

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI B R BASKARAN, ACCOUNTANT MEMBER
&
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.3704/Mum/2018
(Assessment Year :2014-15)**

ITO-13(3)(4), Mumbai R.No.216B, Aayakar Bhavan Mumbai	Vs.	M/s. Tool Art Deco India Pvt. Ltd., Add.1) 61/4, Ajit Bhavan J.B. Nagar, Andheri, Mumbai -400 059 Add.2) B-2, Santunjay Co- op Hsg. L.T. Road Mumbai – 400 091
PAN/GIR No.AACCT3757G		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Airiju Jaikaran
Date of Hearing	28/07/2022
Date of Pronouncement	29/07/2022

आदेश / O R D E R

PER ANIKESH BANERJEE (J.M):

The instant appeal was filed against order of the Id. Commissioner of Income Tax (Appeals)-21, Mumbai [in brevity the CIT(A)] bearing appeal No. CIT(A)-21/ITO-13(3)(4)/IT-385/2016-17 order dated 28/02/2018, order passed u/s.143(3) of the Income Tax Act, 1961 (in brevity the 'Act') for the A.Y.2014-15. The impugned order was generated from the order of the Id. Income Tax Officer, 13(3)(4), Mumbai (in brevity

'the AO') order dated 30/12/2016, order passed u/s.143(3) of the Income Tax Act, 1961.

2. Brief fact is that the revenue had filed the appeal against the order of the Id. CIT(A) for rejecting the addition amount of Rs.7,52,48,754/- on account of sundry creditors, related to the party M/s. Compact Agencies Pvt. Ltd. The said agency is the major sundry creditors of the assessee company and has filed his only submissions through assessee during the course of assessment and has refused to response to the notice u/s. 133(6) of the Income Tax Act. For the incomplete verification, the addition was made u/s.68 by the Id. AO. Aggrieved, the assessee filed an appeal before the Id. CIT(A). But the Id. CIT(A) dismissed the addition of the Id. AO and allowed the appeal. Being aggrieved, the Revenue filed an appeal before us.

3. The Id. CIT (DR) first drew our attention in the assessment order in point No.7.4 & 7.5 page No.8, which is extracted as follows:

7.4 From the above, it can be construed that the assessee company has purchased flat in A.Y. 2013-14, and then changed the shareholding pattern at par to pass on the benefit to majority shareholder. While in the year under consideration it has inflated sundry creditors to evade prying eyes of tax authorities. The Identity and genuineness of transaction pertaining to Sundry Creditors is not proved as mentioned above paras. Hence, it is clear that an arrangement has been adopted by the assessee company to by-pass the benefit of purchase by adopting colourable device. The purchaser party i.e. the assessee company has changed its majority shareholder at par to someone who is Managing Director of the company who is purchaser of the assessee company. This clearly indicates assessee's company intention to give a different colour to the transactions they carry out with an intention to evade the taxes. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of McDowell & Co Ltd Vs Commercial Tax Officer (1985) 22 taxmann 11 (SC) wherein it was held that:

"So far as the contention that it is open to everyone to so arrange his affairs as to reduce the brunt of taxation to the minimum, was concerned, the tax planning may be legitimate provided it is within the framework of

law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. Courts are now concerning themselves not merely with the genuineness of a transaction, but with the intended effect of it for fiscal purposes. No one can now get away with a tax avoidance project with the mere statement that there is nothing illegal about it."

7.5 In view of the above discussion, it is established that assessee has inflated sundry creditors amounting to Rs. 7,52,48,874/- and the transactions pertaining to such sundry creditors are sham. The genuineness of sundry creditors added during the year are not proved beyond doubt, and nature, source and explanation offered by the assessee company regarding the same is not found to be satisfactory. Accordingly, they are treated as unexplained cash credits u/s 68 of the Income-tax Act, 1961.

4. During the hearing proceedings we also observed that the order of the Id. CIT(A). The observation was made by the Id. CIT(A) in point number 6, which is extracted as follows: -

6. Decision:

I have considered the facts of the case and submissions made by the appellant. The only ground of appeal raised in this appeal relates to addition of Rs.7,52,48,874/- in respect of sundry creditors u/s.68 of the IT. Act, 1961 made by the AO. It appears from the records, that the AO noticed that assessee had shown immovable property as an asset in the balance sheet and called for the details and documents relating to the property, purchase and sale of goods and change in share holding of the company during the year. On perusal of these details and documents, the AO noticed that there was a change in the share holding of the company during the year and assessee had indulged in circular trading transactions with other two companies SSK Ispat 'and Compact Agencies and therefore made a test check of the purchases effected from the major supplier- Compact Agencies. The AO sent notices to Compact at two places in India, one in Mumbai and second one in Kolkata, and the notice from the Mumbai address was returned unserved and the notice to Kolkata address was served on the assessee. Compact did not reply directly to the AO but furnished details of sales made by it to the assessee through the assessee, that is Tool Art Deco. This raised further doubts in the mind of the AO and he called for the copy of bank accounts of the assessee as well as Compact Agencies and discovered that the supplier, that is, Compact was also maintaining an account with Kotak Mahindra Bank in Andheri East Mumbai whereas its office was located in Kolkata. The AO then discovered from the copy of bank account of Compact that it was purchasing goods from another associate company, SKS Ispat and hence indulged in circular trading and hence concluded that 'assessee had inflated its purchases and added back an amount of outstanding sundry creditors of Rs.7,52,48,874/- and added the same u/s.68 of the I.T. Act, 1961. The appellant is in appeal against the same.

5. None appeared on behalf of the assessee. We have heard the submission of the Id. DR and considered the documents available in the record. After our thoughtful observation, it is concluded that the amount was received through circular trading from Compact Agencies to M/s. SSK Ispat and Power Ltd., to the assessee. In this transaction, the Id. AO was unable to verify by issuing notice u/s.133(6) to the party. So accordingly, the addition was made u/s.68. The Id. Appellate Authority during the appeal proceedings did not take proper consideration to verify this party in respect of this transaction. Lack of verification was adjudicated by the Id. CIT(A). Where the existence & credentialism of the party in question the section 68 will start to play. In any case, un-verified sundry creditors cannot be allowed for deletion of Section 68. So, accordingly, the addition amount of Rs.7,52,48,754/- is setting aside to the Id. CIT(A) for further adjudication considering the above-mentioned discussion of ITAT. Needless to mention that the assessee should get a reasonable opportunity for redressal of the grievance.

6. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced on 29/07/2022 by way of proper mentioning in the notice board.

Sd/-
(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai; Dated 29/07/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai