee company is engaged in the business of trading in shares and securities. The Id AO observed that the loans received by the assessee company from two corporates viz Database Software Technology Pvt Ltd in the sum of Rs 13,27,20,000/- and M/s Indigo Edutainment Pvt Ltd to the tune of Rs 50,77,00,000/- were not genuine and accordingly brought to tax u/s 68 of the Act. He further observed that mere filing of confirmation of creditors of the loan is not adequate and failure of the assessee company to produce the directors of the alleged loan creditors companies for examination is fatal, thereby the creditworthiness of those loan creditors could not be established and consequently the genuineness of loan transactions remained unproved. The assessee had submitted that both Database Software Technology Pvt Ltd and Indigo Edutainment Pvt Ltd belong to the same group of the assessee and this fact is not disputed by the revenue before us. The assessee had submitted that all these directors are residents of Mumbai which is also not in dispute before us. Hence we find that the assessee had given reasonable explanation for not securing the presence of those directors who are stationed at Mumbai before the Id AO in Kolkata. Moreover, it is not in dispute that the scrutiny assessment proceedings for the Asst Year 2012-13 were being carried out at Mumbai in respect of those two loan creditor companies at the same time in which the scrutiny assessment was framed in the case of assessee herein. Hence the presence of the directors of loan creditor companies at Mumbai would be important and the directors had remained in Mumbai for the same. We are inclined to appreciate the contention of the Id AR that in case if the presence of those directors are compelling, then the Id AO

assessing the assessee could have issued commission to his Mumbai counterpart (i.e Mumbai IT Office) to make necessary verification and investigation and submit the report to him in Kolkata. This was admittedly not done in the instant case. Hence no addition could be validly made merely for non-production of directors of loan creditors who are stationed at Mumbai before the Id AO in Kolkata. Hence we agree with the contentions of the Id AR that the directors stationed in Mumbai were pre-occupied with their respective companies (i.e the loan creditor companies) scrutiny assessments for the Asst Year 2012-13 happening in Mumbai at the very same time, which enabled them not to make their presence before the Id AO in Kolkata.

6.1. We find that the assessee had furnished its bank account and the ledger accounts of the loan creditors as appearing in the books of accounts together with the letter of confirmation from the creditors having details of the transaction. We find that both the loan creditors companies are income tax assesses, had got their accounts audited and had filed its return of income before their jurisdictional AOs. The Id AR pointed out that the scrutiny assessments were indeed framed by the department on the loan creditors companies for the Asst Year 2012-13 u/s 143(3) of the Act dated 31.3.2015 in the case of Database Software Technology Pvt Ltd and 23.3.2015 in the case of Indigo Edutainment Pvt Ltd. There is no adverse remarks made by the AO of the concerned loan creditors in their assessment orders respectively with regard to the capacity of the lenders to advance monies to the assessee company herein. In other words, no additions were made in the hands of loan creditors towards unexplained investment in loans made in the assessee company in the scrutiny assessments of the loan creditors.

6.2. We find that the assessee had duly repaid the entire loans were repaid to M/s Indigo Edutainment Pvt Ltd in Asst Year 2015-16 and 2016-17 either by physical repayment of money or by adjustment towards sales made to them, the details of which are enclosed in pages 142 to 145 of the paper book. With regard to M/s Database Software

Technology Pvt Ltd, the assessee company had repaid Rs 40,00,000/- in Asst Year 2013-14 ; Rs 42,00,000/- in Asst Year 2014-15 and Rs 20,00,000/- in Asst Year 2015-16. We also find from the scrutiny assessment orders of the loan creditors for the Asst Year 2014-15 completed u/s 143(3) of the Act on 13.12.2016 in the case of M/s Database Software Technology Pvt Ltd and on 20.12.2016 in the case of M/s Indigo Edutainment Pvt Ltd that no adverse inferences were drawn in respect of the subject mentioned loan transactions with the assessee company.

6.3. We find that the Id CITA had deleted the addition made u/s 68 of the Act in the hands of the assessee and had also safeguarded the interest of the revenue by suggesting the Id AO to inform the assessing officer of the loan creditors at Mumbai for necessary action at their end. The revenue was not able to bring on record any adverse materials / decisions taken in the hands of the lender companies pursuant to such direction of the Id CITA.

6.4. In view of the aforesaid observations in the facts and circumstances of the case, we hold that the Id CITA had rightly deleted the addition towards loans received from the companies in the same group and accordingly the order of the Id CITA does not call for any interference. Accordingly, the grounds raised by the revenue are dismissed.

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

**Order pronounced in the Court on 01.08.2018**

Sd/-  
[A.T. Varkey]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 01.08.2018  
SB, Sr. PS

Copy of the order forwarded to:

1. ITO, Ward-1(1), Kolkata, P-7, Chowringhee Square, Room No. 06, 7<sup>th</sup> Floor, Kolkata-700069.
2. M/s Artlink Vintrade Pvt. Ltd., 1010, Maker Chamber-V, Nariman Point, Mumbai-400021, (R/N-9, 1<sup>st</sup> Floor, 307, Rabindra Sarani, Kolkata-700006).
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches