

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 41/Kol/2020
Assessment Year: 2012-13

Mobilink Aradhana Complex G.T. Road Asansol - 713304 [PAN: AAIFM6955A]	Vs	Income Tax Officer, Ward - 2(2), Asansol
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Swati Baid, A/R
Revenue by :	Shri Arup Chatterjee, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 09/08/2023
घोषणा की तारीख /Date of Pronouncement: 19/09/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal has been filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - Asansol (hereinafter 'the ld. CIT(A)') passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act'), dt. 03/09/2019, for Assessment Year 2012-13.

2. The first issue for consideration raised in Ground No. 1 is regarding addition made u/s 68 of the Act for unsecured loan of Rs.91,65,000/- and Rs.10,00,000/- received from M/s. Sriram Marketing Services Pvt. Ltd. and M/s. Sriram Power Steel Ltd., respectively.

3. Facts in brief are that the assessee is a partnership firm and filed its return of income for Assessment Year 2012-13 on 30/03/2013. Case selected for scrutiny through CASS followed by issuance of notice u/s 143(2) and 142(1) of the Act. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has received loan of Rs.91,65,000/- and Rs.10,00,000/- from M/s. Sriram Marketing Services Pvt. Ltd. and M/s. Sriram Power Steel Ltd. The Id. Assessing Officer observed that bank statement filed by the assessee are incomplete. Based on certain other observation, the Assessing Officer came to a conclusion that the genuineness of the transactions and creditworthiness of the parties cannot be established and the same were, therefore, added as unexplained cash credit u/s 68 of the Act. The assessee further failed to get any relief before the Id. CIT(A).

4. Aggrieved the assessee is now in appeal before this Tribunal.

5. The Id. Counsel for the assessee submitted that the assessee has successfully proved the identity and creditworthiness of the cash creditors and the genuineness of the transactions. Reference was also made to the paper book containing 80 pages, which contains the bank statements of both the cash creditors and financial statements of M/s. Sriram Marketing Services Pvt. Ltd. and M/s. Sriram Power Steel Ltd., and loan confirmation letters.

6. We have heard rival submissions and perused the material available on record.

7. The addition u/s 68 of the Act, is in challenge before us for the amount of Rs.91,65,000/- and Rs.10,00,000/- received from M/s.

Sriram Marketing Services Pvt. Ltd. and M/s. Sriram Power Steel Ltd.. We notice that both these parties have confirmed the said transactions giving reply to the AO and also giving confirmation of account exhibiting the said transactions which have been carried out through banking channels. We observe that the bank statement of both the alleged cash creditors were not made available with the AO. Before us, the assessee has filed complete bank statement. On perusal of the bank statement of M/s. Sriram Marketing Services Pvt. Ltd. held with Punjab National Bank. We notice that the cash creditor is located at Ranchi, Jharkhand. Assessee gave funds to the said cash creditor amounting to Rs.6,79,000/- during 08/04/2011 to 07/09/2011 and thereafter received Rs.91,65,000/- during 01/10/2011 to 03/01/2012 and further gave Rs.5,50,000/- during 03/12/2012 to 19/12/2012. Closing credit balance in the books of account of the assessee is Rs.79,56,000/-. We also notice that in the bank account of M/s. Sriram Marketing Services Pvt. Ltd., there are regular cash deposits before making any transfer. It was also brought to our notice that M/s. Sriram Marketing Services Pvt. Ltd., has not filed its income tax return for AY 2012-13. The source of income of the said cash creditor is not known. *Prima facie* it indicates that the alleged cash creditor used its bank account for rotation of funds and, therefore, it is not established that whether M/s. Sriram Marketing Services Pvt. Ltd. has sufficient creditworthiness to give the alleged sum to the assessee and also the genuineness of the transactions remains in doubt. Similar is the case for the other cash creditor, namely, M/s. Sriram Power Steel Ltd.. We

also notice that the bank account reveals that there are regular cash deposits before issuing cheques and in absence of any financial statement and other relevant details, the alleged cash deposit in the bank account of the alleged cash creditors remains in doubt. Therefore, in order to examine whether the nature and source of cash credit is explained by the assessee, Hon'ble Apex Court in the case of *Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC)* laid down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.

8. From perusal of the above judgment, we notice that the assessee needs to establish the identity, creditworthiness and genuineness. In the instant case, identity of the creditors is proved but the creditworthiness of the cash creditors and genuineness of the alleged transaction is not proved. Under these given facts and circumstances, since the assessee has failed to explain the nature and source of alleged loan, we find no reason to interfere with the findings of the Id. CIT(A)

and uphold the same. Ground/s raised by the assessee to this effect are dismissed.

9. The second issue for our consideration is disallowance of Rs. 1,05,664/-. We notice that the ld. AO made disallowance of Rs.2,11,328/- on ad-hoc basis being 10% of the total expenditure claimed by the assessee and subsequently, the ld. CIT(A) sustained it to 5% and gave part relief to the assessee. We notice that the assessee has filed all the ledger accounts of various expenses along with supporting evidence. Revenue authorities have not reported any discrepancy in such details failing which the making of such adhoc disallowance cannot be justified. Accordingly, we set aside the finding of the ld. CIT(A) and delete the disallowance sustained by the ld. CIT(A). Ground No. 2 raised by the assessee is allowed.

10. Ground No. 3 is general in nature.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 19th September, 2023 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Kolkata, Dated 19/09/2023

Sd/-

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

6

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata