

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.18/Bang/2024
Assessment Year : 2017-18

Bhagavathi Chits Pvt. Ltd., No.176, Near Sharadha Colony Bus Stop, Basaveshwaranagar, Bengaluru-560 079. PAN : AACCB 0331 Q	Vs.	The Asst. Commissioner of Income Tax, Circle-1(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Bhardwaj Sheshadri, C.A
Revenue by	:	Shri V Parithivel, JCIT

Date of hearing	:	14.03.2024
Date of Pronouncement	:	10.04.2024

ORDER

PER SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 24/11/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1058219069(1) for the assessment year 2017-18 with the following grounds of appeal:-

‘1. The impugned order of the learned Commissioner of Income-tax (Appeals), NFAC {hereafter, "the CIT(A)"} is bad in law, violative of the principles of natural justice and deserves to be quashed. Rs.1,24,25,618/-

2. The CIT(A) erred in confirming the addition of Rs. 1,14,50,000 under section 68 considering, inter alia, that the ingredients for invoking that provision did not exist. Rs.88,45,125/-

3. Without prejudice, the addition under section 68 ought to have been Rs. 86,44,987 only. Rs.8,96,507/-

4. The CIT(A) erred in confirming the addition of Rs. 72,67,690 as remission of liability under section 41(1) as, inter alia, the ingredients of that section did not exist and the addition was made on an ad hoc basis. Rs.23,22,819/-

5. The CIT(A) erred in not allowing deduction of Rs. 39,35,042 as trading liability/bad debts. Rs.12,57,674/-

6. The appellant craves leave to add/or withdraw any or all of these grounds of appeal. For these and other grounds that may be adduced at the time of hearing, the impugned order of the NFAC may be set aside in the interests of justice.

2. The assessee raised additional grounds, which is as under:-

“1. The Appellant craves leave to submit the documents furnished in the accompanying paper book and listed at S1. Nos. t to 5 — pages 1 to 20 in the contents thereto as additional evidence before this Honourable Tribunal.

2. Mr. Karunakar Shetty the managing director of the Appellant had lent Rs. 1,00,94,987 to the Appellant. This loan was out of his borrowing from Mr. Sanjeev Shetty. A confirmation from Mr. Sanjeev Shetty of his loan to Mr. Karunakar Shetty with the cheque number, amount, date, PAN and address had been furnished to the AO. All the transactions were in cheque. The AO in the assessment order added Rs. 1,29,00,000 (although the loan amount was Rs. 1,00,94,987) under section 68 on the ground that Mr. Sanjeev Shetty's credit worthiness was not established, and this was reduced by the CIT(A) to Rs. 1,14,50,000.

3. The credit worthiness of Mr. Karunakar Shetty was not questioned by the AO. However, the AO raised the issue of credit worthiness of Mr. Sanjeev Shetty for the first time only in the assessment order. Further, the proviso to section 68 requiring explanation on the source of the source was

introduced only from AY 2023-24. Therefore, the Appellant did not have an opportunity to furnish further evidence to substantiate the credit worthiness of Mr. Sanjeev Shetty. In the meanwhile, Mr. Sanjeev Shetty passed away on 03.04.2022. The Appellant had to procure the documents from his family members.

4. The Appellant is now furnishing as additional evidence, ITR V and statement of total income of Mr. Sanjeev Shetty and the firm Vijayamala Engineering Works in which Mr. Sanjeev Shetty was a partner to substantiate his credit worthiness, and also the death certificate of Mr. Sanjeev Shetty.

5. The Appellant most humbly prays that the aforesaid documents be taken on record and considered in disposing of the appeal.”

3. The issues raised before us by the assessee are against the ex-parte order passed by the CIT(A) order dated 24/11/2023. The AO passed asst. order on 28/12/2019 and made addition u/s 68 of the Act of Rs.1,29,00,000/-, disallowance of bad debts of Rs.39,35,042./- and disallowance u/s 41(1) of Rs.72,67,690/-. Accordingly, the assessed income was Rs.2,84,91,502/- and assessment was completed.

4. Aggrieved from the above order, the assessee filed appeal before the CIT(A) and the CIT(A) issued several notices on different dates, which were not complied by the assessee. Accordingly, the CIT(A) decided the issue ex-parte on the basis of material available before him.

5. Aggrieved from the above order, the assessee filed appeal before the ITAT.

6. The ld.AR of the assessee submitted that the assessee did not receive any of the notices issued by the CIT(A), probably, it might be the case that the same could have been migrated to the NFAC, New Delhi in terms of notification No.76/2020/F.No.370142/33/2020-TPL dated 25.09.2020. The intention of the assessee was not to disregard the notices issued by the CIT(A) and he complied all the notices issued by the AO. During the course of hearing, the ld.AR of the assessee has filed some additional evidences first time and submitted that these additional evidences are very much necessary for deciding the appeal. He further submitted in case, the additional evidence so placed on record by the assessee is allowed then in that eventuality, no prejudice shall be caused to the rights of the Revenue. Whereas on the contrary, in case, the said additional evidences placed on record by the assessee is not considered then in that eventuality the rights of the assessee shall be prejudiced. He further submitted that if a chance is given to the assessee and he also undertook that he will comply all the notices issued by the CIT(A) for adjudicating the case.

7. The ld.DR strongly relied on the orders of the lower authorities and submitted that both the authorities below had given sufficient time to substantiate its case. However he did not file the requisite documents before the AO and also even before the CIT(A) he did comply to any of the notices.

8. We have heard both the parties and perused the materials on record. We note that the case was decided ex-parte by the CIT(A) on the basis of materials available before him. Before us, the ld.AR of the assessee has filed additional evidence as per Rule 29 of the Income-tax Appellate Tribunal Rule 1963 and after going through the same, we noted that all the documents so placed on record by the ld.AR by way of additional evidences are necessary to adjudicate the case of the assessee. Accordingly, we admit the additional evidences filled by the assessee. Therefore in view of the substantial justice, we direct the CIT(A) to admit additional evidences so placed on record by the ld.AR of the assessee before us and further, we direct the CIT(A) to decide the issues as per law. Needless to say that the reasonable opportunity of being heard to be given to the assessee and the assessee is directed not to seek unnecessary adjournments for early

disposal of the case and update the email, mobile No. and address for communication.

9. In the result, this appeal of the assessee is allowed for statistical purposes only.

Order pronounced on the 10th day of April, 2024 in the open court.

(GEORGE GEORGE K)

Vice President

Bangalore,

Dated : 10.04.2024.

Vms

(LAXMI PRASAD SAHU)

Accountant Member

Copyto:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore