

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA Nos.253 &1012/Mum/2021
(Assessment Years : 2013-14 & 2014-15)**

Deputy Commissioner of Income-tax, CC-7(4) Mumbai. Room No.658 Aayakar Bhavan, M.K. Road Mumbai-400 020 (Appellant)	vs	Shri Rajesh Gaurishankar Poddar 52, Gautam Apartments, 31, Juhu Road, Santacruz (West), Mumbai 400 054 PAN : AAFPP3092C (Respondent)
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Revenue by : Shri Sandeep Raj (CIT DR)
Assessee by : Shri Rushabh Mehta

Date of hearing : 05/01/2023
Date of Pronouncement : 12/01/2023

O R D E R

PER : OM PRAKASH KANT (AM)

The present appeal bearing ITA No. 253/M/2022 is filed by the Revenue against the order dated 23/11/2021 passed by the Id. Commissioner of Income Tax (Appeals) – 49, Mumbai [in short, the Ld. CIT(A)] for A.Y. 2013-14.

2. The Revenue is also in appeal on similar issue for A.Y. 2014-15 also bearing ITA No. 1012/M/2021. However, since the issue is same, A.Y. 2013-14 is taken as the lead case for adjudication.

3. The revenue raised the following grounds of appeal:

“1. *“On the fact and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 56,99,39,390/- made by the AO on account of unsecured Loan U/s. 68 of the IT. Act, 1961 without appreciating the fact that the assessee failed to explain the credit worthiness of creditor Shri Rajesh Poddar (HUF).”*

2. *“On the fact and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 56,99,39,390/- made by the AO on account of unsecured Loan U/s. 68 of the I.T. Act, 1961 without appreciating the fact that the assessee failed to prove the genuineness of transactions.”*

3. *“On the fact and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 56,99,39,390/- made by the AO on account of unsecured Loan U/s 68 of the I.T. Act, 1961 without appreciating the fact that assessee himself had admitted, during search proceeding, that the assessee's group has obtained accommodation entries in lieu of commission.”*

4. Briefly the facts of the case are that the assessee is an individual and chairman & managing director (CMD) of a company namely M/s. Lohal spaat Ltd. During the year under consideration, the assessee has shown to have taken unsecured loan of Rs. 56,99,39,930/- from its own HUF namely Rajesh Poddar (HUF). During the course of assessment proceedings, the assessee was asked to establish genuineness of this transaction and creditworthiness of Rajesh Poddar (HUF). However, the Assessing Officer was not satisfied with the submissions made by the assessee in this regard considering the statement of the assessee recorded in the course of search carried out u/s. 132(1) of the Income Tax Act [for short, “the Act”] on 22.02.2012 wherein he admitted that there were various entities which were providing accommodation entries to M/s. Loha Ispaat Ltd Group in lieu of some commission paid to them. The entities specified in the statement of the assessee matched with the one from whom loan was shown to have been

taken by Rajesh Poddar (HUF). Further, in the assessee's own case from A.Ys. 2006-07 to 2012-13, addition u/s. 68 of the Act was made for this reason. Accordingly, applying the same rationale, the Assessing Officer made addition of Rs. 56,99,39,930/- in respect of unsecured loans received from Rajesh Poddar (HUF).

5. Aggrieved by the said addition, the assessee preferred appeal before the Id. CIT(A) who allowed the appeal in favour of the assessee by deleting the said addition. Aggrieved by the order of the Id. CIT(A), the revenue has preferred this appeal.

6. The grounds No. 1 to 3 of the appeal filed by the Revenue relates to the deletion of the addition of Rs. 56,99,39,390/- u/s. 68 of the Act.

7. Briefly, the facts of the case qua the issue involved is that during the year under consideration, the assessee had taken unsecured loan of Rs. 56,99,39,930/- from Rajesh Poddar (HUF). During the course of assessment proceedings, the assessee was asked to establish with corroborative evidences the identity, genuineness and creditworthiness of the said loan. In reply, the assessee furnished copy of loan confirmation, acknowledgement of return filed by his HUF and balance sheet. The Assessing Officer observed from the balance sheet that Rajesh Poddar HUF has taken loan from various parties which are actually accommodation entry providers to M/s. Loha Ispaat Ltd Group as admitted by the CMD of

M/s. Loha Ispaat Ltd who is the assessee himself. Further, even since the addition u/s. 68 of the Act was made in earlier years from A.Ys. 2006-07 to 2012-13 in the assessee's own case under same set of facts and circumstance, addition was made u/s. 68 of the Act in the year under consideration, as well.

8. However, the ld. CIT(A), after considering the additional evidences, remand report called from the Assessing Officer and the submissions made by the assessee and the order of Hon'ble ITAT in assessee's own case for earlier years from A.Y. 2006-07 to 2012-13, did not find favour with the view taken by the Assessing Officer and accordingly deleted the addition.

9. The ld. Departmental Representative appearing for the Revenue challenged the decision of the ld. CIT(A) and submitted that the addition of Rs. 56,99,39,930/- made u/s. 68 of the Act be sustained. He argued that the assessee has failed to explain the genuineness of the transaction and the creditworthiness of the lender.

10. In rebuttal, the ld. Counsel of the assessee argued that ample documents have been placed on record to demonstrate that the funds received by the assessee from his own HUF were indeed the funds of his own company M/s. Loha Ispaat Ltd. In other words, the origin of the funds was from M/s. M/s. Loha Ispaat Ltd itself which is also assessed u/s. 143(3) of the Act. The ld. Counsel of the

assessee drew our attention to the Paper Book to show the complete trail of flow of funds originating from M/s. M/s. Loha Ispaat Ltd which has been rotated back to the said company or to its group companies and the assessee was one of the intermediate party into the said flow of funds amongst other parties. The ld. Counsel therefore submitted that the funds received by the assessee are duly substantiated with the confirmation, return acknowledgment, bank statement and balance sheet of Rajesh Poddar HUF and that its origin lies in M/s. M/s. Loha Ispaat Ltd which is already assessed u/s. 143(3) of the Act. Hence, the identity of the lender, genuineness of the transaction and creditworthiness of the lender stands duly explained and therefore, addition u/s. 68 of the Act has been rightly deleted by the ld. CIT(A). The ld. Counsel of the assessee also invited our attention to paras 22 to 32 of the decision of the Hon'ble ITAT in his own case for A.Ys. 2006-07 to 2012-13 wherein the addition has been deleted for the reason that the origin of funds lies in M/s. M/s. Loha Ispaat Ltd in whose hands, the addition is already made and that there is no incriminating material found in the course of search.

11. We have heard the arguments of the rival parties and perused the materials on record. The case of the assessee is that the funds received from Rajesh Poddar HUF is originated from M/s. M/s. Loha Ispaat Ltd who is even assessed u/s. 143(3) of the Act. It is noted that the assessee has placed on record the loan confirmation,

acknowledgement of return of HUF, bank statement and balance sheet of HUF. Further, complete trail of movement of funds originating from M/s. M/s. Loha Ispaat Ltd to assessee has been explained in detail in respect of which remand report was also called for by the Id. CIT(A) and nothing adverse have been commented by the Assessing Officer in this regard. The Id. CIT(A) has deleted the addition u/s. 68 of the Act for the reasons as under:-

"7.3.4 I have perused the order of the Hon'ble ITAT in the case of the assessee for assessment years 2006-07 to 2012-13 as above. It is found that the Hon'ble ITAT has observed that it is manifestly clear that the AO himself has stated that the additions of loans in the hands of various individuals and the concerns have been made on the basis of acceptance of the assessee in the statement recorded during the course of search operation that these are amount routed from M/s Loha Ispaat Ltd. to other concerns and individuals of the group and the said amounts had come back to M/s Loha Ispaat Ltd. only. The Hon'ble ITAT has further observed that the Assessing Officer is accepting the assessee's statement that these parties did not have source of their own, but at the same time, the Assessing Officer is rejecting the other part of the statement that these amounts are sourced from Loha Ispaat Ltd. and routed through other concerns to the assessee, which had finally gone back to Loha Ispaat Ltd. only. Hon'ble ITAT, referring to a decision of Hon'ble Supreme Court in the case of Suzuki Parasrampuriah Suitings v/s. Official Liquidator in Civil Appeal No.10322 of 2018 dated 08.10.2018, wherein the Hon'ble Supreme Court has held that a party cannot be permitted to take slaves, has held that the statement also observed that the Assessing Officer was also aware of the real import of their original in assessee's statement wherein it was their origin in Loha Ispaat Ltd. The Hon'ble ITAT after making a detailed discussion on facts has set aside the order of Ld.CIT(A) and decided the issue in favour of the assessee.

7.3.5 It is evident that during the year under reference as well, the AO has made addition on the basis of findings and evidences of the search as discussed in the assessment orders of the earlier assessment years which had been considered by the Hon'ble ITAT. Ld.AO had placed reliance on the order of the Id.CIT(A) for those assessment years which were reversed by the Hon'ble ITAT. In the detailed submissions filed before me, the assessee also claimed that the transactions during the year under reference were similar in nature, as this year also the money has

originated from M/s Loha Ispaat Ltd. and has been received back in the said concern by routing it through different concerns and individuals including the assessee. In this regard, the Id. AR of the appellant has also submitted complete trail along with relevant documents in the form of bank statement of various entities and have demonstrated the trail of movement of funds originating from M/s. Loha Ispaat Ltd. and ultimately getting parked either in M/s. Loha Ispaat Ltd. or any of its group concerns. The assessee further submitted that the Id. AO has also acknowledged this fact that the transactions are similar in its import as earlier years. Even in the remand report, the Id. AO has not doubted the trail or movement of funds originating from M/s. Loha Ispaat Ltd. It was further contended that following the decision of Hon'ble ITAT as above, addition made in year under reference as well. Thus, once M/s. Loha Ispaat Ltd. is assessed to tax and an addition of a higher amount has already been made in the hands of the said concern and the complete trail has been demonstrated and established about the movement of funds within the group, the Id. AO has not been able to establish as to how the money received by the appellant stands unexplained in the hands of the assessee, more so when it is not even the case of the Id. AO that the materials facts in the year under reference are different from earlier years, rather he himself has relied upon the findings of the earlier years only.

7.3.11. *Hence, in my considered view, having examined the facts for the year under consideration in the light of the order and observations of the Hon'ble ITAT for earlier assessment years, it could reasonably be inferred that it may be a case of circulation of funds with certain motives, but its not a case of unexplained funds in the hands of the assessee and, therefore, any impact of these transactions would be in the hands of Loha Ispaat Ltd., wherein additions of higher amount has already been made.*

7.3.12. *Hence, in my considered view, the money received by the assessee from its HUF which is also the part of the same chain of circular transactions cannot be treated as unexplained in the hands of the assessee so as to treat the same as income of the assessee within the meaning of section 68 of the Act. Needless to say that the identity of the lender is known, the creditworthiness of the lenders is also established as the money having been received from other group concerns through banking channels and also that the ultimate source of these funds is M/s. Loha Ispaat Ltd which has also been assessed by the same AO u/s 143(3) for the same year making additions of income which is even higher than the fund routed through the assessee under consideration. As to the genuineness of the transaction, I am of the considered view that in light of the findings of the Hon'ble Tribunal as held in earlier years, and in light of the trail of the circular transactions involving multiple entities and individuals, if any addition is required to be made on this account, the same has to be made in the hands of M/S Loha Ispaat Ltd., which has already been made by the Id. AO in the case of Loha Ispaat Ltd. Hence, in the given facts of the case, there does not exist any*

valid ground to uphold the addition made by the Id. AO in the hands of the assessee, who apparently is only a part of the circular chain and whose immediate source is explained. Even the Hon'ble ITAT in its decision for A.Y. 2006-07 to 2012-13 has deleted such additions based on which the Id. AO had also made similar addition in this year. Hence, respectfully following the decision of the Hon'ble ITAT and being alive to the fact that there is no evidence of involvement of any undisclosed income generated in the hands of the assessee under consideration, I direct the Id. AO to delete the addition of Rs. 56,99,39,930/- made u/s. 68 of the Act.”

12. In view of the detailed reasoning given by the Id. CIT(A), we do not find any reason to interfere in his order. Accordingly, the addition of Rs. 56,99,39,930/- made u/s. 68 of the Act is rightly deleted by the Id. CIT(A) and hence, the ground Nos.1 to 3 of the appeal of the Revenue are dismissed.

13. As the issue involved in A.Y. 2014-15 bearing ITA No. 1012/M/21 in the appeal filed by the Revenue is same with only variance in the figure of unsecured loan received from Rajesh Poddar HUF amounting to Rs. 13,71,07,000/-, the decision rendered for A.Y. 2013-14 as above shall mutatis mutandis apply to A.Y. 2014-15 as well.

14. In the result, both the appeals of the revenue are dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules, 1963 on 12/01/2023.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai; Dated: 12/01/2023
Dragon Legal / Pavanan, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai