

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 6636/Mum/2018 (A.Y. 2007-08)

DCIT-11(1)(2) Room No. 1, Ground Floor, Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Satisfaction Properties Pvt. Ltd. 13, Shankeshwar Darshan A.G. Pawar Cross Lane Byculla East Mumbai-400 027. PAN : AAKCS5804P
(Appellant)		(Respondent)

Assessee by	Shri Neel Khandelwal
Department by	Shri A.K. Das
Date of Hearing	16.11.2022
Date of Pronouncement	25.01.2023

O R D E R

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 27.7.2018 passed by the learned CIT(A)-14, Mumbai and it relates to A.Y. 2007-08. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the addition of Rs. 2.20 crore made by the Assessing Officer under section 68 of the I.T. Act.

2. Facts relating to the issue are stated in brief. The assessee is engaged in property leasing business. The original assessment in the hands of the assessee was completed under section 143(3) of the Act determining loss of Rs. 5.22 lakhs. Subsequently, the Assessing Officer reopened the assessment under section 148 of the Act on the basis of information received by him from CBI/Investigation Wing that the assessee has taken loan from a company named M/s. Basant Marketing Pvt. Limited, which has been identified as

accommodation entry provider. The Assessing Officer collected bank account details of M/s. Basant Marketing Pvt. Limited and noticed that only cheque transactions relating to receipts and payments were found and no expenses or business receipt was seen in the bank account. The Assessing Officer asked the assessee to produce M/s. Basant Marketing Pvt. Limited but the assessee failed to produce the above said party before the Assessing Officer. Accordingly, the Assessing Officer relying upon the information given by the Investigation Wing concluded that the assessee has availed only accommodation entry from M/s. Basant Marketing Pvt. Limited. Accordingly, he assessed the same as income of the assessee under section 68 of the Act.

3. The learned CIT(A) deleted the addition and hence the Revenue has filed this appeal.

4. We have heard the parties and perused the record. We noticed that the learned CIT(A) has deleted the addition with the following observations :-

“4.....

So far as grounds of appeal no. 2,3 & 4 are concerned, it is seen from the appellate order of CIT(A) in the case of M/s. Basant Marketing Pvt Ltd for A.Y. 2010-11 vide Appeal no. 22/CIT(A)-20/CC-2(2)/2009-10 Dt. 30.01.2015, which was passed after the action of the CBI in the case of the appellant, that the Ld. CIT(A) has held as under in this case:-

"I have considered the rival submissions and perused the material placed on record. I have already discussed at length the various aspects of the factual and legal position in the present appeal. In view of such discussions, I am of the opinion that there is no material on record to back the finding of the AO that the assessee company was involved in providing accommodation entry. I am unable to accept the finding of the AO that the documents which were maintained by the assessee company in the normal course of its business and which were being presented regularly to the ROC as well as to the income tax department were all fabricated. I am also unable to uphold the order of the AO that no income was earned or no expenditure was incurred by the assessee company or that its total income had to be treated as nil. In view of the above, I am of the considered opinion that there is no material on record to back the contention of the AO that the assessee company was fake

and that it did not actually exist. The judicial decisions relied upon by the Ld. ARs in course of the appellate proceedings also support the case of the assessee. The AO is therefore directed to assess the total income as declared by the assessee in its return of income by not treating the assessee company as fake or bogus".

Thus, the Ld. CIT(A) has held that M/s. Basant Marketing Pvt Ltd was a genuine company.

It is also seen that a similar issue of loan of Rs. 100 lakhs from M/s. Basant Marketing Pvt. Ltd during AY. 2006 of was under consideration of Hon'ble ITAT Mumbai, in the case of M/s Mahan Industries Ltd in 1TA No. 146/Mum/2016. In its order dated 28 02 2018, relying on the decision of CMA) in the case M/S Basant Marketing Pvt Ltd reproduced above, the Het de Tribunal has held as under :-

"9. In the instant case, we notice that the assessing officer has made the impugned addition on the basis of search conducted by CBI in the hands of Arun Dalmia, wherein it was stated that the transactions of M/s Basant Marketing P Ltd are not genuine. However, it is noticed that, after the search action, the assessments of M/s Basant Marketing P Ltd have been completed for AY 2009-10 accepting the transactions as genuine. Though the AO of M/s Basant Marketing P Ltd has taken a different view and held the transactions to be bogus in AY 2010-11, yet the said view of the AO has been set aside by Ld CIT(A), Kolkatta in the appellate proceedings by observing that the view so taken by the AO is not supported by evidences. It is pertinent to note that the order so passed by La CIT(A) has been accepted by the revenue and thus has attained finality. Hence the very basis, on w the impugned addition has been made, has failed.

10. The AO has also observed that the assessee has failed to discharge the onus placed upon it us of the Act. From the arguments of the Ld A.R. we notice that the assessee has discharged the onus proving the identity of the creditor, genuineness of transactions and credit worthiness of the creditor. The financial statements of M/s Basant Marketing P Ltd show that it was having sufficient sources to lend money to the assessee. The financial statements also show that M/s Basant Marketing P Ltd was carrying on certain trading activities and it has invested funds in Investments, inventories and in giving loans and advances. On the contrary, we notice that the AO did not disprove the contentions and submissions of the assessee, i.e, the AO has failed to discharge the burden of proof shifted to his shoulder. When the assessee is proving the transactions and further when the transactions have been accepted as genuine in the hands of lender, in our view, the theory of human probabilities could not be applied here.

11. The Ld D.R placed his reliance on the decision rendered by Hon'ble Delhi High Court in the of Bikram Singh (supra). However, in the above said case, the credit worthiness of the creditors not established by the assessee, which makes this case distinguishable.

12. In view of the foregoing, we are of the view that the Ld CIT(A) was not justified in confirming the addition of Rs.100 lakhs made u/s 68 of the Act. Accordingly We set aside the order of the Ld CIT(A) passed on this issue and direct the AO to delete the same"

In the present case, the loan from M/s. Basant Marketing Pvt Ltd. was accepted as genuine by the AO in the original assessment proceedings. The AO has also verified himself that the money has come to the account of the appellant from the bank account of M/s. Basant Marketing Pvt Ltd. and there is no cash deposit in that bank account. The observation of the AO that there is no business receipts credited and expenses debited in that bank account is not relevant because the bank account may not be the only bank account of the party. The genuineness and creditworthiness of the party has been accepted by ITAT and the CIT(A) in the decisions quoted above for A.Y. 2006-07 2009-10 & 2010-11. Creditworthiness of the party for AY. 2008-09 has also been accepted by ITAT in its order dt.17.10.2017 in ITA No. 7459/ Mum/2016 in the case of ITO vs Shri Harsh Dalmia. The party is regularly assessed to tax at Kolkata. Therefore failure of the appellant to produce the party before the AO cannot be held to be the reason enough for making the addition u/s. 68 of the IT. Act. Considering the fact that the decision of jurisdiction Tribunal quoted above, is applicable to the facts of the case under consideration also, therefore, respectfully following the same, it is held that there is no material on record to treat the loan of Rs. 2,20,00,000/- taken by the appellant from M/s. Basant Marketing Pvt Ltd. as not genuine. Accordingly, addition of Rs. 2,20,00,000/- made by the AO u/s. 68 of the IT. Act in respect of loan from M/s. Basant Marketing Pvt Ltd. is directed to be deleted and grounds of appeal no. 2,3 & 4 are treated as allowed."

5. We notice that the Ld CIT(A) has passed the order giving proper reasons in support of his conclusion. We notice that the AO has made the addition merely on the basis of information given by CBI/Investigation wing about Basant Marketing P Ltd. However, it was noticed that the Ld CIT(A), in the case of very same Basant Marketing P Ltd, has held that it is a genuine company, which is a factual finding given by Ld CIT(A). Hence the very foundation, on which the AO had made the impugned addition, has failed in this case. Further, the co-ordinate bench has also taken note of this fact in the case of M/s Mahan Industries Ltd (supra) and has deleted identical

addition made in that case. We notice that the Ld CIT(A) has followed the said decision rendered by the co-ordinate bench. Under these set of facts, we are of the view that the decision rendered by Ld CIT(A) on this issue does not call for any interference. Accordingly, we uphold the same.

6. In the result, the appeal filed by the revenue is dismissed.

Pronounced in the open court on 25.1.2023.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

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

Mumbai; Dated : 25/01/2023

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,

(Assistant Registrar)
ITAT, Mumbai

PS