

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
[Before Shri Pramod Kumar, Vice President]

ITA No. 1474/Ahd/2016
Assessment Year : 2012-13

Eshyasi Pharma Ltd

7-B, 31, 32, 33, Krishna Industrial Estate,
Opp. BIDD, Gorwa, Vadodara-390016
[PAN: AADCT 0137 D]

.....Appellant

Vs.

Income Tax Officer

Ward 1(1)(2), Vadodara

.....Respondent

Appearances by:

Anil R. Shah & Kinjal Shah for the appellant

Jayant Jhaveri for the respondent

Date of concluding the hearing : 27.02.2019

Date of pronouncing the order : 24.05.2019

O R D E R

1. This appeal, filed by the assessee, is directed against learned CIT(A)'s order dated 29th April 2016 in the matter of assessment under section 143(3) of the Income-tax Act, 1961, for the assessment year 2012-13.

2. Grievances raised by the appellant are as follows:-

“1 The CIT(A) has erred both in law and in facts in invoking Sec. 68 of the Act and thereby confirming addition of Rs.21,60,000/- added by the Assessing Officer as Unsecured Loan from Mahesh N. Shah (HUF)

2. It is submitted by your Appellant that the Depositor from whom Loan is taken was duly identified, his creditworthiness was proved, he is assessed to tax and transaction being genuine, the addition ought to have been deleted.”

3. The assessee is engaged in the business of manufacturing drugs and doing related job work. During the course of scrutiny assessment proceedings, it was noticed that the assessee had received Rs.21,60,000/- from Mahesh N. Shah HUF. These amounts were paid by Eva Enterprises, on behalf of Mahesh N Shah HUF, through banking channels. The EVA Enterprises was sole proprietorship of BP Shah till 09.05.2010, it was converted into a partnership by induction of Mahesh N Shah (HUF) and Nisha M Shah, and eventually taken over by the assessee company. The

Assessing Officer noted that EVA Enterprises did not file income tax returns, that Mahesh N Shah HUF was showing NIL income and that the date of EVA Enterprises being taken over by the assessee company is not clear. On these facts, the Assessing Officer treated the amount of Rs.21,60,000/- as unexplained credit and added to the income of the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A) who confirmed the action of the Assessing Officer by observing as follows:-

“4.3.1. A perusal of the explanation filed and the details and documents submitted by the appellant shows that the concern M/s. EVA Enterprises has been claimed to be initially a proprietorship concern of Mr. Bhailalbai P Shah. It was converted into a partnership firm in which Mahesh N Shah (HUF) also became a partner. A copy of the deed of partnership has been submitted as a part of the paper book. A perusal of this partnership deed shows that it has been executed on 10th day of May, 2010 and has been registered on 14.05.2010. It clearly states that the partnership shall be deemed to have been commenced on 10.05.2010. It further states that the banking account or accounts shall be opened with the bank or banks. Now a perusal of the bank statement of bank account of Shri Mahesh N Shah (HUF) with ICICI bank shows that it has transferred Rs.21.6 lakhs through RTGS to M/s. EVA Enterprises on 07.05.2010. Thus, as on this date M/s. EVA Enterprises was not a partnership Firm and it was still a proprietorship firm of Mr. Bhailalbai P Shah. How this amount became capital of Shri Mahesh N Shah (HUF) in the firm M/s. EVA Enterprises has nowhere been explained. The AO has also noted in Para 6.3.3 of his order that in the partnership deed no mention of the capital introduced by Shri Mahesh N Shah is there.

4.3.2. Other related facts are that the alleged firm M/s. EVA Enterprises has admittedly not maintained any books of account and has not filed any return of income till date. The appellant also claimed that this firm was taken over by the appellant company but as noted by the AO also, no evidence in this regard has been submitted. Thus, the appellant has failed to establish that the amount transferred by Shri Mahesh N Shah (HUF) on 07.05.2010 was credited as capital account in the firm M/s. EVA Enterprises. In the absence of such link being established by the appellant, the amount transferred from M/s. EVA Enterprises to the appellant company cannot be held to be on account of payment by this firm to the appellant on behalf of Shri Mahesh N Shah (HUF) as claimed by the appellant. Moreover, the appellant has not submitted any explanation regarding the immediate source of the money out of which the firm had paid this amount to the appellant company. As already noted above, this firm is not showing any income and has not even filed return of income in any of the year. Thus, the capacity of this firm to make payment made to the appellant company has not been established.

4.3.3. Thus, the appellant has failed to establish the genuineness of the transactions as well as the creditworthiness of the party which is the immediate source of this amount of Rs.21.6 lakhs. Under such circumstances, the AO's action of adding this amount as unexplained cash credit in the hands of the appellant is correct and is accordingly upheld.”

4. The assessee is not satisfied and is in further appeal before the Tribunal.
5. I have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.
6. I find that the existence of EVA Enterprises is not in doubt. The monies received to the credit of Mahesh N Shah HUF are received from the said firm. The source of source is thus proved. The bonafides of Mahesh N Shah HUF are not in doubt either. The returned income of Mahesh N Shah HUF being NIL and the non filing of returns by EVA Enterprises are not really relevant for the purposes of examining bonafides of this transaction, but the authorities below have been swayed by these considerations. In my considered view, the undisputed facts of the case and material on record clearly establish existence and means of the lender, as also bonafides of the transaction. I, therefore, delete the impugned addition of Rs.21,60,000/-. The assessee gets the relief accordingly.
7. In the result, the appeal is allowed. Pronounced in the open court today on the 24th May, 2019.

Sd/-

Pramod Kumar
(Vice President)

Ahmedabad, the 24th day of May, 2019

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Copies to: (1) The appellant (2) The respondent
(3) Commissioner (4) CIT(A)
(5) Departmental Representative (6) Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad