

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1347/DEL/2018
Assessment Year: 2014-15**

Neelkanth Buildcraft P. Ltd., 307, 3 rd Floor, Nipun Towers, Karkardooma Community Centre, East Delhi-110092. PAN- AAECN4851H	<u>Vs</u>	Income-tax Officer, Ward-18(1), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Ms. Nimisha Singh, CIT DR	
Date of hearing	16.11.2023	
Date of pronouncement	16.11.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, preferred by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-6, New Delhi, dated 29.08.2017, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

“1. That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.

2. That the Ld. CIT (Appeal) has erred in law and on facts in completing the appellate proceedings, without providing proper opportunity of being heard and without appreciating the facts.

3. That the Ld. CIT (Appeal) has erred in law and on facts in sustaining the addition of Rs. 100,05,00,000/-, as unexplained cash credit despite the fact that the source of the same is duly supported by the proper documentary evidences.

4. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the additions made by the AO without appreciating that the assessee has duly explained the transaction to the AO and the assessment was completed relying upon the irrelevant case laws.

5. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

6. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal.”

2. No one attended the proceedings. It is seen from the record that no one has been attending the proceedings since the institution of the present appeal. The notices sent by the Registry have been returned with the postal remark “left”. No change in address, if any, has been furnished by the assessee. Therefore, the appeal is taken up for hearing ex parte to the assessee.

3. The only effective ground in this appeal is against sustaining the addition of Rs. 100,05,00,000/- as unexplained cash credits. The facts related to this addition are that the assessee, a company, filed its return of income on 1.7.2013 at a loss of Rs. 8808/-. The case was taken up for scrutiny assessment. During the course of assessment proceedings the AO noticed that the assessee company had received

loan from one M/s Mannat Buildcraft Pvt. Ltd. during F.Y. 2013-14. The assessee was asked to explain the genuineness, identity and creditworthiness of the lender. The AO noticed that the assessee failed to prove the creditworthiness of the lender. Therefore, he made addition treating the same as unexplained cash credit u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). Aggrieved against this the assessee preferred appeal before the learned CIT(A), who sustained the addition. Now the assessee is in appeal before this Tribunal.

4. Apropos to the grounds of appeal, the learned DR supported the orders of the authorities below and submitted that the assessee grossly failed to prove the creditworthiness of the lender. He contended that the law is well settled that burden is on the tax payer to prove identity, genuineness and creditworthiness of the lender. In the present case the assessee grossly failed to satisfy these conditions.

5. We have considered the material available on record and the submissions of the learned DR. Before AO the assessee could not prove the creditworthiness of the lender. The Assessing Authority has given a finding of fact by observing as under:

“UNEXPLAINED CREDITS

From the perusal of return for A.Y. 2014-15 filed by the assessee, it was noticed that the assessee has received inter corporate deposits under the head other long term liabilities of Rs. 1,00,05,00,000/- during the Financial Year 2013-14. During the course of assessment proceedings the assessee

was asked to prove identity, creditworthiness and genuineness of inter corporate deposits received during the year. The assessee's AR submitted that this loan was from M/s Mannat Buildcraft (P) Ltd. During the course of proceedings notice u/s 133(6) issued to M/s Mannat Buildcraft (P) Ltd. reply of which was not received in this office. The AR of the assessee was asked to produce Director of M/s Mannat Buildcraft (P) Ltd. to prove identity, creditworthiness and genuineness of the transaction. AR expressed his inability to produce the Director of M/s Mannat Buildcraft (P) Ltd.

To sum up the facts and events of the case as described above, the assessee co. has failed to discharge the onus u/s 68 of the I.T. Act, 1961. It is evident from the sequence of events narrated above that the assessee co. has been provided sufficient time and opportunity to produce details/ documents/ evidences to substantiate its claim.

The provisions of section 68 of the I.T. Act, 1961, are as under:-

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the income tax officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."

From the above, it is clear that any amount credited in the books of account has to be explained within the meaning of section 68. The simple question is the amount credited in books of accounts has to be confirmed from the identity that should be genuine and also credit worthiness of that transaction. Provisions of section 68 speaks about amount credited in the books of accounts and in the instant case a sum of Rs.100,05,00,000/- credited in the books of account as Inter Corporate Deposits under the head Other Long Term Liabilities and the assessee failed to prove, genuineness and creditworthiness of these entries.

It has been judicially established that the primary onus is on the assessee to prove the identity, creditworthiness and genuineness of transactions in respect of cash/credits in the books of account/ bank accounts. Identity of the party does not simply mean its existence. The identity should be seen in perspective that it has got a standing in the particular line of activity.

The creditworthiness essentially means capacity in financial dealings or capacity to pay. The creditworthiness of a person is something that is

assessed by somebody while giving loan to the said person or arm's length basis. The bank assesses the creditworthiness of the person while lending loan. The creditworthiness is reflected in the balance sheet of the person and also in the profit making capacity.

In the instant case, since the creditworthiness of the creditor has not been established documents as required in the questionnaire were not submitted, it is held that the assessee was not able to establish the source of inter corporate deposits received which is one of the primary conditions on the part of the assessee. The assessee has nothing to prove the creditworthiness/genuineness of the Inter Corporate deposits.

The Hon'ble Rajasthan High Court in the case of Rajshree Synthetics Pvt. Ltd. vs. CIT 256 ITR 331 has held "that section 68 of the Act, gives a statutory recognition to the principle that cash credits which are not satisfactorily explained, may be assessed as income.... If he is satisfied that these entries are not genuine, he has every right to add its amounts as income from other sources. The satisfaction of the AO is the basis for invocation of power under section 68 and the satisfaction must be derived from the relevant factors on the basis of proper enquiry. It is well settled that the assessee is required to prove prima facie the transactions, which result in cash credits in his books of account"

In view of the above detailed discussion, based on the language used under section 68 of the Act. and the various decisions of different Courts, discussed above, the only conclusion which could be arrived at is:

(i) that the onus or burden to prove the identity, capacity and genuineness has to be on the assessee

(ii) if the cash credit is not satisfactorily explained, the Income Tax Officer is justified to treat it as income from undisclosed sources.

In this circumstances, it is held that, simply because the amount is credited in the books of the assessee, it cannot be said that it is not the undisclosed income of the assessee co, and in all cases it has to be assessed as an undisclosed income of the assessee co, alone.

The assessee failed to discharge its onus of proving the identity/genuineness and creditworthiness of the person who have invested as share capital and share premium with the assessee company.

The assessee was required to prove the creditworthiness and genuineness of the amount received as Inter Corporate Deposits in order to discharge the onus u/s 68 of the Income Tax Act which it has failed to do. It opted not to furnish any details or clarification to the AO though it was given sufficient opportunities to do so. Accordingly, the amount of Rs.100,05,00,000/- is being added to the income of the assessee co. as unexplained credits u/s 68 of the I.T. Act, 1961.

(Addition:- Rs.100,05,00,000/-)”

6. The assessee could not controvert the above finding of the Assessing Authority by placing any contrary material before us. Therefore, we do not see any reason to interfere in the finding of the lower authorities and the same is hereby affirmed. Grounds of appeal are dismissed.

7. Appeal of the assessee stands dismissed.

pronounced in open court on 16th November, 2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI