

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.1760/Del./2019
Assessment Year 2015-2016

The ACIT, Circle-24(1), Room No.340, C.R. Building, I.P. Estate, New Delhi.	vs.	M/s. SMB Securities Ltd., 1511/3, II Floor, Gali No.1, Kotla Mubarak Pur, New Delhi – 110 003. PAN AABCS6276L
(Appellant)		(Respondent)

For Assessee :	Dr. Rakesh Gupta And Shri Somil Agarwal, Advocates
For Revenue :	Ms. Sunita Singh, CIT-DR

Date of Hearing :	13.07.2022
Date of Pronouncement :	19.07.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal has been filed by the Revenue against the order of the Ld. CIT(A)-8, New Delhi, dated 19.12.2008 vide Appeal No.10309/17-18, for the A.Y. 2015-16.

2. Briefly stated facts of the case are that the assessee is registered Non-Banking Finance Company ["NBFC"] and is stated to be deriving income from earning of interest and also dealing in securities. Assessee filed its return of income for the A.Y. 2015-16 electronically on 29.10.2015 disclosing total loss of Rs.1,10,15,204/-. Thereafter, it filed revised return of income on 09.03.2017 disclosing total income of Rs.10,61,350/-. The case was selected for scrutiny and thereafter, assessment was framed under section 143(3) vide order dated 29.12.2017 and the total income of the assessee was determined at Rs.2,95,95,800/-. Aggrieved by the order of the A.O. the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 19.12.2018 in Appeal No.10309/17-18 allowed the appeal of assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal and has raised the following grounds :

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

addition of Rs.2,57,34,453/- made u/s 68 of 1 T Act without appreciating the facts that the assessee company was found to provide the layer of two companies before actually transferring it back to Maitri group and retained commission/charge of Rs.2,57,34,453/- for providing the services to the Maitri Group and the SEB1 in 2013 had barred the Maitreya Service Pvt Ltd. and its director namely Varsha Madhusudan and Shri Janardan Parulekar from the securities market and its collective investment schemes."

- 2. Whether on the facts and circumstances of the case and also in law, the Ld CIT (A) has erred in deleting an addition of Rs 28,00,000/- made u/s 68 of I T Act without appreciating the facts that the assessee failed to produce the director of the lender company M/s Goldmine Buildlech Pvt Ltd or any other creditable evidence to prove the genuineness of the transaction. It was also ignored by the Ld CIT (A) that the Inspector of*

this office reported no such company was existing at the given address.

3. The appellant craves leave to add, alter or amend any of the ground(s) of appeal before or during the course of hearing of the appeal.”

4. Ground No.1 is with respect to deleting the addition of Rs.2,57,34,453/-.

4.1. During the course of assessment proceedings, the A.O. noticed that assessee has received loan aggregating to Rs.103,34,91,422/- from Maitri Group [details of which are listed at para 4.1 of the assessment order]. The A.O. noted that to verify the genuineness of the loans taken by the assessee, notice under section 133(6) were issued at the address provided by the assessee, but the same were returned back un-served. In support of the assessee's contention that the loans are genuine, the assessee, *inter alia*, submitted that assessee had taken loan from the aforesaid 03 companies viz., Maitri Realtor Construction Pvt. Ltd., Maitri Suvarnasiddhi Pvt. Ltd., and West Cast

Ventures India Pvt. Ltd., and these companies are under investigation by Serious Fraud Investigation Office [“SFIO”] and their main promoters have been arrested and the offices of these companies are either closed or sealed. The assessee further submitted that assessee had taken loan from the above 03 companies in the normal course of business as assessee is registered as NBFC. The assessee furnished the loan agreement entered by the assessee with those companies and also placed on record the copy of their audited balance-sheet. The submissions of the assessee was not found acceptable to A.O. The A.O. noted that the assessee-company was provided unsecured loans aggregating to Rs.103.35 crores [rounded-off] by the aforesaid 03 companies. Out of the aforesaid loans that was received by the assessee, assessee had retained Rs.2,57,34,453/- and had transferred the balance amount of Rs.1,00,77,66,969/- to another Company M/s. Shril Investment Ltd., and from there the money was transferred to M/s. Maitri Services Pvt. Ltd., a group of Maitri Group. He thus noted that out of Rs.103.35 crores received by the

assessee, it had retained a sum of Rs.2,57,34,453/- being the Commission for assisting on transfer of funds, and had transferred the balance amount of Rs.1,00,77,66,969/- to M/s. Shril Investment Ltd., which had further transferred Rs.97,25,95,020/- to M/s. Maitri Services Pvt. Ltd., and who inturn had retained an amount of Rs.3,57,71,949/-. According to the A.O. the chain of transactions showed that assessee had entered into an arrangement to transfer the funds through its company and to provide the layer of two companies before actually transferring the money back to Maitri group. He was of the view that the amount of Rs.2,57,34,453/- retained by the assessee takes the character of commission/charge for providing the services to the Maitri Group of companies. He also noted that the SEBI in 2013 had barred the Maitri Services Pvt. Ltd., and its Director namely Varsha Madhusudhan and Shri Janardhan Parulekar from the securities market and its collective investment schemes. He was of the view that the Maitri Group has used the assessee as conduit companies to transfer its fund. He, therefore, concluded that amount of

Rs. 2,57,34,453/- earned by the assessee was to provide assistance to Maitri Group for transfer of money from one group company to another group company and to camouflage the transaction, the amount was shown as unsecured loans. He, thereafter by applying the ratio of decisions rendered by Hon'ble Apex Court in the case of Commissioner of Income Tax, vs., Durga Prasad More 82 ITR 540 (SC) and Sumati Dayal vs., Commissioner of Income Tax [1995] 214 ITR 801 (SC) held Rs.2,57,34,453/- earned by the assessee as undisclosed income and made its addition.

4.2. Aggrieved by the order of the A.O. assessee carried the matter in appeal before the Ld. CIT(A). The Ld. CIT(A) while deciding the issue in favour of the assessee has given a finding that assessee is a registered NBFC, obtained the registration from Reserve Bank of India. He noted that A.O. has not doubted the source of funds, the fact that assessee had borrowed the funds in the ordinary course of business as NBFC. The Ld. CIT(A) also noted that in the audited Balance Sheet assessee has reflected the

borrowings which includes the borrowing from Maitri Group and the amount disbursed including the amount disbursed to M/s. Shrill Investment Ltd. The Ld. CIT(A) has further given a finding that assessee had borrowed money and inturn advanced the same to other company in the ordinary course of business. The A/c of the borrowers and the debtors was running accounts and in such a situation the outstanding balance cannot be treated as income of the assessee. He, thus, deleted the addition made by the A.O.

5. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us. Before us, the Ld. D.R. supported the order of A.O.

6. The Learned Counsel for the Assessee, on the other hand, reiterated the submissions made before the authorities below and supported the order of the Ld. CIT(A).

7. We have heard the Learned Representatives of both the parties and perused the material on record. The issue in the present ground is with respect to deletion of addition of Rs.2.57 crores [rounded-off] made by the A.O.

and deleted by the Ld. CIT(A). We find the Ld. CIT(A) while deciding the issue in favour of the assessee has given a finding that assessee is a registered NBFC and the assessee had borrowed money from the abovementioned 03 companies and disbursed the borrowed money which is the activity undertaken by the assessee in the normal course of business being a NBFC. The A.O. held that difference between the amount received as loan from Maitri Group aggregating to Rs.103,34,91,422/- and the amount advanced amounting to Rs.100,77,66,969/- to M/s. Shrill Investment Ltd., as facilitation fee and brought it to tax. We find the Ld. CIT(A) while deleting the addition has also noted that A.O. has not pointed to any provisions of Income Tax Act under which the aforesaid amount could have been treated as income. We find that Ld. CIT(A) by a well reasoned order deleted the addition made by A.O. Before us, Revenue has not pointed any fallacy in the findings of the Ld. CIT(A) and in such a situation, we find no reason to interfere with the order of the Ld. CIT(A) on this aspect and

thus, **Ground No.1 of the appeal of the Revenue is dismissed.**

8. Ground No.2 is with respect to deletion of addition of Rs.28 lakhs under section 68 of the I.T. Act, 1961.

8.1. During the course of assessment proceedings, A.O. noticed that assessee had shown the receipt of unsecured loans from Goldmine Buildcon Pvt. Ltd., of Rs.28 lakhs and to justify the genuineness of the amount borrowed, assessee furnished copies of confirmation and bank statement of the lender. A.O. noted that to in order to verify the genuineness of the transaction, notice under section 133(6) of the I.T. Act, 1961 was issued to the party, but the notice was returned back un-served. A.O. asked the assessee to produce the Director of the Company or any other credible evidence to prove the genuineness of the transaction in the matter. A.O. noted that assessee did not produce the Director or provided any contact details of the Company or the Director. He also noted that the Inspector who visited the Office has submitted his report that no such

company exists at the given address. The A.O. also noted that Goldmine Buildcon Pvt. Ltd., had not filed ROC returns since last 02 years. A.O. also noted that there was no tangible assets reflected in its balance-sheet and there was no verifiable business of the company. A.O, therefore, held that by merely filing the confirmation letter and the details of Bank A/c, the genuineness of the transaction is not proved. He, accordingly held that the unsecured loans of Rs.28 lakhs received by the assessee as 'unexplained credit' in the hands of the assessee and made the addition of Rs.28 lakhs under section 68 read with Section 115BBA of the I.T. Act,

8.2. Aggrieved by the order of the A.O. assessee carried the matter in appeal before the Ld. CIT(A) who deleted the addition by noting the fact that the transaction had taken place 03 years ago, the amount of loan was returned back to the lender company in the F.Y. 2014-15 itself. The Ld. CIT(A) also noted that assessee had established the identity of the lender by furnishing the confirmation copy, audited balance sheet and copy of ITR

acknowledgment and PAN and the bank statement of the lender to prove the genuineness of the transaction and the creditworthiness of the the lender.

9. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us. Before us, the Ld. CIT(A) supported the order of the A.O.

10. The Learned Counsel for the Assessee, on the other hand, reiterated the submissions made before the authorities below and supported the order of the Ld. CIT(A). He further submitted that the ground raised by the Revenue is misconceived for the reason that the case of the assessee for A.Y. 2015-16 was reopened for the reason that information was received by the A.O. from DDIT (Inv.) that assessee had received a sum of Rs.28 lakhs from Goldmine Buildcon Pvt. Ltd., which was a non-descript shell entity. He submitted that thereafter the assessment was finalised under section 147 r.w.s. 143(3) vide order dated 09.02.2022 and no addition of Rs.28 lakhs was made thereunder, meaning thereby, that the loan was accepted by the Revenue to be genuine. In support of his aforesaid

contentions, the Learned Counsel for the Assessee placed on record the copy of the order passed under section 147 r.w.s. 143(3) vide order dated 09.02.2022 in the paper book. He, therefore, submitted that considering the aforesaid facts, no interference is called for to the order of the Ld. CIT(A).

11. We have heard the Learned Representatives of both the parties and perused the material on record. The issue in the present ground is with respect to deletion of addition of Rs.28 lakhs made by the A.O. under section 68 of the I.T. Act, 1961. We find that Ld. CIT(A) while deleting the addition has noted that the transaction had taken place more than three years back i.e., in F.Y. 2014-15 and the amount was also returned back in F.Y. 2014-15 and that assessee had established the identity by furnishing the confirmation copy, audited balance sheet, copy of ITR acknowledgment, PAN and the bank statement of the lender company. The aforesaid finding of Ld. CIT(A) has not been controverted by Revenue. Further considering the fact that the case of the assessee was reopened under section 147/148 on the same issue i.e., receipt of Rs.28 lakhs, but,

in the re-assessment order passed on 09.02.2022 no addition has been made. Considering the totality of the facts and circumstances of the case and in the absence of any contrary material brought on record, we find no infirmity in the order of the Ld. CIT(A) in deleting the addition of Rs.28 lakhs in the hands of assessee. Accordingly, **Grounds of appeal No.2 of the Revenue is dismissed.**

12. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 19.07.2022.

Sd/-
(MS. ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 19th July, 2022

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.