

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 2153/Del/2019, A.Y. 2015-16

M/s. Rajhans Infratech Pvt. Ltd. M-32, 2 nd Floor, GK-1, New Delhi PAN : AAACD0055F	Vs.	Addl. Commissioner of Income Tax, Circle-21(2) New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. R.S.Singhavi, CA & Sh. Rajat Garg, CA
Revenue by	Sh. B.K.Singh, Sr. DR

Date of hearing:	06.04.2023
Date of Pronouncement:	26 th .04.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 12.02.2019 passed in appeal no. 10393/385/CIT(A)-7/Del./2017-18 for assessment year 2015-16, by the Commissioner of Income Tax (Appeals)-7, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 27.12.2017 u/s 143(3) of I.T. Act, 1961 (hereinafter referred to as 'the Act') passed by ACIT, Circle-21(2), New Delhi (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. The facts of the case that the return of assessee was selected for limited scrutiny under CASS. During the relevant financial year to the present assessment year, the assessee company was engaged in the business of real estate and has derived income from the same. The Ld. AO considered investigation wing letter with regard to information in the print media that certain allegedly bogus companies operated by Mukesh Kumar and Deepak Aggarwal were giving accommodation entries. Search and seizure operation was carried out at different residential and office premises of these persons and based on the evidences collected it was found that the assessee company had also received Rs. 1,75,00,000/- lakhs from M/s. Arti Securities & Services Ltd.(referred hereinafter as 'Lender'), which is run and controlled by these two alleged accommodation entry providers. The Ld. AO, were considering these facts raised query with the assessee company. The assessee company had filed confirmation of loan creditor along with ITR and bank statement of M/s. Arti Securities and Services P. Ltd. However, notices issued by Ld. AO were not served, therefore, assessee company was asked to produce the party. The assessee company however failed to produce the Director of M/s. Arti Securities and Services P. Ltd. Accordingly, after issuing show cause, the unsecured loan of Rs. 1,75,00,000/- from M/s. Arti Securities and Services P. Ltd. was considered to be unexplained. Ld. AO concluded that identity of creditor and the creditworthiness was not proved. Ld. AO specifically considered a trail of deposit received by Lender, and made following relevant observations in para 8(2):-

“2. Creditworthiness of the creditors

In this regard, as seen above it can be stated that the M/s. Arti Securities and services P. Ltd. creditworthiness is doubtful as the source of funds received by them remains unexplained. As seen from the HDFC Bank Statement of M/s. Arti Securities and Services Pvt. Ltd. submitted by the

assessee company, the assessee company has received debit entry of Rs. 50,00,000/- on 22/09/2014 and on the same day there is a credit entry of Rs. 50,00,000/- from Express Towers Pvt. Ltd. further on 23.09.2017 there is credit entry of Rs. 50,00,000/- from Express Towers Pvt. Ltd. and on the same date a debit entry in the name of the assessee company of the same amount. Further, on 17/11/2017 there is a credit entry in the bank statement of Rs. 50,00,000/- from Shridhar Portfolio Management Ltd and further debit entry in the name of the assessee company.”

2.1 Ld. CIT(A) has sustained the addition with following observations in para 3.5:-

“3.5 Onus was on the appellant to prove genuineness of the transactions shown by them but they failed to do so. The above mentioned company was only paper company which was engaged in giving accommodation entries. In this regard, judgements of Hon'ble Delhi high Court in the cases of CIT vs. Nova Promoters and Finlease (P) Ltd. (2012) 342 ITR 169 (Del) and CIT vs. N. R. Portfolio (P) Ltd. (2014) 264 CTR 258 (Del) are relied upon. Further, the judgement of Hon'ble Kolkata High Court in the case of Rajmandir Estate (P) Ltd. (2016) reported in 70 taxmann.com 124 (Cal) and the judgement of ITAT, 'D' Bench, Mumbai in ITA No. 1835/Mum/2014 dated 24.08.2016 in the case of Royal Rich Developers (P) Ltd. are also relied upon. In view of the facts of the case, I am of the considered view that this is not sufficient to discharge the onus cast on the appellant as contemplated u/s 68 of the Act just giving addresses and PAN of the persons concerned when the AO has doubted the credit worthiness/capacity and genuineness of the lender. The burden/onus is cast on the appellant and the appellant is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/credit worthiness of the creditors along with the genuineness of the transaction. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make the additions u/s 68 of the Act as an income. The fact remains that the company is private company in which public are not substantially interested these type of companies are mostly family controlled companies for which the onus as required

u/s 68 of the Act is very heavy to prove identity and capacity of the shareholders and genuineness of the transaction. In view of the above discussion, I am of the considered view that merely submission of the name and address of the share subscriber, income tax returns, Balance sheet/statement of affairs of the share subscriber and bank statement is not sufficient as the AO is to be satisfied as to their identity and creditworthiness as well as to the genuineness of the transaction entered into. The alleged share holders were not found to be genuine and thus, the onus shifts back to the appellant to produce the shareholders before the AO and if the appellant falters, the additions can be made u/s 68 of the Act. Section 68 of the Act has been amended by Finance, 2012 w.e.f. 01.04.2013 whereby the onus is cast upon the appellant company to justify the sources of deposit to explain the source of the source loans which has been held to be clarificatory in nature. In the present case, the appellant company is a private company who could not prove the genuineness of the lender. But is clear from the facts as discussed above that the appellant could not prove the same, therefore, in the light of above facts and case laws as discussed above, I am of the considered view that the AO was justified to make addition u/s 68 of the Act. Therefore, disallowance of Rs.1,75,00,000/- u/s 68 of the Act made by the AO is confirmed. These grounds of appeal are ruled against the appellant.”

3. The assessee has approached the Tribunal raising following grounds :

“(i) That on facts and circumstances of the case, the CIT(A) was not justified in upholding the addition of Rs. 1,75,00,000/- u/s 68 even though same is illegal and wholly without jurisdiction.

(ii) That notice u/s 143(2) was issued for the purpose of limited scrutiny and issue of loan being not the subject matter of such proceedings, the impugned addition without converting limited scrutiny into regular/full scrutiny is not in accordance with CASS guidelines issued by CBDT.

(iii) That the assessing officer having failed to comply with the mandatory CASS guidelines issued by CBDT, the impugned addition is not justified under the law.

2(i) *That on facts and circumstances of the case, the CIT(A) was not justified in confirming the addition of Rs. 1,75,00,000/- being unsecured loan from M/s Arti Securities & Services Ltd., a NBFC registered with RBI on the alleged ground of unexplained cash credit u/s 68 of the Income Tax Act, 1961 which is duly supported from documentary evidences placed on record.*

(ii) *That CIT(A) has not appreciated and considered the documentary evidences in support of genuineness of loan and addition was confirmed on illegal and arbitrary basis.*

(iii) *That in any case, the assessing officer having accepted the claim of interest paid in connection with said loan, the impugned addition is inconsistent and self-defeating.*

(iv) *That the findings of the Assessing Officer being not based upon any adverse material or information, the impugned addition is merely on the basis of presumption and surmises and CIT(A) is not justified in confirming the same.*

3. *That observation of A.O. regarding personal appearance of party are highly uncalled for and same are without proper appreciation of legal procedure and opportunity to the same.*

4. *That the Assessing Officer has erred in charging interest u/s 234A, 234B, 234C without application of mind and proper opportunity.*

5. *That the orders of the lower authorities are not justified on facts and the same are bad in law.*

6. *That the assessee craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice."*

4. Heard and perused the record and considered the submissions. The brief synopsis filed on behalf of the assessee was taken on record while supplying a copy of the same to the Ld. DR. Based upon the same, the determination of grounds is as follows :-

4.1 **The Ground no. 1;** is not pressed on behalf of the assessee accordingly disposed off.

5. **Ground no. 2 and 3;** Primarily on merits, the fundamental submission of Ld. AR was that the Ld. Tax Authorities have not disputed the genuineness of the documents placed on record of M/s. Arti Securities and Services Pvt. Ltd. and paying undue emphasis or non-production of the Directors of lender company, have drawn a presumption against the assessee. It was submitted that judgments in *CIT vs. Nova Promoters and Finlease (P) Ltd. (2012) 342 ITR 169 (Del)* and *CIT vs. N R Portfolio (P) Ltd. (2014) 264 ctr 258 (Del.)* have been relied without the facts being relevant as there in the bogus share capital was in dispute however, in the case of assessee the matter involves 'squared up loan account' wherein the assessee has established not only the source but even the source of shares as the deposits received from *M/s. Express Towers Pvt. Ltd. by M/s. Arti Securities and services P. Ltd.* have been accepted by the revenue in a completed assessment of M/s. Express Tower Pvt. Ltd. u/s 143(3) of the Act.

5.1 It was submitted that in regard to the lender company the return of income declaring income from the interest has been accepted that in fact establishes / genuineness of loan transaction with the appellant company. It was submitted that in another case titled *M/s. S.P. Gupta and company vs. ITO, ITA No. 1593/Del/2018 by order dated 07.07.2021*, a Co-ordinate Bench of this Tribunal has considered the loan transaction from the M/s. Arti Securities and services P. Ltd. and considered it to be a genuine transaction. The identity and source being considered established.

5.2 It was submitted that when the loan itself stand repaid there can be no question of considering the loan to be unexplained.

6. On the other hand, Ld. DR supported the finding of Ld. Tax Authorities below submitting that merely by filing documents the genuineness of transaction is not established because the bogus entry operators make it a point that the trail of transaction is duly evidenced. It was submitted that the onus was on the assessee which it failed to discharge.

7. Appreciating the submissions and the matter on record, the first thing that comes up is that the Ld. AO and Ld. CIT(A) have both recorded findings primarily on the basis that the assessee was unable to produce the Director of lender company so the identity of lender is not established. What can be noticed is that on behalf of the assessee at page no. 186 of supplementary paper book extract of Form no. INC-22 under the Companies Act, 2013 r.w.r. 25 and 27 of the companies (Incorporation Rules, 2014) has been placed on record showing that the address of the company of M/s. Arti Securiteis and Services Pvt. Ltd. was Gautam Budh Nagar, Noida and not Shalimar Bagh, Gaziabad, where notices u/s 131 of the Act were issued by the Ld. AO. That indicates that may be the notices envelop with report, "Left", was correct and does not mean that there was no company in existence at all to say that the identity of lender was doubtful.

8. Next, it comes up that the ld. AO in his assessment order has taken into account all the relevant documentary evidence produced by the assessee. The same includes following :-

"8. In support of the loan received from M/s Arti Securities & Services Limited, we have placed

following documents on record:

- i. Certificate of registration as Non-Banking Financial Institution of M/s Arti Securities enclosed at page 78 of the paper book.*
- ii. ITR Ack. & Audited Balance Sheet of the lender for A.Y. 2015-16 enclosed at page 79 - 98 of the paper book.*
- iii. Ledger Account of the lender showing the loan received and subsequent repayment along with Interest enclosed at page 99 -102 of the paper book.*
- Iv Confirmation from the lender company enclosed at page 103 - 105 of the paper book.*
- V Bank Statement of lender company enclosed at page 106 -110 of the paper book.*
- Vi MCA Current Status of lender company enclosed at page 111 of the paper book.*
- Vii Details of year-wise interest paid to M/s Arti Securities enclosed at page 179 of the paper book.*
- Viii Copies of Form 16A issued on deduction of TDS to M/s Arti Securities enclosed at page 180 -183 of the paper book*
- ix. Copy of Intimation dt. 11/10/2016 of M/s Arti Securities passed u/s 143(1) for A.Y. 2015-16 enclosed at page 189 - 194 of the paper book.*

7.1 The Bench is of considered opinion that when M/s. Arti Securities and Services P. Ltd. is a non-banking financial institution and all particulars with regard to constitution and composition were made available by the assessee and when the Id. AO had access to all bank accounts of M/s. Arti Securities and Services Pvt. Ltd. and even examined the trail leading to loan to the assessee, then what substantial difference the appearances of Director of M/s. Arti Securities and Services Pvt. Ltd. would have made. The transactions have taken from banking channels and if there were sham transactions, then how merely appearance of a Director would have made a difference.

7.2 It seems the Ld. Tax Authorities have fallen in error in laying too much stress on the failure of assessee to ensure presence of

Director of the lender company. The Bench is of firm view that the Act does not mandate how the burden of proof u/s 68 of the Act, to prove genuineness of lender and transaction, is to be established. Each case has to be considered on basis of own facts. The burden on assessee to prove genuineness of lender and transaction is only to rebut the presumption but that does not entitle the Ld. Tax Authorities, to discredit the evidence produced, with a stroke of a whimsical need for a particular piece of evidence only. The quasi-judicial authorities are supposed to examine the evidence produced before them and draw inferences based on their relevance and credibility, to consider if the burden is discharged or not. However, the same seems to be not the case here as presuming the information received from the investigation wing to be sacramental, the Ld. Tax Authorities have failed to appreciate the relevant evidence produced by the assessee and have failed to consider it without impeaching the credibility of that evidence. Suspicion howsoever strong cannot take place of proof. The Ld. Tax Authorities have fallen in error in citing suspicion alone instead of sifting truth from the evidence produced before it.

9. The matter of fact is that M/s. Arti Securities and Services Pvt. Ltd. has filed its return for year ending 31.03.2015 wherein the interest income was shown at Rs. 3,50,05,402/-. The intimation u/s 143(1) dated 11.10.2016, available at page no. 189-194 of the paper book, establish that return of Arti Securities and Services Pvt. Ltd. for A.Y. 2015-16, showing income of Rs. 50,43,390/- has been accepted. This is prior to impugned order of Ld. AO in case of assessee dated 27/12/17. Thus when the interest income of M/s. Arti Securities and Services Pvt. Ltd. stands accepted by the Department, then the loan disbursed by it to earn that income cannot be

considered to be tainted, by attributing suspicion to the identity or creditworthiness of sources of M/s. Arti Securities and Services Ltd. as a lender.

10. Further, the assessee has also provided the copy of order of Ld. CIT(A) in case of M/s. Arti Securities and Services P. Ltd. for A.Y. 2014-15 available at page no. 112-134 of the paper book which shows that Ld. CIT(A) has deleted an addition made u/s 68 of the Act in the hands of this company and the order has attained finality order dated 06.11.2020 from Lucknow Tribunal vide ITA no. 553/Lkw/2018. The same suggests the so called suspicious and dubious activities of the lender M/s. Arti Securities and Services P. Ltd. have been examined in earlier years and nothing was proved by the Department.

10.1 In this context it can also be observed that in a case title *M/s. S.P. Gupta and company vs. ITO, ITA No. 1593/Del/2018 by order dated 07.07.2021*, a Co-ordinate Bench of this Tribunal has considered the loan transaction from the M/s. Arti Securities and Services Pvt. Ltd. and considered it to be a genuine transaction. The identity and source being considered established. The Co-ordinate Bench has also ruled that non-appearance of lender company during assessment cannot be basis for brushing aside the clinching direct evidence brought on record by the assessee.

11. Then as held by Hon'ble Delhi High Court in **CIT Versus Shiv Dhooti Pearls and Investment Ltd. (2015)64 taxmann.com329(Del)**, although while discharging the burden to explain the credit found in books, assessee is not required to prove the source of source, still what we see is that there is on record the copy of assessment order, provided at page no. 196 of the supplementary paper book, which establish that as the Ld. AO has

considered the credit entry from M/s Express Tower Pvt. Ltd. into the hands of M/s. Arti Securities and Services P. Ltd., to be the source of unexplained money which reached the hands of the assessee, but the assessment in the hands of M/s. Express Tower Pvt. Ltd. for A.Y. 2015-16 is concluded u/s 143(3) of the Act without questioning of identity or credibility of that company or its activity. Thus in a way the identity and credibility of the source of source of the loan to the assessee to an extent stands accepted by the Department.

12. Lastly, the matter of fact is that after deducting the tax payable on the loan, the assessee has repaid the loan in the next FY. At page no 99 to 102 of the Paper book the Ledger Account of M/s. Arti Securities and Services P. Ltd. is provided and same shows that by 3/6/15 the loan amount was repaid. The assessment order shows that based on information received on 18/7/16, Ld. AO has scrutinized the loan transaction but before that date the loan stood repaid with interests.

13. So on the facts, aforesaid discussion distinguishes the judgments relied by Ld. CIT(A). On the contrary, the judgment of Hon'ble Gujarat High Court in the case of the **CIT Vs. Rohini builders; 256 ITR 360**, as relied by the Ld. AR, is relevant, where Hon'ble High Court has held :

“The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques.”

14. The Bench is of firm view that the Ld. Tax Authorities below

have fallen in error in concluding that the assessee had failed to discharge it's burden u/s 68 of the Act. The ground no. 2 and 3 are accordingly, decided in favour of the assessee. **Consequently, appeal of assessee is allowed and impugned addition is deleted. Order pronounced in the open court on 26th April, 2023.**

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Date:- 26th .04.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**