

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1469/Mum./2023

(Assessment Year : 2016-17)

Standard Fiscal Markets Pvt. Ltd.
2501, 25th Floor, Planet Godrej
Electra Tower, 3, 30, K.K. Marg
Mahalaxmi, Mumbai 400 011
PAN – AAMCS2300L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-8(2), Mumbai

..... Respondent

ITA no.1470/Mum./2023

(Assessment Year : 2016-17)

Shrey Technologies Pvt. Ltd.
2501, 25th Floor, Planet Godrej
Electra Tower, 3, 30, K.K. Marg
Mahalaxmi, Mumbai 400 011
PAN – AAJCS7399N

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-8(2), Mumbai

..... Respondent

Assessee by : Shri Vimal Punmiya

Revenue by : Dr. Kishor Dhule

Date of Hearing – 26/09/2023

Date of Order – 03/11/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

In ITA no.1469/Mum./2023, Standard Fiscal Market Pvt. Ltd. has challenged the impugned order dated 10/03/2023, for the assessment year 2016-17, while in ITA Nos.1470 and 1473/Mum./2023, Shrey Technologies

Pvt. Ltd. has challenged the separate impugned orders of even date 10/03/2023, for the assessment years 2016-17 and 2017-18, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-50, Mumbai [*"learned CIT(A)"*].

2. Since the factual matrix giving rise to the impugned addition in all the appeals is similar, therefore these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the appeal in ITA No. 1469/Mum./2023 in the case of Standard Fiscal Market Pvt. Ltd. is taken up as the lead case and the decision rendered therein will be applicable *mutatis mutandis* to the other appeals in the present batch.

ITA No. 1469/Mum./2023
Standard Fiscal Market Pvt. Ltd. (A.Y. 2016-17)

3. In this appeal, the assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals)-50 Mumbai has erred in passing the appeal order by confirming the addition of Rs. 13,95,00,000/- u/s 68 of the income tax act 1961.

2. The learned CIT Appeal failed to appreciate that all the transactions recorded in the books of appellant are supported with, ledger, account bank statement also submitted details loan amount which is received is nothing but money transferred by the assessee to other parties and same amount again received by the assessee as a unsecured loan which is nothing but your own money.

3. CIT Appeal has not considered submission of appellant that under IT act there is no scope for assumption and presumptions nor anything can be implied. Disallowance cannot be sustained on the basis of preponderance of probabilities, Suspicion however strong it cannot form basis of addition. Addition cannot be made merely on suspicion surmises and conjectures in the hands of the Appellant.

4. Appellant therefore pray that assessing officer may be directed to delete addition Rs.13,95,00,000/- as addition u/s 68. Even state bank of India already filed personal insolvency case against promoters of appellant.

The appellant craves leave to amend, alter or delete any of the above grounds of appeal."

4. The only dispute raised by the assessee, in the present appeal, is against the addition of Rs.13,95,00,000, under section 68 of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the search and seizure action under section 132 of the Act on M/s Trimax IT Infrastructure and Services Limited, ledger of the assessee was found in the digital data backup seized from the premises of M/s Trimax IT Infrastructure and Services Limited. Accordingly, proceedings under 153C of the Act were initiated in the case of the assessee, and notice under 153C of the Act was issued to the assessee on 14/06/2019. Pursuant to the aforesaid notice, the assessee filed its return of income on 29/06/2019, declaring a total income of Rs.4,070. From the perusal of the return filed in response to the notice issued under section 153C of the Act, it was observed that during the year under consideration the assessee has taken loans of Rs.13,95,00,000, from the following parties:-

<i>Name of Company</i>	<i>PAN</i>	<i>Adress of Company</i>	<i>Amount</i>
<i>PS IT Infrastructure and Services Ltd.</i>	<i>AAACP6501C</i>	<i>602, 6TH Floor, Shival Plaza, Near Marol Industrial Estate, Marol, Andheri (East), Mumbai 400 059</i>	<i>7,50,00,000</i>
<i>Topwell Infotech Pvt. Ltd.</i>	<i>AAECT7701J</i>	<i>76, Vijay Block, Laxmi Nagar, Delhi</i>	<i>1,95,00,000</i>
<i>Unisys Software & Holding Industries Ltd.</i>	<i>AABCC1191Q</i>	<i>105, Sagar Shopping Centre, JP Road, Andheri (W), Mumbai 400 058</i>	<i>4,50,00,000</i>

6. Vide notice issued under section 142(1) of the Act, the assessee was asked to furnish the name, address, and PAN of each creditor, copy of loan confirmations, Income Tax return of each creditor, financials of said creditors, interest rate and amount paid on said loan during the year under consideration to prove the identity of creditors, genuineness of transaction and creditworthiness of said creditors. In response thereto, the assessee filed a submission only providing the names, addresses, and PAN of creditors. Again notice under section 142(1) of the Act was issued requesting the assessee to file the copy of loan confirmations, Income Tax return of each creditor, and audited financials of said creditors. Since the assessee had not filed any loan confirmation and financial statements of creditors to establish the creditworthiness of the lender, the assessee was asked to show cause as

to why the sum of Rs.13,95,00,000, credited in the books of accounts be not added under section 68 of the Act, as during the course of search and seizure action on M/s Trimax IT Infrastructure and Services Limited it was found that the aforesaid creditors had received funds from M/s Trimax IT Infrastructure and Services Limited pursuant to the bogus purchase transaction without delivery of goods. In response thereto, the assessee submitted that the loans taken from aforesaid parties are genuine and the transactions are through banking channels only. It was further submitted that the loans received from the aforesaid parties were invested in M/s Trimax IT Infrastructure and Services Limited and there is a possibility that in some of the cases, money was transferred from M/s Trimax IT Infrastructure and Services Limited to the parties who have given loan to the assessee for business transaction purpose. The assessee further submitted that against the unsecured loan, the assessee has issued secured compulsory convertible non-transferable debentures of Rs. 1 lakh each which are convertible after 10 years from the date of issue.

7. The Assessing Officer ("AO") vide order dated 13/12/2019 passed under section 153C read with section 143(3) of the Act did not agree with the submissions of the assessee and held that the assessee has not filed a single paper to establish the creditworthiness of the lenders and genuineness of the transaction. The AO further held that no prudent businessman would keep such a huge amount without interest and the debentures issued by the assessee have no market value. The AO also referred to the statement of the Director of M/s Topwell Infotech Pvt. Ltd., recorded during the survey action under section 133A, wherein he admitted that M/s Topwell Infotech Pvt. Ltd. and other companies managed by him had provided accommodation entries of bogus purchase bills to M/s Trimax IT Infrastructure and Services Limited at a commission of 0.25% and it was further admitted that on instruction of M/s Trimax IT Infrastructure and Services Limited funds were transferred to various companies including the assessee, as noted on page no. 10-11 of the assessment order. The AO further found that M/s PS IT Infrastructure & Services Ltd and M/s Unisys Software & Holding Industries Ltd are entities controlled by Mr. Jagdish Purohit, who is a well-known entry operator of

Calcutta, providing accommodation entries to various parties. The AO also referred to the statement recorded during the survey under section 133A of the Act on CFO of M/s PS IT Infrastructure & Services Ltd, wherein the aforesaid facts were admitted. The AO also noted that during the search and seizure action under section 132 on M/s Trimax IT Infrastructure and Services Limited the aforesaid statements were confronted with the AGM Accounts and Finance of M/s Trimax IT Infrastructure and Services Limited, wherein he confirmed that he was in contact with the aforesaid persons who statements were recorded during survey under section 133A as per the instructions of the Director of M/s Trimax IT Infrastructure and Services Limited and transferred the money to the bank account of the aforesaid creditors and told the money to be further transferred to companies, including the assessee, at a commission of 0.5% to facilitate these transactions. Since the assessee failed to prove the identity and creditworthiness of the creditors and the genuineness of the transaction, the AO made the addition of Rs.13,95,00,000, as unexplained cash credit under section 68 of the Act.

8. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

9. We have considered the submissions of both sides and perused the material available on record. It is undisputed that during the year under consideration, the assessee received loans from three parties, namely M/s Topwell Infotech Pvt. Ltd., M/s PS IT Infrastructure & Services Ltd, and M/s Unisys Software & Holding Industries Ltd. As per the assessee, the said loan amount was further invested in M/s Trimax IT Infrastructure and Services Limited by buying the shares of the said entity. It is further the claim of the assessee that in lieu of the said loan, the assessee has issued secured compulsory convertible non-transferable debentures of Rs.1 lakh each which are convertible after 10 years from the date of issue. In the hearing, the learned Authorised Representative ("*learned AR*") referred to the confirmation of accounts of the loan from the aforesaid entities. The learned AR also refer

to the various documents forming part of the paper book from page no. 71-217 of the aforesaid entities to support the claim of identity and creditworthiness of the creditor and genuineness of the transaction, such as IT acknowledgement, audited annual accounts, ledger account, and bank statements. The learned AR further admitted that the aforesaid three creditors are regular vendors who used to supply goods to M/s Trimax IT Infrastructure and Services Limited. However, these vendors have also provided accommodation entry of bogus purchases to M/s Trimax IT Infrastructure and Services Limited, which fact was found during the search and seizure action under section 132 of the Act on M/s Trimax IT Infrastructure and Services Limited. The learned AR by referring to the assessment order dated 30/12/2019 passed under section 153A read with section 143(3) of the Act in the case of M/s Trimax IT Infrastructure and Services Limited submitted that the aforesaid three creditors were found to have provided accommodation entry of bogus billing to M/s Trimax IT Infrastructure and Services Limited and addition of Rs.2,75,50,000, was made under section 69C of the Act. The learned AR submitted that the money was paid by M/s Trimax IT Infrastructure and Services Limited to the aforesaid three creditors who after retaining their commission had transferred the balance to the assessee as a loan which was subsequently invested by the assessee in M/s Trimax IT Infrastructure and Services Limited. In this regard, the learned AR referred to page no. 218 of the paper book no. 2 in order to describe the entire trail of transaction. The learned AR also referred to various documents including the bank statements forming part of paper book no. 2 to support the aforesaid claim that the money which originated from M/s Trimax IT Infrastructure and Services Limited has again gone back to M/s Trimax IT Infrastructure and Services Limited through various layers, including the assessee, as share application money. It was further submitted that since the said amount has already been taxed in the hands of M/s Trimax IT Infrastructure and Services Limited, the same amount should not be again taxed in the hands of the assessee as it was a mere conduit entity. For better understanding, the trail of transactions as submitted on page no. 218 of paper book no. 2 is reproduced as under:-

Standard Fiscal Markets Pvt. Ltd. – 2015-16
Assessment Year – 2016-17
Trail of Transaction

Standard Fiscal Markets Pvt. Ltd.
 ITA no.1469/Mum./2023
 Shrey Technologies Pvt. Ltd.
 ITA no.1470/Mum./2023

PART-I				PART-II				PART-III		
S. no.	Date	Party name	Amount (in Rs.)	Party name	Date	Party name	Amount (in Rs.)	Date	Party name	Amount (in Rs.)
1.	11/12/2015	Trimax IT	45,024,107	Unisys Softwares and Holding Industries Ltd.	15/12/2015	Standard Fiscal Markets Pvt. Ltd.	45,000,000			
2.	11/12/2015	Trimax IT	47,510,285	PS IT Infrastructure & Services Ltd.	15/12/2015	Standard Fiscal Markets Pvt. Ltd.	30,000,000			
3.	16/12/2015	Trimax IT	57,514,086	PS IT Infrastructure & Services Ltd.	17/12/2015	Standard Fiscal Markets Pvt. Ltd.	45,000,000			
4.	18/12/2015	Trimax IT	9,800,000	Topwell Infotech Pvt. Ltd.	18/12/2015	Standard Fiscal Markets Pvt. Ltd.	9,800,000	20/12/2015	Trimax IT	150,000,000
5.	18/12/2015	Trimax IT	9,200,000	Topwell Infotech Pvt. Ltd.	18/12/2015	Standard Fiscal Markets Pvt. Ltd.	9,700,000			
			169,048,478				139,500,000			

10. From the perusal of all the aforesaid documents forming part of the paper book and the assessment order dated 30/12/2019 for the assessment year 2016-17 in M/s Trimax IT Infrastructure and Services Limited, we find that the aforesaid three creditors, i.e. M/s Topwell Infotech Pvt. Ltd., M/s PS IT Infrastructure & Services Ltd, and M/s Unisys Software & Holding Industries Ltd, were found to have provided accommodation entry of bogus purchases to /s Trimax IT Infrastructure and Services Limited. We also find that in a statement recorded during the survey as noted on page no. 25 of the aforesaid assessment order it was also admitted that on the direction of M/s Trimax IT Infrastructure and Services Limited, the money was transferred to various entities including the assessee. Accordingly, the addition of Rs. 2,74,50,000, was made as bogus purchases under section 69C of the Act vide the aforesaid assessment order. In the present case, it is the plea of the assessee that since the very same money has been routed through the aforesaid three creditors and has gone back to M/s Trimax IT Infrastructure and Services Limited as a share application money and has already been added in the hands of M/s Trimax IT Infrastructure and Services Limited, the same addition cannot be made in the hands of the assessee being a conduit company. However, it is also evident from the record that the amount of purchases that was held to be bogus under section 69C of the Act in M/s Trimax IT Infrastructure and Services Limited is only Rs.2,74,50,000, however, in the present case only an amount of Rs.13,95,00,000, was given to the assessee as loan, which was further invested by the assessee in M/s Trimax IT Infrastructure and Services Limited. We find that the documents now submitted in support of the submission that it is merely a conduit entity were not examined by any of the lower authorities. Therefore, in view of the facts and circumstances as noted above, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication after examining the documents as furnished by the assessee. The AO is further directed to examine the trail of each transaction from its origin to its ultimate destination. We further direct that upon thorough examination of each penny if it is found that the amount actually belongs to M/s Trimax IT Infrastructure

and Services Limited and is received by the assessee through the aforesaid three creditors only as a conduit, which was ultimately transferred to M/s Trimax IT Infrastructure and Services Limited, then relief be granted to the assessee since tax is to be charged from the real beneficiary and not from the conduit party. The AO shall be at liberty to seek any other information from the assessee for complete adjudication of this issue. The assessee shall also be at liberty to furnish any under document/evidence in support of its claim before the AO. Accordingly, with the above directions this issue is remanded to the file of AO. As a result, grounds no. 1 to 4 raised in assessee's appeal are allowed for statistical purposes.

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

ITA Nos. 1470 and 1473/Mum./2023
Shrey Technologies Pvt. Ltd. (A.Ys. 2016-17 and 2017-18)

12. In the appeal for the assessment year 2016-17, the assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals)-50 Mumbai has erred in passing the appeal order by confirming of addition of Rs. Rs.20,04,00,000/- u/s 68 of the income tax act 1961.

2. The Learned CIT Appeal has not considered that, that the learned assessing officer has not considered all the relevant required documents submitted during assessment proceeding by the authorized representative of appellant.

3. The learned CIT Appeal failed to appreciate that all the transactions recorded in the books of appellant are supported with, ledger, account bank statement also submitted that loan amount which is received is nothing but money transferred by the assessee to other parties and same amount again received by the assessee as a unsecured loan which is nothing but your own money.

4. The appellant submit that under IT act there is no scope for assumption and presumptions nor anything can be implied. Disallowance cannot be sustained on the basis of preponderance of probabilities, Suspicion however strong it cannot form basis of addition. Addition cannot suspicion surmises and conjectures in the hands of the Appellant. be made merely on

5. Appellant therefore pray that assessing officer may be directed to delete addition and disallowances of Rs. 20,04,00,000/- as addition u/s 68. Even state bank of India already filed personal insolvency case against promoters of appellant.

The appellant craves leave to amend, alter or delete any of the above grounds of appeal."

13. While, in the appeal for the assessment year 2017-18, the assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals)-50 Mumbai has erred in passing the appeal order by confirming of addition of Rs.13,54,00,000/- u/s 68 of the income tax Act.

2. The learned CIT Appeal failed to appreciate that all the transactions recorded in the books of appellant are supported with, ledger, account bank statement also submitted details of expense and loan amount which is received is nothing but money transferred by the assessee to other parties and same amount again received by the assessee as a unsecured loan which is nothing but your own money.

3. The appellant submit that under IT act there is no scope for assumption and presumptions nor anything can be implied. Disallowance cannot be sustained on the basis of preponderance of probabilities, Suspicion however strong it cannot form basis of addition. Addition cannot be made merely on suspicion surmises and conjectures in the hands of the Appellant.

4. Appellant therefore pray that assessing officer may be directed to delete addition and disallowances of Rs.13,54,00,000/- as addition u/s 68. Even state bank of India already filed personal insolvency case against promoters of appellant.

The appellant craves leave to amend, alter or delete any of the above grounds of appeal."

14. In both appeals, the grievance of the assessee is limited to addition made under section 68 of the Act. During the hearing, both sides placed reliance upon their arguments raised in the aforesaid appeal in ITA No. 1469/Mum./2023. In these appeals also the assessee claims that it acted merely as a conduit company and the money actually belongs to M/s Trimax IT Infrastructure and Services Limited which through various layers, including the assessee, was ultimately transferred to M/s Trimax IT Infrastructure and Services Limited. In these appeals also the assessee referred to the separate

assessment orders of even date 30/12/2019 passed in the case of M/s Trimax IT Infrastructure and Services Limited for the assessment years 2016-17 and 2017-18. The assessee also furnished the trail of transactions forming part of the paper book on pages 268 and pages 260 for the assessment years 2016-17 and 2017-18 respectively. Since in these appeals similar addition arising out of a similar factual basis is arising, which has been considered in ITA No.1469/Mum./2023, therefore our findings/conclusions as rendered therein shall apply *mutatis mutandis*. Accordingly, the issue arising in both appeals is restored to the file of AO with similar directions as rendered in ITA No.1469/Mum./2023. As a result, grounds raised in both appeals are allowed for statistical purposes.

15. In the result, both appeals by the assessee are allowed for statistical purposes.

16. To sum up, all the appeals are allowed for statistical purposes.
Order pronounced in the open Court on 03/11/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/11/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai