

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 33/Hyd/2022 Assessment Years: 2016-17	
Lam Paul Sashikumar, Secunderabad PAN - AAQPL 5413N (Appellant)	` (Respondent)
Assessee by:	Shri P. Murali Mohan Rao
Revenue by:	Shri T. Sunil Goutam
Date of hearing:	15/03/2022
Date of pronouncement:	16/03/2022

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the assessee is directed against CIT(A) - 11 Hyderabad's order dated 25/01/2022 for AY 2016-17 involving proceedings u/s 143(3) r.w.s 153A of the Income Tax Act, 1961 ; in short "the Act".

2. The assessee has raised 12 grounds of appeal, the sum and substance of which is against the addition of Rs. 7,00,000/- made u/s 68 of the Act.

3. Brief facts of the case are that the appellant had filed his original return of income for A.Y 2016-17 on 02.10.2016 admitting income of Rs.25,32,670/-. Subsequently, search and seizure operations u/s.132 of the IT Act, 1961 were carried out in the case of M/s Goldstone Infratech Ltd. and its other associated persons/companies on 09.11.2017. The case has been centralized and notice u/s.153A has been issued to the appellant and in response, the appellant filed its return of income for A.Y 2016-17 on 06.04.2018 declaring an income of Rs.25,32,670/-. The assessment was completed u/s 143(3) r.w.s 153A of the IT Act by making additions u/s 68 amounting to Rs.14,00,467/- and Rs.7,00,000/- being bank credits and thereby assessed the total income of the appellant at Rs.46,33,137/-.

3.1 With regard to the addition of Rs. 7,00,000/-, the AO observed that the assessee had stated that the said amount had been received from Ms. Rachel Nandita Willi as temporary loan. On perusal of the bank account statement, the AO noted that the said loan had not been returned to Ms. Rachel Nandita Willi and the assessee had neither produced the supportive evidences showing proof of return. Further, the AR of the assessee submitted a letter of confirmation (xerox copy) showing the payment of the amount of Rs. 7,00,000/- in form of hand loan received from Ms. Rachel Nandita Willi and no PAN no. is mentioned.

The AO, therefore, held that the assessee had failed to produce the supportive evidence to prove that the amount was received in the form of hand loan, he made the addition treating as undisclosed income of u/s 68 of the Act.

4. When the assessee preferred an appeal before the CIT(A), the CIT(A) deleted the addition of Rs. 14,00,467/- and confirmed the addition of Rs. 7,00,000/- made by the AO on account bank credits.

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before the ITAT.

7. Before us, the ld. AR of the assessee submitted that the assessee had received Rs. 7,00,000/- as a temporary loan from Ms. Rachel Nandita Williams, for which confirmation letter was filed before the AO, which was not considered and is against the principles of natural justice. He submitted that since the sources, identity and genuineness of the transaction has been explained, the addition made may be deleted. He relied on various case laws including the decision of the coordinate bench of this Tribunal in assessee's own case for AY 2012-13 in ITA No. 404/Hyd/2021, order dated 16/12/2021 wherein under similar set facts of the case, the Tribunal directed the AO to delete the addition.

8. The Id. DR, on the other hand, besides relying on the orders of revenue authorities, submitted that the lower authorities were justified in making the addition of Rs. 7 lakhs in the hands of the assessee as the assessee could not explain properly in regard to the return of the money to the creditor till the assessment as well as till appellate proceedings were completed. He submitted that there was a direct benefit to the assessee of Rs. 7 lakhs in the impugned AY.

9. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We observe from the orders of revenue authorities that a search and seizure operation u/s 132 of the Act was conducted on 9th November, 2017 and the assessee has filed his return of income u/s 139(1) for AY 2016-17 on 27/07/2016 declaring income of Rs. 25,32,670/-. The AO has made the addition in the hands of the assessee of Rs. 7 lakhs, which has been received by the assessee from Ms. Rachel Nandita Williams, which is clear from the bank statement of the assessee. In the instant case, assessment was framed u/s 153A and it is an unabated assessment and no assessments were pending on the date of search initiated upon the assessee. While perusing the assessment order, we find that nowhere the AO has referred any incriminating material found during the course of search relating to the receipt of Rs. 7 lakhs by

the assessee and, therefore, it clearly shows that no incriminating material found during the course of search conducted u/s 132 of the Act on 09/11/2017 in respect of receipt of Rs. 7 lakhs. As held by the Hon'ble High Court of Delhi in the case of Kabul Chawla, [2015] 61 taxmann.com 412 that if no incriminating material found during the course of search for making addition in the unabated assessment, addition cannot be made. We, therefore, following the above judgment, set aside the order of the CIT(A) and direct the AO to delete the addition of Rs. 7 lakhs received by the assessee from as a temporary loan from Ms. Rachel Nandita Williams, for which confirmation letter was filed before the lower authorities, which was not taken into consideration by them. Accordingly, the grounds raised by the assessee on this issue are allowed.

10. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 16th March, 2022.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 16th March, 2022.

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Copy to :

1	<i>Sri Lam Paul Sashikumar, C/o P. Murali & Co., CAs, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad – 82</i>
2	<i>ACIT, Central Circle - 3(2), Hyderabad</i>
3	<i>CIT(A) -11I, Hyderabad</i>
4	<i>PR. CIT(Central), Hyderabad</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

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1	Draft dictated on	
2	Draft placed before author	
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4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
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7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	