

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 11/Jab/2021
(ASSESSMENT YEAR- 2015- 2016)**

Shri Saurabh Baderiya, 1752, Saraswati Colony, Cherital ward, Jabalpur, M.P.-482002.	vs	ACIT, Central Circle, Jabalpur
(Appellant)		(Respondent)
PAN No. AHIPB3208Q		

Assessee By	Shri Rahul Bardia, FCA
Revenue By	Shri Saad Kidwai, CIT DR
Date of hearing	21/09/2023
Date of Pronouncement	22/09/2023

ORDER

PER OM PRAKASH KANT, A.M.:

This appeal by the assessee is directed against order dated 21.09.2020 passed by Ld. Commissioner of Income Tax(Appeals)-3, Bhopal [in short "Ld.CIT(A)"] for assessment year 2015-16, raising following grounds:

1. *"The order passed by the Ld CIT (A) supporting the order of Ld AO is bad in law and facts, void ab initio and with jurisdiction.*

2. *The Ld CIT (A) erred in upholding the order of Ld AO when the entire assessment order is null and void since the approval given by the JCIT u/s 153D is without application of mind.*

3. *The Ld CIT (A) erred in law and facts of the case in upholding the addition of Rs 26,99,878/- u/s 68 in AY 2015-16, when the loan was taken Rs 15,00,000 in AY 2010-11, Rs 5,00,000/- in AY 2012-13 and the balance of Rs 6,99,878/- was accumulated interest amount.*

4. *The Ld CIT (A) erred in law and facts of the case in sustaining the addition of Rs.26,99,878 u/s 68.*

5. *The appellant reserves the right to add or amend any ground of appeal.”*

2. Briefly stated facts of the case are that in the case of the assessee, a search u/s 132 of the Income Tax Act, 1961 (in short “the Act”) was carried out on 17.11.2015 alongwith “M/s Jabalpur Hospital” and “Metro Hospital” Group of cases. Consequently, notice u/s 153A of the Act was issued for AY under consideration and the assessment was completed on 27.12.2017 u/s 153A r.w.s 143(3) of the Act. The AO made addition for unsecured loans received from m/s Vaibhav Pipes Pvt.Ltd. of Rs.26,99,878/- as unexplained cash credit u/s 68 of the Act, holding that the Vaibhav Pipes Pvt.Ltd. was an accommodation entry provider entity. On further appeal, Ld.CIT(A) upheld the addition by observing as under:-

4.2.5."But it is clear from the facts as discussed above tht the appellant could not prove the same, therefore, in the light of above facts and case laws as discussed above, I am of the considered view that the AO was justified to make addition u/s 68 of the IT Act. Therefore, the addition made by the AO amounting to Rs.26,99,878/- is Confirmed. Therefore, the appeal on these grounds is Dismissed."

3. We have heard Ld. Authorized Representatives of the parties on issue in dispute and perused the relevant material available on record. Before us, Ld. Counsel for the assessee has filed a Paper book containing pages 1 to 109. The counsel of the assessee was advised to argue the ground Nos. 3 and 4 of the appeal, which deal with issue in dispute on merit, because if the assessee succeeds on merit, the ground Nos. 1 & 2 challenging the validity of assessment would be rendered only academic. Accordingly, addressing the Ground Nos. 3 and 4 of the appeal, the Ld. Counsel for the assessee referred to page Nos.72 to 80 of the Paper Book and submitted that during the year under consideration, no loan has been received by the assessee. Ld. Counsel for the assessee referred to page 79 of the Paper Book which is the confirmation of the accounts of the M/s Vaibhav Pipes p Ltd for the period of 01.04.2013 to 31.03.2014 and according to which there is an opening balance of Rs.26,52,610/- and thereafter, further interest of Rs. 58, 735/- has

been credited. Further, the transfer entries of Rs.20 crores has been debited to M/s Global Media and final closing balance of the parties has been reported as Rs. 7,11,345/-. Further at page 81, opening balance has been reported at Rs. 7,11,345/- for the period from 01.04.2014 to 31.03.2015 i.e. year under consideration. In view of these confirmations of accounts of the party, the Ld. Counsel for the assessee contended that the loans and advances added by the AO have been received from the said party in the years prior to year under consideration and hence no addition could have been made u/s 68 of the Act for the year under consideration. We agree with the contention of the Ld. Counsel for the assessee as in absence of loan received in the year under consideration, no addition could have been made in the case of the assessee u/s 68 of the Act for the year under consideration. In view of the above facts and circumstances of the case, we restore the matter back to the file of AO for verification of the confirmation of accounts filed by M/s Vaibhav Pipes Pvt.Ltd. and decide the issue in accordance with law. Ground Nos 3 and 4 the appeal by the assessee are accordingly, allowed for statistical purposes. Since, we have allowed the ground Nos. 3 and 4 on merit for verification only, we are not adjudicating on ground Nos. 1 and 2 of the appeal, being rendered merely academic.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 22/09/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar
Jabalpur Bench