

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

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

I.T.A. No. 2188/Mum/2023 (A.Y. 2016-17)

Xania Trading Private Limited F-27, Shagun Arcade Filmcity Road, Goregaon East Mumbai-400 097. PAN : AAACX1412G (Appellant)	Vs.	ACIT-13(3)(2) Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020. (Respondent)
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Assessee by	Shri Nitesh Joshi
Department by	Shri Ram Prakash Rastogi
Date of Hearing	30.10.2023
Date of Pronouncement	02.11.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 25.5.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2016-17. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of Rs. 79 lakhs made by the Assessing Officer under section 68 of the I.T. Act.

2. The facts relating to the issue are stated in brief. The assessee is engaged in the business of retail trading. During the course of assessment proceedings, it was noticed that the assessee has received unsecured loan of Rs. 79 lakhs from M/s. Imagination Edutainment India Pvt. Ltd. at free of cost. According to the Assessing Officer, the assessee has filed only loan confirmation letter and income tax return from the lender and it could not produce bank statement to show the flow of funds. Accordingly, the Assessing Officer took the view that the assessee has failed to prove the genuineness of the loan. Accordingly, he assessed the amount of Rs. 79 Lakhs as unexplained cash credit under section 68 of the Act.

3. The learned CIT(A) examined the facts and noticed that the assessee has filed financial statements of the lender. However, he took the view that the assessee has not paid interest to the lender and further lender is incurring a huge loss by paying heavy interest to its creditors. He took the view that it is unlikely that a person who is incurring a huge loss and also paying interest, would not charge interest on the loan advanced by it. Accordingly, the Ld CIT(A) took the view that the loan is not genuine and the assessee might have ploughed back the loan amount by way of cash to the lender. Accordingly, he confirmed the addition made by the Assessing Officer under section 68 of the Act. The assessee is aggrieved.

4. The Learned AR submitted that the assessee has filed loan confirmation letter obtained from the lender M/s. Imagination Edutainment India Pvt. Ltd., financial statements of the lender, income tax acknowledgment copy of the lender and also extract of the bank statement of the lender. Accordingly learned AR submitted that the assessee has discharged the initial burden placed upon it u/s 68 of the Act by proving the identity, creditworthiness and genuineness of the transaction. He invited our attention to all those documents placed in the paper book. Accordingly, he submitted that the Assessing Officer has not properly looked into those documents and accordingly observed, may be inadvertently that the assessee did not furnish copy of the bank statement to show flow of funds. The Learned AR further submitted that the lender had sufficient funds to advance the money to the assessee and the same proves creditworthiness. He submitted that non-charging of interest on the loan so advanced by the lender to the assessee cannot be the reason to believe the genuineness of the loan transaction. He submitted that the charging of interest or otherwise would depend upon the terms agreed between the parties and the same is not relevant for examining cash credits u/s 68 of the Act. Accordingly, the

learned AR submitted that the Ld CIT(A) was not justified in entertaining presumptions on surmises and conjecture.

5. The Learned AR, in support of his contentions, placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Haresh D. Mehta (2017) 86 taxmann.com 22, wherein it was held that the Assessing Officer could not make the addition of cash credit once the assessee discharged initial burden placed upon it. He also placed reliance on another decision rendered by Hon'ble Bombay High Court in the case of Gaurav Triyugi Singh Vs. ITO (2020) 121 taxmann.comm 86, wherein also identical view has been expressed by Hon'ble Bombay High Court. Accordingly learned AR submitted that the impugned addition made under section 68 of the Act is liable to be deleted.

6. Learned DR, on the contrary, submitted that the assessee has received interest free loan from a company which is paying a heavy interest on its borrowings and also incurring heavy losses. The Learned DR submitted that it is beyond the scope of human probabilities that a loss making company would give interest free advance to the assessee.

7. We heard the rival contentions and perused the record. Under section 68 of the Act, initial burden to prove cash credit is placed upon the assessee. It is well settled principle of law that the assessee has to prove three main ingredients, viz., identity of creditor, creditworthiness of the creditor and genuineness of the transaction. Once the assessee discharges initial burden placed on its shoulders, then the burden would shift upon the shoulders of the Assessing Officer to disprove the evidence furnished by the assessee. In the instant case, the identity of the lender is not in dispute. With regard to the creditworthiness, the tax authorities have taken the view that the assessee has incurred losses and also paid heavy interest. We noticed that the assessee has furnished financial statements of the lender and the

Balance sheet of the lender is placed at page No. 16 of the paper book. A perusal of the same would show that the lender is having own funds of around Rs.45 crores. Besides the above, it has received share application money of Rs. 15 crores. The advance given to the assessee is Rs. 75 lakhs only, which form miniscule part of own funds available with the lender. Accordingly, we are of the view that the creditworthiness of the lender cannot be doubted. The assessee has furnished the extract of the bank statements of the lender to show that the amount of Rs. 79 lakhs have been transferred to the assessee by the lender through banking channel. This fact has also been confirmed in the confirmation letter furnished by the lender, wherein also transfer of funds through banking channels is mentioned. Hence, the genuineness of the transaction is also proved. Thus, we notice that the assessee has discharged initial burden placed upon its shoulders. We noticed that the only reason cited by the learned CIT(A) to disbelieve the loan transaction is that lender is incurring heavy loss and also paying huge interest. The learned CIT(A) did not notice that the lender had sufficient funds to advance the above said amount of Rs. 79 lakhs to the assessee. Hence, the reason given by the learned CIT(A) to disbelieve the genuineness of the loan transaction is not correct and as rightly contended by Ld A.R that it is based on surmises only. The decisions rendered by Hon'ble Bombay High Court in the case of Haresh D. Mehta (supra) and Gaurav Triyugi Singh (supra) would support our view.

8. Accordingly we hold that, in the facts and circumstances of the case, the addition of Rs. 79 lakhs made by the Assessing Officer under section 68 of the Act is not justified. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the addition of Rs. 79 lakhs made under section 68 of the Act.

9. In the result, appeal filed by the assessee is allowed.
Order pronounced on 02.11.2023.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

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

Mumbai.; Dated : 02/11/2023

Copy of the Order forwarded to :

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

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai