

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.136/Kol/2023
Assessment Year: 2010-11

DCIT, Circle-5(1), Kolkata.....Appellant

vs.

M/s Inter Globe Finance Ltd..... Respondent
1st Floor, Aloka House,
6B, Bentick Street,
Kolkata-1.
[PAN: AAACI5520N]

Appearances by:

Shri Abhijit Kundu, CIT-DR, appeared on behalf of the appellant.

Shri, P. Jhunjhunwala, Advocate, appeared on behalf of the Respondent.

Date of concluding the hearing : June 20, 2023

Date of pronouncing the order : August 11, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the revenue against the order dated 22.09.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The appeal is barred by 93 days. A separate application for condonation of delay has been filed, wherein, the dates and events commencing from the date of the order till the date of filing of the appeal have been mentioned. As per the said application, the impugned order of the CIT(A) was received in the office of PCIT-2, Kolkata on 22.09.2022, which was further received in the office of DCIT for 'appeal

scrutiny report' from the office of PCIT-2, Kolkata on 12.10.2022. The due date for filing of the appeal was 20.11.2022. However, the appeal scrutiny report was submitted before the office of PCIT-2, Kolkata on 30.01.2023. Thereafter, after receipt of the certificate of filing from the office of PCIT-2, Kolkata on 14.02.2023, the appeal was filed on 21.02.2023. It has been further submitted in the application that the appeal could not be filed on or before the due date due to huge work load relating to time barred assessments, penalty and writs filed by various assessees on the issue of 148A proceedings. Therefore, a request has been made to condone the delay of 93 days.

3. It is to be noted that the due date for filing of the appeal was on 20.11.2022. The order for appeal scrutiny report was received in the office of the DCIT on 12.10.2022 itself. However, ld. DCIT did not take any action till 30.01.2023. The reason for the delay has been mentioned as huge work load relating to time barring assessment, penalty and writs filed by other assessees. The reasons given in the application, in our view, are not plausible reason. The specific reasons for delay have not been mentioned and merely saying that the appeal could not be filed due to huge work load seems to be a general excuse. There is nothing mentioned in the application as to why the office of the DCIT did not act from 12.10.2022 to 30.01.2023 for at least for sending the appeal scrutiny report. However, considering the principle of justice and equity and considering that the state should not suffer due to minor lapse on the part of officials, lenient view is being taken and the delay of 93 days in filing the present appeal is hereby condoned.

4. Coming to the merits of the case, the revenue in this appeal is aggrieved by the action of the CIT(A) in deleting the additions made by

the Assessing Officer u/s 68 of the Act by treating the unsecured loans obtained by the assessee as not genuine and assessing the same as income of the assessee from unexplained sources.

5. The brief facts of the case are that the assessment was reopened in the case of the assessee on the report of the investigation wing that the assessee had obtained the accommodation entries approximately of Rs.15,22,00,000/- with the help of bogus/shell company namely Satyatej Vyapaar Pvt. Ltd. The assessee filed objections against the reopening of the assessment, however the same was dismissed by the Assessing Officer. Thereafter, the assessment was completed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act, wherein, the Assessing Officer referred to the statements recorded by the investigation wing on an earlier occasion of three persons namely Shri Chan Chakraborty, Shri Suresh Kr. Jain and Mr. Anirban Dutta during some survey action in the case of some other assessee, wherein, the said persons have admitted of providing accommodation entry through Satyatej Vyapaar Pvt. Ltd. to the assessee company. The Assessing Officer, therefore, held that the unsecured loans/share application money shown by the assessee to have been received from Satyatej Vyapaar Pvt. Ltd. were bogus and accordingly made the impugned addition of Rs.17,73,00,000/- into the income of the assessee.

6. However in appeal, the ld. CIT(A) deleted the additions made by the Assessing Officer observing that the assessee had duly proved the identity and creditworthiness of the creditors. He further observed that even vide order dated 25.10.2017 passed u/s 147 of the Act in the case of the creditor, "Satyatej Vyapaar Pvt. Ltd.", for the same assessment year i.e. A.Y 2010-11, no addition has been made on account of cash

credits. He, therefore, held that the loans received by the assessee from the said Satyatej Vyapaar Pvt. Ltd. cannot be held to be bogus. The ld. CIT(A) in this respect has referred to the decision of the Hon'ble Calcutta High Court in the case of CIT vs. Dataware (P) Ltd. (ITAT 263 of 2011). The ld. CIT(A) further observed that since the assessment year involved was A.Y 2010-11 and as per the relevant provisions applicable for the assessment year under consideration, the assessee was not supposed to prove source of source. The ld. CIT(A) further observed that even during the F.Y 2010-11 relevant to A.Y 2011-12, the assessee has repaid the entire loan amount along with interest of Rs.1,74,15,628/- on which TDS was also deducted. He, therefore, observed that as the unsecured loans of Rs.16,38,00,000/- received in the F.Y 2009-10 was refunded to the creditor party itself in that year and the balance amount was refunded in the next financial year, the impugned addition, therefore, was not justified. He, in this respect, has relied upon various case laws. He after considering the overall facts and circumstances of the case, held that there was no doubt about the identity and creditworthiness of the creditor and the genuineness of the transactions. He further held that nature of the source of the credits in the books of account of the assessee stood explained and that the explanation was accepted. He accordingly deleted the addition so made by the Assessing Officer.

7. Before us, the Departmental Representative has relied upon the findings of the Assessing Officer. He has also relied upon the statement of the aforesaid persons to submit that such persons have duly made statement of providing accommodation entry to the assessee through Satyatej Vyapaar Pvt. Ltd.

8. However, the ld. AR of the assessee has submitted that the assessee is a non-banking financial company. The business activity of the assessee is taking loan at a lower rate of interest from some parties and disbursing the same at a higher rate of interest to other persons/parties. That the assessee during the year had taken loan from various parties, however, the additions have been made only in the case of one party namely 'Satyatej Vyapaar Pvt. Ltd.'. The basis of the additions made by the Assessing Officer was the statement recorded of three persons during survey action carried out in the case of some another party on an earlier occasion. The ld. counsel has submitted that the aforesaid persons had retracted their statements. He, therefore, has submitted that the additions could not have been made solely on the basis of retracted statements of some persons recorded u/s 133A of the Act in some other case, in the absence of corroborative incriminating evidence against the assessee. The ld. counsel has further submitted that the creditor, Satyatej Vyapaar Pvt. Ltd., is also a non-banking financial company and is regularly assessed of income tax. That the assessment of the creditor was also completed in the same year and no additions were made in the case of the said Satyatej Vyapaar Pvt. Ltd.. That the loans were taken through banking channel, due interest was paid thereupon after deducting the TDS. He has further invited our attention to the reasons recorded by the Assessing Officer for reopening of the assessment has pointed out that even the reasons recorded by the Assessing Officer were vague and that the information received from investigation wing was not verified by the Assessing Officer from the assessment records of the assessee. That even the Assessing Officer was not sure about the nature of the transactions. That the Assessing Officer in fact has no bona fide

reasons to believe that the income of the assessee has escaped assessment. That the satisfaction of the Assessing Officer regarding the escapement of income was a borrowed satisfaction based on the report of the investigation wing and the Assessing Officer did not make any effort to correlate and verify the said information with the assessment record. He, in this respect, has pointed out that the Assessing Officer in the reasons recorded has mentioned that “it is also appeared from record of the assessee that the company M/s Satyatej Vyappar Pvt. Ltd. from whom the assessee M/s Interglobe Finance Pvt. Ltd. has taken pre-arranged accommodation entry for raising capital in the form of loans and advances or in shares, is a shell company and whose sole purpose is to provide accommodation entries of bogus purchase as well as in the guise of loan/share to various other companies”. A perusal of the above reasons recorded would show that though the Assessing Officer has mentioned that it is apparent from the record of the assessee that M/s Satyatej Vyappar Pvt. Ltd. was a shell company. However, we failed to understand how *he* formed the belief from the assessment record of the assessee itself, that the said M/s Satyatej Vyappar Pvt. Ltd. was a shell company. Moreover, even it has been mentioned that the assessee has taken pre-arranged accommodation entry “in the form of loans and advances or in the shares”, which means that the Assessing Officer even was not sure about the nature of the transaction, as to whether it was a loan transaction or share application money.

9. Under the circumstances, we find force in the contention of the Id. AR that the satisfaction/reasons to believe of escapement of income by the Assessing Officer were not based on his own belief after verification

of the facts, rather, the Assessing Officer has reopened the assessment on the basis of mere information of investigation wing without correlating and verifying the same with the assessment records.

10. Even, on merits, as observed by the Id. CIT(A) also, the assessee had duly proved the loan transactions with the said M/s Satyatej Vyappar Pvt. Ltd. The assessment of the M/s Satyatej Vyappar Pvt. Ltd. has also completed for the same assessment year and no additions were made on account of any cash credits in the account of the said M/s Satyatej Vyappar Pvt. Ltd. Further the laons have been repaid along with interest, major amount of which was repaid during the assessment year under consideration itself, and the remaining amount paid in the subsequent assessment year. The Assessing Officer has not pointed out any defect or infirmity in the evidences and documents furnished by the assessee to prove the identity and creditworthiness of the creditors and genuineness of the transactions. In view of this, we do not find any infirmity in the order of the CIT(A) and the same is upheld. The appeal of the revenue is hereby dismissed.

11. In the result, the appeal of the revenue stands dismissed.

Kolkata, the 11th August, 2023.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 11.08.2023.

RS

Copy of the order forwarded to:

1. DCIT, Circle-5(1), Kolkata
2. M/s Inter Globe Finance Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches