

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.5152/DEL/2018
Assessment Year 2015-16

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| ACIT Circle-8(2) New Delhi | Vs. | Evermore Stock Brokers Private Ltd. C-092,DLF Super Mart-1, DLF-Phase-4, Gurgaon, Haryana-122002 |
| TAN/PAN: AAACP1788K (Appellant) | | (Respondent) |

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|------------------------|------------------------------|----|------|
| Appellant by: | Shri C.S. Anand, Adv. | | |
| Respondent by: | Shri T James Singson, CIT-DR | | |
| Date of hearing: | 03 | 08 | 2023 |
| Date of pronouncement: | 19 | 09 | 2023 |

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-III, Delhi ('CIT(A)' in short) dated 04.05.2018 arising from the assessment order dated 30.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year (AY) 2015-16.

2. The grounds of appeal raised by the Revenue read as under:

“Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.47,72,95,676/- made by the Assessing Officer on account of unexplained unsecured loan u/s.68 of the Income Tax Act, 1961.”

3. Briefly stated, the assessee is engaged in the business of investments and financial activities and has filed its return of income at Rs.96,19,580/- on 26.09.2015 for AY 2015-16 in question. The case was selected for limited scrutiny. As per paragraph 2 of the assessment order, The AO averred that the assessee duly complied with notices, attended before the AO and filed necessary details. The books of account were also produced and test checked as per CASS reasons.

4. In the course of the assessment, from the tax audit report, the AO *inter-alia* observed that the assessee has shown squared off unsecured loans to the tune of Rs. 47,72,95,676/- allegedly received from an entity named *M/s. Pioneer Fincon Services Pvt. Ltd. (PF SPL)*.

4.1 To vindicate the propriety of loan transactions eventually squared up before the closure of the financial year, the assessee presented the books of account, the ledger account of PF SPL as appearing in its books, financial statement of PF SPL etc. to explain the nature of debit and credit entries. It was submitted that similar to earlier years, the assessee in pursuit of its business, advanced money from time to time and similarly recouped after a brief period in ordinary course during the financial year relevant to Assessment Year 2015-16 also. It was asserted that the funds were actually advanced to PF SPL with a view to earn interest on idle funds, rather than obtaining loans. In the process of such advance of its funds, the assessee also earned interest of Rs.2,39,640/- from transactions carried with PF SPL in the relevant assessment year as self evident from the ledger account maintained. As stated, the amount so advanced to PF SPL was, in

turn, received back during the year and the account was squared up which fact emerges from the tax audit report itself. The credit entries appearing in the ledger account of the assessee thus denotes a mere return of pre-existing loans advanced. It was only very rare instances that the repayment to assessee by PFSPL against pre-existing loans exceeded the outstanding resulting in small credits in the hands of the Assessee. It was thus essentially submitted before the AO that the credit entries appearing in the ledger account of PFSPL in the books of the Assessee, were in the nature of repayment of subsisting loans made by PFSPL. All of the comprising transactions were stated to be undertaken during the year.

4.2 The AO however alleged that the financial statement of PFSPL does not inspire much confidence on its creditworthiness inasmuch as the total revenue of the PFSPL is meager Rs. 17.83 lakh only and the assets possessed by PFSPL are also miniscule.

4.3 The AO thus inferred that the PFSPL thus lacks capacity to provide credits to the Assessee. The AO also observed that the bank statement reveals that the bank account was used only for the purposes of routing funds. The funds were transferred by the assessee to other parties immediately on its receipt from PFSPL and there were only 2-3 parties among which funds were exchanged. While drawing inference, the AO also observed that on inquiry from the PFSPL, the accountant of the PFSPL, Mr. Manish Kumar Verma appeared before Assessing Officer to explain the nature of entries. A summons under Section 131 were issued on the Principal Officer of PFSPL on 18.12.2017 for personal deposition. However, instead of the Principal Officer, one Mr.

Sagar Ramdas Bomble attended and submitted that the entity namely PFSPL has been stricken off from the records of the Registrar of Companies and therefore, no Principal Officer/Director formally retains such status. The statement of Mr. Sagar Ramdas Bomble CFO was recorded by the AO and reproduced in the assessment order. The AO ultimately concluded that PFSPL is a mere paper company which was used only to route money to the assessee.

4.4 It was alleged that the assessee has failed to discharge onus cast upon it under Section 68 to prove identity, creditworthiness and genuineness of transactions. The assessee has failed to produce the Director and the statement of a low rung Accountant does not carry much credence.

4.5 The Assessing Officer accordingly considered an amount of Rs.47,72,95,676/- received from PFSPL and credited in the books of the assessee an unexplained credit and added the same total income to the assessee.

5. Aggrieved, the assessee preferred appeal before the CIT(A) to assail the action of the AO towards additions made under S. 68 of the Act.

6. The CIT(A) took note of gist of submissions made on behalf the assessee. The application for admission of additional evidences placed by the assessee was entertained and a remand report thereon from the AO was obtained. The rejoinder on remand report filed by the Assessee was also taken note of.

6.1 On consideration of the material available on record, the

CIT(A) answered the issue in favour of the Assessee.

6.2 For ready reference, the relevant paragraphs of the order of the CIT(A) is reproduced hereunder:

“3.4 I have carefully considered the assessment order, submissions of appellant, the additional evidence, remand report of assessing officer and the rejoinder of appellant. The assessing officer raised objections regarding admission of additional evidences on the ground that a number of opportunities were given to the assessee and also on the ground that director of M/s Pioneer Fincon Services did not honour the summons issued. Vide para 3 of the remand report, the A.O. stated that the additional documents furnished by the assessee under Rule 46A do not have any bearing on the case and also that Sh. Sagar Ramdas Bomble did not have PO. After carefully considering the appellant's application u/R 46A and, the A.O.'s remand report) I find that the appellant was never required by the A.O. to file the documents explaining the sources of funds in the bank account of M/s Pioneer Fincon Services. I also find that the additional documents furnished by the appellant are capable of explaining the sources of funds in the hands of M/s Pioneer Fincon Services. As far as non-appearance by the director of M/s Pioneer Fincon Services in compliance to summons u/s. 131 is concerned, I find that the explanation given by the appellant to be sufficient. Furthermore, the A.O. examined Sh. Sagar Ramdas Bomble and recorded his statement on oath. It can be deduced that the purpose of summoning the Director/ Principal Officer of M/s Pioneer Fincon Services was served by examining Sh. Sagar Ramdas Bomble. I have considered the recorded statement of Sh. Sagar Ramdas Bomble and observed that he clearly told that M/s Pioneer Fincon Services took loan from M/s Evermore Stock Brokers Pvt. Ltd. and repaid the same to M/s Evermore Stock Brokers Pvt. Ltd. within the financial year.

3.5 It is noticed that there was a squared up account in the books of the appellant in the name of M/s. Pioneer Fincon Services. The Tax Auditor of the appellant reported that there was Nil Opening Balance and also Nil Closing Balance. The Tax Auditor also reported that the total credits as well as the total debits during the year were Rs. 47,72,95,676/-. The A.O. treated the entire credit amount of Rs. 47,72,95,676/- as cash credit in the hands of the appellant without distinguishing between the entries in the form of repayments received by the appellant from M/s Pioneer Fincon Services and given by the appellant to M/s Pioneer Fincon Services. The A.O. ignored the Tax Auditor's Report, through which the maximum amount outstanding at any time during the year was reported at Rs. 2,06,00,000/-. The A.O. also ignored the fact that the appellant earned interest from M/s Pioneer Fincon services on the amounts advanced by the appellant to M/s Pioneer Fincon Services. As per the P & L A/c of the appellant, interest income of Rs. 8,36820/- (including interest of Rs. 2,39,640/-

received by the appellant from M/& Pioneer Fincon Services) was credited.

3.6 The A.C. did not appreciate that if the appellant had taken loan from M/s Pioneer Fincon Services, then the appellant would had paid interest to M/s Pioneer Fincon Service. Receiving interest by the appellant from M/S Pioneer Fincon Services was an indication that the loans were given by the appellant to M/s Pioneer Fincon Services and not vice versa. I have carefully examined and analyzed the transactions between the appellant and M/s Pioneer Fincol Services, and also the answers given by Sh. Sagar Ramdas Bomble for & on behalf of M/s Pioneer Fincon Services as reproduced by the A.O. in para 1.7 of the assessment order. I have observed that M/s Pioneer Fincon Servicrs repaid the money to the appellant, which was received by it from the appellant by way of loan and paid interest to the appellant.

3.7 During the course of appellate proceedings, the appellant was required to clarify as to whether or not such transactions occurred in other years and also who paid interest to whom. In reply the appellant furnished & chart alongwith its letter dated 04.05.2018. It is seen from the ledger account of M/s Pioneer Fincon Services, as appearing in the books of the appellant that interest of Rs.2,15,676/- (gross interest of Rs. 2,39,640/-) was debited. It is also seen from the ledger account of the appellant as appearing in the books of M/s Pioneer Fincon Services that interest of Rs.2,15,676/ - (gross interest of Rs. 2,39,640/-) was credited. I have also seen that in the case of M/s Pioneer Fincon Services, the assessments for A.Y. 2012-13 and A.Y. 2013-14 were done u/s 143(3) by ITO Ward 19(4) New Delhi. The appellant was also required to furnish the details showing availability of funds with it at the time of giving funds to M/s Pioneer Fincon Services and also the sources thereof.

3.8 It is gathered from the assessment order that the AO made addition of Rs. 47,72,95,676/- u/s. 68 in the hands of the appellant by doubting the identity of M/s Pioneer Fincon Services, the genuineness of the transactions between the appellant and M/s Pioneer Fincon Services and also the creditworthiness M/s Pioneer Fincon Services. The appellant explained the reason in this regard by stating that since the name of M/s Pioneer Fincon Services was stricken off by the ROC /MCA., there was no director of M/S Pioneer Fincon Services on the date when the summon was issued. The A.O. vide para 3.1 of the remand report alleged that M/s Pioneer Fincon Services did not upload its ITR and audited accounts details, which resulted in striking off of the name of the company, and thus the identity, creditworthiness and genuineness of the business of M/s Pioneer Fincon Services are doubtful. The appellant vide para 7 of its rejoinder dated 26.04.2018, clarified that the conclusion drawn by the A.O. is totally incorrect, because M/s Pioneer Fincon Services was regularly electronically filing its ITRs year after year till A.Y. 2017-18. M/s Pioneer Fincon Services had electronically filed, its

IRs for 2015-16 on 27.09.2015. The appellant vide point no 4 of its letter dt. 04.05.2018, further clarifier that M/s Pioneer Fincon Services could not upload its annual return /balance sheet on the MCA Portal because the system was not accepting the data, while stating that M/s Pioneer Fincon Services was a company which was incorporated with unlimited liability and no capital clause and had no authorized capital. Due to failure of appellant to upload is annual return /balance sheet on MCA Portal, the name of M/s Pioneer Fincon Services was stricken off. Hence the presumption by the AO is found to be incorrect.

3.9 Considering the above discussion, I conclude that the A.O. made addition of Rs.47,72,95,676/- without properly appreciating the factual and legal matrix of this case. The identity of M/s Pioneer Fincon Services is established from the fact that it was regularly filing its ITRs and its assessments were also done u/s 143(3) for A.Y. 2012-13 and F.Y. 2013-14. The genuineness of the transactions between the appellant and M/s Pioneer Fincon Services stands proved from the fact that all transactions were done through banking channels, the account was squared up during the same year and M/s Pioneer Fincon Services paid interest on such transactions to the appellant while deducting tax at source. The A.O. has accepted that the appellant charged interest from M/s Pioneer Fincon Services and has allowed credit of TDS made by M/s Pioneer Fincon Services. The creditworthiness of M/s Pioneer Fincon Services cannot be judged only from the site of its balance sheet on the year end. There are so many other factors, which were required to be looked into.

3.10 Though the term 'creditworthiness' has a much wider meaning, yet the A.O. adopted a very narrow meaning of the term 'creditworthiness'. I am of the considered view that if a person has sufficient funds at its disposal to lend money to others, his creditworthiness cannot be doubted. I have seen from the bank statement of M/s Pioneer Fincon Services and other documents filed with the application u/s 46A that M/s Pioneer Fincon Service always had sufficient funds at its disposal to repay funds to the appellant I find that it is a case where the appellant discharged the onus cast on it u/s 68, and hold that A.O. made the addition u/s 68 of Rs. 47,72,95,676/- without bringing on record any material to establish that M/s Pioneer Fincon Services was merely a paper company, that the transactions between it and the appellant were not genuine and that the credit entries appearing in the books of account of the appellant were nothing but the appellant's own unaccounted money which was routed through the bank account of M/s Pioneer Fincon Services.

3.11 I am satisfied that the sources of funds in the hands of M/s. Pioneer Fincon Services are explained. Various courts have held that on such facts and circumstances addition u/s 68 is not justified. Hence, I am of the considered opinion that the addition of Rs. 47,72,95,676/- made by the A.O. cannot be sustained and thus is

liable to be deleted. I, therefore, delete the addition of Rs.47,72,95,676/-. Hence, these grounds of appeal are allowed.

7. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

8. The Id. CIT-DR for the Revenue relied upon the observations made in the assessment order and submitted in furtherance that the bank statement of PFSPL gives an unflinching impression that the account has been used only for routing funds and the credentials of the PFSPL to the transactions are obscure and unknown. The assessee has received substantial fund from PFSPL but however only an accountant namely Mr. Manish Kumar Verma attended for PFSPL in the inquiry proceedings before the Assessing Officer. Having regard to the indifference shown to the assessment proceedings, a summon under Section 131 was thus issued to enforce the attendance of the Principal Officer of PFSPL. Despite summon under S. 131, no Director appeared before the assessee and one Mr. Sagar Ramdas Bomble appeared and claimed to be Principal Officer (Finance) of PFSPL. Mr. Bomble expressed inability of attendance of Director on the ground that PFSPL has wound up and the name of the company and stricken off and no Principal Officer exists as of now. The Id CIT-DR thus quipped that the disregard to the summons under S. 131 is anything but bonafide. The Id. DR thereafter argued that the loan interchanged between the assessee and PFSPL is not backed by any formal agreement viz; loan agreement etc. to discern the terms of such transaction. The Id. DR thus asserted that PFSPL is merely a paper company formed for the purposes of routing funds without any credentials as rightly noted by the AO. Adverting to S. 68 of the Act, the Ld. CIT-DR pointed out that the primary onus always lay upon the assessee to explain the nature and source of any credit appearing in the books of the Assessee where the assessee has

miserably failed in its endeavour. The Id. DR thus submitted that the action of the AO in invoking Section 68 could not have been faulted by the CIT(A) and consequently urged for reversal of action of CIT(A).

9. Per contra, the Id. counsel for the assessee strongly supported the findings of the CIT(A) rendered in favour of the assessee and submitted that the Assessing Officer has invoked the provisions of Section 68 on misplaced exposition of facts and law.

9.1 It was contended that while invoking the provisions of s. 68, the AO has applied wrong tests and proceeded on prima facie incorrect assumption that the assessee was the beneficiary of loans from PFSPL whereas it is rather a reverse case where the short term loans of varied amounts were intermittently given by the assessee in tranches to PFSPL which were regularly returned by way of repayment after its utilization for a very short period. It was submitted that such facts are discernible from the bank statement and ledger account and the figures don't lie. The AO thus proceeded on non existing facts.

9.2 The Id. counsel next submitted that the maximum amount outstanding at any point of time during the year was only Rs.2,06,00,000/- whereas the Assessing Officer has unimaginably taken aggregate and total of all the transactions of payment and equivalent repayment standing at Rs.47,72,95,676/- for the purposes of the s. 68 disregarding the rotation of same funds multiple times. These facts of total transaction and maximum outstanding are clearly discernible from the audit report itself. The Ld. Counsel thus vociferously contended that the AO yet again portrayed total non application of mind and was totally oblivious of crucial facts while making such high pitched additions

9.3 To bolster the stance of the assessee, the Id. counsel pointed out that not only the AO has committed error in adopting staggering sum of Rs.47.72 crore as unexplained credit as against maximum outstanding of Rs.2.06 crore at any point of time and that credit represent repayment of advances given at earlier occasion, the AO further failed to provide perspective to glaring facts such as (a) The transactions were embedded with commercial intent and character and interest of Rs.2,39,640/- was charged on such Short Term Loan Transactions by the assessee and TDS on interest payments were also deducted by PFSP (b) the crucial fact of total repayment and square up of loan extended to PFSP before the end of financial year in question (c) The amounts credited in the books of account of the assessee under question are repayment of pre-existing loan by PFSP and therefore, the nature of credit i.e. receipts against loan given is self explanatory (d) the documentary evidences as well as the depositions made by the Accountant and CFO of the borrower Co. brings the facts abundantly clear which was conveniently ignored by the AO (e) extenuating circumstances attached towards non-attendance of director of a non-existing co. were sidestepped and it was also not pointed out as to what assistance was not facilitated by CFO of PFSP in the matter of enquiry in response to summons and debilitating impact, if any, of non presence of a director *per se*; (f) There is nothing adverse available against the assessee to trigger doubt on the identity, creditworthiness or the genuineness of transactions. PFSP has been assessed to tax since beginning of its existence and was also assessed to tax under Section 143(3) for Assessment Year 2012-13 as well as Assessment Year 2013-14; the bank statement of the assessee as well as PFSP reflects the genuineness of the banking transactions; The bank statement do not reflect any cash deposits and the surplus money

given by the assessee to earn by way of interest which money, in turn, was given by PFSPIL to other connected concerns as per tacit understanding.

9.4 No adverse inference could per se be drawn for non attendance of the Director. The accountant as well as the CFO attended before the Assessing Officer to offer explanation on the transactions owing to inability for compliance of personal depositions of the Director as PFSPIL had ceased to exist at the time of inquiry for which relevant evidences were placed before both the authorities below.

9.5 Before the first appellate authority, all the evidences were placed to support the *inter se* transactions between the assessee and PFSPIL and a remand report was called for by the CIT(A). The CIT(A) on consideration of totality of facts and the comments in the remand report embraced the plea of the assessee owing to such glaring facts.

9.6 The Id. counsel thus submitted that *bona fides* of nature and source of transactions have been duly traversed and the onus cast upon the assessee in relation to transactions was fully discharged.

10. We have carefully considered the rival submissions, perused the assessment order as well as the appellate order and also the material referred to and relied upon at the time of hearing and case law cited.

11. The controversy in the present case relates to bonafides of credits appearing in the books of assessee on the contours of s. 68 of the Act. The issue is essentially factual in nature.

12. At the outset, on appraisal of the case records and arguments advanced by respective sides, it is noted from the ledger account that the assessee had lent money in a truncated fashion to PFSPIL from time to time which was systematically returned to assessee

through banking channel in a short interval. Thus, the credit entries made in the books of account correspond with the earlier pre-existing loan advanced by the assessee. The nature of the receipt, i.e., credit is thus abundantly clear. Ostensibly, the credits for the purpose of s. 68 are recoupment of the earlier advances. The nature of the credit is thus obvious case of repayment of existing loans. On facts, the AO has obviously misunderstood the true purport of nature of credits. The Assessing Officer has thus misdirected himself in law in proceeding against the assessee on a wholly wrong footing.

12.1 On a broader reckoning, the Assessing Officer failed to understand that firstly, the credits represent the repayment of loan to the assessee and secondly, the outstanding at any point of time is only Rs.2.06 crore. The Assessing Officer has made high pitched additions on misplaced assumption of facts. The transactions have been carried out through banking channel and both, the assessee as well as the borrower PFSPL, are regularly assessed to tax. The so called loans have been ultimately repaid by PFSPL and there is no outstanding at the end of the year.

12.2 A perusal of the order of the CIT(A) clearly brings out the fact that PFSPL is not a stranger entity to the assessee. M/s. PFSPL has availed loans from the assessee on commercial considerations, and the interest paid has been subjected to deduction of tax at source. The inquiry carried out with PFSPL is also found to have been responded and erstwhile PFSPL has joined the enquiry proceedings albeit with the aid of officers of lower pedestal. The presence of the Accountant and CFO of the erstwhile PFSPL reflects co-operation of the borrower with the Revenue Authorities. The statement deposed on oath of the CFO of PFSPL has not shown to reflect anything which may cast aspersions. The vital information towards return of income, financial statement, extract of bank statements of both the

parties to the transaction were placed on record. The AO has not pointed out any disproportionate circumstance with reference to these documents which may suggest any sort of disguise on the part of the assessee and use of its own money. The transactions have been found to be routed through banking channel and reported in the return of income by the assessee as well as PFSPL.

12.3 Besides, the repayment and squaring up of loans is an overriding point of significance. As repeatedly argued, the transactions ultimately were squared up and there was no outstanding at the end of the year. Hence, the assessee cannot be said to have gained any spurious benefit at its disposal by virtue of such transaction. The factum of repayment thus also validates the stance of bonafide. The absence of any advantage arising from alleged credits also somewhat discharges the onus placed under s. 68 of the Act. Having regard to these broad facts, the CIT(A) reckoned that formidable and astounding additions were made CIT(A) concluded the issue in favour of the assessee.

12.4 At this juncture, it may be relevant to refer to the judicial dicta echoed in the case of *CIT vs. Ayachi Chandrashekhar Narsangji*, 42 *taxmann.com* 251 (Guj.); *CIT vs. Mahavir Crimpers*, 95 *taxmann.com* 323 (Guj.); *CIT vs. Karaj Singh (2011)* 15 *taxmann.com* 70 (P&H) and *Panna Devi Chowdry vs. CIT*, 208 *ITR* 849 (Bom). In these judgments, the Hon'ble High Courts have held that the factum of repayment are entitled to great weight while evaluating the bonafides of loan transactions.

12.5 In the light of delineations in preceding paragraphs, we find ostensible rationale in the view taken by the CIT(A) which is backed by evidences and whole set of speaking circumstances. On the other hand, the reasonings advanced on behalf of revenue lack merits.

While the transactions are shown to be impressed with commercial spirit and eventually squared up, the parties to such banking transactions are identifiable on the tax records of the department. The additions made is fundamentally flawed for another reason too i.e. assessing the gross total of all credits disregarding the fact of rotation of money and peak credit being very low in the context.

13. The facts in the present case thus speaks for itself and there appears no need to amplify the findings of CIT(A). Without reiteration of wide ranging observations led by the CIT(A), we are convinced that the onus which lays upon the assessee to explain that the entries made are real and not fictitious, has been duly discharged. Ordinarily, it is difficult to fathom an onus tagged upon the assessee to explain the circumstances as to why third party had needed such funds so long as the transactions are embedded with commercial considerations. Furthermore, the onus towards source in the hands of borrower in relation to repayment entries *qua* pre-existing loans is indeed onerous and can seldom be visualized. We are thus in agreement with the pith and substance of plea advanced on behalf of respondent assessee and endorse the action of the CIT(A) *in toto*. Hence, we decline to interfere with the first appellate order.

14. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 19/09/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /09/2023

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**