

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

SHIR B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1532/MUM/2022
(Assessment Year: 2010-11)

Chivas Trading Pvt. Ltd.,
(Merged entity of Lopez Finvest Ltd.),
302, Elphinston House, 17, Murzban
Road,
Near Sterling Cinema, CST,
Mumbai - 400001
[PAN: AADCC2606E]

..... Appellant
Vs

Dy. Commissioner of Income Tax,
Central Circle – 1(2), Mumbai
Room No. 906, Old CGO Building,
Annexure, Pratihtha Bhavan,
M.K. Road, Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : Shri Vijay Mehta
For the Respondent/Department : Shri Sandeep Raj

Date of conclusion of hearing : 05.09.2022
Date of pronouncement of order : 30.11.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 04.05.2022, passed by the Ld. Commissioner of Income Tax (Appeals)- 47, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2010-11, whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 22.12.2017, passed under Section 143(3) read with Section 153C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeals:
- “1. The Learned CIT(A) has erred in law and on facts in not holding that the initiation of the proceedings under Section 153C as well as the Assessment Order passed under Section 143(3) r.w.s. 153C of the Act by the Ld. AO is without jurisdiction and without proper authority and approval, and deserves to be quashed.*
 - 2. The Learned CIT(A) has erred in law and on facts in not holding that the additions in the Assessment Order under Section 143(3) r.w.s. 153C of the Act cannot be sustained in absence of any incriminating material found in the search pertaining to the appellant for the year under consideration.*
 - 3. The Learned CIT(A) has erred in law and on facts in confirming addition of Rs. 1,35,78,391/- on account of loan given to M/s Ess Gee Developers Pvt. Ltd. on substantive basis in the hands of the appellant company.*
 - 4. The appellant craves leave to add/withdraw or amend any ground of appeal at the time of hearing or before hearing.”*
3. The relevant facts in brief are that Assessment was framed on the Appellant vide Assessment Order, dated 22.12.2017, passed under Section 153C read with Section 143(3) of the Act. Addition of INR 1,35,78,391/- was made in the hands of the Appellant on protective basis in respect of unsecured loan given by the Appellant to Ess Gee Real Estate Developers Private Limited which were held by the Assessing Officer to be not genuine. Substantive additions were made in the hands of Ess Gee Developers Private Limited (now amalgamated with Ess Gee Real Estate Developers Private Limited) who decided to approach Settlement Commission.
4. The Appeal preferred by the Appellant against the Assessment

Order, dated 22.12.2017 was dismissed by the CIT(A) vide order dated 04.05.2022. Being aggrieved the Appellant is in appeal before us.

5. Learned Authorised Representative for the Appellant submitted that the ESS GEE Developers Private Limited had approached Settlement Commission. The Settlement Commission has deleted the substantive additions in the hands of ESS GEE Developers Private Limited observing the loan taken from the Appellant, i.e., Lopez Finvest Ltd.(now amalgamated with Chivas Trading Private Limited) have been satisfactorily explained and are, therefore, genuine. Thus, the protective addition made in the hands of the Appellant should also be deleted. He further submitted that the Appellant had, in any case, granted the loan and not taken unsecured loan and therefore, additions could not have been made in the hands of the Appellant.
6. Learned Departmental Representative relied upon the order passed by the Assessing Officer and the CIT(A). He submitted that the additions were made on the basis of the statements recorded by the facilitator of the accommodation entries and as observed by the CIT(A), the Appellant had failed to explain and prove the source through which the credit was received by the Appellant which in turn was used to give loan to Ess Gee Developers Private Limited.
7. We have considered the rival submission and perused the material on record. On perusal of the Assessment Order it comes out that the protective addition was made in the hands of the Appellant for the reason that substantive assessment

addition were made in the hands of Ess Gee Developers Private Limited as a result of search & seizure action, and survey proceedings in the case of Ess Gee Group, and no other reason was attributed by the Assessing Officer to making the protective addition. The unsecured loan/outstanding amount of INR 1,35,78,391/- standing in the books of account of the Appellant was treated as accommodation entry of unsecured loan given by the Appellant to Ess Gee Developers Private Limited. This loan transaction has, since, been accepted as genuine by the Settlement Commission in the settlement proceedings initiated by Ess Gee Developers Private Limited, and the substantive additions have been deleted. Since the very basis on which protective additions was made in the hands of the Appellant does not survive on account of transaction being held genuine, the order of CIT(A) is set aside and the protective addition of INR 1,35,78,391/- is deleted. Ground No. 3 raised by the Appellant is allowed while Ground No. 1 and 2 are disposed off as being infructuous.

In the result, the present appeal is allowed.

Order pronounced on 30.11.2022.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.11.2022
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai