

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच्", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एव
श्री गगन गोयल, लेखा सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.4336/मुं/2019(नि.व. 2011-12)
ITA NO.4336/MUM/2019 (A.Y.2011-12)

ITO-12 (3) (1),
Room No.147A, 1st Floor,
AayakarBhavan, M.K. Road,
Mumbai-400 020

..... अपीलार्थी/Appellant

बनाम Vs.

M/s. KTG Developers Pvt. Ltd.,
Link Komal Co-op GH Society,
Flat No.3, Plot No.81-A,
Linking Road, Santacruz (W)
Mumbai-400 054
PAN: AACCK-9929-R

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Tejinder Pal Singh
प्रतिवादी द्वारा/Respondent by : Shri Jitendra Singh
सुनवाई की तिथि/ Date of hearing : 15/07/2022
घोषणा की तिथि/ Date of pronouncement : 10/10/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-21, Mumbai [in short 'the CIT(A)'] dated 24/03/2019 for the Assessment Year 2011-12.

2. The Revenue in appeal has assailed the findings of CIT(A) on following four grounds:

(i) Admission of additional evidence without following the provisions of Rule 46A(1) of the Income Tax Rules, 1962 (in short 'the Rules')

(ii) Deleting addition of Rs.93.00 lacs u/s 68 of the Income Tax Act, 1961 (in short 'the Act') in respect of share application money.

(iii) Deleting addition of Rs.5,44,49,000/- u/s 68 of the Act in respect of loan creditors.

(iv) Directions to the Assessing Officer to ascertain genuineness of the loans taken by assessee from M/s. Partheshesh Developers.

3. Shri Tejinder Pal Singh representing the Department submitted that the assessee had taken loans and share application money. The assessee failed to prove genuineness and creditworthiness of the persons from whom loans/ share application money was received. Thus, the Assessing Officer made addition of unproved loans/ share application money u/s. 68 of the Act. The assessee assailed the addition in appeal before CIT(A). The assessee furnished fresh evidence during the first appellate proceedings. The CIT(A) accepted the additional evidences in violation of the provisions of Rule 46A. No reason whatsoever was given by the assessee for not furnishing documents before the Assessing Officer. The Id. Departmental Representative submitted that the CIT(A) sought remand report on the additional evidences filed by the assessee. The Assessing Officer furnished remand report dated 17/10/2017 raising preliminary objections on admission of additional evidences. The CIT(A) ignoring the same admitted the additional evidences and decided the appeal in

favour of the assessee. The Assessing Officer had given sufficient opportunity to the assessee during the assessment proceedings for filing evidences/documents in support of its claim. The assessee failed to provide documents in support of its contentions. The case of assessee does not fall in any of the exceptions provided in Rule 46A for furnishing additional evidences before the First Appellate Authority.

3.1 In respect of ground No.2 of appeal, the Id. Departmental Representative submitted that under scrutiny assessment proceedings the assessee failed to demonstrate genuineness and creditworthiness of share applicants. The Assessing Officer in the assessment order has pointed the deficiencies in documents filed by the assessee. In First Appellate proceedings the CIT(A) deleted the addition, disregarding the observations of the Assessing Officer.

3.2 In respect of ground No 3, the Id Departmental Representative submitted that the assessee failed to prove genuineness and creditworthiness of unsecured loan lenders. Even during remand proceedings the assessee failed to demonstrate the creditworthiness and genuineness of all the unsecured creditors. The Id Departmental Representative as a test case referred to the case of one of the unsecured creditors i.e. Nikhil Maddan. The Id. Departmental Representative pointed that in the case of aforesaid lender, the assessee was able to prove identity of the lender but failed to prove creditworthiness. Similarly, in respect of other lenders the assessee was unable to discharge its onus in proving either the creditworthiness of the lenders or their identity. The CIT(A) has made not dealt with the critical findings of the

Assessing Officer in remand report. The CIT(A) has only generic observations without dealing with the specific findings of Assessing Officer on each of the lending parties. Assessing Officer had categorically held that the lenders had only meagre income. Thus, the Id. Departmental Representative prayed for reversing the findings of CIT(A) and upholding the addition made by Assessing Officer.

3.3 In respect of ground No.4, the Id. Departmental Representative submits that the CIT(A) has erred in directing the Assessing Officer to verify genuineness of the loans taken by the assessee from M/s Partheshesh Developers. The Id Departmental Representative submits that the CIT(A) had co-terminus powers with that of the Assessing Officer, therefore, instead of restoring the issue back to Assessing Officer, the CIT(A) should have made verification at his own behest and decide the issue instead of setting aside the assessment order.

4. Per contra, Shri Jitendra Singh appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing the appeal of Revenue. The Id Counsel for the assessee submits that the assessee had furnished additional evidences before the CIT(A). The CIT(A) before admitting additional evidences had sought remand report from the Assessing Officer. The Assessing Officer in his remand report could not point out any deficiency, therefore, the additional evidences were admitted by the CIT(A) and thereafter decided the issues raised in appeal on merits. The additional evidences filed by the assessee were crucial for adjudication of the grounds raised in the appeal. No prejudice is caused to the Revenue as the additional

evidences filed by the assessee were put to the Assessing Officer for his comments.

4.1 In respect of ground No.2, the Id. Counsel for the assessee submits that addition has been made on account of share application money received by the assessee aggregating to Rs.93.00 lacs from the following five parties:

Sr. No.	Name of Party	Amount (Rs.)
1.	SurenderPanwar	40,00,000/-
2.	Shree Banke Bihari BuildwellPvt. Ltd.	50,00,000/-
3.	JyotiMadaan	1,00,000/-
4.	Nikhil Madaan	1,00,000/-
5.	ManseeMadaan	1,00,000/-
	Total:	93,00,000/-

The Id. Counsel for the assessee submits that out of above five applicants, the substantial amount aggregating to Rs.90,00,000/- was received from Surender Panwar and Shree Banke Bihari Buildwell Pvt. Ltd. were in the period relevant to Assessment Year 2010-11. No addition was made in the year of receipt of the share application money. Now, in the subsequent Assessment Year the Assessing Officer cannot make addition u/s 68 of the Act in respect of share application money received in the preceding Assessment Year. Even otherwise the assessee had furnished all the details proving genuineness and creditworthiness of the share applicants. The Id. Counsel for the assessee submitted that if share application money is held to be received from bogus shareholders, the Department could have reopened assessment of such shareholders and add share application money in the hands of shareholders instead of making addition of the same in the hands of assessee as

unexplained cash credit. In support of his contentions he placed reliance on the following decisions:

(i) CIT vs. Gagandeep Infrastructure Pvt. Ltd, 394 ITR 680(Bom.)

(ii) Ivan Singh vs ACIT, 422 ITR 128 (Bom.)

4.2 In respect of ground No. 3 of appeal, Id. Counsel for the assessee submits that all details in possession of the assessee in respect of unsecured loan lenders were furnished to the Assessing Officer during the assessment proceedings. The Assessing Officer without appreciating documents placed on record made addition u/s 68 of the Act in respect of unsecured loans received by the assessee. The assessee furnished additional evidences before the First Appellate Authority to further substantiate its contentions. During remand proceedings, notices were sent by the Assessing Officer u/s 133 of the Act to all the lenders. All the lenders replied to the notices, confirmations were filed by the lenders, the assessee had furnished relevant documents before the Assessing Officer in remand proceedings to prove genuineness and creditworthiness of the lenders. The Id Counsel for the assessee further submitted that loan amounts were repaid by the assessee either in the same Assessment Year or in the subsequent Assessment Years. The Id. Counsel for the assessee submits that once the loan amounts were repaid through banking channel no addition u/s 68 of the Act is warranted. In support of his submissions Id. Counsel for the assessee placed reliance on the decisions of SMC Bench in the case of Lokesh Devilal Jain vs. ITO in ITA No.4674/Mum/2019 for Assessment Year 2012-13 decided on 08/10/2021.

4.3 In respect of ground No. 4 of appeal, the Id. Counsel for the assessee submits that while giving effect to the order of CIT(A), the Assessing Officer has examined the issue and has deleted the addition, hence, issue raised in ground No.4 of the present appeal does not survive.

5. Both sides heard, orders of authorities below examined. In ground No.1 of appeal, the Revenue has assailed that the additional evidences filed by the assessee were admitted in violation of the provisions of Rule- 46A. We find that during assessment proceedings the assessee had failed to furnish complete documents to substantiate genuineness of the transaction of share application money/loan and creditworthiness of the share applicants and the lenders. It was during the First Appellate proceedings, the assessee had furnished additional documents. The CIT(A) granted opportunity to the Assessing Officer to examine the documents furnished by the assessee as additional evidences and make submissions. In remand proceedings the Assessing Officer issued notices u/s 133 of the Act to share applicants and unsecured creditors. The Assessing Officer was given fair opportunity to make his comments in respect of additional evidences filed by the assessee. The additional evidences filed by the assessee does not make out new case for the assessee. The supplementary evidences filed by the assessee before CIT(A) were only to substantiate the plea raised before Assessing Officer. We find no error in CIT(A) admitting additional evidences filed by the assessee in First Appellate proceedings. Hence, ground No 1 of the appeal is dismissed.

6. In ground No 2 of appeal, the Revenue has assailed deleting the addition u/s. 68 on account of share application money. The first contention of

the assessee is that the share application money was received by the assessee for the purpose of business. The second contention of the assessee is that share application money from SurenderPanwar (Rs 40,00,000/-) and Shree Banke Bihari Buildwell Pvt. Ltd. (Rs.50,00,000/) were received in preceding Assessment Year. This fact has not been disputed by the Revenue. It is also undisputed that no addition u/s 68 of the Act was made in Assessment Year 2010-11 when the aforesaid share application money was received. Once the addition has not been made in the year of receipt of share application money, the same cannot be disallowed in the subsequent Assessment Year. In so far as the other three shareholders, wherein the aggregate share application money received is Rs.3,00,000/ we find that during the assessment proceedings / remand proceedings the assessee had furnished documents viz. copy of Aadhar Card, copies of ITRs and balance sheet as on 31/03/2011. The Assessing Officer has not made any adverse comments on the documents furnished by the assessee. The Assessing Officer has only pointed that some of the documents were not filed which ought to have been filed. However, taking into consideration entirety of facts we are of the view that the documents furnished by the assessee and in balance sheets for the relevant period were sufficient to prove the creditworthiness of the share applicants. It has been further urged placing reliance on the decision rendered by Hon'ble Jurisdictional High Court in the case of CIT vs. Gagandeep Infrastructure (P) Ltd (supra) that if the Assessing Officer had any doubt on the creditworthiness of the shareholders, the share application money cannot be added to the income of the assessee as unexplained cash credit. The Revenue could have proceeded to reopen assessment of such shareholders and assess them to tax in accordance with law. In the light of facts of the case and aforesaid decision no

addition in respect of share application money can be made in the impugned assessment year. We find no error in the findings of CIT(A) in deleting addition of Rs.93,00,000/ on account of share application money. Hence, ground No.2 of appeal is dismissed.

7. In ground No.3 of appeal, the Revenue has assailed deleting of addition u/s 68 of the Act on account of unsecured loan creditors. The contention of the assessee is that the assessee has repaid majority of the loan amount either in the same Assessment Year or in the subsequent Assessment Years. The assessee during the remand proceedings had furnished various documents to substantiate genuineness of the loans and creditworthiness of the lenders. The documents furnished by the assessee include copy of Aadhar Card, the computation of income, confirmations, etc. We find that in the case of some of the lenders, the Assessing Officer has pointed that the bank statements, copies of ITR and computation of income for the relevant period were not furnished. The assessee has *inter-alia* placed on record a table giving name of the lenders, amount of loan, amount of loan repaid, etc. We are live to the fact that the provisions of section 68 of the Act get attracted where the assessee fails to prove identity and creditworthiness of the lender and genuineness of transaction, at the time of receipt of loan amount. In the instant case, the assessee has furnished various documents to discharge its liability fastened u/s 68 of the Act. Nevertheless, the assessee has repaid the loan amount through banking channel, hence, it cannot be said that the assessee was ultimate beneficiary of the loan received. Therefore, it can be inferred that the loan transaction was the business transactions between the assessee and the lenders. Our view is supported by the decision of Hon'ble Gujarat High Court in the case of CIT vs Ayachi Chandrashekhar Narsangji, 221 Taxman 146. There is no allegation by the Department that the loan amount

has flown back to the assessee in the form of cash. However, the fact of repayment of loan amounts have not been examined by the Assessing Officer. We deem it appropriate to restore this issue back to the file of Assessing Officer to examine as to whether the loan amounts have been repaid. The assessee is directed to furnish relevant documents before Assessing Officer in this regard. If the loan amounts have been repaid through banking channel no addition is warranted. The ground No.3 of appeal is allowed for statistical purposes.

8. In ground No.4 of appeal, the Revenue has assailed the directions of CIT(A) to the Assessing Officer to examine genuineness of loans taken by the assessee from M/s. Partheshesh Developers aggregating to Rs.1.60 crores. A perusal of the order giving effect dated 13/09/2019 passed by the Assessing Officer would show that the Assessing Officer had deleted the addition. Once the addition has been deleted by the Assessing Officer after examining the issue in accordance with the directions of CIT(A), the ground No.4 raised in the appeal has become infructuous, hence, dismissed as such.

9. The ground No.5 and 6 of appeal are general in nature, hence, require no adjudication.

10. In the result, appeal by the Revenue is partly allowed for statistical purpose.

Order pronounced in the open court on Monday the 10th day of October, 2022.

Sd/-
(GAGAN GOYAL)

Sd/-
(VIKAS AWASTHY)

लेखा सदस्य/ACCOUNTANT MEMBER

न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 10/10/2022

VM Sr.PS

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)
ITAT, Mumbai