

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.1018/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s. Everflow Techno Tex Limited Room No. 16, 2 nd Floor, 413-C, Vasantwadi, Kalbadevi Road, Mumbai- 400002.	बनाम/ Vs.	The Income Tax Officer, Circle-4(3)(1) Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AANCS2363J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri C. V. Jain
Revenue by:	Shri Aditya M. Rai (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 21/06/2023

घोषणा की तारीख /Date of Pronouncement: 30/06/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order passed u/s 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (hereinafter "the Act") by AO dated 16.04.2021 for AY. 2016-17.

2. At the outset, the Ld. AR of the assessee submitted that even though the assessee has raised six (6) grounds of appeal. The main grievance of the assessee is against the action of the AO to have made an addition of Rs. 1.50 crores without giving proper opportunity to the assessee (ground no. 2).

3. Brief facts of the case regarding this ground, as noted by the AO are that the assessee had filed return of income on 30.11.2016 declaring total income of Rs.1,67,97,280/-. The case was selected for scrutiny and the AO *inter-alia* noted that the assessee had shown to have taken loan of Rs.1.50 crores from M/s. Raju Textiles during the relevant financial year. On being asked by AO about this transaction, the assessee has filed a letter dated 19.12.2019 stating/confirming that their books of account shows credit balance of Rs.1.50 crores as on



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31.03.2016 with their company as unsecured loan. The AO notes that other than this letter, no other evidence have been filed by assessee to prove the identity, genuineness and creditworthiness of the party from whom such loan has been taken. And according to AO since the burden was on the assessee to prove the transaction/credit appearing in its books of account, he was of the opinion that the assessee has failed to establish the genuineness and creditworthiness of the party from whom such loan has been taken. And therefore, the AO made an addition of Rs.1.50 crores u/s 68 of the Act in the draft assessment order dated 26.12.2019. Aggrieved by the addition proposed in the draft assessment order, the assessee preferred its objection before the Ld. Dispute Resolution Panel (DRP) which confirmed the action of the AO by order dated 25.03.2021. Thereafter, the AO gave effect to the direction of the Ld. DRP vide order dated 16.04.2021 wherein he confirmed the addition of Rs.1.50 crores u/s 68 of the Act. Aggrieved by the aforesaid action of the AO, the assessee is before us.

4. We have heard both the parties and perused the records. The main grievance of the assessee is that the AO had made an addition of Rs.1.50 crores u/s 68 of the Act without giving proper opportunity to the assessee. According to Ld. AR, a perusal of the assessment order (para 6) would reveal that AO has acknowledged that assessee had filed the details of unsecured loans as per balance sheet like *name, Pan, address, Amount etc* and has drawn only adverse inference against the amount taken as loan from M/s Raju Textiles. According to Ld. AR, if the AO was not satisfied with the document/information about this lender, he ought to have sought it from the assessee, and in such an event assessee would have furnished it. And since it was not



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sought, assessee was under the impression that AO was satisfied with the details/documents filed to prove the transaction; and in any case given an opportunity to the assessee, it would file the relevant documents to prove the identity, genuineness and creditworthiness of the creditor M/s. Raju Textile.

5. Per contra, the Ld. DR objects to giving a second innings to the assessee. According to Ld. DR, since in the balance sheet M/s Raju Textile was shown as a creditor, the burden was on assessee to prove the nature & source of the credit of Rs. 1.50cr, which assessee failed, so. AO made the addition which does not require any interference from our side.

6. Having heard both the parties, we note that AO noted from perusal of balance sheet of assessee that assessee has taken un-secured loan from creditors and on being asked by AO to file the (*party-wise Name, Address, Pan, amount etc*), the assessee filed the details of un-secured loan, which fact the AO acknowledged in the assessment order. However, AO found that in respect of loan taken from M/s Raju Textiles, the assessee had filed only the confirmation letter from it (assessee) only which was addressed to the accounts manager of the creditor (M/s. Raju Textile) wherein the assessee confirmed to creditor that credit balance as on 31.03.2016 (unsecured loan) was to the tune of Rs.1.50 crores (page 28 of PB). Other than that letter, the assessee did not file any other documents since it was under the bonafide belief that no other documents need to be filed on this issue, since AO did not ask any other evidence to substantiate the nature and source of Rs 1.5 crs. Be that as it may, since the assessee has made out a case of lack of opportunity on this issue before the AO, we rely on the order of



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the Hon'ble Supreme Court in the case of **Tin Box Company Vs. CIT (249 ITR 216)(SC)** wherein the Hon'ble Supreme Court held as under:-

"It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

"We will straightway agree with the assessee's submission that the ITO had not given to the assessee proper opportunity of being heard . " That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts . That order must be made after the assessee has been given a reasonable opportunity of setting out his case . We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard .

2 . Two questions were placed before the High Court, of which the second question is not pressed . The first question reads thus :

"1 . Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"

In our opinion, there can only be one answer to this question which is inherent in the question itself : in the negative and in favour of the assessee .

3 . The appeals are allowed . The order under challenge is set aside . The assessment orders, that of the Commissioner (Appeals) and of



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the Tribunal are also set aside . The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid. No order as to costs .”

7. Since we have found that the assessee didn't get proper opportunity before the AO to prove the identity, creditworthiness and genuineness of the creditor (M/s. Raju Textiles), this issue is set aside back to the file; and AO is directed to adjudicate this issue de novo. And the assessee is given liberty to file relevant documents to prove the *identity, creditworthiness and genuineness* of the loan transaction to the tune of Rs.1.50 crores with M/s. Raju Textile. And the AO to pass order in accordance with law after hearing the assessee.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 30/06/2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30/06/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai



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