

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A(SMC)" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 265/Kol/2023
Assessment Year: 2013-14

Poddar Realtors 1, Parkus Road, Burdwan Pin- 713101 [PAN : AAGCP2937G]	Vs	Income Tax Officer, Ward-2(1), Burdwan
अपीलार्थी/ (Assessee)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Akkal Dudhewala, FCA
Revenue by :	Smt. Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख/**Date of Hearing** : 15/05/2023
घोषणा की तारीख /**Date of Pronouncement**: 22/06/2023

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, (hereinafter the "Id. CIT(A)") dt. 07/02/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2013-14 which is arising out of the assessment order framed u/s 143(3) of the Act dt. 27/09/2021.

The assessee has raised the following grounds of appeal:-

"1. For that on the facts and in the circumstances of the case, the addition of Rs.25,00,000/- made u/s 68 was factually as well as legally unsustainable and therefore the same deserves to be deleted.

2. For that on the facts and in the circumstances of the case, the authorities below were unjustified-in not appreciating that the assessee had duly discharged its onus of establishing the identity, genuineness & creditworthiness of the loan creditor and in that view of the matter the addition of Rs. 25,00,000/- made by way of unexplained cash credit u/s 68 was untenable on facts & in law.

3. For that the assessee craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."

2. Brief facts of the case are that, the assessee company filed its return of income for the AY 2013-14 on 11.09.2013 declaring NIL income. The return of income was processed us 143(1) of the Act. Subsequently, the case of the assessee was reopened by issue of notice u/s 148 of the Act dated 18.03.2020. In response the assessee filed return of income on 19.09.2020 and requested for the reasons recorded for reopening their case. From the notice issued u/s 143(2) by the NFAC dated 16.10.2020, it is noted that the 'Issues as per reasons recorded for reopening' was not stated. Thereafter, the AO issued notice u/s 142(1) of the Act calling for information/details which was duly complied with by the assessee . In the assessment order, the AO observed that his office was in receipt of information that on examination of the bank account held by the assessee it was gathered that the account of the assessee got credited with cash deposit of Rs.10,00,000/- from M/s Evermore Sales Pvt Ltd., in respect of which the assessee explained that there was no cash deposit of this sum and the amount received from M/s Evermore Sales Pvt Ltd was Rs.25,00,000/- and not Rs.10,00,000/- by way of interest bearing loan which was received through proper banking channel and evidence in support thereof was placed before the AO. Upon examining the details furnished by the assessee, the AO noted that the assessee was unable to explain the purpose of loan and that the genuineness of transaction remained unproved as there was cash deposit and immediate

withdrawal. The AO finally concluded that cash was deposited by M/s Evermore Sales Pvt Ltd in their bank account to advance loan to the assessee and that the assessee in this guise had brought back its accounted income into regular books of accounts. Hence, the receipt of loan of Rs.25,00,000/- was added by way of unexplained cash credit u/s 68 of the Act.

2.1. Aggrieved the assessee carried the matter in appeal before the Ld. CIT(A) without success.

3. Aggrieved, the assessee is in appeal before us.

4. The ld. Counsel for the assessee, firstly objected to the inaction of the AO to provide the reasons recorded for reopening the assessment which according to him was *sine qua non* to assume jurisdiction u/s 147 of the Act. He thus urged that on this ground alone, the impugned order deserves to be held to be *ab initio void*. In support, he relied on the decisions of the Hon'ble Supreme Court in the case of *Pr.CIT Vs V Ramaiah* (103 taxmann.com 202) and *Pr.CIT Vs Jagat Talkies Distributors* (85 taxmann.com 189).

5. The ld. Counsel for the assessee thereafter pointed out that the reasons which were ultimately cited in the assessment order was based on erroneous assumption of facts as it revealed that the information available with the AO was that account of the assessee got credited with cash deposit of Rs.10,00,000/- from M/s Evermore Sales Pvt Ltd. He further submitted that, assessee had demonstrated before the AO that this reason was factually incorrect in as much as there was no cash deposit in their account and that monies received from M/s

Evermore Sales Pvt Ltd was Rs.25,00,000/- by way of interest-bearing loan through proper banking channel. For this, he invited our attention to the copy of bank statement and the loan confirmation of M/s Evermore Sales Pvt Ltd placed in the paper book. He argued that the AO did not dispute this submission of the assessee and instead changed his tact and made an addition of Rs.25,00,000/- by holding that there was a cash deposit of Rs.25,00,000/- in the bank account of M/s Evermore Sales Pvt Ltd prior to advancement of loan to the assessee which represented routing of account of unaccounted monies of the assessee . The Ld. Counsel for the assessee explained that even the ultimate finding was factually perverse as there was no cash deposit in the bank account of M/s Evermore Sales Pvt Ltd, copy of their bank statement was placed at Pages 44 to 46 of the paperbook. To substantiate the identity, creditworthiness and genuineness of the loan transaction, the assessee placed before us the copy of the audited financials, bank statement, loan confirmation and IT Acknowledgment of M/s Evermore Sales Pvt Ltd and the details of repayment as well, which was done much prior to issuance of notice u/s 148 of the Act. Relying on the decision of Hon'ble Gujarat High Court in the case of *Pr. CIT Vs Ambe Tradecorp Pvt Ltd (145 taxmann.com 27)*, the Ld. Counsel for the assessee submitted that when identities of the lenders stood proved and that the loans were also repaid subsequently, no addition was permissible u/s 68 of the Act. He also relied on the decisions of the Hon'ble Calcutta High Court in the cases of *Pr.CIT Vs Sree Leathers (448 ITR 332)* and *Pr.CIT Vs Overtop Marketing Pvt Ltd*

(145 *taxmann.com* 27). He thus prayed that the order of the lower authorities be reversed and that the additions be deleted. Per contra, the Ld. DR argued supporting the order of the lower authorities.

6. We have heard both the parties and perused the material placed before us and carefully gone through the decisions relied upon by the assessee. The assessee has primarily challenged the addition of Rs.25,00,000/- made by the AO u/s 68 of the Act in relation to the unsecured loan of Rs.25,00,000/- received by the assessee from M/s Evermore Sales Pvt Ltd. It is noticed that the assessee had filed all documentary evidences which it was required to maintain in the ordinary course to substantiate the identity and creditworthiness of the lender and genuineness of the transaction. On perusal of the records it is noted that the assessee had received the loan on several dates from M/s Evermore Sales Pvt Ltd holding PAN AACCE8179M, aggregating to Rs.25,00,000/- through proper banking channel and that there was no cash deposited in the bank account of the assessee, as wrongly alleged in the recorded reasons. It is thus noted that the reasons recorded prior to reopening proceeded on incorrect assumption of facts and thus *ex-facie* was untenable.

7. We further find, that the lender had sufficient own funds to advance the loan to the assessee. The loan is noted to carry interest at the rate of 9%. The assessee has provided the said interest in its books and deducted TDS thereon as well. The interest income has been accounted for by the lender and the same form parts of the return of income filed by M/s Evermore Sales Pvt Ltd for the relevant AY 2013-

14 dated 23.12.2013. The bank statement of M/s Evermore Sales Pvt Ltd evidences that there was no prior deposit of cash before advancement of loan. The loan has been confirmed by the lender and the same was also subsequently repaid along with full interest by the assessee in the year 2014-15. We note that all these documents which were filed by the assessee before the lower authorities have not been found to be incorrect or faulty at any stage. Moreover, the main premise on which the AO made the impugned addition viz., there was a prior cash deposit in the bank account of M/s Evermore Sales Pvt Ltd before advancement of loan has been noted to be factually wrong as there is no cash deposit in account of M/s Evermore Sales Pvt Ltd as well.

8. In view of the above facts, the reliance placed by the Ld. Counsel for the assessee on the decision of the jurisdictional Calcutta High Court in the case of *Pr.CIT vs. Sreeleathers (supra)* is found to be applicable, wherein on similar facts and circumstances, the Hon'ble Court had held as follows:

"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an

explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

9. As noted earlier, the loan was repaid in 2014-15 and, therefore, the allegation of the AO that assessee was a beneficiary of the loan cannot be sustained on these facts and is liable to be deleted. We gainfully refer to the judgment of the Hon'ble Gujarat High Court in the case of *PCIT vs. Ambe Tradecorp (P.) Ltd (supra)* where it has been held as follows:

"The Tribunal rightly recorded in para 29 of the judgment.

"Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries being carried out in the later years. Thus, in the given facts and circumstances, we hold that there is no infirmity in the order of the Ld. CIT(A)."

10. We, therefore, under the given facts and circumstances of the case, are of the considered view since the assessee has successfully discharged its onus of proving the identity of the loan creditor, which in the instant case duly registered with Ministry of Corporate Affairs, having PAN and had filed return of income as well. Further creditworthiness of the transaction is proved with the fact that they have been carried through banking channel and sufficient funds were available with the loan creditors to explain the amount of loan given and the genuineness of the transaction is proved with the fact that the assessee company is carrying out regular business activity and the loan was obtained at commercial rate of interest which was also repaid at a later date in subsequent year, interest was paid on the loans and tax at source has been deducted and duly reflected by the loan creditor in their income tax return. Therefore, we fail to find any justification in

the action of ld. AO invoking the provisions of Section 68 of the Act. We, thus, set aside the finding of ld. CIT(A) and delete the addition of Rs.25,00,000/- made u/s 68 of the Act.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 22nd June, 2023 at Kolkata.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 22/06/2023

Sd/-

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata