

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.214/Kol/2022
Assessment Year: 2017-18

Assam Bengal Carriers.....Appellant
P-10, New CIT Road,
Kolkata, WB-700073.
[PAN: AAFFA0462R]

vs.

ACIT, Circle-40(1), Kolkata.....Respondent

Appearances by:

Shri Sushil Pranukha, FCA & Harsh V. Bhardwaj, FCA, appeared on behalf of the appellant.
Shri Amitava Bhattacharyya, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 30, 2022

Date of pronouncing the order : September 13, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 15.03.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

“ For that

- 1. The Appellant denies the liability to be assessed at total income of Rs.6,03,32,614 against returned income of Rs NIL and as also confirmed by Ld CIT(A) NFAC*
- 2. The L'd CIT(A) NFAC erred in confirming the addition made by L'd A.O amounting to Rs 4,73,20,190 without appreciating the fact that purported receipt by the appellant is sum total of many credit entries on account of frequent transactions between inter group entities since last many years.*
- 3. The L'd CIT(A) NFAC erred in confirming the disallowance of interest of Rs.1,30,12,424 by erroneous calculation on entire balance including that on opening balance carried forward from previous year.*
- 4. The L'd CIT(A) NFAC erred in confirming the order of A.O which is bad in law and perverse.*
- 5. Each ground is without prejudice to each other and independent.*
- 6. Appellant craves leave to add, delete, modify any ground at or before date of hearing.”*

2. A perusal of the above grounds of appeal reveals that the assessee is aggrieved by the action of the lower authorities in making addition of Rs.4,73,20,190/- of the unsecured loans received by the assessee treating the same as unexplained credit u/s 68 of the Act. The assessee is also aggrieved from the disallowance of interest amount of Rs.1,30,12,424/- paid by the assessee on the loan amount.

3. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order to submit that the Assessing Officer firstly observed as under:

“During the year under consideration it was noticed that the assessee had taken unsecured loans from various parties which were de-listed/struck off by the Registrar of Companies of Ministry of Corporate Affairs as shell companies.”

Thereafter the Assessing Officer without discussion of the facts of the case, goes on to explain about the report of SIT on black money and its recommendation on shell companies running into three pages. Thereafter the Assessing Officer noticed that the assessee has taken unsecured loan from M/s ABC Financial Services Pvt. Ltd. of Rs.4,73,20,190/- and paid interest of Rs.13012424/-. The notice u/s 133(6) of the Act was issued to the said company and reply was received. The Assessing Officer also sent an inspector to enquire about the existence of the said M/s ABC Financial Services Pvt. Ltd.. The inspector reported that though there was no sign board of the said company, however, he met there Shri Binod Agarwal, partner cum staff of the company. He reported that the company was a Non-Banking Financial Company (NBFC). The Assessing Officer also issued summons u/s 131 for personal appearance of the director of the said company and in response Sri Mahadev Lal Agarwal, appeared and delivered his statement. Sri Mahadev Lal Agarwal also explained to the Assessing Officer that the previous name of the said company was Agarwal Wire Industries Pvt. Ltd. which was registered in ROC Kanpur. On being asked to explain that the above said company i.e. Agarwal Wire Industries Pvt. Ltd. was struck off as per MCA website; Mr. Agarwal explained that presently ROC Kolkata was having jurisdiction over ABC Financial Services Pvt. Ltd. and that ROC Kanpur has no jurisdiction over the assessee company since 1994. Further to verify the creditworthiness of the loan creditor, the Assessing

Officer examined the ITRs filed by M/s ABC Financial Services Pvt. Ltd. and noted that there was nil income of the company from 2014-15 to 2017-18. The Assessing Officer observed that despite such a low income, the said M/s ABC Financial Services Pvt. Ltd. had given loans to the assessee which seem entirely implausible. The assessee was show-caused in this respect. In response, the assessee furnished the requisite details. However, the Assessing Officer held that the credibility of the creditor was doubtful and accordingly made the impugned additions of the loan amount as well as disallowed the interest claimed to have been paid by the assessee on such loan.

5. The Id. CIT(A) confirmed the additions so made by the Assessing Officer.

6. The Id. counsel for the assessee has submitted that the Assessing Officer started to frame the assessment in respect of unsecured loans obtained by the assessee on the wrongful assumption that the assessee had taken unsecured loan from shell companies whereas, the said assumption of the Assessing Officer was proven totally wrong and ultimately he made the addition only on the basis of that creditworthiness of the lender company was doubtful. The Id. counsel for the assessee has further submitted that the lender company was the group company of the assessee which was a NBFC (Non Banking Financial Company). That the said lender company was duly registered with the Registrar of Companies and that the director of the said company was one of the partners of the assessee firm. The Id. counsel has further drawn our attention to the following chart:

Particulars	A.Y. 2014-15	A.Y. 2015-16	A.Y. 2016-17	A.Y.2017-18
Revenue from Operation	1,17,03,490.77	1,26,70,493.00	1,40,57,048.00	1,73,62,023.16
Other Income	21.00	-	63,440.00	-
Total Income	1,17,03,511.77	1,26,70,493.00	1,41,20,488.00	1,73,62,023.16
Profit/(Loss) before tax as per books	8,76,308	10,75,056	(29,86,098)	(21,65,058)
Tax expenses as per books	-	1,57,180	(6,75,980)	420
Profit/(Loss) after tax as per	8,76,308	9,17,876	(36,62,078)	(21,64,638)
Gross Total Income	(2,06,949)	2,91,663	(25,14,580)	(33,01,547)
As per Tax	-	55,576	-	-

Liability				
Net worth as per RBI	556.37 Lacs	485.01 Lacs	546.78 Lacs	527.37 Lacs

7. The ld. counsel has further submitted that the lower authorities have completely ignored the company's turnover and its reserve and surplus and its net worth that the lender company being a NBFC has to file every year specific return with RBI to demonstrate the company's net worth. That if adequate net worth is not maintained, then there is every chance of NBFC licence being revoked. The ld. counsel has further submitted that merely because the lender company having run into losses for a year or two, did not mean that the company's operation was not genuine. That the company's turnover was in crores and the company was a genuine company. The ld. counsel has further drawn our attention to paper book pages 140 to 153 to submit that the assessee was having a running account with the lender company namely M/s ABC Financial Services Pvt. Ltd. and that there was an opening balance of Rs.12,02,68,102.70 as on 01.04.2016. During the year, a loan of Rs.4.73 crores was received, however, the assessee company also repaid the loan amount of Rs.13.72 crores. He, therefore, has submitted that the Assessing Officer totally ignored that the assessee during the year has repaid an amount of Rs.13.72 crores as against the loan during the year of Rs.4.73 crores by way of various running transaction during the year and that the closing balance was at Rs.4.20 crores only as against opening balance of Rs.12.02 crores. The ld. counsel has further invited our attention to the income tax return of M/s ABC Financial Services Pvt. Ltd. placed at paper book pages 190 to 194 to submit that the said lender company for the assessment year 2013-14 had returned a very high total income of Rs.5,53,94,060/- and paid high taxes. The ld. counsel has further submitted that the Assessing Officer not only verified the existence of company by sending inspector there but also the company responded not only to the summons issued u/s 133 of the Act but also director of the said company appeared before the Assessing Officer in response to the summons issued u/s 131 of the Act. That it was also explained that merely because the erstwhile company namely Agarwal Wire Industries Pvt. Ltd. had stopped working and its name was struck off from the ROC Kanpur, that did not mean that the assessee company was not a

genuine company. The assessee company was duly registered with ROC Kolkata since 1994. The ld. counsel, in this respect, has invited our attention to paper book page 240 to submit that as per the information obtained under the RTI Act, it has been duly informed by the Office of ROC that ROC Kanpur has raised the ticket for correction of master data of M/s ABC Financial Services Pvt. Ltd. which has been shifted from State of Uttar Pradesh to State of West Bengal vide order dated 20.01.1994 and further that the said ticket has been resolved and the master data has been corrected.

8. The ld. DR could not rebut the above submissions of the ld. counsel for the assessee. He only submitted that the lender company did not return any income for the last four years which means that there was no activity going on and that even the inspector did not find sign board of the lender company at the given address. However, the above submissions of the ld. DR have been proved to be without merits. As noted above, not only the lender company responded to the notices issued u/s 133 of the Act but also the director of the said company appeared in response to notice u/s 131 of the Act, even the inspector also met the director cum employee of the lender company at the given address. The assessee has duly proved not only the identity, creditworthiness of the lender company but also the genuineness of the transaction by way of demonstrating about the running account of the assessee with the said company and that the total loan liability of the assessee company during the year being decreased. In view of this, we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.

9. In the result, the appeal of the assessee stands allowed.

Kolkata, the 13th September, 2022.

Sd/-
[Girish Agrawal]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated:13.09.2022.

RS

Copy of the order forwarded to:

1. Assam Bengal Carriers
2. ACIT, Circle-40(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches