

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI**SHRI AMARJIT SINGH (JUDICIAL MEMBER)**
AND
BEFORE SHRI PRASHANT MAHARISHI (ACCOUNTANT MEMBER)I.T.A. No.6978/Mum/2019
(Assessment year 2010-11)

The Income-tax Officer Ward 24(2)(3) Mumbai	vs	Shri Kamal S. Jodhwani C/101-108, Crystal Plaza New Link Road, Andheri (W), Mumbai-400 053 PAN : ADDPJ9780D
APPELLANT		RESPONDENT

Appellant by	Shri Sanjay Sharma
Respondent by	Shri Manish Kumar Singh

Date of hearing	06-12-2021
Date of pronouncement	10-12-2021

O R D E R**Per Prashant Maharishi (AM)**

- 01 The Income-tax Officer, Ward 24(2) (3), Mumbai [The ld AO] files this appeal against the order of Commissioner of Income-tax (Appeals)-36, Mumbai [the Ld.CIT (A)] dated 30-08-2019 for assessment year 2010-11.
- 02 The Assessing Officer has raised the following effective grounds of appeal:-

“On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 4,42,46,9727- made u/s. 68 of the Income Tax Act, 1961 on account of unexplained cash credit, without appreciating the following factual and legal aspects:-

a) Though the unsecured loans of Rs. 4,42,46,972/- were not received in the A.Y. 2010-11, if any sum is found to be credited in the books of accounts of an assessee maintained for any particular year, the assessee should prove the identity, genuineness and creditworthiness of the creditors.

b) The statute has not differentiated between unsecured loans received during the year and carried forward unsecured loans from the previous year. The intention of the legislature is that the identity, genuineness and creditworthiness of any unsecured loans if found credited in the books of assessee, is to be proved.”

03 Only grievance in this appeal is the deletion of the addition of Rs. 4,42,46,917/- which the learned Assessing Officer under section 68 of the Income-tax Act, 1961, made. The reason for deletion was that the above sum was not received in the assessment year 2010-11.

04 The brief facts of the case shows that the assessee is an individual engaged in the business of property development. He filed his return on 15/10/2010 at Rs. 11,74,104/-. The case was taken up for scrutiny. The nature of the income shown by the assessee is business income and Income from other sources.

05 During the course of assessment proceedings, the assessing officer asked the assessee to furnish the details with reference to unsecured loans, deposits and advances received during the year. The assessee was also asked to furnish the identity, creditworthiness and genuineness of the transaction. The details were submitted. The Assessing Officer noted that details are incomplete with respect to the parties, who have given advances or loans, address and in some of the cases; permanent account numbers were not stated. The assessee did not file confirmation letter also. The Assessing Officer issued notices under section

133(6) of the Act to the parties, some of them replied and some of them did not. Some of them also denied to have entered into any transactions with the assessee. Thereafter, the learned Assessing Officer made an addition under section 68 of the Income-tax Act with respect to a sum of Rs. 94,50,000/- received from three parties, a sum of Rs. 3,93,47,000/- from six parties and Rs. 2,11,96,970/- from five parties. Further addition of Rs. 75,38,000/- was also made under section 69 of the Income-tax Act with respect to cash deposit in the bank account. Assessing Officer also disallowed interest expenditure of Rs.16,57,379/-. Accordingly, the assessment order under section 143(3) of the Act was passed by the learned Assessing Officer on 19/03/2013 determining total income of Rs. 8,03,63,470/-.

06 Assessee, aggrieved with the order of the learned Assessing Officer, preferred appeal before the learned Commissioner of Income tax (Appeals) contesting all these additions. The learned Commissioner of Income-tax (Appeals), after obtaining the remand report as well as rejoinder to the same, noted that out of the addition of Rs.6,99,93,970/- made by the learned Assessing Officer, a sum of Rs. 4,16,46,970/- is not required to be added during this year for the reason that the same was no credited in the books of account of the assessee during this year, but in earlier years. He confirmed the addition of Rs. 2,83,47,000/- and deleted balance sum of Rs. 4,16,46,970/- for this reason. Except this, all other additions made by the learned Assessing Officer were confirmed by that order.

07 The learned Assessing Officer is aggrieved with the order of the learned Commissioner of Income-tax (Appeals) with respect to the deletion of the addition of Rs.4,16,49,970/-.

- 08 The learned Senior Departmental Representative vehemently submitted that if the sum of Rs.4,16,49,970/- was not received during the year, the learned Commissioner of Income tax (Appeals) should have seen the facts of the case where the assessee has failed miserably to prove the identity and creditworthiness of the parties as well as the genuineness of the transactions. Therefore, according to him, the learned Commissioner of Income tax (Appeals) should have given a direction to the learned Assessing Officer to make the addition in the year in which such sum was received. He vehemently supported the order of the learned Assessing Officer.
- 09 The learned authorized representative submitted that the learned Assessing Officer has made the addition under section 68 of the Income-tax Act of sum of parties who have given advances to the assessee for purchases. He submitted that in most of such cases, the assessee has also submitted before the learned Commissioner of Income tax (Appeals), the account confirmation letters and the copies of cheques received along with bank account, permanent account numbers of the parties. He further submitted that when the sum is not credited in the books of the assessee during the previous year, the same could not have been added under section 68 of the Act and, therefore, that addition was deleted. He supported the deletion of addition to that extent by the learned Commissioner of Income tax (Appeals).
- 10 We have carefully considered the rival contentions and perused the orders of the lower authorities. The order of the learned Commissioner of Income-tax (Appeals) clearly states that Assessing officer has made addition u/s 68 of the Income-tax Act amounting to Rs. 6,99,93,970/-. On perusal of submission of assessee, remand report by The Ld AO and rejoinder of the assessee, he

found that out of the sum of Rs. 6,99,93,970/-, only sum of Rs. 2,83,47,000/- was received during the previous year and the balance sum of Rs. 4,16,46,970/- was received in the earlier years. Therefore, he deleted the addition of Rs. 4,16,46,970/- and confirmed balance addition of Rs. 2,83,47,000/-. The provisions of section 68 of the Income-tax Act provides that if 'any sum' is found credited in the books of the assessee 'during the previous year', then only such sum can be added as income of the assessee on part of failure of the assessee to prove the identity and creditworthiness of the parties as well as the genuineness of the transaction. If the sum is not found credited during the previous year, that sum cannot be added under section 68 of the Income-tax Act for that year. The learned departmental representative could not show us any evidence that the above sum was credited in the books of account of the assessee during the previous year. Further, the learned Commissioner of Income tax (Appeals) has deleted the addition of Rs. 4,16,46,970/-. However, the learned Assessing Officer is challenging the deletion of the addition of Rs. 4,42,46,970/-. The learned Assessing Officer, as per ground 1(b), has stated that even the carry forward of unsecured loans are required to be added under section 68 of the Act. On plain reading of provisions of section 68 of the Act, we do not agree with the above contention. Furthermore, the learned departmental representative stated that the learned Commissioner of Income tax (Appeals) should have given a direction for making an addition of the above sum in the year in which such sum was received. We fail to appreciate this argument because of the reason that the learned Assessing Officer raises no such ground of appeal. Even otherwise, what order the learned Commissioner of Income tax (Appeals) should have passed, could not be the matter of argument

before us unless the same is raised in the grounds of appeal. We are also not empowered to suggest to the parties about what grounds should have been raised by them. Further, the learned Commissioner of Income tax (Appeals) has reached to the above conclusion after obtaining the remand report of the Assessing Officer. Ld DR could not show us the argument of LD AO before LD CIT (A) to give him direction to make addition in the year in which it is received. In view of this, we find no infirmity in the order of the learned Commissioner of Income tax (Appeals). Accordingly, ground 1 raised by the learned Assessing Officer is dismissed.

11 In the result, ITAT No.6978/Mum/2019 filed by the learned Assessing Officer for AY 2010-11 is dismissed.

Order pronounced on 10/12/2021.

Sd/-

sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dt : 10/12/2021

Pavanan

Copy to :

1. Appellant
 2. Respondent
 3. The CIT concerned
 4. The CIT(A)
 5. The DR, ITAT, Mumbai
 6. Guard File
- /True copy/

By Order

Asstt. Registrar, ITAT, Mumbai