

आयकर अपीलीय अधीकरण, न्यायपीठ – “सि” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “Virtual C” KOLKATA

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.1712/Kol/2018
Assessment Year: 2015-16

Assistant Commissioner of Income Tax, Circle-34, Aayakar Bhawan, P:oorva, 7 th Floor, 110, Shantipally, Kolkata-700 001	बनाम / V/s.	Shri Amarjit Banthia 23A, N.S. Road, 2 nd Floor, Room No.-8, Kolkata-700 001 [PAN No.ADKPB 5333 L]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Smt. Ranu Biswas, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri S.M.Surana, Advocate
सुनवाई की तारीख/Date of Hearing	13-08-2020
घोषणा की तारीख/Date of Pronouncement	19-08-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee’s appeal for assessment year 2015-16 arises against the Commissioner of Income Tax (Appeals)-10, Kolkata’s order dated 22.05.2018 passed in case No.889/CIT(A)-10/Cir 34/15-16/2017-18/Kol., involving proceedings 143(3) of the Income Tax Act, 1961; in short ‘the Act’.

Heard both the parties. Case file(s) perused.

2. The Revenue’s sole substantive grievance raised in the instants appeal seeks to reverse CIT(A)’s action deleting the unexplained cash credit addition of ₹1,78,89,906/- made in the course of regular assessment framed on 22.12.2017.

Learned departmental representative invited our attention to assessment findings holding the assessee's six creditors namely M/s Swito Finance and Estates Pvt. Ltd., M/s Castle Commodities Pvt. Ltd., M/s Mahavir Finance Pvt Ltd., M/s Sharp Investments Ltd, M/s RGF Capital markets Ltd. and M/s Jahangirabad Finance Co Pvt. Ltd. as mere "*jama-kharchi*" providing entities only.

3. We see no reason to express our agreement with the Revenue's foregoing contention. The fact remains that the assessee's former five entities / NBFC formed the subject-matter of identical addition made in respect to the preceding assessment year 2014-15 as well. This tribunal's co-ordinate bench's decision in **ITA No.780/Kol/2018** decided on 15.01.2020 has deleted the said identical addition as under:-

"3. Heard rival contentions. The sole ground raised by the as under:-

"1. That on the facts and circumstances of the case, the Ld. CIT(A) erred deleting the disallowance of sundry unsecured loans to the tune of Rs.3,59,01,331/- (including interest of Rs.8,01,331/ since the three golden rules of identity, creditworthiness of creditors and genuineness of transactions have all failed during the assessment stage."

4. We find that the ld. CIT(A) has at para 10 to 13 of his order, held as follows:

"10. I have carefully gone through the Ld. A.O.'s order and submission of the appellant during the course of Assessment Proceedings as well during Appellate proceedings. It is seen that all the lenders are Registered NBFC companies permitted by the Reserve Lending and Investment. All these companies have been regular in filing their returns with Income Tax as well as ROC authorities and the same have been accepted by their respective A.O. Nowhere did I find any re returns have been rejected or challenged by the department. Also, I find that the Ld AO has not made any reference to the Assessing Authorities of these 5 companies from whom the appellant has taken loans, and ascertained the status from those assessing Officers. In the factual matrix which emerges, it is seen that the assessee has discharged its primary onus by filing the details relating to the Loan Creditors, and thereafter the onus has shifted to the Ld. AO. It is also seen that some Companies have appeared before the Ld AO and have admitted to having given the loans. The Ld. AO has ignored these evidences which favour the appellant. In fact it is observed that the Ld AO has relied upon certa Jivendra Mishra and Gopal Maity before Officers of the Investigation Wing, and has not

confronted the assessee with such adverse material, and this alone renders the order of the Ld AO weak in law. Reliance is placed on Hon'ble Supreme Court's judgment in the case of CIT Vs. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC) for the proposition that if the issued summons u/s 133(6) it is his duty to bring the process to a logical conclusion and non-response by such assessee. The judgment is squarely applicable to the case of the assessee.

11. The additions in cases of Swito Finance and Estates Pvt Ltd., Castle commodities Pvt. Ltd. and Mahavir Finance Pvt. Ltd. has been made relying the statement of the person Mr. Jivendra Mishra who is neither the director or employee in the company. As such there is no evidentiary value of such statement. It is also seen that the appellant adduced ample evidences in support of the identity and transactions and no discrepancy whatsoever has been found. Besides, in cases where the directors of the lenders appeared have admitted to have given loans to the appellant. The nature of receipt in earlier number of staff is irrelevant as the same is the internal matter of the lender company with which assessee is not concerned. In any case, the appellant has satisfactorily explained the source of receipts. It is also pertinent that the appellant has filed returned incomes of Rs.45,21,990/- for the AY 2013-14, Rs.71,05,970/- for this subject A.Y 2014-15, Rs.83,70,930/- for the A.Y 2015-16 and Rs.5,57,90,660/- for the A.Y 2016-17. These do not have, in my considered opinion any direct link with the matters at hand, but they do suggest that the assessee is a compliance taxpayer in a larger picture.

12. Under the facts and circumstances, I am of the considered view that the addition is merely based on surmises and conjectures and on material not relevant for the case of the appellant-taxpayer. Therefore I find that the additions made by the Ld AO are not sustainable on the facts of the case, and the law applicable. The same are therefore deleted, and the ground **allowed** in favour of the assessee.

13. Regarding disallowance of interest on loan, the same being consequential in nature to the loan, also remain unsustainable, and as a corollary are deleted. As a result grounds No. 2-5 stand **allowed.**”

5. The credits in question are loans obtained by the assessee from NBFCs which are registered with Reserve Bank of India. On a query from the Bench, the Id. Counsel for the assessee, submitted that, the loans have been repaid to these NBFCs in the subsequent years. Under these circumstances, we find no infirmity in the or infirmity in the order of the Id. CIT(A) and uphold the same and **dismiss** this appeal of the revenue.”

Learned departmental representative is fair enough in not pin-pointing any distinction on facts in the Revenue's substantive grounds raised in the instant appeal.

4. Coming to the sixth entity M/s Jahangirabad Finance Co Pvt. Ltd., it emerges that this is also an NBFC having regular loan transactions with the assessee in lieu of charging interest. We thus adopt the very foregoing reasoning *mutatis mutandis* to affirm the CIT(A)'s action in case of this last entity as well.

5. This Revenue's appeal is dismissed.

Order pronounced in open court on 19/08/2020

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

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

*Dkp-Sr.PS

दिनांक:- 19/08/2020 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-ACIT, Cir-234, Ayakar Bhawan Poorva, 7th Floor, 110, Shantipally, Kolkata-107
2. प्रत्यर्थी/Respondent-Shri Amarjit Banthia, 23A, N.S.Road, 2nd Floor, Room No.8 Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
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 ।