



IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.5345/Mum./2019
(Assessment Year : 2014-15)

Income Tax Officer
Ward-24(3)(1), Mumbai

..... Appellant

v/s

Opal Developers
505, Shalimar Morya Park
Andheri (W), Mumbai 400 053
PAN-AAAFO9104D

..... Respondent

Assessee by : Shri Bhupendra Shah
Revenue by : Ms. Shreekala Pardeshi

Date of Hearing - 17.08.2021

Date of Order - 27.09.21

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 28th February 2019, passed by the learned Commissioner of Income Tax (Appeals)-36, Mumbai, pertaining to the assessment year 2014-15.

2. The Revenue has filed this appeal on the following grounds:-

1. *"Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) had erred in treating unsecured loan of Rs.1,69,00,000/- as genuine, without appreciating the fact that the assessee had failed to establish the genuineness and creditworthiness of the lenders".*

2. *"Whether on the facts and circumstances of the case, and in law, the Ld.CIT(A) had erred in treating unsecured loan of Rs.1,69,00,000/- as genuine, ignoring the fact that the Investigation Directorate of Kolkata had already proved that the lenders were only paper companies and accommodation entry providers".*

3. *"Whether on the facts and circumstances of the case, and in law, the Ld.CIT(A) had erred in treating the unsecured loan of Rs.1,69,00,000/- as genuine, notwithstanding the decision of the Hon'ble Calcutta High Court in the CIT(Central) -1, Kolkata vs. Maithan International (375 ITR, 123) that mere submission of confirmation letters from lenders cannot suffice to prove the creditworthiness of the lenders".*

3. Facts in brief:- In this case, as stated by the Assessing Officer, the assessee is a builder and developer and was engaged in building a project called "Shalimar Fortleza". The assessee filed its return of income on 29th November 2014, declaring total income at ₹ 90,239. During the year under consideration, the assessee has received unsecured loans of ₹ 1,69,00,000 from four different parties. The Director of Investigation, Income Tax Department, Kolkata, found such unsecured loans obtained by the assessee as mere paper companies floated by a syndicate involved in providing accommodation entries of bogus long term capital gain/loss. Subsequently, the Assessing Officer sought explanation from the assessee to show cause as to why the said unsecured loans should not be treated as assessee's income from unexplained sources. The assessee vide its letter dated 26th December 2016, submitted its explanation. The Assessing Officer considering the submissions of the assessee observed that as per the report of the

DGIT, Kolkata, the companies from whom the assessee has shown unsecured loans are conclusively proved to be companies existing merely on paper. The Assessing Officer further observed that these companies have been floated by the syndicate for providing accommodation entry of bogus long term capital gain/short term capital loss to persons who want to convert their unaccounted income in the garb of bogus capital gain/loss. He further of the opinion that creditworthiness means whether the parties had sufficient means to advance such loans and creditworthiness is not proved by mere issue of a cheque or by furnishing a copy of statement of bank account. The Assessing Officer was further of the view that to see the creditworthiness is not only the matter of financial strength of the person but also a matter of financial and social background of the person. Accordingly, the Assessing Officer held that the creditworthiness of the loan lenders and the genuineness of the loan transactions have not been satisfactorily established, therefore, the unsecured loans of ₹ 1,69,00,000, was treated as assessee's income from unexplained sources. The assessee being aggrieved filed appeal before the first appellate authority.

4. Before the learned CIT(A), the assessee in support of its claim, submitted as under:–

"1) The Appellant has furnished the details and source of Unsecured Loans obtained by filing the confirmation, Bank

statements, Return of Income and financial statements from lender companies.

2) The genuineness of transaction, identity and capacity ('creditworthiness') of lenders has been fully substantiated and explained with evidences filed on record. The primary onus is thus discharged.

3) The criteria of testing creditworthiness from the Profit and Loss Account, based on low income / low tax is incorrect, but the creditworthiness is adjudged from the Balance Sheet reflecting Net Worth, sources and application of Funds available with the entity.

4) The Bank Statement of Lenders reflects substantial peak Balance at the time of granting loans to appellant company.

5) The AO has made baseless and unsubstantiated allegations about lenders being involved in investigations of Directorate of Investigation, Kolkata for companies based in Mumbai and Chhattisgarh.

6) The AO sought to make independent Enquiries by issuing summons U/s. 131 to lenders based in chhattisgarh, which is against the provisions of law.

7) The AO issued summons u/s 131 discreetly and at the fag end of the assessment proceedings in the last week of December, which is also clear cut violation of natural Justice.

8) The fact that AO has acknowledged that summons were issued and served but not responded cannot be held against the appellant. Further, in cases where responses were received, the loans are still held to be unexplained for want of creditworthiness.

9) The enquires made by deputing Ward Inspector to verify address and existence of lender companies also favours the Appellant. The AO has unnecessarily raised issue of sparse furniture or employees in office of lender companies.

10) Most of the loans have been repaid in the subsequent period of time by the Appellant and certainly before the completion of the assessment."

5. The learned CIT(A) considering the aforesaid submissions of the assessee, held as under:—

"4.1.5 In regard to the above discussion, the assessee was able to discharge the onus by adequately proving the identity of the creditor, genuineness of the transaction and credit worthiness of the creditor. In my opinion without examining the aforesaid documents and commenting upon its truthfulness and genuineness, no addition can be attempted. As evident from the assessment order, the AO has not discussed the merits of various submissions made by the appellant and casually brushed aside the details filed by the assessee during the assessment proceedings. The moot point before the AO was to examine the nature and source of the credit entries from M/s Essar (India) Limited, M/s Rockon Enterprises, M/s East West Finvest P.Ltd and Purvi Finvest P.Ltd which was not taken to a logical conclusion.

4.1.6 In view of the facts and circumstance of the case it is seen that the appellant has complied with the requirements of the provision of section 68 and has furnished all requisite documents. The creditworthiness of the lenders apart from their respective confirmations, bank statement and income tax return have been further established vide their respective balance sheets. It is also an important fact to note that the impugned loans have been duly repaid in the subsequent period before the completion of assessment proceedings before the AO. As to findings of the AO that the loan creditors did not appear in response to summons issued u/s 131 of the Ac, it was held in the case of CIT v. U.M. Shah, Proprietor Shrenik Trading Co. [1973] 90 ITR 396 (Born.) that "if the parties had received the summons but did not appear, the assessee could not be blamed. Hence, in my opinion merely based on the statement of a third person without any corroborative evidence, transactions in question could not be held as non-genuine or bogus. As such, in the absence of any contrary evidence placed on record the impugned loan transactions could not be treated as bogus or paper transaction or an accommodation entry".

4.1.7 After considering the totality of the facts, the submissions, applicable law and on the basis of discussions mentioned above, I have come to the conclusion that the nature and source of credit in the book of accounts of the appellant stands explained. Consequently, addition of Rs. 1,69,00,000/- as unexplained cash credit u/s 68 cannot be sustained. The grounds of appeal relating to the addition of Rs.1,69,00,000/- is deleted and the appeal is Allowed.

4.2 In Ground No. 2 the appellant has challenged the addition made towards interest on the unsecured loans taken from all the 4 lenders to the tune of Rs. 13,63,294/-, and reduced from the expenses transferred to the Work in Progress.

4.2.1 As discussed in the preceding paragraphs, the loan amount of Rs.1,69,00,000/- taken from all the above 4 lenders have been found to be genuine as it fulfilled all the requisite conditions laid down by law. In view of the findings above, the interest arising from the said loans cannot be faulted as being in the nature of unexplained expenditure. Further, Interest were paid to M/s Essar (India) Limited, M/s Rockon Enterprises, M/s East West Finvest P.Ltd and Purvi Finvest P.Ltd through account payee cheques, after deducting relevant applicable TDS and issue of TDS Certificates to the Deductee's. MIs Essar (India) Limited, Mis Rockon Enterprises, MIs East West Finvest P.Ltd and Purvi Finvest P.Ltd have filed return of income and have accordingly made valid claims of such TDS in their return of income.

4.2.2 Hence, I am of the opinion that the addition of Rs. 13,63,294/- being interest payment made to the said parties on the unsecured loan is not justified and is hereby deleted. Thus, grounds of appeal no.2 is Allowed."

6. The learned Departmental Representative submitted that the assessee is a builder received unsecured loan from four parties and these parties did not respond to summons issued by the Assessing Officer. He brought to our notice Page-2 of the assessment order. He fairly submitted that the assessee has submitted all the documents to prove that the requirement under section 68 of the Act is fulfilled and he brought to our notice at Page-4 and 5 of the assessment order. Further, he brought to our notice Page-13 of the learned CIT(A) order and submitted that the learned CIT(A) has done wrong interpretation without appreciating the issue involved in the assessee's case in which the assessee has established the identity, but did not prove the creditworthiness and genuineness of the transactions. In this regard, he brought to our notice Page-50 of the paper book, Page-64 of the paper book, Page-88 of the paper book of the respective parties,

financial statements to highlight the fact that these parties were incurring continuous losses and still they are lending loans to the other parties. Further, he brought to our notice Page-62, Page-77 and Page-89-0 and Page-92 which are bank statements of the parties who have lent money to the assessee. By referring to the above bank statement, he submitted that these parties do not carry sufficient bank balance and highlighted the one day transaction in which the funds were credited and lent to the assessee. It clearly shows that these are all money routing companies where money comes in and goes out on the same day. He finally submitted that all the companies who were lent the money incurred continuous losses and still lends the money and he prayed that the addition made in the assessment order may be sustained.

7. The learned Authorised Representative for the assessee by relying on the findings of the learned CIT(A) submitted that the assessee has proved the required the ingredients to justify the transaction under section 68 of the Act i.e., identity, creditworthiness and genuineness of the transactions. He submitted that from the records submitted before the authorities below, the assessee has clearly proved the identity and the relevant bank statement and financial statement clearly indicate that the parties who lent the money has sufficient balance in the books of account which proves

that creditworthiness and genuineness were clearly established. He further submitted that the Assessing Officer has issued summons to the creditors which they have received at the fag end of the assessment proceedings. Further, he submitted that the assessee has re-paid the above advances in the subsequent assessment year itself. The assessee has rebutted / addressed all the findings of the Assessing Officer which was submitted before the learned CIT(A) and he brought to our notice Page-7 to 9 of the written submissions submitted before the learned CIT(A) in which the assessee rebutted clearly and further he relied on the case of ACIT v/s Premanand, ITA no.3514/Del./2014. He made an alternate plea that no cross-examination opportunity was given to the assessee.

8. In the rejoinder, the learned Departmental Representative submitted that before the first appellate authority and he stressed the point with reference to Page-119 of the paper book to submit that money comes and money goes out therefore these are all paper companies and he submitted that this issue involve in this appeal are factual matter and no need of any case law.

9. Considered the rival submissions and perused the material on record. The Assessing Officer has treated the unsecured loan availed from the following four parties namely :-

1.	<i>Rockon Fintech Ltd.</i>	₹ 12,00,000
2.	<i>Essar India Ltd.</i>	₹ 12,00,000
3.	<i>Purvi Finvest Ltd.</i>	₹ 1,15,00,000
4.	<i>East West Finvest India Ltd.</i>	₹ 30,00,000
	<i>Total:-</i>	₹ 1,69,00,000

10. It is evident that the Assessing Officer has not disputed the identity of the creditors. Although, whatsoever the reason that may be, the Assessing Officer has treated an amount of ₹ 1.69 crore as unexplained cash credit and the fact remains that the assessee has filed confirmation of account balances and interest payments to the parties; acknowledgment of return of income filed, audited financial statements bank statements reflecting loans given to the assessee firm. The said loans have been received by the assessee by way of either account payee cheque or RTGS and the assessee has also paid interest to the creditor as well. The assessee has also cleared off by making repayment of the loans and advances received from the aforesaid four parties in the subsequent assessment year hence, in our view, the Assessing Officer was indeed not justified in making the addition on account of unsecured loan as unexplained under section 68 of the Act. We also notice from the aforesaid which becomes clear that the assessee has discharged the primary onus by proving the identity of the creditor, genuineness of the transaction as well as the creditworthiness of the creditors. The loan so obtained was not only

reflected in the respective books of account and also bank statements. Thus, on overall consideration of facts and material on record, we are of the view that learned Commissioner (Appeals) was justified in deleting the addition made by the Assessing Officer. Consequently, we uphold the order of the learned CIT(A) by dismissing the grounds of appeal raised by the Revenue.

11. In the result, Revenue's appeal is dismissed.

Order pronounced in the open court on 27.09.21

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

Sd/-
S. RIFAUZ RAHMAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 27.09.21

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai