

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

**BEFORE SHRI JOGINDER SINGH (VICE PRESIDENT) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 141/MUM/2018
Assessment Year: 2009-10**

ITO-8(3)(3), Mumbai, Room
No. 616, 6th floor,
AayakarBhavan, M.K. Road,
Mumbai-400020.

M/s Vijay Dwellers
Vs. Pvt. Ltd. 477,
BABYLON Bldg.
Adenwala Road,
Matunga (E),
Mumbai-400019.

PAN No. AADCV9041N

Appellant

Respondent

Revenue by : Mr. B. Satyanarayan Raju, DR
Assessee by : Mr. Nadeem Ahmed Lasani, AR

Date of Hearing : 17/01/2019
Date of pronouncement : 30/01/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-14, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition made u/s. 68 of the I.T.

Act of Rs.13,48,00,000/- received by the assessee from M/s. Prakruti Infrastructure Pvt. Ltd.

2. The Ld. CIT(A) erred in holding that there is no requirement for assessee to prove the source of funds in the hands of M/s. Prakruti Infrastructure Pvt. Ltd., because this was a case of repayment of loan given in the financial year 2007-08 by the assessee.
3. The Ld. CIT(A) failed to see that loan money given earlier was not lying dormant in bank account of M/s. Prakruti Infrastructure Pvt. Ltd., to be "returned" this year and was applied elsewhere necessitating fresh, flow of funds even for repayment.
4. The Ld. CIT(A) failed to see that the amounts were returned in 14 transactions over the year in amounts varying from Rs.2,50,000 to Rs.50,00,000 and sources of funds for each such transfer was to be explained as it was part of the assessee group company and rotation of funds among group concerns is seen.
5. The Ld. CIT(A) 's order is contrary in law and on facts and deserves to be set aside.

3. Briefly stated, the facts are that the Assessing Officer (AO), on receipt of information from the Deputy Director of Income Tax (Inv.), Mumbai, noticed that a total amount of Rs.14,78,00,000/- has been credited in the bank account of the assessee from various concerns including credits from the group concern i.e. Prakruti Infrastructure Pvt. Ltd. On that basis, the AO reopened the assessment by issuing notice u/s 148 dated 30.03.2016 to the assessee. In response to a query raised by the AO during the reassessment proceedings, the assessee filed a reply dated 19.12.2016, which is reproduced as under:

“With reference to the above subject matter and as directed vide your aforesaid notice we confirm that the amount received from various parties

namely M/s Prakruti Infrastructure Pvt. Ltd., Rashmikant M. Shah & from Dharmendra Bhanushali & Tulsi Bhanushali & from M/s New Park Sun Gardens.

Amount received from Mr. Rashmikant M. Shah (Director) & from M/s New Park Sun Gardens is amount received as unsecured loan.

However, Amount received from M/s Prakruti Infrastructure Pvt. Ltd. is current liability in subsequent years and the said liability of M/s Prakruti Infrastructure Pvt. Ltd. is repaid.

Amount received from Mr. Dharmendra Bhanushali & Tulsi Bhanushali is towards booking of flat No. 501 & 502 and the abovesaid amount is shown in the balance sheet as an advances received towards flat.”

However, the AO was not convinced with the above explanation of the assessee for the reason that the identity, genuineness and creditworthiness of the Director and the related parties were not proved along with any supporting documentary evidence. Therefore, the AO made an addition of Rs.14,78,00,000/- as unexplained cash credit u/s 68 of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A) and submitted additional evidence which could not be filed before the AO. On receipt of it, the Ld. CIT(A) sent a copy of it to the AO and called for a remand report. After the receipt of the remand report from the AO, the Ld. CIT(A) forwarded a copy of it to the assessee for its comments. The assessee filed a reply dated 07.08.2017.

As regards the addition of Rs.13,48,00,000/- made by the AO, the Ld. CIT(A) held as under:

“5.2 So far as receipt of sum of Rs.13,48,50,000/- from Prakruti Infrastructure P. Ltd. is concerned, the AO has accepted the claim of the appellant that the said sum was received from Prakruti Infrastructure P. Ltd. by the appellant. However, the only objection of the AO was that the source of funds in the hands of Prakruti Infrastructure P. Ltd. has not been explained by the appellant. Since this is a case for repayment of loan given by the appellant, there is no requirement for the appellant to prove the source of funds in the hands of Prakruti Infrastructure P. Ltd. Accordingly, the AO is directed to delete the addition of Rs.13,48,50,000/- made in the assessment order in respect of receipt of Rs.13,48,50,000/- from Prakruti Infrastructure P. Ltd.”

4.1 As regards the addition of Rs.50,00,000/- made by the AO, the Ld. CIT(A) held as under:

“So far as receipt of sum of Rs.50,00,000/- from Shri Dhamendra Bhanushali and receipt of sum of Rs.20,00,000/- from Ms. Tulsiben Bhanushali is concerned, the appellant has filed copies of cheques issued by these parties, confirmation letters from these parties as well as the registered agreement of sale of flats with these parties. Accordingly, the additions made under section 68 of the IT act in respect of sums received from these parties are liable to be deleted. However, the copies of confirmation and the copies of the cheques issued by these parties were not available before the AO, though the relevant registered agreements of sale were made available to the AO. Therefore, the appellant is directed to file a copy of these documents before the AO who shall satisfy himself regarding the correctness of the documents filed by the appellant and delete the addition of Rs.50,00,000/- made in the assessment order in respect of receipt of Rs.50,00,000/- from Shri Dharmendra Bhanushali and also delete the addition of Rs.20,00,000/- from Ms. Tulsiben Bhanushali, if the documents filed by the appellant are found to be correct.”

5. Before us, the Ld. DR reiterates the grounds of appeal. On the other hand, the Ld. counsel of the assessee submits that the requirement of explaining the source of source of the receipts came into the statute book by amendment to section 68 of the Act on 01.04.2013 effective from the AY 2013-14 onwards. This appeal in question pertains to AY 2009-10, therefore, during the subject assessment year, there was no requirement to explain the source of source. In this regard reliance is placed by him on the decision by the Hon'ble Bombay High Court in *Pr. CIT v. Veedhata Tower Pvt. Ltd.* (ITA No. 819 of 2015) and *Pr. CIT v. M/s SDB Estate Pvt. Ltd.* (ITA No. 1356 of 2015). The Ld. counsel further submits that it has discharged the onus placed upon it u/s 68 by filing confirmation of account copies from M/s Prakruti Infrastructure Pvt. Ltd. for both the financial years 2007-08 and 2008-09, the year of payment and the year of receipt ; the bank account of the said Prakruti Infrastructure Pvt. Ltd. for both the financial years 2007-08 and 2008-09 in which the transactions in question are reflecting ; and has also filed a copy of ITRV for both the assessment years 2008-09 and 2009-10 in the case of M/s Prakruti Infrastructure Pvt. Ltd. and all these documents were duly verified by the AO while forwarding his remand report to the Ld. CIT(A).

6. We have heard the rival submission and perused the relevant materials on record. So far as receipt of Rs.13,48,50,000/- from Prakruti Infrastructure P. Ltd. is concerned the Ld. CIT(A) has rightly observed that since this is a case of repayment of loan given by the assessee, there is no requirement on the part of the assessee to prove the source of funds in the hands of Prakruti Infrastructure P. Ltd. There cannot be any

dispute on the above reasoning. We are supported by the decision in *Veedhata Tower Pvt. Ltd.* (supra) and *M/s SDB Estate Pvt. Ltd.* (supra).

In so far as, the receipt of Rs.50,00,000/- from Shri Dharmendra Bhanushali and Rs.20,00,000/- from Ms. Tulsiben Bhanushali is concerned. The Ld. CIT(A) has directed the assessee to file the copies of confirmation and cheques before the AO as delineated at para 4.1 hereinbefore.

Thus we uphold the order of the Ld. CIT(A).

7. In the result, the appeal is dismissed.

Order pronounced in the open Court on 30/01/2019.

Sd/-
(JOGINDER SINGH)
VICE PRESIDENT

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/01/2019

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