

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 699/Srt/2023 (Assessment Year 2017-18)

*(Physical hearing)*

Godawari Fibres Pvt. Ltd., 3009, World Trade Centre, Ring Road, Surat-395002. <b>PAN No. AAACG 8903 F</b>	Vs.	I.T.O., Ward-1(1)(2), Surat, New Ward 1(1)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Ramesh Malpani, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Appeal instituted on	16/10/2023
Date of hearing	18/12/2023
Date of pronouncement	18/12/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 28/08/2023 for the Assessment Year (AY) 2017-18. The assessee has raised following grounds of appeal:

- “(1) That on the facts and in the circumstances of the case as well as in law, the appeal order passed by Id. CIT(A) dismissing the appeal of the appellant is wrong, unjustified, invalid and bad in law.*
- (2) That on the facts and in the circumstances of the case as well as in law, the Id. CIT(A) has erred in upholding the addition of Rs. 47,04,000/- made u/s 68 of the I.T. Act, 1961 (the Act). The addition so made Id. AO and sustained by Id. CIT(A) is contrary to the settled law. Appellant prays for deleting the same.*
- (3) Without prejudice to above grounds of appeal, that the Id. CIT(A) has also erred in law in upholding the charging of tax on above addition u/s*

*68 of the Act at the higher tax rate of 60% plus surcharge as per substituted section 115BBE by the Taxation Laws (Second Amendment) Act, 2016 which was inserted on 15/12/2016 and made effective prospectively from 01/04/2017, whereas the loan amount was received by the appellant before even passing of the said amendment Act and, therefore, higher rate inserted by the amendment Act is not applicable to the transactions done before 15/12/2016. This ground is without prejudice to main ground that the addition u/s 68 itself is wrong and unjustified and must be deleted.*

*(4) The appellant craves leave to add, amend, alter, delete or modify any grounds of appeal."*

2. Brief facts of the case are that the assessee is a company, engaged in the business of textile, filed its return of income for A.Y. 2017-18 on 07/10/2017 declaring income of Rs. 1,11,540/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee had shown transaction of loan with a company, whose registration has been cancelled by the Ministry of Corporate Affairs (MCA). The Assessing Officer noted the name of such company as M/s Namoshivani Trade Pvt. Ltd., the assessee has shown unsecured loan of Rs. 47,04,000/-. On the basis of such observation, the Assessing Officer issued show cause notice dated 12/12/2019 to the assessee. The contents of show cause notice is recorded in para 5 of assessment order. In the show cause notice, the Assessing Officer noted that the assessee has taken unsecured loan from M/s Namoshivani Trade Pvt. Ltd. The Assessing Officer issued notice under Section 133(6) of the Income Tax Act, 1961 (in short, the Act) to the said company, which was returned back unserved. The Assessing Officer also referred that the lender

company failed on test of identity as its name is struck off by MCA. The assessee was show caused as to why unsecured loan should not be treated as cash credit. The Assessing Officer noted that the assessee filed its reply as recorded in para 6 of assessment order. The assessee in its reply, stated that they have availed unsecured loan of Rs. 47.04 lacs on 22/11/2016 from M/s Namoshivam Traders Private Limited. The said loan was received through RTGS. The assessee furnished account confirmation, income tax return, audited report, audited balance sheet, Profit & Loss Account of the said company. It was contended that unsecured loan is payable on call or as and when asked to refund, so the loan cannot be added as a cash credit. The assessee further explained that on verification of MCA Data, the name of said company was struck off due to non-filing of Registrar of Company (ROC) return. The said company is not a shell company and is a genuine company. They are in the process of restoration of their name in the MCA Portal. The assessee further stated that the name of lender company is M/s Namoshivam Traders Private Limited which has wrongly been mentioned as M/s Namoshivani Trade Pvt. Ltd. The said company is assessed to tax and filing return of income. Copy of return for the A.Y. 2017-18 was enclosed. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer recorded that the name of the lender company was struck off by MCA and notice under Section 133(6) of the

Act was returned back. The Assessing Officer treated the said loan as non-genuine and added under Section 68 of the Act.

3. On appeal before the Id. CIT(A), the action of Assessing Officer was upheld. The Id. CIT(A) while upholding the action of Assessing Officer, held that the burden of proof was on the assessee and they were required to offer explanation to the satisfaction of Assessing Officer so as not to attract the mischief of Section 68 or that of Section 69A of the Act. The Id. CIT(A) by referring various case laws, held that the assessee was required to discharge the onus by producing evidences and explanation as comprehensive and accurate. No explanation is offered by assessee either during assessment or appellate stage. Notice under Section 133(6) of the Act, issued by assessing officer, was returned back unserved. The Id. CIT(A) also upheld the action of Assessing Officer in taxing the addition under Section 115BBE of the Act. Further aggrieved, the assessee has filed present appeal before this Tribunal.
4. I have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that he does not want of press ground No. 1 of appeal. Considering the prayer of Id. AR of the assessee, ground No. 1 of appeal is dismissed being not pressed.

5. Ground No. 2 relates to the addition under section 68. The Id. AR of the assessee submits that during the assessment, the assessee furnished complete details of the lender company to discharge its onus regarding identity, creditworthiness and genuineness of transactions. The assessee furnished complete details as recorded by Assessing Officer in para 6 of assessment order that the assessee furnished confirmation, income tax return, audit report, Profit and Loss Account, updated address and e-mail address. The Assessing Officer himself has sent notice on wrong name of the lender company, name of Lender Company is M/s Namoshivam Traders Private Limited. However, the Assessing Officer sent notice to M/s Namoshivani Trade Pvt. Ltd. The company was alive when the assessee alive when unsecured loan was availed on 22/11/2016. The name of lender company was struck off somewhere in August, 2018. The Id. AR of the assessee submits that it has filed copy of order of MCA showing the name of striking off certain companies. Copy of said notification is filed at page No. 35 of paper book. The assessee has duly filed copy of confirmation, copy of which is filed at page No. 4 of paper book, affidavit of Director of lender company, ITR, audit report, financial statement, the lender company was having sufficient funds with it at the time of lending the money. The cash and balance in the bank of lender company was more than Rs. 68.00 lacs as reflected on page No. 24 of paper book. The loan was received through banking channel, copy of bank statement is

available at page No. 29 of paper book. The Id. AR of the assessee submits that once the assessee has discharged its primary onus by filing sufficient evidence of identity, creditworthiness and genuineness of transaction, the assessee has discharged his onus, the onus was shifted on the Assessing Officer to make further investigation, the Assessing Officer simply treated the said company as non-genuine on the basis that their name was struck off subsequently by the MCA. There is no allegation that the said company was indulging in providing accommodation entry. To support such submission, the Id. AR of the assessee relied upon the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs Ranchhod Jivabhai Nakhava (2012) 21 taxmann.com 159 (Guj), Kolkata High Court in CIT Vs M/s Dataware Private Limited G.A. No. 2856 of 2011 dated 21/09/2011 and the decision of Hon'ble Apex Court in CIT Vs. Orissa Corporation (P) Ltd. (1986) 1986 taxmann.com 1163 (SC).

6. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR for the revenue submits that the name of lender company was struck off by the MCA. The transaction of assessee with said entity which name is striking off was doubtful, surrounding circumstances suggests that the transaction of loan was not a valid one. Neither the identity nor the genuineness of transaction or creditworthiness was proved by the assessee. The Id. Sr. DR for the revenue prayed to confirm the addition made by the Assessing Officer or

in alternative the matter may be restored to the file of assessing officer to make further investigation of facts and evidences filed by the assessee.

7. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I have also deliberated on the various evidences filed before the Tribunal, copy of which was made available before the Assessing Officer as recorded in para 6 of assessment order. I have also deliberated upon the various case laws relied by the Id. AR of the assessee. I find that the Assessing Officer doubted the genuineness of loan transaction on the basis that the name of lender company was striking off. The Assessing Officer sent notice under Section 133(6) of the Act in the name of M/s Namoshivani Trade Pvt. Ltd. In fact, the name of lender company is M/s Namoshivam Traders Private Limited. No such notice in the name of such lender was sent. The Assessing Officer has not reported the remark of postal authority whether it was returned back due to nomenclature of name or by some other reason. I further find that the assessee furnished confirmation, copy of affidavit of Director of lender company, income tax return, audited balance sheet, Profit & Loss Account and the bank statement. No investigation of fact was carried out by the Assessing Officer. The Assessing Officer rest his entire decision on the basis that name was struck off and notice under Section 133(6) was returned back. I find that the name of lender company was struck off subsequently i.e.

on 24/08/2018 and not in the impugned year. I find that the Hon'ble Jurisdictional High Court in the case of CIT Vs Ranchhod Jivabhai Nakhava (supra) held that where lenders of assessee are income tax assesseees whose PAN have been disclosed, Assessing Officer cannot ask assessee to further prove genuineness of transactions without first verifying such fact from income tax returns of lenders. I find that the Hon'ble Kolkata High Court in the case of CIT Vs M/s Dataware Private Limited (supra) also held that when creditor is an income tax assessee, the Assessing Officer after getting the PAN and information of that creditor is assessed under the Income Tax Act, the Assessing Officer should enquire from Assessing Officer of creditor society, genuineness of transaction and whether such transaction has been accepted by the Assessing Officer of the creditor but instead of adopting such course, the Assessing Officer himself could not enter into return of creditor and grant the same as unworthy of credence. The Assessing Officer is bound to accept the same as genuine when identity of creditors and the genuineness of transactions through account payee cheque has been established. Further the Hon'ble Supreme Court in the case of CIT Vs Orissa Corporation (P) Ltd. (Supra) is also held that where assessee received loan from three individuals under hundis, since assessee had given names and addresses of alleged creditors and it was in knowledge of revenue that said creditors were income tax assesseees, their index number was in file of revenue, impugned addition under

Section 68 treating said loan amount as unexplained cash credit was unjustified. In view of the aforesaid factual and legal discussion, I do not find any justification in making addition under Section 68 of the Act without disputing or discarding or giving any adverse finding on the evidences furnished by the assessee against unsecured loan. Accordingly, I direct to delete the addition made by the Assessing Officer and confirmed by the Id. CIT(A). In the result, ground No. 2 of the appeal is allowed.

8. Considering the fact that I have allowed ground No. 2 in toto, therefore, adjudication of ground No. 3 of the appeal has become academic.
9. In the result, this appeal of assessee is allowed.

Order announced in open court on 18th December, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 18/12/2023  
*\*Ranjan*  
Copy to:  
1. Assessee  
2. Revenue  
3. CIT  
4. DR  
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat