

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवालेखा सदस्य के समक्ष ,
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.284/Kol/2023
Assessment Year: 2017-18

Grameen Shakti Microfinance Services (P) Ltd.....Appellant
13/2, Asutosh Chatterjee Road,
Kolkata-700031.
[PAN: AA ECS8300C]

vs.

ITO, Ward-10(1), Kolkata..... Respondent

Appearances by:

Shri Rajeeva Kumar, Advocate, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : October 18, 2023

Date of pronouncing the order : November 28, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 20.02.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. That under the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of a sum of Rs.2,71,76,548/- made by the A.O on account of the share capital along with premium raised by the assessee during the year under section 68 of the Income Tax Act, 1961. The addition is unjustified and needs to be deleted.

2. The assessee crave leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing."

3. The brief facts of the case are that the Assessing Officer during the assessment proceedings has noted that the assessee company had issued 814889 equity shares of face value of Rs.10/- and at a premium of Rs.23.35/- each during the year and thereby raised share capital of Rs.81,48,890/- and premium of Rs.1,90,27,658/- totalling to Rs.2,71,76,548/-. On being asked to explain, the assessee furnished the relevant details to prove the identity and financial worth of the share subscribers and genuineness of the transaction. The Assessing Officer also issued notices u/s 133(6) of the Act to the share subscribers. However, the Assessing Officer observed that the share subscribers failed to justify the subscribing of such shares in the assessee company. He, therefore, held that the assessee has failed to prove the identity, financial worth of the share subscribers and genuineness of the transaction and made the impugned additions of Rs.2,71,76,548/- treating the same as unexplained cash credits of the assessee.

4. The Id. CIT(A) confirmed the additions so made by the Assessing Officer by way of cryptic order.

5. The Id. Counsel for the assessee has made the following factual submissions:

“1. The assessee company was formerly known as M/s. Srija Chemo (P) Ltd and with effect from 25.04.2018, the name of the assessee was changed to M/s. Grameen Shakti Microfinance Services (P) Ltd. Copy of the certificate of incorporation pursuant to the change of name is at Page- 207 of PB.

2. The assessee, during the year, received share application money of Rs. 2,71,76,548/- from 9 subscribers by issuing 814889 equity shares of Rs.10/- each at premium of

Rs.23.35 per share. Out of the total 9 share subscribers, 3 individuals are directors of the company and one is group company named M/s. Jeebika Business Promotional Initiative (P) Ltd (having common directors). The other 5 individuals are relatives & friends of the directors of the assessee.

3. This is to mention here that the assessee is into the business of Microfinance duly registered as Non-Banking Finance Company (NBFC) with Reserve Bank of India (RBI).

4. That in terms of the minimum capital requirement of the regulator, RBI the assessee was required to maintain minimum share capital of Rs. 5.00 Crs. therefore, in order to meet the said requirement it has raised the share capital herein from its own Directors, sister concerns and friends and relatives of directors.

5. The details of the subscribers of shares such as address, e-mail, PAN, no of shares allotted, face value of shares, premium charged are at Page 208 of the PB.

6. In the course of the assessment proceedings, the assessee submitted the details and documents as required by the AO which include ITR filing acknowledgement, Audited Financial Statement and Bank Statement of the assessee along with Share application form, confirmation of transaction & source of fund, ITR filing acknowledgement and Bank Statement of the subscribers. Copy of allotment advices, share certificates issued to the subscribers and return of allotment filed with the RoC in Form No. PAS-3 were also submitted. All these documents are placed at Pp-1 to 237 of the PB.

7. In response to the notice issued under section 133(6) of the Income Tax Act, 1961, all the subscribers of equity shares filed relevant details & documents such as confirmation of transaction & source of fund, ITR filing acknowledgement & Bank Statement.

8. M/s. Jeebika Business Promotional Initiative (P) Ltd is engaged in the business of sale/re-sale of solar lamp & mixer/grinder and the equity shares were subscribed by the

said company out of its revenue from operation. (Page-161 & 166 of PB) The directors subscribed shares out of their accumulated savings (income). The other 5 individuals namely Mrs. Supriya Rakshit, Mr. Pranab Rakshit, Mrs. Rupali Sarkar, Mr. Pulak Srakar & Mr. Sukdev Biswas also subscribed shares out of their accumulated income.

9. The directors of the assessee Mr. Ganesh Chandra Modak, Mrs. Sundari Modak & Mrs. Sukriti Mukhopadhyay appeared before the AO in person on 23.12.2019 to explain the case. However, their statements/presence were not recorded. The AO was satisfied with the details/documents submitted by the assessee and the subscribers. However, without considering the details/documents submitted by the assessee and the subscribers, the AO passed order on 26.12.2019 making addition of the entire share application money of Rs.2,71,76,548/- received from 9 subscribers. The CIT(A) confirmed the addition made by the AO vide his order dated 20.02.2023 in Appeal No.10768/CIT(A), Kolkata-4/2019-20.”

6. The Id. Counsel for the assessee has further relied upon the following documents and further submitted that all the documents were furnished before the lower authorities:

1. GANESH CHANDRA MODAK (SHAREHOLDER)

- i) Share Application Form*
- ii) Confirmation of transaction & source of fund*
- iii) ITR-V for the AY 2015-16 to 2017-18*
- iv) Copy of Relevant Bank Statement*
- v) Copy of allotment advice*
- vi) Copy of share certificate*

2. SUNDARI MODAK (SHAREHOLDER)

- i) Share Application Form*
- ii) Confirmation of transaction & source of fund*
- iii) ITR-V for the AY 2015-16 to 2017-18*
- iv) Copy of Relevant Bank Statement*
- v) Copy of allotment advice*
- vi) Copy of share certificate*

3.SUKRITI MUKHOPADHYAY (SHAREHOLDER)

- i)Share Application Form*
- ii)Confirmation of transaction & source of fund*
- iii)ITR-V for the AY 2015-16 to 2017-18*
- iv)Copy of Relevant Bank Statement*
- v)Copy of allotment advice*
- vi)Copy of share certificate*

4.SUKDEB BISWAS (SHAREHOLDER)

- i)Share Application Form*
- ii)Confirmation of transaction & source of fund*
- iii)ITR-V for the AY 2015-16 to 2017-18*
- iv)Copy of Relevant Bank Statement*
- v)Copy of allotment advice*
- vi)Copy of share certificate*

5.PULAK KUMAR SARKAR (SHAREHOLDER)

- i)Share Application Form*
- ii)Confirmation of transaction & source of fund*
- iii)ITR-V for the AY 2017-18*
- iv)Copy of Relevant Bank Statement*
- v)Copy of allotment advice*
- vi)Copy of share certificate*

6.RUPALI SARKAR (SHAREHOLDER)

- i)Share Application Form*
- ii)Confirmation of transaction & source of fund*
- iii)ITR-V for the AY 2017-18*
- iv)Copy of Relevant Bank Statement*
- v)Copy of allotment advice*
- vi)Copy of share certificate*

7.PRANAB RAKSHIT (SHAREHOLDER)

- i)Share Application Form*
- ii)Confirmation of transaction & source of fund*
- iii)ITR-V for the AY 2017-18*
- iv)Copy of Relevant Bank Statement*
- v)Copy of allotment advice*
- vi)Copy of share certificate*

8.SUPRIYA RAKSHIT (SHAREHOLDER)

- i)Share Application Form*
- ii)Confirmation of transaction & source of fund*
- iii)ITR-V for the AY 2017-18*

- iv) Copy of Relevant Bank Statement*
- v) Copy of allotment advice*
- vi) Copy of share certificate*

9.M/S Jeebika Business Promotional Initiative (P) Ltd. (Shareholder)

- i) Share Application Form*
- ii) Confirmation of transaction & source of fund*
- iii) ITR-V for the AY 2015-16 to 2017-18*
- iv) Copy of Relevant Bank Statement*
- v) Copy of allotment advice*
- vi) Copy of share certificate*
- vii) Audited Financial Statement as on 31.03.2017*

10.M/s Grameen Shakti Microfinance Services (P) Ltd. (The Assessee)

- i) Copy of ITR-V for the AY 2017-18*
- ii) Copy of Annual Financial statements for the year ended 31.03.2017*
- iii) Copy of Relevant Bank Statement*
- iv) Certificate of Incorporation*
- v) List of Shareholders*
- vi) Details of Share capital for FY 2016-17*
- vii) Copy of PAS-3 filed with ROC*

7. The Ld. Counsel reiterating his above submissions has contended that in this case, the assessee had filed all evidences to prove the identity and creditworthiness of the subscribers and genuineness of the transaction including the address, PAN & Form 2 & Form 5 filed with Registrar of Companies of the share subscriber companies, their audited financial statements, acknowledgement of filing their Income Tax Return, copy of bank statement of the allottee company highlighting the payment of the entire amount of share capital and share premium. That all the transactions were done through banking channel and duly confirmed by the share subscribers. He has further submitted that the subscribing companies were having adequate reserves and surpluses to invest in the assessee company. Further, that all these subscribers were income tax assesseees and further that all the investor companies were duly incorporated with the Registrar of

Companies. That there were no paper companies involved in the transactions. The Ld. Counsel has also submitted that the share subscribers were Income Tax Assesseees and the copies of their ITRs were also filed. He has further contended that the Assessing Officer, however, instead of examining the relevant documents, insisted for the personal presence of the directors of the subscribers which was not in the hands of the assessee. However, the directors of the assessee Mr. Ganesh Chandra Modak, Mrs. Sundari Modak & Mrs. Sukriti Mukhopadhyay appeared before the AO in person on 23.12.2019 to explain the case. However, their statements/presence were not recorded. He therefore, has submitted that the identity and creditworthiness of these companies was duly established. He has further submitted that the AO could not point out any defect or discrepancy in the evidences/documents submitted by the assessee to prove the identity and creditworthiness of the subscribers and genuineness of the transaction. He has further submitted that instead of pointing out any defect or discrepancy in the evidences and the details furnished by the assessee, the AO proceeded to take adverse inference only on the ground that the directors of the subscriber companies did not appear personally before the AO. The ld. Counsel for the assessee in this respect has relied upon the decision of the Jurisdictional Calcutta High Court in the case of Crystal networks (P) Ltd. vs CIT reported in (2013) 353 ITR 171(Cal). The ld. Counsel has also relied upon the decision of the Co-ordinate Kolkata Bench of the Tribunal in the case of 'M/s Satyam Smertex Pvt. Ltd. vs. DCIT', ITA No.2445/Kol/2019 vide order dated 29.05.2020, wherein the coordinate bench of the tribunal, while further relying upon the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Raj

Kumar Agarwal vide ITA No.179/2008 dated 17.11.2009 has held that non production of the director of the company, which is regularly assessed to income Tax having PAN, on ground that the identity of the subscriber is not proved, cannot be sustained.

8. The ld. D/R, on the other hand, has relied upon the observations made by the AO. He has further relied upon the impugned order of the ld. CIT(A). The Ld. DR has further relied upon the decision of the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron & Steel (P) Ltd. reported in [2019] 103 taxmann.com 48(SC).

9. We have considered the rival submissions of the ld. representatives of the parties and also gone through the record. In this case a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The Assessee in this case, as reproduced above, has explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually.

The Assessing Officer, however, observed, "This is ample proof that the share capital so raised during the year are verifiable only on papers

submitted before MCA and/or bank document that cannot explain the circumstances leading to such share issue.” The Assessing officer, however, has not pointed out what were those other circumstances, which the Assessee was required to prove. He has even not pointed out any adverse circumstance which the assessee was required to explain. We note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies.

Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon’ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon’ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of “Crystal networks (P) Ltd. vs CIT” (supra) has held as under:

“We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding.”

10. So far as the reliance of the Ld. DR on the decision of the hon'ble Supreme Court in the case of “PCIT v/s NRA Iron & Steel (P) Ltd.” (supra) has taken note of the observations made by the Supreme Court in the “the land mark case of *Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC)* and *Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC)* laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”

Thereafter the hon'ble Supreme court summed up the principles which emerged after deliberating upon various case laws as under:

“11. *The principles which emerge where sums of money are credited as Share Capital/Premium are:*

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

The Hon'ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted

upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., impugned additions are not warranted in this case.

11. It has to be further noted that though powers of the Id. CIT(A) are co-terminus with the AO and the Id. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Manish Build Well (P.) Ltd.* reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the Id. CIT(A) shows that the Id. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply cited certain case laws even without pointing out as to how these case laws were applicable to the facts and circumstances of this case. The order of the Id. CIT(A) is a non-speaking order. By simply reproducing the contents of the case laws without discussing about their application on the facts of the case, in our view, would not make the order of the Id. CIT(A) justifiable speaking order and hence, the same is not sustainable as per law.

12. In view of the above discussion, we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.

13. The appeal of the assessee stands allowed.

Kolkata, the 28th November, 2023.

Sd/-
[गिरीश अग्रवाल/Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग/Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 28.11.2023.

RS

Copy of the order forwarded to:

1. Grameen Shakti Microfinance Services (P) Ltd
2. ITO, Ward-10(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches