

आयकर अपीलिय अधीकरण, न्यायपीठ – “ए” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.1264/Kol/2018
Assessment Year :2013-14

DCIT, Circle-10(1), Aayakar Bhawan, 3 rd Floor, P-7, Chowringhee Square, Kolkata-700 069	V/s.	M/s Madhushree Sarees Pvt. Ltd., 103, park Street, 2 nd Floor, Kolkata-700 071 [PAN No.AADCM 5024 C]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Dhrubajyoti Roy, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri S.M. Surana, Advocate
सुनवाई की तारीख/Date of Hearing	13-01-2020
घोषणा की तारीख/Date of Pronouncement	31-01-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (Appeals)-4 Kolkata's order dated 13.03.2018 passed in case No.79/CIT(A)-4/2016-17/Kol, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The Revenue's former substantive ground pleads that the CIT(A) has erred in law and on facts in reversing the Assessing Officer's action treating the assessee's unsecured loans of ₹2,10,00,000/- as unexplained cash credits u/s. 68 of the Act and more particularly, after admitting additional evidence in

violation of Rule 46A of the Income Tax Rules, 1962. The CIT(A)'s detailed discussion to this effect reads as under:-

“3. Identity:

I have perused the assessment order and the Submissions of the Ld. AR and the case laws on this issue. It is seen that the assessee company has received these loans from this company a peak of such unsecured loans has been taken as under by the AO:

Sl.No.	Name	Addresses as provided by assessee	Peak credit in the name of the parties period 01.04.12 to 31.03.13
1	M/s Gagan Vanijya (P) Ltd.	95A, Park Street, 3 rd Floor, Suit No.3A, Kolkata-700 016	56,50,000/-
2	M/s Madhushree Housing Pvt. Ltd.		20,00,000/-
3	M/s Madhushree Overseas Pvt. Ltd.		50,00,000/-
4	M/s Madhushree Projects Pvt. Ltd.		33,00,000/-
5	Proctono Enterprise Pvt. Ltd.	½ Lord Sinha Road, Sharma House, kolkta-71	48,50,500/-
6	M/s Madhushree Vanijya	493/C/A, GT Road, Vivek Vihar Howrah	2,00,000/-
		Total	2,10,00,000/-

3.1 It is also an uncontroverted fact of these six concerns are group concerns of the assessee with the following directorship:

‘Following are the details of unsecured loan taken by the assessee company from other group companies during the financial year in question:-

Name of the parties	Op. bal. as on 01.04.12	Add: loan taken	Add: interest	Less: TDS	Less: Loan refund	Cl. Bal. as on 31.03.13	Name of the directors
Gagan Vanijya Pvt.Ltd.	0	23400000	215248	21525	15493723	8100000	Rahul Chowdhary Rajendra Agarwal
Madhushree Housing Pvt. Ltd. 95A, Park St. Kol-16	1400000	2750000	148390	14839	2483551	1800000	Bhagwati Prasad Chowdhary Rahul Choudhary
Madhushree Overseas Pvt. Ltd., 95A, park St. Kol-16	1800000	7400000	196299	19630	7576669	1800000	Bhagwati Prasad Chowdhary Aruna Choudhary
Madhushree Projects Pvt. Ltd., 95A, Park St. Kol-16	1300000	6150000	131628	13163	6543465	1025000	Bhagwati Prasad Chowdhary Aruna Choudhary
Procton Enterprises Pvt. Ltd., ½ Lord Sinha Rd. Kol-71	1150000	8550000	145677	14568	6431109	3400000	Bhagwati Prasad Chowdhary Rajendra Agarwal
Madhushree Vanijya Pvt. Ltd., 493/C/A G.T.Rd.,Howrah-711102	0	300000	20108	2011	68097	250000	Bhagwati Prasad Chowdhary Rahula Choudhary

While Sri Bhagwati Prasad Chowdhury, Sri Rahul Chowdhary and Smt. Aruna Chowdhary happen to be directors of appellant company, they are also holding directorship in the lending companies and in that sense the lending companies are all same group companies.”

3.2. Since all the lending companies are filing their return with ROC and all of them have the same Directors as the Assessee company, therefore, the Directors are

identifiable and are reputed people from the business community of Kolkata, therefore, merely because these companies have shifted their addresses from one place to another and nobody could be found any one at the addresses given, would not mean that the identity of these companies is not in doubt. Therefore, in my opinion, **identity** of these lenders have been proved.

3.3 Capacity:

The second question would be **capacity** of the companies to lend –

It is seen from the statement of share capital (**Annexure A**) that all these six companies have advanced the loan out of their share capital and reserves and surplus. Further, from the chart at Annexure A, it can be seen that the share capital of these six companies have remained static since last three years. Even if the source of capital in the hands of lender companies was dubious then the additions should have been made in the hands of these lender companies. Further, the additions should have been made in the year in which these companies have raised the share capital and not in the Assessment Year 2013-14, where these lender companies have not raised any capital. In view of the above, the Assessee has proven that the loans have come out of the share capital and reserves and surplus of these six companies. It is clear that the Assessee has been able to establish the capacity of the lenders to lend the money to the Assessee Company.

3.4 Genuineness:

As far as **genuineness** of the transaction is concerned the Id. AR has submitted the documents to show that all the transactions have been done through banking channels. All the lender companies have their Income Tax Return up to date and all the companies are Roc compliant. Further, most of the loans were brought forward loan from earlier years and no additions have been made in the earlier years. The lenders are being increased and refunded from time to time, therefore, there is continuous transactions going on with these associate concerns. In view of the above genuineness of the transaction is also proved.

3.5 Following the case laws cited by the Ld. AR supports the case of the Assessee:

The Madras High Court in the case of **CIT V. Mark Hospitals Pvt. Ltd., (2015) 373 ITR 115 (Mad)** held that “where assessee duly submitted all details of creditors from whom it has obtained unsecured loans and evidence produced by assessee proved creditworthiness of creditors and genuineness of transactions, no addition u/s. 68 could be made.

The Delhi High Court in the case of **Asstt. CIT v. Vikrant Puri (2016) 47 ITR (Trib.) 708 (del)** held that “where assessee had furnished name, address and PAN of the creditors and genuineness of transaction and creditworthiness of creditor was also fully established, addition made on account of loan taken from said creditors was to be **deleted.**”

Similarly, the Delhi High Court in the case of observed that **CIT V. Lalit Kumar Poddar (2015) 231 taxmann. 816 (Del)** – “where identity and creditworthiness of parties had been established from whom assessee had taken loans and advances, no addition u/s. 68 could be made.

Similarly are the views taken by ITAT, Mumbai –Asst. CIT V. Sanjay m. Jhaveri (2015) 168 TTJ 751 (Mum) “where assessee had taken unsecured loans and duly field confirmation letters of creditors, copies of their bank accounts and acknowledgement of returns of income filed by them, same could not be treated as undisclosed income of the assessee.” Where no incriminating evidence relating to

loan transactions was found, the Id. AO was not justified in invoking sec. 68 for the purpose of making addition on account of loan received.

In Charinjit Singh V. ITO (2016) 52 ITR (Trib.) 337 (Chd.) the ITAT held “where the creditors had confirmed having given loans to the assessee, they had explained source of deposits and transactions were through banking channels, there, was no justification in making addition of the said amount u/s. 68”. Also Loil Overseas Food Ltd. V. ITO (2017) 55 ITR (Trib.) 544 (Chd.)”.

3.6. FINDINGS OF CIT(A):

*In view of the above discussion and the case laws cited, since the Assessee has been able to prove the identity of the lenders, capacity of the lenders to lend money to the assessee company and genuineness of the transaction, therefore, the addition cannot be sustained. Therefore, Ground No.1 is **Allowed**.”*

3. We have given our thoughtful consideration to rival pleadings. Learned departmental representative vehemently contended during the course of hearing that the Assessing Officer had rightly treated the assessee's unsecured loans as unexplained cash credits in the event of latter's failure in proving identity, genuineness and creditworthiness thereof. We find no merit in Revenue's foregoing pleadings. The fact remains that an assessee has availed the impugned unsecured loans from its eight group entities parties having common directors entities and all of the said parties have filed the relevant evidence right from scrutiny in its favour. Learned departmental representative fails to pin-point any lack of genuineness or creditworthiness in the said parties' bank statements & other records which could substantiate the fact sought to be alleged from the department side that they had been acting as accommodation entry providers. We do not see any additional evidence admitted by the CIT(A) much less in violation of Rule 46A of the Income Tax Rules, It is therefore hold that the CIT(A) has rightly deleted the impugned unexplained cash credits in the nature of unsecured loans availed from the group entities having common directors. The Revenue's instant former substantive grievance fails accordingly.

4. Next comes the latter substantive issue of bogus commission expenditure amounting to ₹9,58,999/-. We notice from the CIT(A)'s discussion under challenge in para-5 to 5.3 i.e. he has found Shri Vasa, Mohit Kochar to

have been accepted as providing commissions services to the assessee not only in the impugned assessment year but also in preceding and succeeding assessment year(s) duly accepted by the Assessing Officer. He has further restricted the impugned disallowance to that @ 50% only keeping in mind all the relevant facts and circumstances. We hold that the CIT(A)'s action under challenge holding the impugned commission expenditure allowable @ 50% only does not suffer from any illegality and irregularity therefore.

5. This Revenue's appeal is dismissed.

Order pronounced in the open court 31/01/2020

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp

दिनांक:- 31/01/2020 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Cir-10(1), P-7, Chowringhee Sq. 3rd Floor, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Madhushree Sarees Pvt. Ltd., 103, Park Street, 2nd Fl. Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।