

IN THE INCOME TAX APPELLATE TRIBUNAL
 "E" Bench, Mumbai
 Before Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)
 ITA No.2717/Mum/2018
 (Assessment Year: 2014-15)

DCIT-13(3)(2) 2 nd Floor, Aaykar Bhawan M.K.Road, Mumbai-400 020	Vs.	Twin Best Trading & Marketing Pvt.Ltd. 2 nd Floor, Tricom House, Gandhi Estate, Andheri Kurla Road, Safed Pool, Andheri(E) Mumbai-400 072
PAN/GIR No. AACCT2533L		
(Revenue)	:	(Assessee)

&
 ITA No.3848/Mum/2018
 (Assessment Year: 2014-15)

Twin Best Trading & Marketing Pvt.Ltd. 2 nd Floor, Tricom House, Gandhi Estate, Andheri Kurla Road, Safed Pool, Andheri(E) Mumbai-400 072	Vs.	ACIT-2(3)(1) Aaykar Bhawan, M.K.Road Mumbai-400 020
PAN/GIR No. AACCT2533L		
(Assessee)	:	(Revenue)

Assessee by	:	Shri Dharan Gandhi
Revenue by	:	Shri Vijay Kumar Menon

Date of Hearing	:	14.07.2021
Date of Pronouncement	:	26.07.2021

ORDER

Per Shamim Yahya, A. M.:

These cross appeals by the Revenue and the Assessee are directed against the order of the learned Commissioner of Income Tax (Appeals)-6, Mumbai ('Id.CIT(A) for short) dated 26.02.20218 and pertain to the assessment year (A.Y.) 2014-15.

2. The grounds of appeal raised by the revenue read as under:

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to verify whether out of the total amount added u/s. 68 of the J.T. Act of Rs. 4,63,15,623/-, the opening balance was of Rs. 3,14,81,000/- and if so, then the addition of this amount of Rs. 3,14,81,000/- cannot be made u/s. 68 during the year under consideration, as the CIT(A) is not empowered to set aside the case in the guise of issuing directions.
 2. In giving the directions being contested in Ground No. 1, the Ld. CIT(A) has very conveniently omitted to consider the fact that the receipts/ credits during the year were Rs. 2,55,17,879/- and the sum of Rs. 2,55,17,879/- was liable to be added u/s. 68 of the I.T. Act on the facts of the case for A.Y. 2014-15, as no further evidence was filed even before the Ld. CIT(A) by the assessee.
 3. The appellant prays that the order of the Ld. CIT(A) on the above grounds being perverse, as it is rendered without appreciation of correct facts, be set aside and that of Assessing Officer be restored.
 4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary. , :
3. The grounds of appeal in assessee's appeal read as under :-

The Commissioner of Income Tax (Appels)-6 on facts and in the circumstances of the case and in law erred in sustaining addition of Rs. 1,48,34,623/- towards unsecured loans borrowed by the appellant company during the A.Y. 2014-15.

4. Brief facts of the case are that during the course of the assessment proceedings, the AO noted that the assessee had taken unsecured loans as under:

S.No.	Name of the party from which loan taken	Amount (Rs.)
1	M/s.Kothari Financial Services	1,01,500
2	M/s.Tricom IT Services Pvt. Ltd.	46,79,073
3	M/s.Tricom India Ltd.	66,26,651
4	M/s.ISIS Trade Com Pvt. Ltd.	81,74,822
5	M/s.Antelope Mercantile Pvt. Ltd.	17,10,447
6	M/slimegreen Trade Com	2,50,22,500
	Total:	4,63,14,993

The AO asked the assessee to submit of profit & loss account, balance-sheet and bank statement proving the creditworthiness and genuineness of the transaction with the

aforesaid parties. The AO has noted that assessee has failed to submit profit and loss account, balance-sheet and bank statement of these parties, however, only ledger confirmations of the parties were submitted. In order to confirm and verify the said transactions, notices u/s.133(6) were sent by the AO at the addresses given by the assessee. Out of the notices so issued by the AO, the notices sent to M/s. ISIS Trade Com Pvt. Ltd., M/s. Antelope Mercantile Pvt. Ltd. and M/s. Limegreen Trade Com Pvt. Ltd. were returned unserved. Further, no reply was received from the other 3 parties i.e. M/s. Kothari Financial Services, M/s. Tricom IT Services Pvt. Ltd. and M/s. Tricom India Ltd. confirming the transactions with the assessee. The AO further observed that M/s. ISIS Trade Com Pvt. Ltd., M/s. Antelope Mercantile Pvt. Ltd. and M/s. Limegreen Trade Com Pvt. Ltd, operated from the same address i.e. G-2, Neelkamal Building, Roshan Nagar, Borivali (West), Mumbai. The AO further observed that as per section 68, the onus is on the assessee to prove the creditworthiness of the parties by providing P&L account, balance-sheet and genuineness of the transaction by providing bank statement. He further noted that assessee has failed to furnish the same despite repeated notices issued. Accordingly, the unsecured loans aggregating to Rs.4,63,14,993/- were considered as income of the assessee and added to the total income of the assessee.

5. Upon assessee appeal Ld.CIT(A) granted part relief by holding that opening balance of the loan cannot be added during the year. Hence, he sustained the addition with regard to the loan taken during the year. Ld.CIT(A) has held as under:-

8. I have considered the facts of the case, discussion of the AO in the assessment order, oral contentions and written submissions of the assessee and material available on record. It is seen from the assessment order that for verification of identity, creditworthiness and genuineness of the transaction, the AO had issued notices u/s.133(6) to the creditor parties on their addresses given by the assessee. It is further a fact noted by the AO and not disputed by the appellant that the notices were sent at the addresses provided by the assessee. It is further seen from the assessment order that 3 of the creditor parties viz. M/s. Kothari Financial Services, M/s. Tricom IT Services Pvt. Ltd. and M/s. Tricom India Pvt. Ltd. despite the receipt of notices u/s.133(6) did not respond to the AO whereas in the case of remaining 3 parties, notices were returned unserved. It is further the fact of the case noted by the AO in

the assessment order that M/s. ISIS Trade Com Pvt. Ltd., M/s. Antelope Mercantile Pvt. Ltd and M/s. Limegreen Trade Com Pvt. Ltd. had one common address at G-2, Neelkamal Building, Roshan Nagar, Borivali (West), Mumbai. Such facts as have been noted by the AO and non-verifiability regarding the very identity of the creditor parties led the AO to invoke the provisions of section 68 and thereby make the addition of unsecured loans taken by the assessee and is accordingly found to be justifiable. However, it is seen from the submission of the assessee that out the loans so disallowed aggregating to Rs.4,63,15,623/-, it is the contention and submission of the assessee that the amount of Rs.3,14,81,000/- was the opening balance and therefore unsecured loans to the extent of Rs.3,14,81,000/- were not taken during the year under consideration and therefore, the addition to the extent of Rs.3,14,81,000/- is out of the total addition made of Rs.4,63,15,623/- was not sustainable in view of the various decisions which have been noted hereinabove. In this regard, it is stated that in the decisions cited by the appellant, the Hon'ble Jurisdictional Tribunal have clearly held that on plain reading of the provisions of Income-tax Act, a person with reasonable knowledge on tax laws cannot even remotely venture upon making an addition referable to previous year's loans in the subsequent year. This finds its mention at para 3 of the order of Hon'ble Tribunal in the case of (TO Vs. Shri Nasir Khan J. Mahadik (supra). Similar view has been held by Hon'ble ITAT in the case of ITO Vs. M/s.Anant Shelters Pvt. Ltd. (supra). An observation in this regard, finds its mention at para 8 of the said decision of Hon'ble ITAT. In view of such submission of the assessee and the decisions of Hon'ble Jurisdictional Tribunal, the AO is directed to verify the facts from his records and if the submission of the assessee that out of the total amount added u/s.68 of the Act at Rs.4,63,15,623/-. The opening balance was of Rs.3,14,81,000/- and therefore to the extent of the amount of Rs.3,14,81,000/- was not the loan taken during the year under consideration, then the addition of this amount of Rs.3,14,81,000/- cannot be made u/s.68 during the year under consideration. The AO may verify such facts from the assessee's case and if the facts are found to be correct as per the submission of the assessee, there cannot be addition to the extent of Rs.3,14,81,000/- out of the total addition of Rs.4,63,15,623/-. It is hereby mentioned that after verification of the facts, if it is found that unsecured loans worth Rs.3,14,81,000/- out of the addition made of Rs.4,63,15,623/- are found to be pertaining to the earlier years, the AO may take necessary actions as per law in regard to such unsecured loan of Rs.3,14,81,000/- for the assessment years to which they pertain.

6. Against the above order, the assessee and the Revenue are in cross appeal before us.

7. We have heard both the parties and perused the record. Ld. Counsel of the assessee submitted that proper time was not given by AO to supply the requisite details. He further submitted Ld.CIT(A) also has not considered various submission submitted before him. In this regard, he pleaded to admit additional evidences with

regard to the plea in support of the loans. He pleaded that the matter may be remitted to AO for fresh examination. He also referred to Hon'ble Bombay High Court decision for the proposition that opening balance cannot be added for this year.

8. Per contra Ld. DR relied upon AO's order.

9. Upon careful consideration we note that very short time was granted by the Assessing Officer to the assessee to make the submission in connection with the loans. It is also the plea of learned Counsel of the assessee that certain crucial submissions were made before learned CIT(A), who has not considered the same. The assessee has also requested to admit additional evidence in connection with the loan creditors financials which were not before the Assessing Officer. Learned CIT(A) also on the issue of opening balance of loan has remanded the matter to the Assessing Officer to make factual verification. Hence we deem it appropriate to remit the entire matter to the Assessing Officer. We make it clear that we have not considered the issue on merits in any manner whatsoever. The Assessing Officer is directed to decide the issue de novo as per law after giving adequate opportunity to the assessee of being heard and make the necessary submission.

10. In the result , these appeals are allowed for statistical purposes.

Order pronounced in the open court on 26 .07.2021

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 26 .07.2021
Thirumalesh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai

6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai