

आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
AND SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 1540/Kol/2019
Assessment Year: 2014-15

Padmini Agencies Pvt. Ltd. 14/1, Shree Gopal Mullick Lane Kolkata - 700012 PAN : AAECP7899M	Vs	I.T.O., Ward-1(2), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Soumitra Choudhury, Advocate
Revenue by :	Shri Arup Chatterjee, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 18/07/2022
घोषणा की तारीख /Date of Pronouncement: 29/08/2022

आदेश/ORDER

PER SHRI MANISH BORAD, AM :

The present appeal is directed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals), Kolkata - 10, (hereinafter the “ld. CIT(A)”) dt. 01/04/2019, passed u/s 250 of the Income Tax Act, 1961 (“the Act’), for Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal before this Tribunal :-

1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) on 01.04.2019 is completely arbitrary, unjustified and illegal.
2. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.O. and confirming the addition of Rs. 1,00,00,000/- on account of Interest free advances treating the same as unexplained cash credit under section 68 of the IT. Act which is completely arbitrary, unjustified and illegal.
3. For that on the facts of the case, the Ld. CIT(A) was wrong in not considering the facts that the advances amounting to Rs. 1,00,00,000/- to Pragati Management issued on 23.08.2013 as short term interest free advances, moreover at the time of assessment proceeding the assessee company had produced bank book, respective

ledger are supported by confirmation of parties and their identities, as such the finding of the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

4. For that the charging interest u/s. 234B is mechanically wrong and illegal.

5. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal."

3. Briefly stated, the facts as culled out from the records are that the assessee is a Private Limited Company engaged in the business of investment in shares and loan financing. The assessee e-filed its return of income on 23/09/2014, declaring total income of Rs.3,401/- for the Assessment Year 2014-15. Case selected for scrutiny through CASS followed by service of notice u/s 143(2) & 142 (1) of the Act. During the course of assessment proceedings, the Id. Assessing Officer examined the bank statement of the assessee and noticed that loan totaling to Rs.90,00,000/- was received from M/s. Yogmaya Distributors Pvt. Ltd. on three different occasion and loan of Rs.10,00,000/- received from M/s. Vilasini Sales Pvt. Ltd. and the total sum of Rs.1,00,00,000/- was given as short term interest free advance to M/s. Pragati Management. However, the said transactions of loans received and loans advanced were not reflected in the audited financial statements ending on 31/03/2014. The assessee was asked to provide the details of the cash creditors, namely, M/s. Yogmaya Distributors Pvt. Ltd. and M/s. Vilasini Sales Pvt. Ltd. Notices sent u/s 133(6) of the Act to both the cash creditors did not bring any satisfactory results. The assessee requested for further time to file other documents but subsequently, no such details were furnished. The Id. Assessing Officer proceeded to make the addition of Rs.1,00,00,000/- u/s 68 of the Act for unexplained cash credit mainly on account of the fact that M/s. Yogmaya Distributors Pvt. Ltd., denied to have entered into any transaction with the assessee. The Id. Assessing Officer also made minor disallowance u/s 14A of the Act at Rs.25,259/- and eventually assessed the total income of the assessee at Rs.1,00,28,660/-.

4. Aggrieved the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed submissions including details of unsecured loans received and loans advanced. The assessee also pleaded that it was not provided an opportunity of cross-examination. The Id. CIT(A) examined the fact that M/s. Yogmaya Distributors Pvt. Ltd. denied to have entered into any transaction with the assessee. However, the Id. CIT(A) was not satisfied with the submissions made by the assessee on the issue of addition u/s 68 of the Act and came to a conclusion that the assessee failed to prove the identity and creditworthiness of the cash creditors and genuineness of the transactions and thus, confirmed the action of the Assessing Officer.

5. Further aggrieved, the assessee is now in appeal before this Tribunal raising various grounds. But the sole grievance of the assessee is that the Id. CIT(A) has erred in confirming the addition of Rs.1,00,00,000/- made by the Assessing Officer u/s 68 of the Act.

6. The Id. Counsel for the assessee apart from reiterating the submissions made before the lower authorities, further stated that the loans in question were taken through proper banking channels. Loan confirmations were received and placed on record. Statement of Allahabad Bank clearly shows that loans taken from alleged cash creditors have been further advanced to M/s. Pragati Management. Reference was also made to the companies master data and certificate of incorporation to prove the identity of M/s. Yogmaya Distributors Pvt. Ltd. and M/s. Vilasini Sales Pvt. Ltd.. It was strongly contended that these were genuine loans and they were applied for giving interest free loan advances to M/s. Pragati Management.

The Id. Counsel for the assessee also took an alternative plea that even if the assessee is considered as an accommodation entry provider, since the assessee has taken the loan and provided entry to M/s. Pragati Management for the equal amount, it has been held by the Hon'ble Jurisdictional High Court that in cases

where the assessee is engaged in the business of providing accommodation entries only, the commission on such accommodation entries may be added to the income of the assessee. Reliance was placed on the decisions of the Hon'ble Jurisdictional High Court in the case of *PCIT vs. M/s. Safeco Projects Pvt. Ltd. in ITAT No. 32 of 2019*, judgment dt. 07/03/2019. The ld. Counsel for the assessee further relied to the judgment of the Hon'ble Jurisdictional High Court in the case of *PCIT vs. M/s. Sreeleathers in ITAT/18/2022*, judgment dt. 14/07/2022 for the proposition that addition made by brushing aside the records submitted by assessee are unsustainable.

7. Per contra the ld. D/R, vehemently argued by supporting the orders of the lower authorities and stated that the assessee failed to prove the genuineness of the transactions and creditworthiness of the cash creditors.

8. We have heard rival contentions and perused the records placed before us as well as the case laws cited by ld. Counsel for the assessee.

9. The sole grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of Rs.1,00,00,000/- made by the Assessing Officer u/s 68 of the Act as unexplained cash credit. From perusal of the bank statement placed in the paper book, we find that the amount of Rs.1,00,00,000/- was received by the assessee as per the following schedule:-

<i>Date</i>	<i>Name</i>	<i>Amount [in Rs.]</i>
06.08.2013	<i>Yogmaya Distributors Pvt. Ltd.</i>	5000000
17.08.2013	<i>Yogmaya Distributors Pvt. Ltd.</i>	2500000
19.08.2013	<i>Yogmaya Distributors Pvt. Ltd.</i>	1500000
20.08.2013	<i>Vilasini Sales Pvt. Ltd.</i>	1000000
Total		Rs.1,00,00,000/-

On 23/08/2018, the said unsecured loan of Rs.1,00,00,000/- was given as a short term interest free advance to M/s. Pragati Management. According to the Assessing Officer, the assessee was unable to explain the unsecured loan of

Rs.1,00,00,000/- referred above. To ascertain the same, the Id. Assessing Officer sought for the addresses of both the cash creditors and loan confirmations. The assessee complied and provided the addresses of both the parties. We find that the assessee had filed loan confirmation from M/s. Yogmaya Distributors Pvt. Ltd., signed by the Director of M/s. Yogmaya Marketing Pvt. Ltd., which has been taken note of by the Assessing Officer in the assessment order. Subsequently notice u/s 133(6) of the Act was issued to M/s. Yogmaya Distributors Pvt. Ltd. and M/s. Vilasini Sales Pvt. Ltd. The notice issued to M/s. Vilasini Sales Pvt. Ltd. returned unserved by the Postal Authority. In reply to the summon issued u/s 133(6) of the Act, M/s. Yogmaya Distributors Pvt. Ltd. denied having any such transaction with the assessee. A showcause notice dt. 22/11/2016 was issued by the Assessing Officer asking the assessee to explain as to why the credit of Rs.1,00,00,000/- shall not be treated as unexplained income for the purpose of addition u/s 68 of the Act. In compliance, the assessee filed reply as under:-

"This is in reference to your letter dated 22th November, 2016, in this regard we would like to take some time to collect the said documents from the concerned party M/s. Yogmaya Distributors Pvt Ltd and M/s. Vilasani Sales Pvt. Ltd. Hope we will be able to provide explanation with supporting documents which would be self-explanatory towards the transactions."

Thereafter, in absence of any further compliance by the assessee, the Assessing Officer proceeded to frame the assessment order u/s 143(3) of the Act, dt. 19/12/2016, making the addition u/s 68 of the Act.

10. We observe that before the lower authorities, the assessee has provided the addresses of the alleged cash creditors, copies of certificates of incorporation and master data of the companies to prove the identity of M/s. Yogmaya Distributors Pvt. Ltd. and M/s. Vilasini Sales Pvt. Ltd.. Statement of Allahabad Bank clearly reflecting that loans have been taken and the same has been further advanced to M/s. Pragati Management. The assessee had discharged the initial burden of proof by filing the identity details, proving the genuineness of the transactions and financial statements of the alleged cash creditors to prove their creditworthiness.

11. Be it as it may, during the course of hearing, the ld. Counsel for the assessee submitted that even if the assessee is considered to be an accommodation entry provider then also, the addition can be made only for the element of commission earned on such accommodation entries provided and that the Hon'ble Jurisdictional High Court in the case of *M/s. Safeco Projects Pvt. Ltd. (supra)* has held that, such commission income on accommodation entries is only Rs. 250 per lakh rupees i.e., 0.25% of the accommodation entry. We, however, on perusal of the audited balance sheet of the assessee company and the bank statement, found that the nature of business of the assessee is not that of an accommodation entry provider. Normally, those assessee's who are indulged in business of such accommodation entry are unable to provide any details of the persons from whom they had received such loans and also the persons to whom such loans were advanced and there are frequent entries of similar amounts of debit and credit and usually there are voluminous transactions in the bank statements of so called accommodation entry providers. However, on perusal of the bank statements of the assessee we notice that from 01/04/2013 to 08/04/013, there are hardly seven to eight transactions and the assessee has provided necessary details to explain all the alleged cash creditors as well as the persons to whom amounts have been advanced. It clearly seems to be the case of taking interest free unsecured loan and giving it as interest free loan to some other concern for short term.

12. Though the issue before us relates to unexplained cash credit, however, looking at the overall circumstances of the case, the details filed by the assessee in the form of proof of identity, bank statements, nature of transactions carried out during the year, confirmation of amounts received, and copies of Income Tax Returns, we intend to hold that in the instant case, there can only can be an element of commission income which the assessee might have earned for arranging such short term loans for M/s. Pragati Managment and without holding the assessee to be an accommodation entry provider. Thus, to end the dispute and without setting any precedence for the alleged transactions, we estimate income of the assessee @ 3% of the total loans advanced i.e., 3% of Rs.1,00,00,000/- which

comes to Rs.3,00,000/- and direct the Assessing Officer to sustain the said addition and the remaining addition of Rs.97,00,000/- stands deleted. While doing so, at the cost of repetition, we hold that the decision rendered in the instant case shall not be taken as a precedence for other cases, since the view taken by us is purely based on the facts of the present case.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 29th August, 2022 at Kolkata.

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

Kolkata, Dated 29/08/2022

**SC Sp/8*

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata