

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH “A”, CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT
AND SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.527/Chd/2018

निर्धारण वर्ष / Assessment Year : 2013-14

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| M/s Fidelity Commodity Traders Ltd., 543, Kaporr Street, Blindraban Road, Ludhiana. | बनाम | The Income Tax Officer, Ward-7(1), Ludhiana. |
| स्थायी लेखा सं./PAN NO.AAACF2501Q | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by: Shri Ashwani Kumar, CA
राजस्व की ओर से/ Revenue by : Smt.Meenakshi Vohra, Sr.DR
सुनवाई की तारीख/Date of Hearing : 07.03.2019
उद्घोषणा की तारीख/Date of Pronouncement: 04.06.2019

आदेश/ORDER

Per Sanjay Garg, Judicial Member :

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-3, Ludhiana [hereinafter referred to as ‘CIT(A)’], dated 23.2.2018 relating to assessment year 2013-14,

passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The assessee in this appeal has taken following grounds:

"That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-S, Ludhiana is against law and facts on the file in as much as she was not justified to uphold the action of the Ld. Assessing Officer in making an addition of Rs. 50,00,000/- on account of alleged unexplained credit in the name of M/s Sumukh Commercial Pvt. Ltd. by resort to provisions of Section 68 of Income Tax Act, 1961."

3. Brief facts of the case are that the assessee company is engaged in the business of dealing in investment in securities. Return of income of the assessee had been filed at an income of Rs.28,730/-. During the course of assessment proceedings, from the perusal of balance sheet filed by the assessee company for the year under consideration, it was found by the A.O. that during the year under consideration, the assessee had shown an amount of Rs.50,00,000/- payable to M/s Sumukh Commercials Pvt. Ltd. under the head 'current liabilities'. The assessee was asked to furnish the evidence for genuineness of transaction and for credit worthiness and identity of the company/person from whom an amount of Rs.50,00,000/- was received. The assessee company was asked to file the

ITRs, bank statement, and audited balance sheet of the creditors, namely M/s Sumukh Commercials Pvt. Ltd. The counsel of the assessee produced Sh. Parveen Kumar Jain, the director of the M/s Sumukh Commercials Pvt. Ltd., whose statement was recorded. In his statement he admitted that his company had given an advance of Rs. 50,00,000/- to the assessee, for purchase of shares of M/s Gala Finance & Investment Limited, which were available with the assessee concern at Rs.50 per share. Further he also stated that due to shortage of funds, his concern did not purchase the shares of Gala finance limited and received back the whole amount of Rs.50,00,000/- later on. The A.O., however, observed that the director of the company had failed to explain the source of above said credits made in the bank account of M/s Sumukh Commercials Pvt. Ltd. Later on the assessee explained the immediate deposits before transferring the amount of Rs.50,00,000/-received in the bank account of M/s Sumukh Commercials Pvt. Ltd from following concerns:-

| S.NO. | Name of the person from received | Amount received | Nature of receipt |
|-------|----------------------------------|-----------------|-----------------------------|
| 1. | Space Corp. Ltd. | 5,00,00/- | Return of inter cop deposit |
| 2. | Bipin V. Shah | 10,00,000/- | Return |
| 3. | Olive Overseas Pvt. Ltd. | 31,05,000 | Sundry receivable |

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|----|------------------------------|------------|-------------------|
| 4. | Nakshatre Business Pvt. Ltd. | 1,00,000/- | Sundry receivable |
|----|------------------------------|------------|-------------------|

The A.O. observed in the assessment order that no books of account were produced by the creditor, even after availing so many opportunities. In the mean time the A.O. received an information from the DDIT(Inv.), Unit-III, Mumbai, vide which it had been revealed that Olive Overseas Pvt. Ltd. & Nakshatre Business(P) Ltd. were also paper companies. He held that the amounts received from these concerns could not be treated as genuine. In view of the above facts, sources of credits in the bank account of the creditor made immediately before transferring the amount to the assessee, remained unexplained. In the facts of the case, the A.O. treated the claim of the assessee company as non genuine. Hence, the A.O. made an addition of Rs.50,00,000/- u/s 68 of the Act to the total income of the assessee company in view of the unexplained credits into the account of the assessee.

4. The Ld.CIT(A) confirmed the addition so made by the A.O.

5. Hence, the assessee has come up in appeal before us.

6. We have heard the rival contentions of both the parties and have also gone through the orders of lower authorities. Admittedly, the amount of Rs.50,00,000/- received by the assessee company for sale of shares of M/s Gala Finance & Investment Limited to M/s Sumukh Commercials Pvt. Ltd. had been returned/paid back to M/s Sumukh Commercials Pvt. Ltd. as the transaction did not mature. To prove the creditworthiness of the buyer and to prove the genuineness of the transaction, the assessee produced before the A.O. Shri Parveen Kumar Jain, Director of M/s Sumukh Commercials Pvt. Ltd., whose statement was also recorded, whereby he had admitted that he had paid Rs.50,00,000/- to the assessee company for purchase of shares of M/s Gala Finance & Investment Limited and further that the said money had been received back as due to shortage of funds his concern did not purchase the shares. The transaction was done through banking channel and all the requisite documents to prove the genuineness of transaction, such as copy of bank account statement, Balance Sheet, confirmation from M/s Sumukh Commercials Pvt. Ltd. were submitted. The Ld.Counsel for the assessee has also produced before us the copy of the decision of the Tribunal in the case of M/s Gala Finance &

Investment Limited bearing ITA No.1170/Chd/2017 decided vide order dated 18.1.2019 of this Tribunal. In the said case of M/s Gala Finance & Investment Limited, the addition was made by the A.O. doubting the payment of Rs.57,29,425/- made by the assessee company for purchase of shares of M/s Gala Finance & Investment Limited. The said addition stood deleted vide order dated 18.1.2019 of this Tribunal. The facts speaks that the assessee had made a payment of Rs.57,29,425/- for purchase of shares of M/s Gala Finance & Investment Limited. The assessee through the transaction in question had intended to sell those shares and in lieu received the amount of Rs.50,00,000/- from M/s Sumukh Commercials Pvt. Ltd. The assessee to prove the genuineness of the transaction as noted above, has submitted all the requisite documents as noted above. The transaction was confirmed by the director of the company in his statement recorded by the A.O. Even the director of the company has also furnished the source of the money, which was further advanced to the assessee. Thus the assessee has not only proved the source of the money but has also furnished the details of source of the source. The A.O. further doubted the source of the source i.e. the company from which from M/s Sumukh

Commercials Pvt. Ltd. received the amount, which was utilized to advance the money to the assessee, for that, in our view, no adverse inference can be drawn against the assessee as there is no evidence on the record that it was the own money of the assessee, which was routed through the aforesaid companies. Under these circumstances, the addition in this case has been made on the basis of suspicion, whereas the primary/initial burden, which was upon the assessee, has been duly discharged by the assessee. In view of this, we do not find any justification on the part of the lower authorities in making/confirming the impugned addition in the hands of the assessee, the same is accordingly ordered to be deleted.

7. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the Open Court on 04.06.2019.

Sd/-

एन. के. सैनी

(N.K. SAINI)

उपाध्यक्ष/ Vice President

दिनांक /Dated: 4th June, 2019

रती

Sd/-

संजय गर्ग

(SANJAY GARG)

न्यायकि सदस्य/ Judicial Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar