

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 1048/Bang/2022
Assessment Year : 2011-12

M/s. Lakshmi Gold Khazaana Pvt. Ltd., No. 475, Nanjundi Arcade, 6 th Cross, Sampige Road, Malleshwaram, Bangalore – 560 003. PAN: AABCL6692H	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(4), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Chandrashekhar, Advocate
Revenue by	:	Ms. Neera Malhotra, CIT-DR

Date of Hearing	:	04-09-2023
Date of Pronouncement	:	08-09-2023

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The instant appeal filed by the assessee is directed against the order dated 19.09.2021 passed by the Ld.CIT(A)-2, Bangalore arising out of the order dated 31.03.2015 passed by the Ld.DCIT, Central Circle – 1(4), Bangalore u/s. 153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2011-12 whereby and whereunder the addition of Rs. 50 Lakhs on account of unexplained cash u/s. 69 of the Act has been upheld.

2. Brief facts leading to the case is this that the appellant company engaged in the business of trading –retailers filed its return of income on 30.09.2011 declaring income at Rs.2,28,67,060/-. Subsequently a search u/s. 132 of the Act was conducted in the group cases of M/s. Lakshmi Gold Palace and M/s. Lakshmi Gold Khazaana Pvt. Ltd. on 08.02.2013 and warrant was issued upon the assessee viz., M/s. Lakshmi Gold Khazaana Pvt. Ltd. Certain incriminating documents have been found and seized from the premises of the assessee. Consequently notice u/s. 153A dated 07.02.2014 was issued to the assessee and under a letter dated 24.03.2014, the assessee requested the authorities to treat the original return of income filed u/s.139(1) dated 30.09.2011 as per the return filed in terms of the notice u/s. 153 of the Act to the tune of Rs.2,28,67,060/-.
3. From the seized document, it was found that the appellant paid an amount of Rs. 50 Lakhs in cash to one M/s. Eureka Builders on 15.05.2010. The revenue relied upon the statement made by one Shri M.K. Ramakrishna, General Manager of the company in respect of such payment made to M/s. Eureka Builders is cash. The source of such cash payment was directed to be explained by the assessee, in reply whereof the assessee denied the fact of paying any cash to the said M/s. Eureka Builders and further stated that the statement of paying cash was only to rebut the claim of the said builder pursuant to the legal notice issued to the

assessee for recovery of the said amount. The amount still existed as liability in the books of the appellant company. Such contention made by the appellant was, however, not found acceptable and the said amount of Rs. 50 Lakhs was added to the total income of the assessee by the Ld.AO which was further confirmed by the Ld.CIT(A). Hence the instant appeal before us.

4. Before the Ld.CIT(A), the assessee submitted as follows:

“vi) The learned Assessing officer in the assessment order at para 5 stated as follows:

- *As per Annexure A/LGKPL/8, page No.62 contains the details of loan given by M/s. Eureka Builders to M/s. Lakshmi Gold Khazaana Pvt Ltd. As per this an amount of Rs.50,00,000/- was given to M/s. Lakshmi Gold Khazaana Pvt Ltd on 16.06.2010. As per Annexure A/LGKPL/8, Page No.53 contains details of loan given by M/s. Eureka Builders to Mr. K. P.Nanjundi. As per this the amount of Rs. 1,00,00,000/ - was given to K.P.Nanjundi on 27.11.2010.*

- *The learned Assessing Officer further reproduced the statement recorded from Mr. M.K.Ramakrishna being question No.13 and answer to the same. Further reproduced the statement recorded from the Eureka Builders and they have stated that they have not received any amount in cash from Mr. K.P.Nanjundi or any of his firms.*

- *Further the learned Assessing Officer reproduced the submission of the appellant as follows:*

“4. With regard to amount payable to M/s. Eureka Builders, the said amount of Rs.1.5 Crores has not been paid and the amount payable has been reflected under unsecured loans in the financial statement as at 31.03.2012 and the same continues to be shown payable. The amount payable to M/s. Eureka Builders is under litigation. M/s. Eureka Builders had sent a legal notice towards recovery of the said amount. In reply to the notice, the company had written that it need not pay anything to them and said that the amount was paid in cash which was not accepted by M/s. Eureka Builders. The statement was only

out of context to rebut the amount payable, however the liability continues to exist as on date and no amount has been paid to M/s. Eureka Builders in cash.

vii) The appellant enclosed the seized material A/LGKPL Page No.62 i.e., Letter from Eureka Builders vide dated 30.09.2011 sent to the appellant to pay the due amount of Rs.50,00,000/- with interest and marked as Annexure-C. Copy of the seized material Page No.53 of A/LGKPL/8 related to letter from Eureka Builders to M/s. Lakshmi Golds Palace dated 30.09.2011 is enclosed and marked as Annexure-D. Copy of the seized material page No.66 to 68 and 72 to 74 of A/I.GKPL/3 is enclosed and marked as Annexure-E. Copy of the seized material page No.21 and 22 of A/LGKPL/8 is enclosed and marked as Annexure-F.

viii) The appellant submits that the appellant has not paid any cash payment to M/s. Eureka Builders. The appellant submits that the appellant received the amount from M/s. Eureka Builders through banking channel on 16.06.2010 a sum of Rs.50,00,000/-. The said amount was payable by the appellant for the year ended 31.03.2011. The appellant submits that the M/s. Lakshmi Gold Palace has due to the said M/s. Eureka Builders for the year ended 31.03.2011 a sum of Rs.1,00,00,000/-. The said amount of Rs.1,00,00,000/-payable by M/s. Lakshmi Gold Palace to M/s. Eureka Builders was transferred to the account of the appellant in the financial year 2011-12. Consequently the total amount due by the appellant to M/s. Eureka Builders is at Rs.1,50,00,000/-. The appellant has not paid the said amount and it is shown as payable in the books of accounts of the appellant.

ix) The contention of the appellant that the amount was payable to M/s. Eureka Builders was also supported by the seized material being the letter sent by the Eureka Builders to the appellant as well M/s. Eureka Builders, which is much before search and the said letters were found in the course of the search.

x) The appellant submits that further the statement recorded from M/s. Eureka Builders also supports the contention of the appellant that the appellant has not paid cash.

xi) The appellant submits that the amount payable to M/s. Eureka Builders is under litigation. Since they have sent legal notice and in reply the appellant also sent reply and the appellant stated that the appellant need not pay anything to them since the appellant has paid. in cash. The seized material at page No.21 being cash entry of

Rs.50,00,000/- being paid to M/s. Eureka Builders is only to rebut the amount payable by the appellant. In fact the appellant has not made any cash payment to M/s. Eureka Builders.

xii) The learned Assessing officer without any finding in the assessment order simply made addition of Rs.50,00,000/- by observing that "based on the above discussion a sum of Rs.50,00,000/- is added back as unexplained cash to the total income returned by the assessee".

xiii) The learned Assessing officer has not given any show cause notice before making the addition and the addition made is in violation of principles of natural justice.

xiv) The addition made by the learned Assessing officer is not in accordance with law.

xv) The learned Assessing Officer accepted the books of accounts of the appellant and it was subject to audit under section 44AB of the Act.

xvi) The return of income for the impugned assessment year 2011-12 was filed on 30.09.2011 showing the amount payable to M/s. Eureka Builders a sum of Rs.50,00,000/- for the year ended 31.03.2011. Copy of the breakup of Trade Payable is enclosed and marked as Annexure-G. The appellant also filed in response to notice issued under section 153A of the Act to treat the same return of income filed on 30.09.2011. The appellant also filed the return of income for the assessment year 2012-13 on 30.09.2012 and the appellant shown the amount payable to M/s. Eureka Builders at Rs.1,50,00,000/-. Copy of the breakup of the Trade Payables as on 31.03.2012 is enclosed and marked as Annexure-H.

xvii) The appellant submits that search under section 132 was conducted on 08.02.2013. Before search during the period financial year 2012-13 in view of litigation with M/s. Eureka Builders the appellant passed the entry in the ledger account of cash payment to support the stand of the appellant that nothing was payable to M/s. Eureka Builders. On the search the said ledger account was seized. However the appellant in the return of income filed for the assessment year 2013-14 shown the amount payable to M/s. Eureka Builders a sum of Rs.1,50,00,000/-. Copy of the breakup of Trade Payables for the A.Y. 2013-14 is enclosed and marked as Annexure -I.

xviii) The learned Assessing officer has not passed any speaking order being a quasi judicial authority in respect of the addition made of Rs.50,00,000/- as unexplained

cash and consequently the addition made is liable to be deleted on the facts and circumstances of the case.

xix) The addition made by the learned Assessing officer is liable to be deleted on the facts and circumstances of the case.”

5. At the time of hearing of the instant appeal, the Ld.Counsel appearing for the assessee submitted before us that a legal notice was sent by M/s. Eureka Builders to the assessee for recovery of that amount and in order to rebut the same, it was stated that nothing was pending as the amount has already been paid to the said party by cash. Infact, no amount has been actually paid to M/s. Eureka Builders in cash and the seized document showing such cash payment of the impugned amount of Rs.50 Lakhs was created by it just to support its reply. Further that the IT return for the year under consideration filed on 30.09.2011 showing Rs. 50 Lakhs was payable to M/s. Eureka Builders as on 31.03.2011. In view of the litigation subsequently such entry was passed to create a record that cash payment of Rs. 50 Lakhs was made to M/s. Eureka Builders and the amount paid by it later was repayment of the same.

6. On this aspect, he has also drawn our attention to the letter written by the said M/s. Eureka Builders to the assessee wherein the statement of amount due along with interest as on 30.09.2011 is reflecting the principle amount of the impugned amount of Rs. 50 Lakhs and interest from 16.06.2010 to 30.09.2011 is Rs.11,77,500/- is claimed to have been payable; the said letter is annexed to page 28 of

the paper book filed before us. In the event, the amount is not paid, the appellant would be facing dire consequences, the lender company may approach the court for recovery of the said amount as also mentioned in the said letter. The said fact of non-payment of amount has also been reiterated by the said M/s. Eureka Builders by way of legal notice dated 23.02.2012 issued to the appellant company, appearing at page 33 of the paper book filed before us. Under this premises, it is the ultimate submission made by the Ld.AR that since M/s. Eureka Builders has already denied the receipt of such cash deposit made by the appellant, the addition made contrary to the fact is, thus, liable to be deleted.

7. On the other hand, the Ld.DR relied upon the orders passed by the authorities below. According to her, once the entry has been made, cash payment of Rs. 50 Lakhs made in the books of accounts of the appellant establishes the fact of such payment was actually made by the appellant to M/s. Eureka Builders, which reflects the unaccounted income of the appellant. She, therefore, supports addition made u/s. 69 of the Act made by the authorities below.
8. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record particularly the orders passed by the authorities below.

9. The moot point involved in this particular case is this that as to whether the addition u/s. 69 of the Act of the impugned amount of Rs. 50 Lakhs is sustainable particularly when both the parties, the appellant and M/s. Eureka Builders has denied such cash payment made by the appellant. On this aspect, we have considered the legal notice issued by the said M/s. Eureka Builders dated 30.09.2011 and 23.02.2012 appearing at pages 28 & 33 respectively in the paper book filed before us. The authorities below relied upon the statements given by the said Shri M.K. Ramakrishna during search u/s. 132(4) of the Act of making such payment by the appellant in cash to M/s. Eureka Builders but has not considered the explanation rendered by the appellant to this effect that in order to rebut the legal notice issued to the appellant one after another, the entry of cash payment of Rs.50 Lakhs loan was created; no actual payment was made by appellant in cash to M/s. Eureka Builders. Neither the legal notice issued to the appellant by the said M/s. Eureka Builders has earned any credence from the authorities which ought to have been considered in its proper perspective in view of the particular fact that the creditor itself is denying of receiving the loan of Rs. 50 Lakhs in cash from the appellant. We also find that the denial on the part of M/s. Eureka Builders has been considered by the Ld.CIT(A) to this effect that such might have been for the specific purpose of making its case stronger as the matter was under dispute. This observation, according to us, is merely

on surmise and conjectures. The authorities below ought to have considered the entire aspect of the matter is its proper perspective that too on the basis of the documents placed before them. Whereas, in this particular case the documents mainly the legal notices were not been considered in its true sense. Neither we find, any other iota of evidence in support of such observation made by authorities below against the appellant so as to substantiate the addition made u/s. 69 of the Act to the impugned amount of Rs. 50 Lakhs. Hence we do not find any cogent reason in making such addition particularly when both the parties in dispute are denying the repayment of loan of Rs.50 Lakhs by cash. In the absence of any supporting cogent evidence in the hands of the Revenue and merely on the basis of surmise and conjecture, the impugned addition made by the authorities below is found to be not sustainable in the eyes of law. The same is, thus, deleted.

In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 08th September, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(MADHUMITA ROY)
Judicial Member

Bangalore,
Dated, the 08th September, 2023.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore

By order

Assistant Registrar,
ITAT, Bangalore