

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 3005/MUM/2023
Assessment Year: 2018-19

Income Tax Officer 41(1)(3),
Room No. 315, Kautilya
Bhavan, BKC, Bandra (E),
Mumbai-400051.

Vs.

Omsai Prints, Kalyan Bypass,
Thane, Bhiwandi,
Bldg. No. M-2/B, Shree Rajlaxmi
High Tech Ind Park, NR Kalyan
Bypass Thane Bhiwandi,
Shashtrinagar,
S.O. (Thane)-421302.
PAN NO. AACFO 9575 G
Respondent

Appellant

Assessee by
Revenue by

: Mr. Haridas Bhat, CA
: Mr. H.M. Bhatt, Sr. DR

Date of Hearing : 25/01/2024
Date of pronouncement : 30/01/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the Revenue against order of the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:

1 (i) "Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the addition made u/s 68 of the Act by holding that merely non-compliance of third party cannot be a ground for disallowance, ignoring the fact that no documentary evidence were submitted during the assessment proceedings to prove the creditworthiness of the lenders and genuineness of the transactions."



ii. "Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the addition made u/s 68 of the Act by relying on the bank statement of the lenders and holding that the lender had funds to lend, ignoring the decision of Apex Court in the case of Pavankumar M Sanghavi [2018] 97 taxman.com 398(SC), wherein the Apex Court has upheld the judgment of Gujarat High Court wherein the similar facts and issue was involved."

2. Briefly stated, facts of the case are that the assessee was engaged in the business of import and export of printing works such as calendars, books journals etc. The assessee filed its return of income for assessment year under consideration on 05.10.2018. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act on 31.05.2021, the Assessing Officer made addition u/s 68 of the Act in respect of four parties namely (i) Divakar Shetty,(ii) Pooja Prakash Bhandary, (iii) Vidhiyadhar Ridij and (iv) Zainub Abbar Presswala.

3. On further appeal, the Ld. CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before the Tribunal raising grounds as reproduced above.

4. We have heard rival submission of the parties and perused the relevant material on record. Before us, the Ld. counsel for the assessee filed a Paper Book containing pages 1 to 86. He referred to Page No. 36 of the Paper Book which is a copy of the confirmation filed by Divakar Shetty. On perusal of the confirmation, we find that a sum of Rs.70,00,000/- is appearing as opening balance as on



1/4/2017. Similarly, on perusal of the page No. 52 of the Paper Book, we find that in the case of Vidhyadhar Ridij also amount of Rs.50,000/- is appearing as opening balance. Similarly, in the case of Zainub Abbar Presswala copy of the confirmation has been filed on Paper Book page 53 and according to which the amount of Rs.4,00,000/- is appearing as opening balance. Wherever, amount is appearing as opening balance, then said sum has not been received during the year under consideration and therefore, no addition could have been made u/s 68 of the Act for the year under consideration. Accordingly, finding of the Ld. CIT(A) in respect of three parties is upheld. In respect of Pooja Prakash Bhandary a sum of Rs.2 crores have been received during the year under consideration. Before us, the Ld. Counsel for the assessee has filed a copy of the registration deed of sale of property by her on Paper Book page 36. It is clearly evident that she had received Rs. 2 crores as advance from sale of the property on 26.03.2018 and same has been advanced to the assessee. Thus, all the three ingredient of section 68 of the Act i.e. identity, creditworthiness and genuineness of the transaction in the case are established and therefore, no addition could have been made u/s 68 of the Act in case of credit received from said party. Therefore, we uphold the finding of the Ld. CIT(A) in respect of this party also. It is not the case that the Ld. CIT(A) has deleted the addition merely relying on the bank statement of the lenders and therefore, the decision relied upon by the Revenue in grounds raised is not applicable over the facts of



instant case. The ground of appeal of the Revenue is accordingly dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30/01/2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/01/2024

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai