

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 7542/Del/2017
Assessment Year: 2012-13**

Anil Mithas,
Annati Fortune House,
B-117, Sector-67, Noida.

vs.

DCIT, Circle 27(1),
New Delhi.

PAN : AGIPM0679H
(Appellant)

(Respondent)

Appellant by : Ms.Gunjan Jain, C.A.
Respondent by : Mrs.KirtiSankratyayan, Sr. DR

Date of hearing : 10.05.2022
Date of order : 31.05.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 10.10.2017, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-13, Delhi (in short 'Id. Commissioner') u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2012-13.

2. Brief facts relevant for adjudication of this appeal are that the Assessee while declaring total income of Rs.9,24,08,720/- filed its return of income electronically on dated 08.01.2014. Thereafter, the case of the Assessee was selected for scrutiny under CASS and resulting into issuance of notice u/s. 143(2) of the Act on dated 04.09.2014. In the assessment proceedings, it was observed by the Assessing Officer that the Assessee company has shown unsecured loan of Rs.10 lacstaken from M/s. M.R. Infra Promoter Pvt. Ltd. For which the Assessee was asked to furnish the details of Income-tax Return, confirmation of account and copy of bank account statement with narration entries of the person who has given unsecured loan to prove the genuineness of the transaction and identity of the person, but the Assessee failed to submit the details/documents desired as above, of M/s. M.R. Infra Promoter Pvt. Ltd. from whom the unsecured loan was taken of Rs.10 lacs.

Ultimately, the Assessing Officer while relying upon the decision of Hon'ble Delhi High Court in the case of Nova Promoters and Finance Pvt. Ltd. (ITA No. 342 of 2011), made the addition of Rs.10 lacs u/s. 68 of the Act on the pretext that the Assessee could not prove the genuineness of the transaction and creditworthiness and identity of the person.

3. The Assessee, being aggrieved by the assessment order, preferred first appeal before the Id. Commissioner before whom it was claimed by the Assessee that the credit of Rs.10 lacs as appearing in its books of account was on account of loan from M/s. M.R. Infra Promoter Pvt. Ltd. and in fact, no sum was received or credited in the account of the Assessee for the relevant assessment year from M/s. M.R. Infra Promoter Pvt. Ltd..This entry was only a

transfer entry/Journal entry passed in the books wherein M/s. M.R. Industries Pvt. Ltd. has debited Rs.10 lacs and the said amount was credited to M/s. M.R. Infra Promoter Pvt. Ltd. and therefore, cannot be subjected to section 68 of the Act. It was further claimed by the Assessee that the provisions of section 68 would be applicable only in case where there is a credit in the books of Assessee and such credit is of the sum of money received during the year and impliedly, the section would apply only to the credits received in money form and therefore it can be construed that section 68 is not applicable for general entries.

Though, the Id. Commissioner accepted the additional evidence filed before it and also observed *that the loan amounting to Rs.10 lacs was not received by the Assessee in its bank account, the credit of said amount of Rs.10 lacs in the books of appellant was on account of journal entry being loan given on the instruction of the Assessee by M/s. M.R. Infra Promoter Pvt. Ltd. to M/s. M.R. Industries Pvt. Ltd. The Assessee during the course of appeal proceedings submitted the following evidence in respect of both the parties, namely, M/s. M.R. Infra Promoter Pvt. Ltd. and M/s. M.R. Industries Pvt. Ltd. :*

- (i) Confirmation of aforesaid transaction of Rs.,.10 lacs by both the parties.*
- (ii) PAN of both the parties*
- (iii) ROC particulars of both the parties.*

3.1 The Id. Commissioner also observed that the Assessee has also submitted that both the aforesaid parties have not filed their ITRs for last many years, therefore, the appellant was not able to submit the same. The appellant has prayed that no adverse cognizance of the said default on the part of the lender be taken against him as he has duly submitted their assessment particulars

and action, if any, to be taken for the said default be initiated in the case of the lender. However, the Id. Commissioner clearly held that in the absence of Income-tax return for the relevant years, it cannot be held that the appellant had discharged the onus casted on it u/s. 68 of the Act and therefore, after consideration of all the evidence available on record, found the addition of Rs.10 lacs made by the Assessing Officer as sustainable since the creditworthiness remained unproved.

4. The Assessee, being aggrieved, is in appeal before us.

5. Heard the parties and perused the material available on records. It is not in controversy here that the credit entry pertains to the journal entry only in the books of account of the Assessee and in fact, no actual cash credit has been credited/received in the account of the Assessee.

5.1 Even Hon'ble Madras High court in the case of V.R. Global Energy Pvt. Ltd. Vs. Income-tax Officer, Corporate ward 3(4) Chennai, (2018) 96 taxman.com 647(Madras) wherein the Assessee has shown certain amount as share premium as against "nil" in the immediately previous year ending on 31.03.2011. The valuation of shares allotted in settlement of the pre-existing liability and has been held to be taxable as unexplained cash credit by the Hon'ble Tribunal. However, the Hon'ble High Court has held that the transactions were only book transactions and there was no cash receipt and therefore, set aside the addition made u/s. 68 of the Act. The Hon'ble high Court further held that when there was no cash involved of the transaction of allotment of shares, the provisions of section 68 of the Act treating it as unexplained cash credit are not attracted.

5.2 The said judgment was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court, vide its order dated 06.11.2019 dismissed the Special Leave Petition to appeal (C. No. 7079 of 2019) in the case of ITO vs. V.R. Global Energy Pvt. Ltd. (2020) 113 taxmann.com 31 (SC).

5.3 The Hon'ble Tribunal at Delhi in the case of DCIT vs. SurenGoyal (ITA No. 1767/Del/2011 decided on 01.12.2011) dealt with the identical issue where the Assessee had received a loan of Rs.20,00,000/- from his father through general entry in the books of account and there was no physical transfer of money from the account of his father, therefore, the deletion of the said addition was justified by the Hon'ble Tribunal.

5.4 The Assessee has also relied upon the judgment passed by the Hon'ble Tribunal Delhi in the case of ITO ward 27(4) New Delhi vs. Zexus Air Services Pvt. Ltd. (2021) 127 taxmann.com 119 (Delhi Tribunal) wherein also, the Hon'ble Court dealt with the identical issue and affirmed the deletion of similar addition made by the Assessing Officer by invoking the provisions of section 68 of the Act, however, opined that the addition, if any, has to be made in the hands of a person to whom the shares were allotted for his services rendered by debiting the accounts in the books. Therefore, the Assessing Officer may take necessary steps for bringing this amount to tax in the hands of that person or his legal heirs in accordance with law.

5.5 On the aforesaid considerations and analyzations, we do not find any reason and justification to sustain the addition under challenge and consequently the same is deleted.

6. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 31/05/2022

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 31/05/2022

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