

आयकर अपीलीय अधिकरण
मुंबई पीठ "सी"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री ओम प्रकाश कांत , लक्षा सदस्य का समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
आअसं. 6433/मुं/2017 (नि. व. 2008-09)
ITA NO.6433/MUM/2017(A.Y.2008-09)
आअसं. 6434/मुं/2017 (नि. व. 2013-14)
ITA NO.6434/MUM/2017(A.Y.2013-14)

The Income Tax Officer 3(2)(4),
Room No.673, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Parth Tradelinks Pvt. Ltd.,
112-B, 11th Floor, Mittal Court,
Nariman Point, Mumbai 400 021.
PAN: AADCP-5678-D

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri R.A.Dhyani

प्रतिवादी द्वारा/Respondent by : Shri. A.K.Tibrewal

सुनवाई की तिथि/ Date of hearing : 18/01/2022

घोषणा की तिथि/ Date of pronouncement : 27/01/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax(Appeals) -8, Mumbai [in short 'the CIT(A)'] for the assessment years 2008-09 and 2013-14, respectively. Both the impugned orders are of even date i.e. 21/07/2017.

2. Since, identical grounds have been raised by the Revenue in both the appeals assailing the order of CIT(A) deleting the addition under section 68 of the Income Tax

Act, 1961 (in short 'the Act'), these appeals are taken up together for adjudication and are decided vide this common order.

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3. The brief facts of the case as emanating from records are: The assessment for assessment year 2008-09 in the case of assessee was reopened on the basis of information received by ADIT(Investigation), Maharashtra that the assessee is engaged in providing accommodation entries. The assessee is one of the group companies formed by Shri Harsh Dalmia and Shri Arun Dalmia. The assessee along with its Group Companies is alledgely engaged in rigging share prices of Himachal Futuristic Company Ltd.(in short 'HFCL'), Patna Media Graphic, Zee Telefilms Ltd. and other companies. The Assessing Officer on the basis of information received held that during the period relevant to assessment year under appeal, the assessee has taken unsecured loans from following companies aggregating to Rs.8,57,64,358/-:

Sr.No.	Name of creditor Company	Amount in Rs.
1.	Arneja & Co.	1,50,000
2.	Birla Power Solutions Ltd.	1,43,07,500
3.	Basant Marketing Pvt. Ltd.	(1,41,48,142)
4.	Himachal Futuristic Communications Ltd.	6,95,00,000
5.	Real Tradelink Pvt. Ltd.	1,75,000
6.	Watermark Financial Consultants Ltd.	(95,70,000)
7	Zenith Birla (India) Ltd.	2,54,00,000
	Total	8,57,64,358

The Assessing Officer made addition of the aforesaid amount under section 68 of the Act, stating that genuineness of unsecured loans is prima-facie doubtful. Aggrieved by the assessment order dated 10/03/2014 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after considering submissions of the assessee and documents on record deleted the addition. Hence, the present appeal by the Revenue.

4. Shri. R.A. Dhyani representing the Department vehemently supporting the assessment order submitted that the assessee and its Group Companies are engaged in providing accommodation entries. No actual business is being carried out by the assessee. During the period relevant to assessment year under appeal, the assessee has allegedly taken loans from various companies, however, the identity, creditworthiness and genuineness of the loan transactions were not proved. The investigation was carried out by CBI, ACB in the case of Dalmia Brothers and Group Companies including assessee. From investigation assessee's involvement in providing accommodation entries is clearly discernable. The Id. Departmental Representative prayed for reversing the findings of CIT(A) and uploading the addition made in the assessment order.

5. Per contra, Shri A.K. Tibrewal appearing on behalf of the assessee vehemently defended the impugned order passed by the CIT(A). The Id. Authorized Representative of the assessee submitted that the Assessing Officer has made addition merely on the basis of suspicion and without properly ascertaining the facts. The assessee had furnished detailed documents viz. copy of confirmation from the creditors, copy of annual report of the creditors, copy of the bank account of the assessee endorsing that the amount has been received through banking channel, copy of bank account statement of creditors, PAN of creditors, copy of ITRs to substantiate creditworthiness and identity of the creditors and genuineness of the transactions. However, the Assessing Officer has failed to examine these documents and has merely placed reliance on the information received from CBI ACB. The CIT(A) after examining the documents has deleted the addition. The Id. Authorized Representative of the assessee pointed that all the relevant documents in respect of the creditors has been filed before the Tribunal in the form of paper book. The Id. Authorized Representative of the assessee prayed for upholding the order of CIT(A) and dismissing appeal of the Revenue.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. A perusal of assessment order shows that the Assessing Officer has placed huge reliance on the investigation conducted by CBI ACB without examining creditworthiness and identity of the lenders and the genuineness of the transactions. For making addition under section 68 of the Act three conditions that are required to be examined are identity and creditworthiness of the lenders and genuineness of the transactions. In penultimate paragraph of the assessment order, the Assessing Officer has recorded that investigation carried out by the CBI, ACB has established prima-facie that unsecured loans appearing in the books of account of the assessee company are not genuine loans but are bogus accommodation entries. The assessee has not made any submissions in this regard.

Whereas, the documents furnished by the assessee in voluminous Paper Book explicitly indicate that the assessee had furnished relevant documents to discharge its onus in proving identity and creditworthiness of the creditors and genuineness of the transactions. Observations made by Assessing Officer and thereafter making addition under section 68 of the Act indicate that the Assessing Officer had placed reliance only on the investigations carried out by CBI ACB only. The Assessing Officer has not carried out the exercise of examining the documents furnished by the assessee to discharge its onus in satisfying the conditions set out under section 68 of the Act. The Assessing Officer has made addition merely on surmises and conjectures.

7. The CIT(A) in the impugned order after examining the documents on record and the assessment order has held that the Assessing Officer has not disputed any of the evidences filed by the assessee nor has come up with any adverse investigation findings. The addition made by the Assessing Officer is based merely on suspicion. It is not through the lens of suspicion but an objective consideration of facts that the issue have to be decided. Since, the assessee has discharged initial onus to establish identity, creditworthiness and genuineness of the transactions and the Assessing

Officer has not faulted the confirmation, etc. filed before him, therefore, the addition made under section 68 of the Act is unsustainable. We concur with the findings of the CIT(A), hence, the impugned order is upheld and appeal of the Revenue is dismissed being devoid of any merit.

8. The assessee has filed application under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, assailing validity of re-opening of assessment. The Id. Authorized Representative of the assessee stated at Bar that he is not pressing the said application at this stage. In view of the statement made by Ld. Authorized Representative of the assessee, the issue regarding admissibility of application under Rule 27 and the issue raised therein is not deliberated upon at this stage and is left open.

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9. Since, the grounds of appeal and the facts germane to the issue in appeal are identical to appeal in assessment year 2008-08 except for the quantum of addition under section 68 of the Act, the findings given while adjudicating appeal of Revenue for assessment year 2008-09 would mutatis mutandis apply to the present appeal. Consequently, the appeal of the Revenue for assessment year 2013-14 is dismissed, for parity of reasons.

10. In the result, both appeals by the Revenue are dismissed.

Order pronounced in the open court on Thursday the 27th day of January, 2022.

Sd/-

(OM PRAKASH KANT)

लक्षा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 27/01/2022
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai