

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.760/Ahd/2018
Assessment Year: 2012-3**

Gopinath Buildcon Pvt. Ltd., A-801, Viceroy Ville, Judges Bungalow Road, Bodakdev, Ahmedabad – 380 015. [PAN – AADCG 8157 A]	Vs.	The Deputy Commissioner of Income Tax, Circle – 2(1)(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Aatish Shah & Shri Anil Shah, ARs	
Revenue by	Shri Ashok Kumar Suthar, Sr. DR	
Date of Hearing	21.02.2024	
Date of Pronouncement	28.02.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 12.01.2018 passed by the CIT(A)-2, Ahmedabad for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal :-

- “1. *The impugned order is bad in law, passed against the natural rule of justice, without giving proper opportunity of being heard and is based on an inappropriate appraisal of facts and is liable to be quashed.*
2. *The Ld. AO have erred in law and on facts in making addition of Rs.60,00,000/- under section 68 of the Act and the Hon'ble CIT(A) have erred in law and on facts in confirming the same.*
 - (A) *The Ld. AO have erred in law and on facts, in making addition of Rs.5,00,000/- under section 68 of the Act, in respect of unsecured loans from Krutarth Project Pvt Ltd*
 - (B) *The Ld. AO have erred in law and on facts, in making addition of Rs.25,00,000/- under Section 68 of the Act in respect of unsecured loans from SAF Impex India Pvt Ltd.*

- (i) *By concluding that, the said unsecured loan(s) of Rs.25,00,000/- received by the appellant company from SAF Impex India Pvt. Ltd. was appellant's own unexplained money which was routed through Kenai Enterprises Pvt. Ltd. and SAF Impex India Pvt. Ltd. and the Hon'ble CIT (Appeals) have erred in law and on facts in confirming the addition so made by the Ld. AO.*
- (ii) *In relying on the statement of Director of M/s. SAF Impex Pvt. Limited without giving any opportunity to the appellant company to counter the statement of the Director of M/s. SAF Impex India Pvt. Ltd. and the Hon'ble CIT (Appeals) have erred in law and on facts in confirming the addition so made by the Ld. AO.*
- (iii) *In treating as unexplained credit under section 68 of the Act and as unexplained income of the appellant and the Hon'ble CIT(Appeals) have erred in law and on facts in confirming the addition so made by the Ld. AO.*
- (iv) *In concluding that, SAF impex India Pvt. Ltd. had not given any loan of Rs.25,00,000/- to the appellant and in holding that, on 09.02.2012 Rs.25,00,000/- deposited in the account of SAF Impex India Pvt. Ltd. by Kanani Enterprise Pvt. Ltd. and on 10.02.2012, the said money was transferred to the appellant company and the Hon'ble CIT(Appeal) have erred in law and on facts in confirming the addition so made by the Ld. AO.*
- (v) *The Hon'ble CIT(Appeal) have erred in law and on facts in confirming the addition of Rs.25,00,000/- made by the Ld. AO under section 68 of the Act in respect of unsecured loans from SAF Impex India Pvt. Ltd.*
- (C) *The Ld. AO have erred in law and on facts in making addition of Rs.4,25,000/- under section 68 of the Act in respect of unsecured loans from Shivani 'Trading Co. Prop. Shri Sudarshan R Sharma and the Hon'ble CIT(Appeal) have erred in law and on facts in confirming the said addition of Rs.4,25,000/- made by the Ld. AO under section 68 of the Act in respect of unsecured loans from said Shivani Trading Co.*
- (D) *The Ld. AO have erred in law and on facts, in making addition of Rs.25,75,000/- under section 68 of the Act in respect of unsecured loans from Sudha Brothers, Prop. Shri Sudarshan R Sharma and the Hon'ble CIT(Appeal) have erred in law and on facts in confirming the said addition of Rs.25,75,000/- made by the Ld. AO under section 68 of the Act in respect of unsecured loans from said Sudha Brothers.*

(E) *While confirming the addition of Rs.60,00,000/- under section 68 of the Act from the above stated four entities/parties the Hon'ble CIT(A) have erred in law and on fact in not considering the facts, law and the additional evidences admitted by him in proper perspective.*

(3) *The Ld. AO have erred in law and on facts in disallowing depreciation of Rs.1,7,867/- on Car and the Hon'ble CIT(A) have erred in law and on facts in confirming the said disallowance of Rs.1,72,867/- so made by the Ld. AO.*

(4) *The Ld. AO have erred in law and on facts in making disallowance of Rs.2,65,423/- out of Foreign Travelling expenses and the Hon'ble CIT(A) have erred in law and on facts in confirming the said disallowance of Rs.2,65,423/- so made by the Ld. AO."*

3. The return of income was filed by the assessee on 31.08.2013 declaring total income of Rs.44,28,260/-. The case was selected for scrutiny and notice under Section 143(2) of the Income Tax Act, 1961 was issued on 12.09.013 and was served upon the assessee. Notices under Section 142(1) of the Act were issued on 12.09.2013 and 23.09.2014. In response to the same notices, the Ld. AR of the assessee attended the assessment proceedings and submitted the details. The assessee company was engaged in the business of builders - property developers. The Assessing Officer observed that there was six persons/corporate entities had given fresh unsecured loans to the assessee during the year under consideration. However, the assessee did not furnish any copy of return of income, Balance Sheet, Bank statement and other corresponding evidences in support of the credit worthiness of the parties. The assessee filed its contention and submissions. After taking cognisance of the same, the Assessing Officer made addition in respect of SAF Impex India Pvt. Ltd., Krutarth Project Pvt. Ltd., Shivani Trading & Sudha Brothers towards unsecured loan amounting to Rs.25,00,000/- Rs.50,00,000/- and Rs.30,00,000/- respectively under Section 68 of the Act. The Assessing Officer also made disallowance of depreciation on car and disallowed amount of Rs.1,72,867/- as well as disallowance of travelling/foreign travelling expenses amounting to Rs.2,65,423/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that in respect of four parties i.e. SAF Impex India Pvt. Ltd., Krutarth Project Pvt. Ltd., Shivani Trading & Sudha Brothers, to prove

the credit worthiness of those parties, the assessee submitted bank statement of Sudha Brothers as well as ledger of SAF Impex India Pvt. Ltd. from books of accounts as stands in books of the assessee to establish source of depositor explaining the source of source and also the bank statement evidencing receipt of cheque. The Ld. AR submitted that the assessee has also given Depositor's letter dated 13.03.2015 and in fact out of the said loan the assessee received information that source of source with Kanani Enterprise Pvt. Ltd. received the partial loan amount of Rs.25,00,000/-. Thus, the Ld. AR submitted that the SAF Impex India Pvt. Ltd. has the credit worthiness and it was not the case of the Assessing Officer that SAF Impex India Pvt. Ltd. has not received the said loan/amount from Kanani Enterprise Pvt. Ltd.

6. As regards to Krutarth Project Pvt. Ltd., the Ld. AR submitted that the assessee submitted confirmation ledger, complete address with PAN details of the party, bank statement of the assessee company as well as confirmation of accounts alongwith repayment details in the subsequent year i.e. 2014-5 where loan has been repaid to the depositor. The Ld. AR submitted that the PAN of depositor evidencing the repayment of loan was also presented before the CIT(A).

7. As regards Shivani Trading Company & Sudha Brothers, in both these cases the assessee has filed confirmation ledger complete address with PAN details of the party, bank statement of the assessee company showing amount received through banking channel as well as bank statements related to Indusind Bank of depositor firm evidencing source of fund as well as confirmation of account along with repayment details of subsequent period where loan has been repaid which was duly confirmed by the depositor.

8. The Ld. DR submitted that the assessee has not given the source of the funds in case of SAF Impex India Pvt. Ltd. as well as the income tax return of all the parties to show the creditworthiness of those parties. Therefore, the Assessing Officer as well as the CIT(A) has rightly confirmed addition.

9. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that in respect of SAF Impex India Pvt. Ltd., the assessee has given the source of source of the depositor and the same was never doubted either by the Assessing Officer as well as by the CIT(A). In

fact, the subsequent repayment of partial loan was also thereon recorded and, therefore, the documents/evidences submitted by the assessee before the Assessing Officer as well as before the CIT(A) was sufficient enough to prove the creditworthiness of the depositor. The CIT(A) in fact acknowledges the fact that documents were produced but has given contrary finding to the same. Thus, the CIT(A) has not rightly taken the cognisance of the creditworthiness and the corelation of the same with the documents provided by the assessee. As regards to Krutarth Project Pvt. Ltd., the confirmation as well as the bank statements clearly indicate that the parties were having sufficient balance to give the loans to the assessee which was subsequently repaid by the depositor and, therefore, the CIT(A) here also ignored the evidences produced by the assessee. In case of Shivani Trading and Sudha Brother, the confirmation and bank statement clearly indicate the credit worthiness of the parties. Merely not filing the income tax return (details of acknowledgement of tax return) cannot be said that the assessee has not filed any document to prove the creditworthiness of the parties. Thus, ground no.2 of the assessee's appeal is allowed.

10. As regards to ground no.3 relating to disallowance of depreciation of Rs.1,72,867/- on car, the same was not properly dealt by the CIT(A) as the assessee has utilised the car for business purposes and for that the assessee has given the details as submitted before us. Hence, ground no.3 is allowed.

11. As regards to foreign traveling expenses, the CIT(A) and the Assessing Officer has totally ignored the vouchers and the connected details given by the assessee in respect of foreign travelling and, therefore, the disallowance was not justified. Hence, ground no.4 is allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 28th February, 2024.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 28th day of February, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad