

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 2570/MUM/2019
Assessment Year: 2009-10**

Fame Engineering Pvt. Ltd.,
D-31, Star Apartment, S.V.
Road, Borivali (West),
Mumbai-400092.

PAN No. AAACA 9948 E

Appellant

ITO-12(2)(1),
Aayakar Bhavan,
Mumbai-400020.
Vs.

Respondent

**ITA No. 3978/MUM/2019
Assessment Year: 2009-10**

Asst. Commissioner of Income
Tax-12(2)(1),
Room No. 128E, 1st floor,
Aayakar Bhavan, Churchgate,
Mumbai-400020.

Appellant

M/s Fame Engineering India Pvt. Ltd.,
31, Star Apartment, S.V. Road, Borivali
West,
Mumbai-400092.
Vs.

PAN No. AAACA 9948 E

Respondent

Assessee by : None
Revenue by : Mr. S.N. Kabra, DR

Date of Hearing : 13/04/2022
Date of pronouncement : 10/05/2022

ORDER

PER OM PRAKASH KANT, AM

These two appeals, one by the assessee and another by the Revenue are directed against two separate orders dated 22/03/2019 and 25/03/2019 passed by the Ld. Commissioner of Income Tax (Appeals)-20, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2009-10. The appeal by the assessee is against additions of unexplained cash credit upheld by the Ld. CIT(A). The appeal by the Revenue is against deletion of penalty levied by the Assessing Officer for accepting loan otherwise than an account payee cheque. Being connected issues, both these appeals are heard together and dispose off by way of this consolidated order for convenience.

2. At the outset, we may like to mention that despite notifying, neither anyone appeared on behalf of the assessee, nor any adjournment was filed. In the facts and circumstances, we were of

the opinion that assessee was not interested in prosecuting the appeals, and therefore same were heard *ex-parte*, qua the assessee after hearing arguments of the Ld. Department Representative and on perusal of the record.

3. First, we take up the appeal of the assessee in ITA No 2570/Mum/2019. The grounds raised by the assessee are reproduced as under:

1. *The learned CIT (A) has grossly erred both in law and on facts in confirming the order of assessment passed u/s 143(3) r.w.s. 147 of the Act on 22.03.2019 determining the income of the appellant at Rs. 1,00,00000/- as against the Income returned at Rs.5,29,919/-.*

2. *The Learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that initiation of the reassessment proceedings us 147 of the Act is without satisfying the statutory preconditions as envisaged us 147 of the Act, and hence initiation of the reassessment proceedings itself is bad in law.*

2.1 *The Learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that learned A has initiated the reassessment proceedings without having any tangible material for the formation of reasons to believe that the income of the assessee has escaped assessment, and hence assumption of jurisdiction is bad in law.*

2.2 *The Learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that proceedings u/s 147 of the Act has been initiated only for the purpose of verification of the source of loan, and to make roving and fishing enquiry, and hence initiation of the reassessment proceedings is without jurisdiction.*

3. *The Learned CIT (A) has grossly erred both in law and on facts in confirming the addition of Rs. 1,00,00,000/- considering loan taken from non-genuine company under section 68 of the Income Tax Act.*

3.1 *That the learned CIT(A) while upholding the addition made u/s 68 of the Act has completely failed to comprehend that the aforesaid sum represents an amount purportedly received as Business advances from M/s K.PH. Metals Pvt. Ltd. by account payee cheques and is duly reflected in the books of account of the appellant, and hence the provisions of section 68 of the Act has no application.*

3.2 *That the learned CIT(A) has erred in failing to appreciate that appellant has received the aforesaid Business advances from M/s K.PH. Metals Pvt. Ltd by receiving account payee cheque, and such a transaction was duly reflected in its books, however since the KPH could not arrange the funds in its bank and hence aforesaid transaction was duly reversed in its books of account, hence addition sustained by the learned CIT(A) is unsustainable in law.*

3.3 *The Learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that under section 68 of the Act burden is on the revenue to establish that the assessee has taken unexplained credit and hence addition made without discharging such burden is unsustainable in law.*

4. *The learned CIT (A) erred in confirming the charging of interest ws. 234B of the Income Tax Act. 1961.*

5. *The order passed by the learned CIT (A) is illegal, bad in law, ultra vires and contrary to the provisions of law and facts and is passed without application of mind and in violation of the principles of natural justice.*

4. Briefly stated facts of the case are that the assessee filed return of income for the year under consideration on 30/09/2009 declaring loss of ₹1,04,34,582/-. The return of income filed by the assessee was selected for scrutiny and the assessment under section 143(3) of the Income-Tax Act, 1961 (in short 'the Act') was completed on 23/12/2011 at assessed loss of ₹34,584/-. Subsequent to the completion of the assessment, on receipt of information from the ITO Ward, Vadodara *vide* letter dated 29/02/2016, the Assessing Officer reopened the assessment by way of issue notice under section 148 of the Act. As per the information the assessee had received a loan of ₹1,00,00,000/- from M/s KPH Metals, which was founded to be paper company in the enquiry conducted by the Investigation Wing of the Income Tax Department at Vadodara. The Assessing Officer commenced reassessment proceeding and after considering the submission of the assessee

made addition of Rs.1,00,00,000/- in terms of section 68 of the Act, holding that the assessee failed to furnish satisfactory explanation regarding the credit appearing its books of accounts from M/s KPH metals. The contention of the assessee that the cheque received from the said party was not deposited, was found to be unsatisfactory by the Assessing Officer. Accordingly, the Ld. Assessing Officer completed reassessment on 15/12/2016 after making addition for the unexplained cash credit in terms of section 68 of the Act. On further appeal, before the the Ld. CIT(A), the assessee challenged the legality of the reassessment proceedings as well as addition on merit. The Ld. CIT(A) rejected the contention of the assessee challenging the legality of the reassessment as well as merit of the addition. Aggrieved, the assessee is before the Tribunal by way of raising grounds as reproduced above.

5. In the grounds raised before us, the assessee has challenged legality of the reassessment proceeding as well as addition on merit.

We find that Ld. CIT(A) has adjudicated the legality of the reassessment proceeding as under:

“4.4.1 I have considered the contentions of the appellant. The appellant has not produced the copy of the reasons for reopening. As per the decision of the Hon'ble Supreme Court in the case G.K.N. Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19 (SC), the appellant was entitled to a copy of the reasons recorded under section 148(2) after filing its return in response to the notice under section 148. Therefore, the onus in this case was on the appellant to produce the copy of the reasons recorded. The appellant has not done so. In absence of the copy of the reasons recorded under section 148(2), the contention of the appellant cannot be accepted. Without prejudice to the above, I find that in this case the AO received information that the appellant had made a false claim of having received a loan. A false claim made amounts to failure to make full and true disclosure. Therefore, I hold that the AO was justified in reopening the assessment even though more than 4 years had passed from the end of the relevant assessment year and an order under section 143(3) of the Act had been passed. Therefore, grounds of appeal No. 1 & 2 are dismissed”.

6. We find that, the information was received from the Assessing Officer in another case, wherein during the course of the search it was found that said person was engaged in providing accommodation entries and the assessee before us also received loan from one of such party. In our opinion, the information was received from reliable sources and there was relevant material on

which a reasonable person could make a requisit belief that income escaped Assessment, and therefore the Assessing Officer is justified in reopening the assessment. The Ld. CIT(A) has also rejected the contention of the assessee that there was no failure on the part of the assessee in making full and true disclosure, as false claim was made by the assessee regarding the loan. In absence of any rebuttal by the assessee before us, we concur with the finding of the Ld. CIT(A) on the issue in dispute and uphold the finding of the Ld. CIT(A). The grounds raised by the assessee challenging the legality of the reassessment are accordingly dismissed.

7. In the grounds related to merit of addition, we find that assessee failed to discharge its onus under section 68 of the Act and therefore the Ld. CIT(A) is justified in upholding the addition. We do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly we uphold the same. The grounds, pertaining to merit of the additions are also dismissed.

8. In the result, the appeal of the assessee is dismissed.
9. As far appeal of the Revenue is concerned, we find that Revenue has treated the credit of the loan as unexplained and levied the penalty treating that loan was received otherwise than by account payee cheque. We find that Ld. CIT(A) has cancelled the penalty observing as under:

“5.1 I find that the Department’s stands in the impugned order and in the assessment order passed u/s 143(3) in the appellant’s case are conflicting. In the assessment order, the AO has held that the appellant’s claim of taking a loan of Rs.1,00,00,000/- was bogus. In other words, the AO held that no such loan was taken by the appellant. But in the order u/s. 271D the Addl. CIT has held that the appellant had taken a loan of Rs.1,00,00,000/- by a mode other than account payee cheque or draft. By this office letter dated 06.03.2019. the Additional CIT, Range-12(2), Mumbai was requested to clarify whether or not the appellant’s claim that it had taken a loan of Rs.1,00,00,000/- from M/s. KPH Metals Put. Ltd. had been accepted by the department. It was pointed out that in case the loan transaction has been accepted, the addition made u/s.68 in the assessment order will be deleted; on the other hand, in case the loan transaction has been accepted, the order imposing penalty u/s.271D cannot be sustained The Additional CIT was requested to submit his reply by 15.03.2019. No reply has been received so far.

5.2 I have upheld the addition made u/s. 68 of the Act in my order dated 22.03.2019 in Appeal No. CIT(A)-20/IT-10639/2016-17. Therefore, as mentioned

above, the penalty order passed u/s 271D is not sustainable. I, therefore, cancel the penalty order”.

9.1 In our opinion, the finding of the Ld. CIT(A) is justified as the Revenue cannot have held the loan as unexplained and simultaneously treat that the loan was received otherwise than by account payee cheque and levy penalty. We do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The grounds of the appeal of the Revenue accordingly, dismissed.

10. In the result, both the appeal of the assessee as well as Revenue are dismissed.

Order pronounced in the open Court on 10/05/2022.

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 10/05/2022

Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-

4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai