

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

**BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM**

आयकर अपील सं. / ITA No.1007/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

Poddar Finin Consultancy P.Ltd.,
S.No.24, Hissa No.5,
Village Ransai Khopoli Road,
Dist – Raigad,
Khalapur - 410 203

PAN : AAGCP3938D

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Wd-3, Panvel

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Sardar Singh Meena

सुनवाई की तारीख / Date of Hearing : 18.07.2022
घोषणा की तारीख / Date of Pronouncement : 23.09.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This assessee's appeal for A.Y. 2014-15 arises against the CIT(A)-2, Thane's order dated 23/03/2018 passed in case No. 10759/2016-17, involving proceeding u/s. 143 of the Income Tax Act, 1961; in short "the Act".

Case called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte

2. Coming to the assessee's sole substantive grievance that both the lower authorities erred in law and on facts in making section 68 unexplained cash credit addition of Rs.12.10 crores, we note that the CIT(A)'s detailed discussion affirming the assessment finding to this effect reads as under:-

"6. I have carefully considered the facts of the case, findings of the AO in the assessment order as well as remand report, submission of the appellant and material placed on record. From the facts of the case it is noticed that during the year the appellant had introduced unsecured loans of Rs 12,10,00,000/- from Aum Impex (Rs 5.00 Crores) and Pioneer Exim (Rs 7.10 Crores). The perusal of ledger accounts of these creditors reveals that the appellant had not paid any interest on these loans. In order to ascertain the genuineness of these loans, the appellant was required to establish three essential ingredients of provisions of Sec 68 of the I T Act, i.e. identity of creditors, creditworthiness of creditors and genuineness/nature of transactions, by furnishing credible documentary evidences. In compliance the appellant merely filed confirmation from these creditors and subsequently filed copies of Income Tax Returns and other details. On perusal of the Income Tax Returns the AO noticed that the incomes of these creditors were not commensurate to the amount of loans advanced. M/s Aum Impex and M/s Pioneer Exim had declared meager income of Rs.1,78,770/- and Rs. 8,56,790/-, against which they **had advanced interest free loans of Rs 5 Crores and Rs 7.10 Crores, respectively.** The AO further observed that there were huge credit entries through RTGS, etc., in the bank accounts of these loan creditors, immediately before issue of cheques in favour of the appellant and it could not establish, satisfactorily, the source of credit entries in the bank accounts of these creditors. The AO further observed that in the immediate preceding year, i.e. A Yr 2013-14, the appellant had raised unsecured loans of Rs 26,40,58,000/- from Aum Impex, Rajesh Poddar, Rajesh Advantage Pvt Ltd and Star Offshore, which were also added to

the income, as it could not satisfactorily explain the same, in the similar set of circumstances. The AO, therefore, treated the unsecured loans of Rs 12.10 Crores, as unexplained, as per provisions of Sec 68 of the Act and added to the income of the appellant.

6.1 During the course of appellate proceedings the Ld. AR filed detailed submission, along with additional evidences and claimed that he was not given sufficient opportunity of being heard, to explain the genuineness of loans and accordingly requested for admission thereof, as per Rule 46A of the I T Rules. Accordingly, vide this office letter dated 14.06.2017, copy of the submissions, along with evidences, were forwarded to the A.O., with a direction to go through the same and submit a comprehensive remand report, after necessary verification/ investigation.

6.2 During remand proceedings, the appellant was allowed several opportunities of being heard to establish the genuineness of loans, by filing credible documents and was also directed to produce the creditors for verification. The appellant however, could not furnish the prescribed details in the required manner and also failed to produce these creditors. In the remand report, the AO reported that in-spite of being specifically required and giving reasonable opportunities of being heard, the appellant neither submitted the current addresses and other contact details of these loan creditors nor produced them for verification in person. The AO further reported that the appellant has reiterated the submission/arguments that the transactions are routed through banking channels, therefore these are genuine transactions. The AO reported that in-spite of giving reasonable opportunity of being heard, the appellant has squarely failed to establish the three essential ingredients of Sec 68 of the Act, i.e. identity of creditors (by furnishing current mailing addresses), creditworthiness of the creditors (as these creditors are declaring meager

income and indulging in the business of providing entries) and genuineness / nature of transactions (as the appellant had failed to establish the source of credits in the bank accounts, just before issue of cheques in favour of the appellant). The AO, therefore, inferred that the appellant has squarely failed to establish the genuineness of these loans.

6.3 *On receipt of the remand report from the AO, a copy thereof was handed over to the appellants for comments. In the rejoinder the Ld. AR merely contended that the above loans have been routed through the banking channels and the documents such as ITRs, PAN, etc., have been filed before the AO and the AO should have enforced their attendance, for establishing the genuineness of transactions, if not satisfied.*

6.4 *After considering the above facts and to ascertain the genuineness of these unsecured loans, during appellate proceedings, the Ld. AR was required to furnish credible documents such as current confirmed copies of ledger accounts, for the relevant years i.e. year in which loans were borrowed and till the years in which the same were repaid, highlighting the details of loans received, interest allowed, tax deducted, tax deposited in the government account, interest income declared by these creditors, loan repaid, source and mode of repayment of loans, purpose of loans borrowed and their deployments, bank statements of creditors and appellant, highlighting the relevant entries regarding loans advanced, loans received, interest paid/credited, loans repaid/ received back, balance sheets, P&L, A/Cs, audit reports of the appellant and creditors for years till these entries have been squared up and was also asked to produce creditors for verification. In compliance, in spite of giving several opportunities of being heard, the Ld. AR could not furnish the above details, during appellate proceedings, in the required manner, for the reasons best known to him.*

6.5 It is pertinent to mention here that this is almost first year of the appellant's business and had not carried out any major business activities, therefore, not credited any sales/receipts in the P&L Account. The promoter of the company, Shri Rajesh Poddar, had merely introduced capital of Rs 12,000/- towards ROC filing fees. In spite of these facts the above creditors, which are mainly shell entities, claimed to have advanced unsecured loan of Rs 12.10 Crores, free of interest, without any guarantee/collateral security. As regard the turnover of the creditors is concerned, it appears that the same had been created by indulging in the circular transactions, as these alleged shell entities, so called loan creditors, had declared meager income. The appellant had squarely failed to establish the nature of loans and purpose of loans borrowed. It is a surprise to note that in spite of having no business / goodwill / reputation in the market, the appellant could manage to borrow the huge unsecured loan of Rs 12 Crores, through above shell entities, that too free of interest. It is further noticed that the appellant had squarely failed to furnish above required credible documents, to establish the three essential ingredients, as provided in the provisions of Sec 68 of the Act, to prove that the unsecured loans of Rs 12.10 Crores, were genuinely borrowed and repaid to the above shell entities.

6.6 In my considered view, so far as the legal foundation of the addition is concerned, it consists of appellant's inability to satisfy the AO about three essential ingredients, as has been provided in the provisions of Sec 68 of the Act, which provides that where any sum is found to be credited in the books of accounts maintained for any previous year and the appellant offers no explanation about nature and source thereof or the explanation offered by appellant is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income tax as income of that previous year. It is also settled legal position that the onus of the appellant, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters or demonstrating that the

transactions are done through banking channels or even by filing the copies of Income Tax returns. It is pertinent mention to here that what is genuine and what is not genuine, is a matter of perception, based on facts of each case vis-a-vis ground realities of the facts under consideration. The facts of the case cannot be considered in isolation, with the ground realities, to understand as to how the shell entities which are loan creditors, typically functions vis-a-vis genuine loan creditors. The shell entities are generally those entities which are indulging in providing various types of accommodation entries, without any significant/ actual trading / manufacturing / service activities, or with high volume transactions / turnovers with low margin of taxable income, to give it colour of normal business entities, used as vehicle for various financial manoeuvres. A shell entity by itself is not an illegal entity but it is their act of abetment of, and being part of, financial maneuvering to legitimise illicit money and evade taxes that take it action beyond what is legally permissible, and have every semblances of genuine business. The legal ownership, by a person in existence, by creating statutory documentations, as necessary for legitimate business and documentation trail as necessary for legitimate transaction would normally follow. The operation carried out by these shell entities are only to facilitate financial maneuvering for the benefits of its clients or with that predominant underline objective, to give colour of genuineness to these entities. In the case of appellant it is crystal clear that it had introduced unexplained money, through these shell entities, under the garb of unsecured loans, thereby failed to establish the three essential ingredients of Sec 68 and accordingly liable to be taxed, as per provisions of the Act. In this regard I would like to place my reliance on the rulings of various courts / ITAT in the following cases:

1. Suman Gupta Vs CIT (2013-LL-0122-69) (SC) where Hon'ble Supreme Court dismissed appeal of the assessee. Suman Gupta Vs ITO (ITA No.680/12 vide judgement dated 07.08.2012) (AII.HC) -

where Hon'ble Allahabad High Court held that where identical amounts were found to have been deposited in accounts of half a dozen lenders prior to lending, and assessee could only produce one lender for examination, 'addition is to be made as assessee failed to prove genuineness of loans

2. PCIT V/s Bikram Singh (ITA No.55/2017] (Delhi) - *where Hon'ble Delhi High Court held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establish the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy.*
3. Toby Consultants (P.) Ltd. Vs CIT (2010) 324 ITR 338 (Delhi) -*where Hon'ble Delhi High Court held that where assessee-company had shown in books unsecured loans of Rs. 2.58 crores and Rs. 2.45 crores from its two directors and it was explained that money belonged to its own entity and was routed through directors and Tribunal found that directors who advanced loan were admittedly not at all men of means for advancing such huge amount of loan amounting to about Rs. 5 crores and secondly that assessee even for taking such huge amount of loan did not want to pay any interest for which creditors also agreed, Tribunal had rightly, arrived at a finding of fact, on analysis of all relevant material on record, that genuineness of transaction had not been established and assessee had failed to independently prove same application money, amount so received was liable to be taxed under section 68.*

4. Sanraj Engineering Pvt. Ltd. Vs CIT (ITA 79/2016) (Delhi) - where Hon'ble Delhi High Court held that addition made u/s 68 on account of unsecured loans was justified, where initial onus of proving the creditworthiness of the lenders was not discharged by the assessee.
5. Narcsh Chandra Jain Vs CIT (ITA No.335 of 2009) (Allahabad)- Where Hon'ble Allahabad High Court held that tribunal *was* justified in holding that amount of loan received by assessee was unexplained income u/s 68 in as much as identity, genuineness, creditworthiness of the transaction is not proved.
6. CIT Vs Maithan International (56 taxmann.com 283 (Calcutta)/[2015] Taxman 381 (Calcutta)/[2015] 375 ITR 123 (Calcutta)/[2015] 277 CTR) - Assessing Officer could not accept genuineness of loan taken by assessee from various creditors merely on basis of their bank statements and letter of confirmations as he was required to examine creditworthiness of said creditors as well.
7. Amtrac Automobiles India Pvt Ltd Vs ACIT (ITA No.2920/Del/09) - Neither before AO nor before CIT(A), assessee could make share applicants available. Identity not established. Appeal dismissed.
8. CIT Vs Navodaya Castle Pvt Ltd ([2014] 367 ITR 306 (Del)) - It was accepted that the assessee was unable to produce the directors and the principal officers of the six shareholder companies and also that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer had observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

9. Advance Powerlnfra Tech Ltd Vs DCIT fl.T.A. No. 605/Kol/2015 - Merely furnishing PAN Numbers in routine way, does not explain the source or the creditworthiness of the party. The basis on which premium has been charged for the shares has not been explained. A perusal of the financial statements do not justify the quantum of share premium charged.
10. CIT Vs D.K. Garg ((2017) 84 laxmann.com 257 (Delhi)) - Where assessee, an accommodation entry provider, was unable to explain all sources of deposits and corresponding payments, he would not be entitled to benefit of peak credit.
11. Mangilal Jain Vs ITO (Mad) 315 ITR 105, CIT Vs Precision Finance P Ltd. (Cal) 208 ITR- Assessee failed to prove the genuineness of credit - Mere proof of identity of creditor or that transaction was by cheque, is not sufficient - Addition u/s 68 upheld
12. Blowell Auto (P) Ltd. Vs ACIT (P&H) 11 DTR 91 -Since creditworthiness and genuineness of transaction not established, addition u/s 68 justified
13. Prakashchandra Singhvi (HUF) Vs ITO (ITAT, Ahd) 134 ITD 283 - Mere filing of PAN cards, I. T. returns etc. did not by itself discharge assessee from preliminary burden to establish genuineness of gifts where donors were not found at the address given in the returns or PAN card - In such circumstances, it is the duty of the assessee to produce donors /creditors before the Assessing Officer as otherwise addition u/s 68 has to be made.
14. V.I.S.P (P) Ltd. V/s CIT (MP) 265 ITR 202 - Sec 68 does not confine

to cash entries in books - If the liability shown in the account is found to be bogus and there is no plausible and reasonable explanation of the assessee, the amount can certainly be added towards the income of the assessee

6.7 Considering the facts as discussed above, in my considered opinion, the appellant has squarely failed to establish the three essential ingredients, provided in Sec 68 of the Act, to establish the genuineness of loans, during assessment **as well as remand and appellate proceedings, therefore, the addition of unexplained unsecured loans of Rs 12,10,00,000/-, made by the AO, is quite justified hence does not require any interference. The above ground of appeal is, therefore dismissed.**"

3. We find merit in Revenue's vehement arguments in support of the impugned addition. It has come on record the assessee neither co-operated nor explained genuineness of the impugned cash credits even in remand proceedings. We thus quote PCIT V/s NRA Iron and steel (P) Ltd., (2019) 412 ITR 161 (SC), Sumati Dayal V/s CIT (1995) 214 ITR 801 (SC) and CIT V/s Durga Prasad More (1972) 82 ITR 540 (SC) that mere filing of documentary evidence does not absolve the assessee from discharging its onus of proving genuineness/ creditworthiness of the sums credited which has to be considered in the light of human probabilities by removing all blinkers, respectively. We thus conclude that the learned lower authorities have rightly made the impugned addition. The assessee fails in its sole substantive grievance.

4. This assessee's appeal is dismissed in above terms.

Order pronounced in the Open Court on this day of 23rd September, 2022.

Sd/-

(DR.DIPAK P.RIPOTE)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(S.S. GODARA)

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 23rd September, 2022.
Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Thane.
4. The Pr.CIT-2, Thane.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

S.No.	Details	Date	Initials
1	Draft dictated on	18.07.2022	
2	Draft placed before author	23.09.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		