

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
MSKAVITHA RAJAGOPAL, JM

**ITA No.1587/Mum/2023**

(Assessment Year: 2018-19)

Income Tax Officer  
Ward 5(1)(1),  
570, 5<sup>th</sup> Floor,  
Aaykar Bhavan,  
Mumbai-400 020

Vs.

M/s BKC Abode Pvt. Ltd.  
394-C, Lamington  
Chambers,  
Lamington Road,  
Grant Road,  
Mumbai-400 004

**(Appellant)**

**(Respondent)**

**PAN No. AAECB3807D**

**Assessee by** : Shri K.P. Devani, Adv.

**Revenue by** : Shri S Srinivasu, CIT DR

**Date of hearing:** 05.09.2023

**Date of pronouncement :** 08.09.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the learned Income Tax Officer, ward 5(1)(1), Mumbai [ the Ld. AO]against the appellate order passed by the National Faceless Appeal Centre, Delhi [ the Ld. CIT (A)] for A.Y. 2018-19, dated 10<sup>th</sup> March, 2023, wherein the appeal filed by the assessee against the assessment order passed by National e-Assessment Centre, Delhi dated 12<sup>th</sup> April, 2021, passed under Section 143(3) of the Act, was allowed.



02. Therefore, the learned Assessing Officer is aggrieved and is in appeal before us as per several grounds of appeal raised as under: -

- 1) on the facts and circumstances of the case and in law, the learned CIT (A) erred in deleting the addition made on account to depreciation for ₹ 8,249,911/-
- 2) on the facts and circumstances of the case and in law, the learned CIT – A erred in holding that the assessee has added back depreciation amount of ₹ 8,249,911/- without appreciating the fact that the assessee has initially added back the same and subsequently claimed the same amount in computation of income.
- 3) On the facts and in the circumstances of the case and in law, the learned CIT – A erred in deleting the addition made on account to depreciation for ₹ 8,249,911/- without appreciating the fact that the assessee has not got his books of accounts audited and also has not reporting depreciation chart any filing return thereby correctness of depreciation claimed is not verifiable
- 4) on the facts and circumstances of the case and in law the learned CIT (A) erred in deleting the addition under section 68 of the act of ₹ 273,462,000/- and the levy of tax under



section 115BBE vide order under section 143 (3) of the act.

5) On the facts and circumstances of the case and in law, the learned CIT (A) erred in deleting the addition by accepting additional evidence submitted by the assessee during the appellate proceedings which was not submitted during the assessment proceedings.

6) On the facts and circumstances of the case and in law the learned CIT (A) erred in deleting the addition made on the basis of assessee's submission but without giving opportunity to the AO as per subrule (3) of rule 46A of IT rules 1962 by calling for remand report.

03. The brief fact of the case shows that assessee is a company, who filed its return of income at ₹ nil on 27<sup>th</sup> September, 2018. An intimation under Section 143(1) of the Act, was issued on 15<sup>th</sup> July, 2019, wherein the total income of the assessee was determined at ₹82,49,911/-. The claim of depreciation made in the annual accounts was added to the income of the assessee. However, it was claimed that the assessee did not claim the depreciation at all in its computation of total income for which assessee made an application under Section 154 of the Act on 5<sup>th</sup> August, 2019 and further second application on 9<sup>th</sup> March, 2021, which were not disposed off.



04. Subsequently, the return of income was picked up for scrutiny under e-assessment scheme, 2019 for limited scrutiny assessment for verification of share capital in the company. The learned Assessing Officer found that assessee does not have any income for this year but has subscribed and fully paid up capital of ₹27,35,62,000/- for this year where for earlier year share capital was only ₹1 lac, thus, there is an enhancement of share capital by ₹27,34,62,000/-. Assessee was questioned to submit the details.
05. Assessee submitted that M/s Tracstar Investment Private Limited has invested in the preference share capital of the company giving its Name, Address, Permanent Account Number details of shares, balance sheet and confirmation etc. assessee also submitted that investor company was having the identical amount of unsecured loan in the assessee company for earlier years, this unsecured loan has been repaid by the assessee to that company and on the same date that company invested in the share capital of the company. It was further stated that the source of money was from the books of accounts of the assessee company itself wherein it repaid the unsecured loan appearing in the balance sheet of the assessee company as on 31 /3/2017. Therefore, the source of the fund is the unsecured loan repaid by the assessee company of the investor company. With respect to the identity and creditworthiness assessee submitted the balance sheet and the income tax return along with the bank statement of the assessee company wherein the repayment of



unsecured loan is disclosed and receipt of share application money on the same date was shown. It was also submitted that the investor company is a group entity only having the same address as of assessee. Thus, assessee submitted that identity, creditworthiness of the investor and the genuineness of the transaction is established.

06. Subsequently, the learned Assessing Officer issued notices under Section 133(6) of the Act to the investor company. In response to that, investor company submitted its income tax return and annual accounts as well as confirmed making investment in the assessee company. Investor also confirmed that it has invested in the redeemable preference shares in the assessee company explaining nature of transaction.
07. The learned Assessing Officer held that as the investors did not submit the bank statement, and as per ITR the total taxable income of the investor is only ₹42,06,110/-. The assessee has filed to prove the genuineness of the transaction and therefore, addition of ₹27,34,62,000/- was made as per assessment order dated 12<sup>th</sup> April, 2021, determining the total income of the assessee at ₹28,17,11,900/-.
08. The assessee aggrieved with the same preferred the appeal before the learned Commissioner of Income-tax (Appeals). The claim of the assessee is that the investor is a related company. It has received loan from the same company in the year ended 31<sup>st</sup> March, 2017 having the



aggregate sum of ₹26,26,22,068/-plus interest accrued thereon. This amount was repaid during the year along with interest which became Rs. 27.25 crores, the same sum has been invested by the investor as preference share capital of the assessee. The repayment of loan and share capital was also received and paid on the same date are substantiated by the bank account of the assessee where the name of the investor when the loan is repaid and when the amount is received as a capital on the same date is available. It was further stated that before the learned Assessing Officer assessee has submitted the balance sheet of the company where loan payable to M/s Tracstar Investment Private Limited along with interest is shown during the year as per note number 11 in the balance sheet. The bank account of the assessee with Punjab National Bank also showed that it is repayment of unsecured loan which has been accepted as share application money. It also demonstrated the ledger account of assessee from the books of M/s Tracstar Investment Private Limited, wherein both the parties are having the same address to show that it is a related concern. The bank statement of M/s Tracstar Investment Private Limited with Punjab National Bank in account no. 79831 was submitted which also demonstrates the same entry. The balance sheet of the investors is also placed wherein the investment of Investor Company in the assessee company was also disclosed. The learned CIT (A) after considering the explanation of the assessee, deleted



the addition of ₹27.34 crores under Section 68 of the Act. Against this the learned Assessing Officer is in appeal.

09. The learned Departmental Representative vehemently submitted that the M/s Tracstar Investment Private Limited was already an investor in the above company by way of unsecured loan. This unsecured loan is repaid during the year. Such repaid of unsecured loan has once again invested by that company in the assessee company as preference share capital. The bank statement of the investor was not given and therefore, the learned Assessing Officer is correct in making the addition.
010. The learned Authorized Representative submitted the written submission as well as the paper book showing that when the identity, creditworthiness and genuineness of unsecured loan received in earlier year is not disputed and the same money has been now been introduced by the same investor showing the exact trail of funds also, without having any contrary evidence, the assessee has demonstrated and discharged its onus under Section 68 of the Act. He submits that when the bank statement of assessee and the bank statement of investors along with the annual accounts of the assessee and the investor is examined, there is a complete undisputed trail of repayment of unsecured loan and issue of preference share is demonstrated. Therefore, there is no dispute with respect to the identity, creditworthiness of the transaction. The genuineness of the transaction is also proved by the assessee by showing the source of source of the funds



invested in preference share capital being the repayment of unsecured loans by assessee itself, the addition is rightly deleted by the learned CIT (A).

011. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that the assessee has issued the preference share capital of ₹2,73,46,200/- non-cumulative redeemable preference share of ₹10 each to M/s Tracstar Investment Private Limited. During assessment proceedings, the assessee submitted the confirmation of the investors, confirmation of accounts of the investors, balance sheet of the assessee and the investor company showing the transaction and bank statement of the assessee disclosing details of the above transaction and showing the trail of the fund. The learned Assessing Officer issued notice under Section 133(6) of the Act to the investor, which was replied to by submitting the balance sheet, confirmation and income tax return. The learned Assessing Officer says that assessee did not file the bank account of the investor and therefore, looking at the return of income, the addition was made under Section 68 of the Act. Before the learned CIT (A), the assessee submitted the bank statement of investor also. The learned CIT (A) dealt with this issue in paragraph no.4.5 and 4.6 that the bank statement of the assessee with the Punjab National Bank was available and further the bank statement submitted of the investor is merely supporting the facts stated by the assessee available and both the bank accounts in the same bank are showing complete trail of the funds from



assessee and to assessee through the investor. Undisputedly, M/s Tracstar Investment Private Limited has paid unsecured loan to the assessee which was outstanding in F.Y. 2016-17 amounting to ₹27,26,96,805/- after adjustment on 31<sup>st</sup> March, 2017, the above amount was repaid. This fact is demonstrated in note number 11 of the annual accounts of the assessee company. At page no.26 of the paper book, the Punjab National bank Account of the assessee in Account No.4046 is placed for the year 2017, which shows that the amount of unsecured loan paid by the assessee company and the amount of investment in preference share received by the assessee company to and from M/s Tracstar Investment Private Limited is 8<sup>th</sup> November, 2017. Therefore, assessee repaid the unsecured loan on 8<sup>th</sup> November, 2017 and on the same date received the sum from the same entity for which preference shares were issued. Thus, investor converted its unsecured loan with the assessee company into redeemable preference shares with the same funds which were available with it on repayment of unsecured loan of the assessee of the investor company. The facts are also corroborated by the bank statement of M/s Tracstar Investment Private Limited with Punjab National Bank of account no. 79831, also shows that on 8<sup>th</sup> November, 2017, the investor received unsecured loan and converted the same in preference share capital. The source of the funds of the investor also shows at ₹196 crores as per the balance sheet as on 31<sup>st</sup> March, 2018 and As on 31<sup>st</sup> March, 2017, it was Rs. 193



crores. It is not the case of the Revenue that the amount of unsecured loan received by the assessee is not genuine, because same is accepted without any enquiry for the year ended on 31<sup>st</sup> of March 2017. The facts before the lower authorities also do not suggest that there is any enquiry to show that the transaction of borrowing of unsecured loan or the preference share capital is not genuine. In fact, the investor company and the assessee company are both having the same address. Both are disclosed as related parties in the annual accounts transactions of both the parties. Even in response to notice under Section 133(6) of the Act, the investor submitted the bank statement to the learned Assessing Officer. The return of income was also available of the investor, the learned Assessing Officer has also recorded the income of the investor. The Revenue, does not dispute that the source of funds invested by the investor in the assessee company is not the repayment of the share capital. Further, the bank statement of the investor as held by the learned CIT (A) was merely supporting the claim of the assessee which is adequately evidenced from the bank statement of the assessee itself showing the date wise flow of fund to the investor on account of repayment of loan and receipt of the funds on the same day on account of issue of preference share capital. In view of this, we do not find any infirmity in the order of the learned CIT (A) in deleting the addition under Section 68 of the Act of ₹27.34 crores. Accordingly, the ground nos. 4 to 6 of the appeal are dismissed.



012. Ground no.1 and 3 is with respect to the addition of disallowance of depreciation for ₹82,49,911/-. As the assessee has not claimed this depreciation in its return of income, there is no reason to disallow the same by the CPC. The learned CIT (A) deleted the same when it is not claimed by the assessee. No infirmity was pointed out before us. Accordingly, as the assessee has not claimed depreciation of ₹82,49,911/- which is evident at page no. 14 of the Paper Book which is the computation of the total income and assessee has disallowed as an inadmissible expenditure of ₹82,49,911/-. On analysis of the computation of income, the balance sheet of the assessee and the attached profit and loss account, it is clear that assessee has not claimed any depreciation therefore there is no reason that there should be a depreciation statement. Further the return of income shown by the assessee is rupees nil. The accounts of the assessee are audited as it is a company. In view of this, we do not find any infirmity in the order of the learned CIT – A in deleting the above disallowance. Accordingly, ground no.1 to 3 of the appeal is dismissed.

013. In the result, the appeal of the learned Assessing Officer is dismissed.

Order pronounced in the open court on 08.09.2023.

Sd/-  
(KAVITHA RAJAGOPAL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08.09.2023

*Sudip Sarkar, Sr.PS*



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai