

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.698/Mum./2023

(Assessment Year : 2017-18)

Sunshine Tracon Pvt. Ltd.
5th Floor, 1, Plot no.7, Sharda Sadan
Swami Gyanjivandas Marg
Dadar Railway Station, Dadar (East)
Mumbai 400 014 PAN – AAGCS8868M

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-4(1), Mumbai

..... Respondent

Assessee by : Shri Vinod Kumar Bindal a/w
Shri Satish Gupta
Revenue by : Dr. Kishor Dhule

Date of Hearing – 11/03/2024

Date of Order – 20/03/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 13/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-52, Mumbai, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In its appeal, the assessee has raised the following grounds:-

"1. The CIT(A) erred in law and on facts in confirming the addition for unsecured loans of Rs.7,12,55,800/- u/s 68 of the Act received during the relevant period

(i) ignoring the material placed on record in support of the loans,

(ii) alleging the same as not proven, on extraneous grounds viz absence of KYC; non- provision of interest and payment etc., ignoring the peculiar functioning of a registered NBFC as per the guidelines of the RBI, and

(iii) when the said loans with interest have been repaid finally through account payee cheques and therefore, the onus u/s 68 of the Act stood discharged. Thus, the addition should be deleted.

2. The appellant craves the leave to add, substitute, modify, alter, delete or amend all or any ground of appeal either before or at the time of hearing.”

3. We have considered the submissions of both sides and perused the material available on record. The only grievance of the assessee, in the present appeal, is against the addition of Rs.7,12,55,800 under section 68 of the Act on account of the loan received by the assessee during the year under consideration. The assessee is a non-banking financial company and is engaged in the business of providing loans. For the year under consideration, the assessee filed its return of income on 29/10/2017 declaring a total income of Rs.89,80,010. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, upon perusal of the balance sheet, it was noticed that the assessee has shown long-term borrowings and short-term borrowings. Accordingly, the assessee was asked to furnish the statement of unsecured loans. In response thereto, the assessee filed its response and accordingly, notice under section 133(6) of the Act was issued to the 30 entities from whom loans were received by the assessee. In response to the aforesaid notice, the assessee submitted confirmation from some lenders and in some cases the lenders submitted their details. However, in respect of the following 9 entities no details were furnished by the assessee:-

<i>Sr. No.</i>	<i>Name of the lender</i>	<i>Amount (Rs.)</i>
1.	<i>M/s. Navketan Premises Pvt. Ltd.</i>	<i>1300000</i>
2.	<i>M/s. Jayanti Agencies Pvt. Ltd.</i>	<i>9400000</i>
3.	<i>M/s. Jayakalp Tradelink Pvt. Ltd.</i>	<i>5500000</i>
4.	<i>M/s. Patangar Finance Pvt. Ltd.</i>	<i>2500000</i>
5.	<i>M/s. Shree Ostwal Builders Ltd.</i>	<i>15000000</i>
6.	<i>M/s. Swarg Gold Touch Ltd.</i>	<i>55800</i>
7.	<i>M/s. Taj Agro Commodities Pvt. Ltd.</i>	<i>10000000</i>
8.	<i>M/s. Trincas Agencies & Commerce Pvt. Ltd.</i>	<i>22500000</i>
9.	<i>M/s. S. Narendra Kumar & Co.</i>	<i>5000000</i>
	<i>Total:</i>	<i>7,12,55,800</i>

4. Accordingly, the assessee was asked to show cause as to why the sum received by the assessee from these entities where the assessee vis-à-vis the respective lenders failed to file any details/submission should not be treated as unexplained and added to the total income of the assessee. Since, the assessee failed to prove the genuineness of the transaction, and establish the identity and creditworthiness of these entities nor the assessee furnished the confirmation from these entities, the Assessing Officer vide order dated 31/12/2019 passed under section 143(3) of the Act made an addition of Rs.7,15,55,800 received as loan by the assessee from these entities. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue, however, restricted the addition to Rs.7,12,55,800.

5. In the present case, it is undisputed that the assessee received a loan of Rs.7,12,55,800 from the aforesaid entities. Thus, the primary onus is on the assessee to establish the identity and creditworthiness of the loan lender and the genuineness of the transaction to come out of the rigours of section 68 of

the Act. However, before the AO, the assessee except for furnishing a copy of the ledger account and copy of bank statement did not furnish any other documents to satisfy the aforesaid conditions. Accordingly, the AO by invoking the provisions of section 68 of the Act made the addition of the entire amount received as a loan from the aforesaid 9 entities. During the hearing, the learned AR submitted that the assessee furnished the lenders' confirmation, lenders' balance sheet, lenders' Income Tax return acknowledgement, and lenders' bank statement, however, the learned CIT(A) did not consider all the details and upheld the addition under section 68 of the Act. Therefore, in view of the facts and circumstances as noted above, we deem it appropriate to restore this issue to the file of the jurisdictional Assessing Officer for *de novo* adjudication, with a direction to the assessee to furnish all the material/documents to establish identity and creditworthiness of the loan lender and genuineness of the transaction in respect of the loan of Rs. 7,12,55,800 received from the aforesaid 9 entities. Accordingly, the impugned order is set aside and the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 20/03/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/03/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai