

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

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI PRASHANT MAHARISHI, AM**

आयकरअपीलसं./ I.T.A. No.3097 & 3098/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2016-17 & 2017-18)

M/s. West and Investment & Finance Consultancy P.Ltd 38,2 nd Floor, Bombay Mutual Building, Dr. D.N.Road, Fort Mumbai-400001	बनाम/ Vs.	DCIT, Circle-4(2)(1), Mumbai CIT(A)-47, Mumbai.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACW0973H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Deepak Tralshawala
प्रत्यर्थीकीओरसे/ Respondent by	:	Deepika Arora-Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	30.03.2023
घोषणाकीतारीख / Date of Pronouncement	:	31.03.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeals has been filed by the assesses against separate impugned order dated 22.09.2022 for the AY 2016-17 passed u/s. 143(3) r.w.s 147 and order dated:14.09.2022, passed

by Ld. CIT (Appeals)-47 Mumbai, for the quantum of assessment passed u/s 143(3).

2. On merits, the common issue involved on the both the appeal relates to addition of Rs. 2,50,00,469/- on account of unsecured loan added u/s. 68 in AY 2016-17; and Rs. 100,00,209/- on account of loan added u/s 68 for the AY 2017-18. Will first take up the appeal for AY 2016-17 and our finding given there in on merits will apply mutatis mutandis in the appeal for the AY 2017-18.

3. In AY 2016-17 Assesses also raised validity of re-opening u/s 147 r.w.s 148. The facts in brief are that, the Assessee Company is non banking financial company (NBFC) involved in lending and borrowing of funds, besides business of management consultancy. The Assessee file its return of income u/s 139(1) on 06.10.2016 declaring total income of Rs. 38,93,53,540/-. The said return was duly proceeds u/s 143(1) and same was accepted. There after assesses case was re-opened on the basis of following reasons recorded.

"Information was received from the office of the O/o the DDIT(Inv), Kolkata, vide letter dated 11.12.2018 that:

A search and seizure action in the case of Shri Mukesh Banka group was carried out on 21.05.2018. Based on the findings gathered and subsequently brought on records, it is found that Shri. Mukesh Banka is one of the leading entry providers operating in Kolkata, indulging in providing accommodation entries in the nature of bogus unsecured loans, or in other forms etc. Evidences collected and the statements of various persons recorded including that of Shri. Mukesh Banka during search established the modus operandi and led to detection of accommodation entries.

Further the DDIT(inv) has informed that M/s. BLOSSOM TREXIM PVT LTD is one of the entities being operated by Shri Mukesh Banka Group. The amount received by the assessee is shown below as unsecured loans. This amount received as bogus unsecured loans amounting to Rs 2,50,00,469/- have to be brought to tax, which have escaped assessment for AY 2016-17.

Name of the Entry Provider	Transaction Date	F.Y	Transaction Amount
M/s. Blossom Trexim P. Ltd.	03.12.2015	2015-16	40,00,058/-
	03.12.2015	2015-16	40,00,058/-
	03.12.2015	2015-16	35,00,058/-
	03.12.2015	2015-16	35,00,058/-
	21.03.2016	2015-16	27,00,063/-
	21.03.2016	2015-16	26,00,058/-
	21.03.2016	2015-16	24,00,058/-
	21.03.2016	2015-16	23,00,058/-
		Total	

3. *In view of the above facts (para 1 to 2), after due application of mind & after analyzing all the relevant information in the case of the assessee in totality, I have reason to believe that income of Rs.2.50,00,469/-has escaped assessment for AY 2016-17 and the same is therefore required to be reopened for scrutiny assessment. The Additional Commissioner has given approval to reopen the case vide letter dated 13.01.2020.*

4. The Assessing Officer sought information u/s 133(6) from M/s. Blossom Trexim Pvt. Ltd., from whom Assessee has taken unsecured loan of Rs. 2.50 Crores. However, no response was received from the said party in response to notice issued on 26.02.2021 as per the AO. However, in his order he is also mentioned the said party had responded with ledger accounts of the assessee in its books on 19.03.2021. The Assessing Officer has made following observations for making the addition:

3. The assessee is registered as a NBFC (Non Banking Financial Company) and its main activity comprises of lending & borrowing besides the business of management consultancy to registered NBFCs. During the year, the assessee has shown income from business & Profession (Sales of services) and income from other sources. The assessee mentions in its ITR that it has received secured loan of NIL amount and unsecured loan of

Rs.1,19,92,51,612/- during the year under consideration. Out of the said unsecured loan Rs.2,50,00,469/- has been received during the year from M/s. Blossom Trexim Pvt. Ltd. As per the reasons of the reopening of the case that Mukesh Banka group has been carrying out the activities of providing accommodation entries to other parties through various entities, one of them being M/s. Blossom Trexim Pvt. Ltd. Information was sought from M/s. Blossom Trexim Pvt. Ltd. by serving upon notice u/s. 133(6) of the Act. No response has still been received in this regard.

4. A letter to the assessee was upon on 25.02.2021 requesting it to furnish the confirmation copy of the parties from whom unsecured loan (with amount) was taken. The assessee was also requested to submit the bank statement highlighting the transaction details of such unsecured loan. However, the assessee did not respond to the letter served upon it. No explanation regarding the unsecured loan received from M/s. Blossom Trexim Pvt. Ltd. (an accommodation entry providing entity) has been furnished either by the assessee or the accommodation entry provider entity. Since the creditworthiness of the lender and genuineness of the transaction could not be proved, the unsecured loan of Rs.2,50,00,469/- shown in the books of the assessee is treated as unexplained cash credits u/s. 68 r.w.s. 115BE of the IT Act. In pursuance of the case assessee was again given an opportunity to prove the capacity, genuineness and identity of the loan provider i.e. M/s. Blossom Trexim Pvt. Ltd through a letter dated 25.02.2021. Assessee failed to communicate or respond his submission till the due date

provided. Along with the letter a notice u/s 133(6) was issued to Ms. Blossom Trexim Pvt. Ltd on 26.02.2021 to prove its Identity, genuineness and creditworthiness by 01.03.2021. The notice was not responded on or before the due date i.e. 01.03.2021, but responded with the ledger copy and Bank Statement on 19.03.2021. However, the response fails to prove the creditworthiness of the loan provider. Again M/s. Blossom Trexim Pvt. Ltd was issued notice u/s 133(6) on 22.03.2021 asking to furnish the ITR copy to prove its creditworthiness to pay such huge loan amounting to Rs 2,50,00,469/-. The notice was responded by submission in form of Acknowledgement of ITR for AY 2016-17, wherein the income of the party providing the loan (i.e. M/s. Blossom Trexim Pvt. Ltd) was Rs 523 only. Thus it remains that credit worthiness of the loan provider is questionable, and submission made by the assessee and cross verification response provided by the M/s. Blossom Trexim Pvt. Ltd is neither satisfactory nor tenable.

5. The Ld.CIT(A) is also confirmed the staid addition. In sum and substance his findings are summarized as under:

- The Assesses has filed reply by “M/s. Blossom Trexim Pvt. Ltd.” which has filed ledger account in response to notice u/s. 133(6) before the AO, wherein he has confirmed the loan.

However, this does not lead to inference that assesses has discharge the onus.

- During the course of search conducted on **Shri. Mukesh Banka Group Companies**. Wherein, he admitted that he has provided bogus accommodation entries from company “M/s. Blossom Trexim Pvt. Ltd” Which was controlled and operated by him through dummy directors. Three the person who had sign in the capacity of the director of “M/s. Blossom Trexim Pvt. Ltd”, was just dummy director and therefore, loan conformation filed by the Assesses to prove the identity of the lender cannot be treated as credible evidence. This company has only offered income of Rs. 523.
- Very importantly, on spot verification by the income tax inspector on the given address “M/s. Blossom Trexim Pvt. Ltd” did not have any existence on the said address i.e. the company was not found that on address. Thus, he concluded that “M/s. Blossom Trexim Pvt. Ltd” was only the paper company.

- Thus, the Assessee Company has failed to explain the source through which lender has provided the loan to the assessee with documentary evidences and bank statement of the lender did not have sufficient balance to lend to the loan to the assessee.
- Thereafter, he relied upon in various judgments and confirmed the addition made by the AO.

7. Before us, the Ld. Counsel for the assessee drew attention to the copy of confirmation of the ledger account of the assessee in the books of “M/s. Blossom Trexim Pvt. Ltd” and pointed out that all the cheques mentioned therein are reflected in the bank statement of the assessee, therefore, there cannot be any dispute that the money has come from the books of creditor company to the bank account of the Assessee.

8. Apart from that, Assessee has also paid interest and also deducted TDS along with the copy of acknowledgement of return of income of this company. Thus, not only the identity of the creditor has been established, but also the genuine of the transaction, because the money has come from the bank account of the creditor

company to the bank account of the Assessee and that company has reflected the said loans in its books. Thus, on these grounds addition u/s 68 cannot be sustained.

9. On the other hand, Ld. DR submitted that, nowhere the assessee has filed any audited balance sheet of the lender company and what was the source of the funds given to the assessee company. Apart from that, once it has been found in the course of search by the investigation wing that one entry and operator 'Shri. Mukesh Banka' was providing accommodation entry through this company "M/s. Blossom Trexim Pvt. Ltd" which was managed and controlled by him, then all the more onus was on the assessee that, not only this company had creditworthiness, but also it was genuine transaction. This fact is further corroborative by the fact that when ITI inquired on the given address of that company which was shown in the return of income it was not found to be existed at that place. Thus, in these circumstances it cannot be held the loan transaction is genuine.

10. In rejoinder Ld. Counsel submitted that, at neither stage any statement of 'Shri. Mukesh Banka' or any material found from the

search of 'Shri. Mukesh Banka' was made available to the assessee, nor AO ever confronted that there was any enquiry by ITI and that company was found to be non existing, especially when this company has been filling regular returns.

11. After considering the relevant finding given in the impugned order as well as material referred to before us, we find that the assessee is heavily relied upon the conformation of lesser account by "M/s. Blossom Trexim Pvt. Ltd" and the corresponding entries of the said loan amount in the bank account of the assessee. However, the copy of audited account and the balance sheet of the creditor company have not been filed in order to examine the source of the funds and whether, this company had any creditworthiness. Merely because loan has come through banking channels, that does not prove the creditworthiness of the creditor which is one of the essential ingredient to prove the source of the credit. Even though, *proviso* to section 68 is not applicable on loan, however the primary onus is on assessee to establish the genuineness and the creditworthiness of the lender apart from establishing the identity. In the peculiar facts of the case, once there is background where

certain adverse information based on certain enquiry has been found that this company was found to be controlled and managed by an entry operator who has admitted this fact, then at least onus lives heavily on the assessee. Though any statement which has not been confronted to the assessee, may not be used against the assessee, however, in so far as assessee is concerned genuineness and creditworthiness needs to be established. Accordingly, under the facts and the circumstances of this case, we are of the opinion that, on merits, the issue should be restored back to the file of the AO with the direction to the assessee that it should file all the relevant documents and evidences including the source of the funds and the creditworthiness of the lender company and also the Ld. AO may enquire from the said company about the source of the funds. With this direction the issue of addition u/s 68 is set and the matter is restored back to the file of the AO to decide the issue fresh and in accordance with the law and assessee shall substantiate its case before the AO.

12. Since, similar finding and facts are permitting in AY 2017-18, wherein assessee taken loan from **Company Filbert Ltd.** which

again was managed and controlled by Shri Mukesh Banka, which has given a loan of rupees one crore. Thus, for this year also this matter is set aside to the file of the AO could similar direction.

Accordingly, on merits the appeal of the assessee is allowed for the statistical purposes.

13. In so far as, the validity of re-opening is concerned in AY 2016-17, we have already re-produced the reasons recorded for the AY 2016-17 and it is observed that, there was a credible information with the Assessing Officer received from the investigation wing and there was specific information that assessee have received 2 Crore loans form M/s. Blossom Trexim Pvt. Ltd” which was found to be providing bogus accommodation entry. This prima facie is sufficient material for the AO to entertain reason to believe that income chargeable to tax has escaped assessment. We do not find any infirmity in acquiring of jurisdiction u/s 147. Accordingly, the arguments taken by the Ld. Counsel before us on the legal issue is dismissed.

14. In the result, Appeal of the Assesses are allowed for the statistical purposes.

Orders pronounced in the open court on 31st March, 2023.

Sd/-
(Prashant maharishi)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 31.03.2023
Ms.Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai