

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Suchitra Kamble, Judicial Member

ITA No. 278/Rjt/2016
Assessment Year 2012-13

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| The ITO, Ward-1(3), Jamnagar (Appellant) | Vs | M/s. 2D Enterprise, Jamnagar PAN: AAAFZ6321K (Respondent) |
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Assessee by: Shri Mehul Ranpura, A.R.
Revenue by: Shri Ashish Kumar Pandey, Sr. D.R.

Date of hearing : 28-08-2023
Date of pronouncement : 31-10-2023

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

This is an appeal filed against the order dated 13-05-2016 passed by
ld. CIT(A) for assessment year 2012-13.

2. The grounds of appeal are as under:-

- “1. The Ld. CIT(A) erred on facts and in law in deleting the disallowance of Rs.1,80,00,000/- made by the Assessing officer u/s. 68 of the Act treating the unsecured loan as unexplained.*
 - 2. The Ld. CIT(A) erred on facts and in law in deleting the disallowance of claim of interest expense amounting to Rs.6,01,424/- on unsecured loans.*
 - 3. On the basis of the facts and circumstances of the case, the learned CIT (A) ought to have upheld the order of the Assessing Officer.*
 - 4. That the revenue craves leaves to add, amend, alter or withdraw any ground of appeal.*
 - 5. It is therefore prayed that the order of the CIT (A), Jamnagar may kindly be set aside and that of Assessing Officer be restored.”*
3. The assessee filed return of income on 14-08-2012 declaring income at Rs. Nil. Subsequently, the return of income was processed u/s. 143(1). The case was selected for security and notice u/s. 143(2) was issued on 06-08-2013 and served upon the assessee on 13-08-2013. Subsequently, notice u/s. 142 was issued on 27-09-2013 and the assessee filed written submissions on 06-06-2014. The Assessing Officer observed that the audited report mentioned that there was outstanding unsecured loan of Rs. 1,37,04,024/- from F C Pharmaceutical Pvt. Ltd. Rs. 38,23,150/- from H P Chemical Pvt. Ltd. and Rs. 10,74,250/- from Shahmaru Construction Pvt. Ltd. The assessee furnished the reply thereby submitting the copy of PAN card of depositors, copy of account of the above parties from assessee's books of accounts, copy of confirmation of assessee's accounts from books of depositors, copy of return of income tax of the depositors, copy of the audited balance sheet of the said three companies and Affidavits of the Directors of the Companies. The Assessing Officer after taking cognizance of the details held that the scrutiny assessment in the case of H P Chemical Pvt. Ltd. and F C Pharmaceutical Pvt. Ltd. is also under scrutiny for

assessment year 2012-13 with the concerned Assessing Officer. So, in the interest of revenue, the amount credited in the books of assessee from H P Chemical Pvt. Ltd. of Rs. 36,36,000/- and from F C Pharmaceutical Pvt. Ltd. of Rs. 1,33,64,000/- is added to the total income of the assessee on protective basis u/s. 68 of the Act in the interest of revenue. The Assessing Officer further held that the unsecured loan received from Shahmaru Construction Pvt. Ltd. of Rs. 10,00,000/- is added on substantial basis u/s. 68 of the Act as unsecured credits to the total income of the assessee. The Assessing Officer further disallowed the claim of interest expenses of Rs. 6,01,424/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Id. Departmental Representative submitted that as relates to ground no. 1, the CIT(A) was not justified in deleting the disallowance of Rs. 1,80,00,000/- made by the Assessing Officer u/s. 68 of the Act treating the unsecured loan as unexplained. The Id. Departmental Representative submitted that the defacto verification of the PAN was not shown and there was a doubt related to the identity of the parties. The Id. Departmental Representative further submitted that the creditworthiness was also not established by the assessee before the Assessing Officer as well as the CIT(A) and without verifying the identity/creditworthiness and the genuineness of the transactions, the CIT(A) has deleted the addition. Therefore, the Id. Departmental Representative submitted that the matter may be remanded back for verification as section 68 provisions were not

proved by the assessee. The Id. Departmental Representative relied upon the decision of *Kottex Industries vs. ACIT (2021) 129 taxman.com 151*. As regards ground no. 2, the Id. Departmental Representative submitted that the CIT(A) was not correct in deleting the disallowance of claim of interest expenses amounting to Rs. 6,01,424/- on unsecured loans. The Id. Departmental Representative submitted that as per section 36(1)(iii), the deemed interest is on consequential basis and therefore the Assessing Officer has rightly disallowed the same on these unsecured loans. The Ld. DR submitted that the entire money trail was detailed by the Assessing Officer after inquiry under Section 133(6) of the Income Tax Act, 1961 from Banks and it was noted that the cash is first deposited in the various concerns M/s. Magnum Ltd., Karan Enterprises, Krishna Enterprises, Navrang Enterprises, Nutan Enterprises and S K Corporation and then transferred by RTGS or through cheque to the bank account of H. P. Chemicals P. Ltd., F. C. Pharmaceuticals P. Ltd. and Shahmaru Construction P. Ltd. which is further given as unsecured loan to the assessee. The Assessing Officer further observed that these companies were not tax payers. These facts are mentioned in para 5.2 in the Assessment order.

7. The Id. Authorized Representative relied upon the order of the CIT(A) and further submitted that the addition on the basis of unsecured loans is on protective basis and in fact these loans were repaid subsequently. So, in these companies, the identity, genuineness and the creditworthiness was established by the assessee before the Assessing Officer as well as before the CIT(A). The Id Authorized Representative also relied upon the decision of Hon'ble Supreme Court in case of *CIT vs. Lovely Export 395 ITR 680* and

decision of Hon'ble Bombay High Court in case of CIT vs. Gangandee Infrastructure (P.) Ltd. (2017) 80 taxman 272.

8. We have heard the rival contentions and perused all the relevant materials available on record. It is pertinent to note as relates to ground no. 1, the Assessing Officer himself has mentioned that the assessee along with its submissions before the Assessing Officer has given the copy of PAN card of the depositors, copy of account of the above parties from assessee's books of accounts, copy of confirmation of assessee's account from books of deposits and the copy of return of income tax of the depositors, copy of the audited balance sheet of the said three companies as well as Affidavit of the Directors of the companies. These documents were never doubted by the Assessing Officer and in fact the addition is on the basis of protective assessment itself shows that the assessee has given all the documents related to the identity, creditworthiness and the genuineness of the transactions. The contentions of the Ld. DR that money trail was explained in para 5.2 of the Assessment Order, the same becomes negated once the Tribunal in the substantive additions of the entities that are H. P. Chemicals P. Ltd., F. C. Pharmaceuticals P. Ltd. deleted the same on the basis that the amount received by these companies are genuine (ITA No. 316 & 317/RJT/2017 order dated 13.09.2023 at the time of hearing both parties submitted that the appeals related to substantive additions are pending for orders and the order of the Tribunal was taken from the website of the Tribunal with the knowledge of both the parties). Therefore, in present assessee's case the creditworthiness doubted by the Assessing Officer does not stand footing as the said transaction from its source becomes genuine as per the finding of

the Tribunal. In fact, in subsequent years, the assessee paid the said loans and therefore, the CIT(A) has rightly deleted the said additions. Ground no. 1 of Revenue's appeal is dismissed. As relates to ground no. 2, the same is consequential to ground no. 1, hence ground no. 2 of Revenue's appeal is dismissed.

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

Order pronounced in the open court on 31-10-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 31/10/2023

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot