

**THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.4886/Mum/2019
(Assessment year : 2011-12)

Jiwani Construmate Private Ltd 7, Narayan Niwas, 2 nd Khetwadi Mumbi-400 004 PAN : AAACJ8207H	vs	ITO-5(2)(2), Mumbai
(APPELLANT)		(RESPONDENT)

Appellant by	Shri Anant Pai, (AR)
Respondent by	Smt. Smita Verma, (DR)

Date of hearing	02 -02-2021
Date of Pronouncement	25/02/2021

ORDER

Per Saktijit Dey, JM

This is an appeal by the assessee against the order dated 10-05-2019 of learned Commissioner of Income Tax (Appeals)-10, Mumbai for the assessment year 2011-12.

2. At the outset, on instruction, the learned Counsel for the assessee did not press ground 2. Accordingly, ground 2 is dismissed as not pressed.
3. In ground 1 assessee has challenged addition of Rs.20 lakhs as unexplained cash credit under section 68 of the Income-tax Act, 1961.

4. Briefly the facts are, in course of assessment proceedings, the Assessing Officer (AO), on examining the balance-sheet of the assessee noticed that the assessee has shown an amount of `5,86.20,000/- due to M/s New India Roadways under the head 'current liability'. As observed by the AO to verify the correctness of the liability shown, the AO issued notices u/s 133(6) of the Act to M/s New India Roadways. As observed by the AO, in response to the said notice, the concerned party by letter dated 06-12-2013 furnished a copy of ledger account, the closing balance of liability due from the assessee was shown at Rs.5,66,20,000/-. Noticing this, the AO called upon the assessee to explain the difference between the liability appearing in the books of the assessee and in the books of the creditor. In reply, the assessee by filing a reconciliation statement further explained that the difference was due to a clerical mistake which has been rectified in the next year. The AO, however, did not accept the explanation of the assessee and added back the differential amount of Rs.20 lakhs by treating it as unexplained cash credit u/s 68 of the Act. The addition so made was also sustained by the Ld.CIT(A) while deciding the appeal.

5. The learned Counsel for the assessee submitted, assessee is a civil contractor and executes work under the Municipal Corporation Of Greater Mumbai (MCGM). He submitted, the amount of Rs.20 lakhs is a refund of earnest money deposit with the MCGM which was wrongly credited in the ledger account of M/s New India Roadways appearing in assessee's books instead of crediting the deposit account. To demonstrate the aforesaid factual position, learned Counsel drew attention to the ledger account and bank statement copies of which have been placed on record. Further, he submitted, necessary entry rectifying the mistake has been passed in the ledger account of M/s New India Roadways

appearing in assessee's books. Further, to demonstrate that the amount of Rs.20 lakh shown as liability due to M/s New India Roadways is actually earnest deposit with MCGM, the learned Counsel for the assessee wanted to place before the Bench some more documents by way of additional evidence and requested for admitting them. Thus, he submitted, as the assessee has established the identity and creditworthiness of the creditor as well as the genuineness of the transaction, the addition cannot be made under section 68 of the Act.

6. The learned Departmental Representative submitted, neither before the AO nor before the first appellate authority, the assessee could properly explain the source of the outstanding liability of Rs.20 lakh appearing in the books. She submitted, from the information received from the creditor the difference of Rs.20 lakh was clearly revealed. Therefore, the assessee having failed to reconcile the difference properly, addition was made under section 68 of the Act. She submitted, the assessee cannot be permitted to furnish additional evidence at this belated stage.

7. I have considered rival submissions and perused materials on record. Undisputedly, there was a difference between the outstanding liabilities shown in the name of M/s New India Roadways as per the assessee's books and as per the books of account maintained by the concerned party. This is evident from the reply furnished by M/s New India Roadways in response to the notice issued under section 133(6) of the Act. However, the learned Counsel for the assessee has submitted before me that due to a clerical mistake, earnest money deposit of Rs.20 lakhs with MCGM and refund thereof has been wrongly shown as liability against M/s New India Roadways. From the ledger account and bank statement (copies furnished in the paper book), it is seen that an amount of Rs.20 lakh

claimed to be deposit towards earnest money was paid to MCGM on 10-03-2010. Further, from the bank statement it appears that the assessee has received back the said earnest money deposit from MCGM on 19-01-2011. The assessee has also furnished journal voucher and ledger account copy wherein necessary rectification entries have been passed, rectifying the mistake. Further, by way of additional evidence, the assessee has furnished the bank statement of the account maintained with Central Bank of India to demonstrate that the amount of Rs.20 lakh was paid towards earnest money deposit with MCGM. Further, the assessee has furnished certain information from the website of the MCGM by way of additional evidence to emphasize that Rs.20 lakh which is the subject matter in dispute is, in reality, the earnest money deposit with MCGM. I have noticed, before the first appellate authority the assessee had also submitted that the amount of Rs.20 lakh shown as liability due to M/s New India Roadways is because of a clerical mistake. However, the first appellate authority has not given any credence to such statement of the assessee.

8. Be that as it may, in view of the submissions made before me by the learned Counsel for the assessee as well as the additional evidences now furnished which, in my view, have a crucial bearing in deciding the issue; hence, should be admitted, I am of the considered opinion that assessee's claim that the disputed addition of Rs.20 lakhs actually represents the earnest money deposit with MCGM requires thorough examination. Since, evidences now furnished before the Tribunal were not filed before the departmental authorities, in my view, the issue needs to be remitted back to the Assessing Officer for examining assessee's claim vis-à-vis the additional evidences filed by the assessee as well as the evidences already on record. Accordingly, I restore the issue to the file of the

Assessing Officer for fresh adjudication after due opportunity of being heard to the assessee.

9. In ground 3, the assessee has challenged disallowance of Rs.1,78,738/- out of the interest expenditure claimed during the year.

10. Briefly the facts are, in course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction of Rs.11,25,973/- towards interest paid on loans availed. After calling for necessary details and examining them, he found that while the assessee has paid interest @9% on loan given to related party. Though, in response to query raised by the AO regarding charging less interest, the assessee furnished its explanation, however, the Assessing Officer was not convinced. Accordingly, he worked out the interest receivable from loan given to related party at 12% and added back an amount of Rs.1,78,738/-. The aforesaid addition made by the Assessing Officer was also sustained by learned Commissioner (Appeals).

11. The learned Counsel for the assessee submitted, out of the temporary surplus working capital available, the assessee had advanced loan to the related party on short term basis and as a temporary advance. He submitted, it is not a fact that the loan was advanced without charging any interest, but the assessee had charged interest @9% p.a. He submitted, the temporary advance was given with the understanding that money would be returned immediately on call. Therefore, he submitted, interest was charged at 9% which is more than the prevailing rate of interest on bank FDRs. Further, he submitted, the assessee had sufficient interest free funds available to subsidize interest on the loan given. Therefore, he submitted, the disallowance made should be deleted.

12. The learned Departmental Representative submitted, before the first appellate authority, the assessee has not specifically argued this issue. In this context, she drew our attention to paragraph 8.2.1 of the appellate order. However, she strongly relied upon the observations of the AO and the learned Commissioner (Appeals).

13. I have considered rival submissions and perused materials on record. Though, it may be a fact that the assessee had availed loan at the interest rate of 12% p.a., whereas, it has advanced loan to a sister concern by charging 9% interest p.a; however, assessee's contention that it is a temporary advance of surplus funds available and was given on the condition that it has to be repaid on call, has not been disputed or denied. The assessee's claim that the rate of interest charged at 9% is more than the prevailing rate of interest on FDRs has not also been found to be false. In such circumstances, if the assessee has parked his surplus fund temporarily by charging interest at 9%, which is more than prevailing rate of interest on FDR, the interest so charged cannot be held to be unreasonable. Therefore, in my view, the disallowance made out of the interest expenditure is uncalled for. Accordingly, I delete the disallowance.

14. In ground 4 assessee has challenged disallowance made out of sales promotion and travelling expenses. During the assessment proceedings, the AO noticed that the assessee had claimed expenditure of Rs.1,73,980/- towards sales promotion and Rs.1,01,600/- towards travelling. Alleging that the assessee could non furnishing of vouchers and evidences made the expenditures unverifiable, the AO disallowed 25% out of the expenditure on ad hoc basis. Though, the assessee contested the aforesaid disallowance before the first appellate authority; however, it was sustained.

15. I have heard the parties and perused the materials on record. Undisputedly, the part disallowance of sales promotion and travelling expenses has been made purely on ad hoc basis alleging non furnishing of complete evidence. Considering the nature of expenditure, it may not be possible on the part of the assessee to maintain the details of all the expenditure incurred on sales promotion and travelling. However, keeping in view the possibility of inflation of expenditure by the assessee to some extent, in my considered opinion, disallowance of @20% out of the aforesaid expenditures would be fair and reasonable. Accordingly, I direct the AO to restrict the disallowance to 20% of the expenditure claimed towards sales promotion and travelling. This ground is partly allowed.

16. In the result, appeal is partly allowed.

Order pronounced in the Open Court on this 25/02/2021.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai, Dated : 25 / 02/2021.

Pavanan, Sr.P.S (on contract)

Copy of the order forwarded to :

1. The Appellant.
2. The Responent.
3. The CIT(A)
4. 4. The CIT
5. D.R., ITAT, Mumbai.
6. Guard File.

//True Copy//

By order

I.T.A.T., Mumbai.

