

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

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1573/MUM/2023 (A.Y: 2015-16)

IWI Stationary Pvt. Ltd., 1213, Maker chamber V 221, Nariman Point Mumbai - 400021 PAN: AAACI3710N	v.	DCIT – Central Circle – 3(2)(1) Aayakar Bhawan Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Ms. Rupa Nanda
Department Represented by	:	Shri H.M. Bhatt
Date of Conclusion of Hearing	:	04.09.2023
Date of Pronouncement	:	20.09.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 08.03.2023 for the A.Y.2015-16 passed u/s. 250 of Income-tax Act, 1961 (in short "Act").

2. Assessee has raised following ground in its appeal: -

1. The Ld. CIT(A) erred in disallowing deduction of restricted paid of ₹.2,06,120/- on loan taken from M/s. Shyam Alcohol & chemicals Ltd., by treating the said loan as bogus."

3. At the time of hearing, Ld. AR brought to our notice that similar ground was raised by the assessee before the Coordinate Bench in ITA.No. 1571 & 1572/Mum/2023 for the A.Y. 2013-14 and 2014-15 and the Coordinate Bench has considered and adjudicated the issue in favour of the assessee. Copy of the order is placed on record.

4. On the other hand, Ld. DR relied on the findings of lower authorities.

5. Considered the rival submissions and material placed on record, we observe that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case in ITA.Nos. 1571 & 1572/Mum/2023 for the A.Y. 2013-14 and 2014-15 respectively vide order dated 20.07.2023 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

"7. We heard rival contentions on this issue and perused the record. In the instant case, the loan taken by the assessee has been added u/s 68 of the Act. Sec. 68 enables assessment of such types of cash credits, if the assessee fails to prove the nature and source of cash credits. "Nature of cash credit" would mean that the assessee is required to show that it is not of revenue nature. In order to prove the source, the assessee should discharge initial burden to prove the cash credits placed upon his shoulders of the assessee u/s 68 of the

Act, i.e., the assessee is required to prove three main ingredients, viz., the identity of the creditor, the genuineness of the transactions and the credit worthiness of the creditor. If the assessee discharges the initial burden, then the burden would shift to the shoulders of the assessing officer, i.e., it is the responsibility of the AO to disprove the claim of the assessee by bringing evidences on record.

8. *We shall now examine the facts prevailing in the instant case. It is noticed that it is not the case of the AO that the assessee did not discharge the initial burden placed upon it with regard to the loan taken by it. We notice that the assessee has furnished all the details relating to the loan in order to discharge the burden placed upon it u/s 68 of the Act. However, the AO has refused to accept those details, only for the reason that the above said company has been categorized by the investigation wing as accommodation entry provider.*

9. *We noticed from the record that the assessee has filed following documents in order to discharge the burden placed upon it under section 68 of the Act :-*

- a) Annual audited account of lender company.*
- b) Bank statements showing receipt of money.*
- c) Copy of income tax return filed by lender company.*
- d) Confirmation of ledger account by the lender company.*

Through these documents, the assessee has proved the identity, credit worthiness and genuineness of transactions. Thus, in our view the assessee has discharged initial burden placed upon it under section 68 of the Act by furnishing above said documents.

10. *The question as to whether the Assessing Officer could have made addition under section 68 of the Act by relying upon the statement given by an accommodation entry provider was examined by the Coordinate Bench in the case of M/s. Moraj Realty Pvt. Ltd. (ITA No.708 & 709/Mum/2019 dated 08-12-2020). It was held as under :-*

"17. Moreover, except for relying on the statement of VVB the Assessing Officer has not done any inquiry himself except for referring to a notice issued under section 133(6) in A.Y. 2009-10 only. The learned counsel of the assessee has challenged

the very veracity of this observation. He has submitted that assessee has asked for the copy of the said notice issued under RTI Act. In response it was replied that copies thereof are not available. Hence, this shows that even the so called inquiry by the Assessing Officer was done in case of only one party for A.Y. 2009-10 and the veracity of which is itself in doubt.

18. We find ourselves in agreement with the submissions of the assessee's counsel. We note that except for the statement of the entry operator which was also retracted the addition made by the authorities below is devoid of cogent material. In this regard we note that in similar circumstances honourable Bombay High Court in the case of CIT Vs. Orchid Industries Pvt. Ltd. (ITA No. 1433 of 2014 dated 5.7.2017) held as under :-

"The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra)

would be applicable in the facts and circumstances of the present case.”

11. In our view, the above said decision rendered by the coordinate bench supports the case of the assessee. Accordingly, following the above said decision, we hold that the addition made by the Assessing Officer under section 68 of the Act, in the facts and circumstances of the case, was not justified. Accordingly we set aside the order passed by the learned CIT(A) on this issue and direct the AO to delete the addition of Rs.20.00 lakhs made under section 68 of the Act.

12. The next issue contested in AY 2013-14 relates to the disallowance of interest expenses of Rs.1,78,082/- paid on the loan taken from M/s Shyam Alcohol & Chemicals Ltd. The AO has disallowed interest expenses, since he had assessed the loan taken from the above said company as unexplained cash credit u/s 68 of the Act. In earlier paragraph we have held that the loan of Rs.20.00 lakhs taken by the assessee cannot be added under section 68 of the Act. Accordingly, the disallowance of above said interest expenditure is not called for. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the disallowance of Rs. 1,78,082/- made out of interest expenses.”

6. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case in the earlier Assessment Years i.e., for the A.Y. 2013-14 and 2014-15, we allow the ground raised by the assessee.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 20th September, 2023

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 20.09.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum