

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं / **ITA No.21 and S.A. No.6/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2016-17)

Prathishta Business Solutions (P) Ltd Hyderabad PAN:AAHCP2943F	Vs.	Income Tax Officer Ward 16(2) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri P Murali Mohan Rao, CA	
राजस्व द्वारा / Revenue by:	Shri Jeevan Lal Lavidiya CIT (DR)	
सुनवाई की तारीख / Date of hearing:	14/03/2024	
घोषणा की तारीख / Pronouncement:	20/03/2024	

आदेश/ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 29/12/2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2016-17.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacture contractor for Pepsico India Holdings (P) Ltd. It filed its return of income on

17.10.2016 declaring income of Rs.Nil. The case was selected for scrutiny through CASS and statutory notices u/s 143(2) and 142(1) were issued and served on the assessee in response to which the assessee filed certain information.

3. During the course of scrutiny assesment proceedings, the Assessing Officer noted that there was an increase of Rs.16,50,84,266/- in unsecured loans accepted by the assessee for the impugned A.Y. In response to the statutory notices, the assessee furnished the details of the persons who made the investment and the Bank Account copies of the assessee company. The Assessing Officer thereafter asked the assessee to furnish the name and full postal address of the lenders, their PAN Nos, copy of ITR etc., He also asked the assessee to file documentary evidence in support to prove the capacity, creditworthiness and genuineness of the transaction. However, inspite of repeated opportunities granted by the Assessing Officer, the assessee did not produce any evidence to the satisfaction of the Assessing Officer regarding the identity and creditworthiness of the creditors and the genuineness of the transaction. The Assessing Officer therefore, passed the order u/s 144 by making addition of Rs.16,50,84,266/- u/s 68 of the I.T. Act, 1961.

4. Before the learned CIT (A) NFAC, the assessee filed certain documents to explain the identity and capacity of the loan

creditors and genuineness of the transactions. The learned CIT (A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and rejoinder of the assessee to such remand report, the learned CIT (A) N.F.A.C sustained the addition made by the Assessing Officer by observing as under:

8. APPELLATE FINDINGS:

8.1 Grounds of Appeal No. 1, to 4 are pertaining to additions made by the AO of Rs.16,50,84,266/- u/s 68 of the Act, 1961 vide order dated 11.12.2018 u/s 144 of the Act. During the assessment proceedings, it was noticed by the AO that there is increase of said amount in unsecured loans accepted by the appellant. As per the AO, the appellant did not furnished any information even after granting several opportunities. Accordingly, the AO passed order 144 of the Act, 1961. The appellant furnished his written submission on 08.03.2023. In the Para 5.9 of such reply, the appellant also reproduced remand report given by the AO in response to the communication from this office. After going through the said remand report (dated 18.09.2019) it was noticed by this office there were instances of cash deposit before transferring the money to the appellant in several cases and also the issue of credit worthiness. The Ld. AO furnished a table relating to 18 persons but did not give conclusive remarks on the issue of identity, banking channel and credit worthiness of the creditors / unsecured loan makers. One more communication was sent to AO to give conclusive report on 02.11.2023. The Ld. AO responded on 01.12.2023 and relied upon the earlier remand report dated 18.09.2019. The following discrepancies have been noted in the Table-1 of the remand report dated 18.09.2019:

- "A. At Sr. No. 2 was payment was made in cash.*
- B. At Sr. No. 3, 4, 15 credit worthiness was not there.*
- C. At Sr. No. 7, 8 there is cash deposit before issuing the cheques.*
- D. At Sr. No. 18 the source was not explained."*

8.1.2 In all the cases, the credit worthiness evidence such as ITR, Balance Sheet, Profit & Loss Account etc. was not filed before the AO and not during the appellate proceedings. In the appellate proceeding, the applicant the only filed his old bank account as well as bank account of above said person. I have examined all the bank accounts of these persons and noticed that there are credit entries immediately before issuing the cheques to the appellant. The Ld. AO has not examined this aspect even during the second opportunity given to him. The same was also not explained by the appellant during the appellate proceedings. The appellant failed to fulfill the condition relating to credit worthiness and identity of the creditor by mere filing of the bank statement. The Bank Statement is not proof of credit worthiness. Hence, the appellant failed to explain the source of loans and credits received by him during the year. The addition made by the AO on this ground is confirmed and the grounds of the appellant are dismissed.

5. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

1) The order passed u/s 250 by the Ld. CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.

2. The Ld. CIT(A) ought to have appreciated the fact that the Assessing Officer erred in completing the best judgement assessment u/s 144 of the Act without affording reasonable opportunity, which is against the principles of natural justice.

3. The Ld. CIT(A) erred in not adjudicating the submission made by the appellant that the AO erred in completing the assessment u/s 144 without issuing a show cause notice as per the provisions of Sec 144 of the Act indicating the reasons for proposed additions, which is incorrect and bad in law.

4. The Ld. CIT(A) ought to have appreciated that when the assessment itself is invalid, the additions made in course of the assessment proceedings are also invalid and bad in law and the said order is liable to be quashed.

5. The Ld. CIT(A) erred in confirming the addition of unsecured loans u/s 68 by stating that the assessee failed to prove the credit worthiness and identity of the creditors by mere filing of the bank statement.

6. The Ld. CIT(A) ought to have appreciated the fact that the amount of Rs. 12,90,84,266/- is received through banking channels which proves the genuineness of the transaction i.e., identity of the creditors and credit worthiness of the creditors, the three ingredients as per the provisions of Sec 68 of the Act.

7. The Ld. CIT(A) ought to have appreciated the fact that the addition made in respect of the opening balances carried forward from previous years is unsustainable and against the provisions of Income Tax Act and is against to the principles of principles of Natural Justice.

8. The Ld. CIT(A) ought to have considered the fact that the Assessing Officer observed in his remand report by forming

an opinion that the transactions entered by the assessee proves the identity of the person, genuineness of the transaction and the creditworthiness of the lender and the addition made u/s 68 ought to have been deleted.

9. The Ld. CIT(A) ought to have appreciated the fact that the books of accounts of the company are duly audited by the qualified auditor and no adverse remark has been raised which clears that the assessee company has maintained all the information/documents with respect to the transactions undertaken.

10. The Ld. CIT(A) ought to have appreciated that the unsecured loans are genuine considering the fact that unsecured loans undertaken during the year are from related parties only i.e., shareholders and directors and the same has been taken through proper banking channel.

11. Appellant may add or alter or amend or substitute or delete/and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”

6. The learned Counsel for the assessee at the outset drew the attention of the Bench to the copy of the remand report submitted by the Assessing Officer which has been reproduced by the learned CIT (A) NFAC from Page 14 to 18 and submitted that the Assessing Officer during the remand proceedings has verified the various details filed by the assessee. However, despite the remand report of the Assessing Officer, the learned CIT (A) NFAC called for another report from the Assessing Officer which he did not give for which the learned CIT (A) NFAC sustained the addition made by the Assessing Officer. The learned Counsel for the assessee submitted that the assessee has repaid some of the loans in subsequent years and for this purpose he filed a chart containing the details of such repayment of loans as additional evidence. Referring to the various decisions in the case law compilation, he

submitted that when the assessee has repaid the unsecured loans in subsequent years, the genuineness of such loan could not be doubted. Referring to various other decisions in the case law compilation, he submitted that when the assessee has proved the identity and capacity of the loan creditors by filing sufficient documentary evidence and genuineness of the transaction is not doubted the addition u/s 68 is not justified. In his alternate contention he submitted that the matter may be restored to the file of the Assessing Officer for necessary verification and adjudication of the issue since according to the learned CIT (A) NFAC the Assessing Officer did not give his conclusive report as directed by the learned CIT (A) NFAC.

7. The learned DR, on the other hand, heavily relied on the orders of the learned CIT (A) NFAC.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.16,50,84,266/- u/s 68 of the I.T. Act on the ground that there is an increase in the unsecured loan during the year and that the assessee could not prove to his satisfaction regarding the identity and creditworthiness of the loan creditors and the genuineness of the transaction. We find the learned CIT (A) NFAC upheld the

action of the Assessing Officer the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that when the Assessing Officer in the original remand report has verified the documentary evidences filed by the assessee substantiating the identity and creditworthiness of the loan creditors and genuineness of the transactions, the learned CIT (A) NFAC instead of accepting the same has called for another remand report from the Assessing Officer. It is his submission that although the Assessing Officer reiterated his earlier stand in his report dated 1.12.2023, however, according to the learned CIT (A) NFAC the Assessing Officer did not give any conclusive report for which the learned CIT (A) sustained the addition made by the Assessing Officer which is not justified under the facts and circumstances of the case. It is also his submission that given an opportunity, the assessee can prove the creditworthiness of the loan creditors. It is also his submission that the assessee has already repaid substantial amount of unsecured loan in subsequent A.Ys and therefore, in view of the various decisions cited in the case law compilation, the genuineness of such loan creditors should not be doubted.

9. We find the Assessing Officer in the instant case had given a remand report dated 18.9.2019 wherein he had mentioned that the assessee company has furnished various information which he has verified. However, when the learned CIT (A) NFAC

sent another communication to the Assessing Officer to give his conclusive report, vide communication letter dated 2.11.2023, the Assessing Officer responded on 1/12/2023 and relied upon the earlier remand report dated 18.9.2019. However, according to the learned CIT (A) NFAC the Assessing Officer has not given any conclusive remand report. Under these circumstances and considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one final opportunity to the assessee to substantiate his case by filing requisite documents to his satisfaction and decide the issue as per fact and law after giving due opportunity of being heard to the assessee. While doing so, the Assessing Officer shall keep in mind the various discrepancies raised by the learned CIT (A) NFAC in his order. The Assessing Officer shall decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

SA No.6/Hyd/2024

11. Since we have decided the appeal and have restored the issue to the file of the Assessing Officer for fresh adjudication, therefore, the SA filed by the assessee becomes infructuous. Accordingly, the same is dismissed.

12. In the result, the appeal filed by the is allowed for statistical purposes and the SA filed by the assessee is dismissed.

Order pronounced in the Open Court on 20th March, 2024

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 20th March, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Prathishta Business Solutions (P) Ltd Hyderabad C/o P Murali & Co. CA, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Income Tax Officer Ward 16(2) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order