

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 1530/MUM/2017
Assessment Year: 2012-13**

Income Tax Officer Ward 5(3)(2),
Room No. 526, 5th floor, Aayakar
Bhavan, M.K. Road,
Mumbai-20

Appellant

M/s Shreeji Multitrade Pvt. Ltd.,
4th floor, Rukmani Niwas, 69,
JSS Road, Opera House,
Mumbai-400 004.

Vs.

PAN No. AABCH 8303 D

Respondent

Revenue by : Mr. Hoshang B. Irani, DR
Assessee by : Ms. Samruddhi Mali, AR

Date of Hearing : 27/04/2022
Date of pronouncement : 10/06/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 24/11/2016 passed by the Ld. Commissioner of Income-Tax (Appeal)-10, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

1. *"Whether, on the facts and circumstances of the case and in the law, the Ld. CIT(A) has erred in allowing the appeal of the*



assessee without considering the provisions of section 68 of the I.T. Act and onus to prove the genuineness of the transaction."

"Whether, on the facts and circumstances of the case and in the law, the Ld. CIT(A) has erred in allowing relief to the assessee despite the failure of the assessee to prove the genuineness of the transaction, identity of the cash creditor and creditworthiness of the creditor."

2. Briefly stated facts of the case are that during the year under consideration a sum of ₹2,00,00,000/- was shown to have been received by the assessee company on 04/05/2011 from M/s Innovative Spinning and Knitting Private Limited. During scrutiny proceedings, the Assessing Officer on verification of the bank statement found this sum as received on 04/05/2011 through RTGS and out of the same, the assessee transferred ₹1,99,75,000/- to M/s Garandiose Jewelry Private Limited on same date. The assessee however submitted that in books of account the credit of ₹1,40,00,000/- was transferred and recorded against to M/s Aqua Glitters marketing Private Limited (i.e. associate concern of M/s Innovative Spinning and Knitting Private Limited), which was



further transferred to M/s Mumbai Gems and diamonds Private Limited (i.e. an associate concern of the assessee). For verification of the parties, the Assessing Officer issued notice under section 133(6) of the Income-Tax Act, 1961 (in short 'the Act'), however those notices returned back by the postal authority with the remark "not available". The Assessing Officer *vide* letter dated 05/03/2015 asked the assessee to produce the principal officer of the M/s Innovative Spinning and Knitting Private Limited, however the assessee failed to produce the same. In view of the Assessing Officer, the identity & creditworthiness of the parties who provided some of ₹2.00 crores to the assessee could not be established and genuineness of the transaction also could not be proved and therefore he added the sum of ₹2.00 crores as unexplained cash credit due to failure on the part of the assessee in discharging his onus in terms of section 68 of the Act, relying on the decision of the Hon'ble Punjab and Haryana



High Court in the case of **Blowell Auto P Ltd Vs CIT** reported in **219 ITR 185**.

3. On further appeal, the assessee submitted before the Ld. CIT(A) that director of M/s Innovative spinning and knitting Private Limited Sh Pushpesh Kumar Baid was absconding as per the newspapers and therefore he could not be produced. The Ld. CIT(A) deleted the addition observing as under:

“4.2. I have carefully considered the facts of the case and the submissions of the Id.AR. I have also gone through the decisions relied on by the AO and the Id.AR. As seen from the facts of the case an amount of Rs. 1.40 crores was shown as advance against goods under trade payable in the balance sheet entry under Current Liabilities (outstanding amount at the year-end). Thus, there is no doubt about this transaction and credit to be given to M/s Mumbai Gems and Diamonds P Ltd as per internal directions and in view of the fact that certain sales were also made by M/s Mumbai Gems and Diamonds P Ltd to M/s Aqua Glitters Marketing P Ltd. With regard to Rs. 60 lakhs the amount was adjusted in the accounts of M/s Baid Electronics Distribution P Ltd as journal entry against payment of Rs. 80 lakhs on 6/6/2011 as seen from the ledger copy of M/s Baid Electronics Distribution P Ltd found in the books of assessee company. Therefore credit for this amount also to be given. Since these transfer of credits have taken place with the directions of



M/s Innovative Spinning and Knitting P Ltd. credit for Rs.2 cores to be given in the hands of M/s Innovative Spinning and Knitting P Ltd.

With regard to the AO's reservation that the appellant was not having sufficient funds to make such payments, I'm in full agreement with the Id.AR that balance in the bank account is not required since the adjustment is only through book entry as per internal directions."

4. Before as the Ld. counsel of the assessee has filed a paper book containing pages 1 to 107 which *inter alia* include newspaper reports on Pushpesh Kumar Baid, i.e. director of M/s Innovative Spinning and Knitting Private Limited etc. The Ld. counsel of the assessee submitted that all the documents in support of nature and source of the transaction has already been submitted and the credit is by way of a bank transactions and therefore, Ld. CIT(A) has correctly deleted the addition.

5. On the contrary, the Ld. DR submitted that it was not verifiable as to the entity from the payment of ₹2.00 crores was received in the bank account of the assessee. He submitted that the director of M/s Innovative Spinning and Knitting Private Limited was not even



produced during the appellate proceeding also nor any audited accounts or income tax return etc. of said concern have been filed before the lower authorities. Therefore, the Ld. CIT(A) is not justified in deleting the addition.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The assessee in its books of accounts has shown receipt of ₹2.00 crores from M/s Innovative Spinning and Knitting Private Limited. Further the assessee has shown this amount as transferred in the name of another two entities. All these three entities were not found at the addresses provided by the assessee, during verification by the Assessing Officer invoking section 133(6) of the Act. On being asked, the assessee also failed to produce the director of M/s innovative spinning and knitting Private Limited. Even during appellate proceedings, the assessee failed to produce him before the lower authorities. In our opinion, by way of merely stating that said person



was absconding and therefore he could not be produced before the Assessing Officer is not sufficient to discharge onus under section 68 of the Act. It is the onus on the assessee to explain the identity and creditworthiness of the person from whom credit is shown to have been received and also to establish genuineness of the transaction. In the facts and circumstances of the case, the assessee has failed to substantiate with evidences to explain all the three ingredients of section 68 of the Act, therefore the Ld. CIT(A) is not justified in deleting the addition. Accordingly, we set aside the order of the Ld. CIT(A) on the issue in dispute and uphold the order of the Ld. Assessing Officer. The ground of the appeal of the Revenue is accordingly allowed.

7. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open Court on 10/06/2022.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**



Mumbai;

Dated: 10/06/2022

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