

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 6006/Mum/2017

(Assessment Year 2012-13)

Income Tax Officer,
Ward 15(3)(4)
Room no. 15B,
Aayakar Bhavan, MK Road,
Mumbai-400 020

Vs.

M/s Sunshakti Oil Refinery
Private Limited
D-46, S-11, MG Complex,
Amarjyot CHS, Sector-14,
Vashi, Navi Mumbai

(Appellant)

(Respondent)

PAN No. AAPCS2034N

Assessee by : None

Revenue by : Shri Hoshang B. Irani, DR

Date of hearing: 05.07.2022

Date of pronouncement : 05.07.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the learned Assessing Officer against the order passed by the learned Commissioner of Income-tax (Appeals)-28, Mumbai [CIT(A)] dated 9th June, 2017.
02. The learned Assessing Officer has raised following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in directing the addition of unsecured loans of Rs. 5,52,69,300/- made under section 68 of the Income tax act, holding

that the appellant has proved the genuineness of transactions in the form of confirmations, PAN, return of income, bank statement etc, thereby ignoring the recent decision of the Hon'ble Supreme court of India in the case of Navodaya Castle (P) Ltd (2015) 56 taxmann.com 18(SC), wherein the Apex court has upheld the Delhi High Court decision holding that certificate of incorporation, PAN etc, were not sufficient for purpose of identification of subscriber company.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of unsecured loans of Rs. 5,52,69,300/-made under section 68 of the Income Tax Act, thereby ignoring the financial inability of the creditors to invest such huge amount of money and also ignoring the decision of the Hon'ble Bombay High Court in the case of Major Metels Ltd vs. UOI and Ors(2012) 251 CTR (Bom), wherein the Hon'ble Bombay High Court has upheld the findings of the settlement commission in respect of the addition made u/s 68 of the Act, where the nature and source of receipt could not be satisfactory explained by the assessee.

3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition of Rs. 5,62,986/- on account of sundry creditors, ignoring that the assessee had merely filed confirmations, whereas the genuineness of transactions were questionable.

4. *On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in admitting the additional evidences without satisfying the condition laid down the Rule 46A and in particulars sub Rule(1), more so when the assessee did not prove that it was prevented from sufficient cause from furnishing the evidence during the assessment proceedings and it is also not a case when the AO did not give sufficient opportunity.*

5. *The appellant prays that the order of CIT(A), Mumbai on the above directions be set aside and that of the assessing officer be restored.*

6. *The appellant craves leave to amend or alter any of the aforesaid grounds or add a new grounds of appeal, which may be necessary at any time before or at the time of hearing of appeal."*

03. At the time of hearing, it has come to our notice that assessee is undergoing corporate insolvency process and order has been passed by the NCLT on 1st October, 2019 holding the assessee as corporate debtor and declaring moratorium period. The Provisions of Section 14 of the IBC code prohibits the continuation of any suit against the debtor. In view of this, the appeal filed by the learned Assessing Officer deserves to be dismissed. Hence, dismissed. However, we give liberty to the learned Assessing Officer to file the appeal, if so desire on completion of the moratorium period. The learned



Assessing Officer may make an application for recall of this order at that time.

04. In the Result, appeal filed by the learned Assessing Officer is dismissed.

Order pronounced in the open court on 05.07.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 05.07.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai