

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 895/Mum/2023 (A.Y. 2011-12)

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| Grishma Hemanshu Mody D-31, 104, Yogi Prasad Yogi Nagar, Borivali (W), Mumbai 400 091. PAN : AAOPM1215F (Appellant) | Vs. | Commissioner of Income Tax (Appeals), NFAC, Mumbai. (Respondent) |
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| Assessee by | Shri Chandra N. Pachauri |
| Department by | Shri Surendra Kumar Meena |
| Date of Hearing | 16.08.2023 |
| Date of Pronouncement | 25.10.2023 |

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 24-01-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2011-12. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.25.00 lakhs made u/s 68 of the Act by the AO.

2. The facts relating to the above said issue are discussed in brief. The assessee is an individual and is a partner in M/s Surface Road Construction. She had taken a loan of Rs.25.00 lakhs from a company named M/s Delight Diam P Ltd. The revenue carried out enquiry in the case of above said company, which was carrying on diamond business. In

the statement taken from one of the directors named Shri Deepak Kailash Babel u/s 131 of the Act, he had admitted that the entire sale of diamonds represented accommodation entries. He also admitted that the loans given by the company to various persons is also bogus. It was noticed by the AO that the assessee had taken loan of Rs.25.00 lakhs from the above said company. On the basis of statement given by Shri Deepak Babel, the AO concluded that the assessee has taken accommodation entry by way of loan and accordingly concluded that the income of the assessee has escaped the assessment. Accordingly, the AO reopened the assessment of the year under consideration.

3. In response to the query raised by the AO about the loan, the assessee submitted the PAN details, copy of bank accounts. It was submitted that the loan is duly reflected in the books of accounts of both the parties. However, the AO asked the assessee to produce directors of M/s Delight Diam P Ltd and the assessee expressed her inability to produce them. The AO issued notice u/s 133(6) of the Act and it was returned unserved. Accordingly, the AO came to the conclusion that the loan taken by the assessee is only an accommodation entry and accordingly assessed the loan amount of Rs.25.00 lakhs as income of the assessee u/s 68 of the Act. The Ld CIT(A) confirmed the same and hence the assessee has filed this appeal.

4. We heard the parties and perused the record. In the instant case, the addition has been made u/s 68 of the Act, wherein cash credits, which is loan here, has been added. 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 sources, 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.

5. 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 received by it. We notice that the AO has initiated the reassessment proceedings on the basis of investigation report relating to the lender. The Ld A.R submitted that the investigation report is entirely based on a statement taken from Shri Deepak Babel on 05-03-2018, but the said statement has been retracted by him on 28-03-2018. Accordingly, the Ld A.R submitted that the AO could not have initiated reassessment proceedings on the basis of a retracted statement.

6. We notice that the AO has mainly relied upon the report of investigation wing to come to the conclusion that the assessee has availed only accommodation entries. He has also referred to the non-reply of the notices issued by them. As noticed earlier, it is not the case of the AO that the assessee did not discharge initial burden placed upon her u/s 68 of the Act. When all the relevant details are available with the AO, it is the requirement that the AO should examine those documents and could reject them, only if he finds fault with those documents. We notice that the AO did not find any deficiency or fault with the evidences produced by the assessee. We notice that the AO did not confront the statement given by Shri Deepak Babel with the assessee. It is the case of the assessee that the above said person has retracted his statement. The assessee has filed copy of retracted statement. The assessment order is silent about the retraction. In our view, the AO has not carried out enough examination to prove that the loan was only accommodation entry, particularly, in view of the fact that the assessee has discharged the initial burden placed upon it.

7. Accordingly, in the facts and circumstances of the present case, we are of the view that the AO was not justified in disbelieving loan amount of

Rs.25.00 lakhs received by the assessee from M/s Delight Diam P Ltd and assessing the same as income of the assessee u/s 68 of the Act. For the same reasons, the Ld CIT(A) was not justified in confirming the assessment. For the reasons discussed above, we set aside the order passed by Ld CIT(A) and direct the AO to delete the addition of Rs.25.00 lakhs made u/s 68 of the Act.

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

Pronounced in the open court on 25/10/2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 25/10/2023

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai