

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2167/Mum/2023
(A.Y: 2018-19)

DCIT, C.Circle-3(4), RoomNo1915,19 th Floor, Air India Bldg, Nariman Point, Mumbai-400021.	Vs.	Starlight System (I) LLP, 5 th Floor Sunteck Centre 37-40, Subhash Road, Vile Parle (E), Mumbai-400057.
PAN/GIR No. : ACIFS0005M		
Appellant	..	Respondent

Appellant by :	Shri Dr.Kishore Dhule.CIT-DR
Respondent by :	Shri.Gaurav Kabra.AR

Date of Hearing	25.01.2024
Date of Pronouncement	18.04.2024

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals)(CIT(A))-51, Mumbai passed u/sec143(3) and u/sec 250 of the Ac. The revenue has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case, the Ld.CIT(A) is not justified in holding that the assessee has discharged onus cast upon him to prove the genuineness of loan transaction, ignoring the fact that capacity of the creditors to*

advance such loan or the source of it were not established in terms of section 68 of the Income Tax Act, 1961."

2. "On the facts and in the circumstances of the case, the Ld.CIT(A) is not justified in holding that the assessee has proved the genuineness of its loan transaction ignoring the findings given by the AO, which is based on the third party enquiry, detailed analysis of financials and the business activity of the loan creditors that creditworthiness and genuineness of loan transaction was not satisfactorily established." The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be. The appellant, therefore, prays that on the ground stated above, the order of the Ld.CIT (A)-51, Mumbai, may be set aside and that of the Assessing Officer restored.

2. The brief facts of the case are that, the assessee is Limited Liability Partnership firm and is engaged in the business of real-estate. The assessee has filed the return of income for the A.Y 2018-19 on 12.10.2018 disclosing a total income of Rs.187,25,01,540/- and the return of income was processed u/sec143(1) of the Act. Subsequently the case was selected for complete scrutiny assessment under E-assessment Scheme, 2019 on the following issues.

- (i) Income from real-estate business
- (ii) ICDS Compliance and Adjustment
- (iii) Unsecured Loans

(iv) Share Capital / Other Capital

3. Subsequently the Assessing Officer (AO) has issued notice u/sec 143(2) and U/sec 142(1) of the Act. Incompliance to the notice, the assessee has submitted the details. The AO on the verification of details filed in support of the income tax return has issued show cause notice dated 07.04.2021 and the assessee has filed the written submissions on 10.04.2021. Further the assessee has requested for a video conference (VC) to present the case. The video conference was scheduled on 21.04.2021 and was complied. Whereas the AO after considering the details find that the assessee has obtained unsecured loans from seven parties and the assessee was called to prove the identity, creditworthiness and genuineness of the transactions of unsecured loans with parties as under:

<i>Sl No.</i>	<i>Name of the Loan creditors</i>	<i>PAN of the Creditor</i>	<i>Unsecured loan accepted during the year (in Rs.)</i>
1	<i>Amenity Software P Ltd</i>	<i>AAECA7054J</i>	<i>3,00,00,000</i>
2	<i>Magenta Computer Software Ltd</i>	<i>PAADCM9731C</i>	<i>2,70,00,000</i>
3	<i>Satguru Infocorp Services P Ltd</i>	<i>AAECS6683A</i>	<i>5,50,50,000</i>
4	<i>Starlight Systems P Ltd</i>	<i>AAFCS7733L</i>	<i>24,31,24,747</i>
5	<i>Skystar Buildcon P Ltd</i>	<i>ADFPS8856G</i>	<i>221,87,00,000</i>

6	<i>Nivedity Mercantile & Financing Ltd</i>	AAACN6692G	55,12,98,204
7	<i>Keytone Corporate Solution</i>	PAACCK0018K	102,05,00,000

4. In the scrutiny proceedings, the assessee has submitted ledger account copies of the loan creditors and confirmations. Whereas the AO has verified the ledger accounts and payments and dealt independently in respect each loan creditor on the information submitted to substantiate the identity, creditworthiness and genuineness of the loan transactions at Para 6 to 10 of the assessment order. The AO has also dealt on the transactions of group companies and the financial statements of the lenders. Further the AO has issued notice u/sec 133(6) of the Act on the loan creditors and considered the facts and enquiries in respect of each creditor case. The AO has also called for the books of accounts and financials details of the group concerns and produce the parties. The assessee could not produce the parties but submitted the information referred in the assessment order. Whereas the AO has considered the information and the evidences filed and found that the assessee has not discharged obligation of proving the creditworthiness and genuineness of the loan creditors. Finally the AO was not satisfied with the evidences filed

and observed that the assessee has not established the ingredients required u/s 68 of the Act in respect of the loan transactions and made addition of unexplained cash credits from the four unsecured loan creditors parties (i) M/s Amenity Software Pvt Ltd of Rs.300 lakhs (ii) M/s Magenta computer Software Ltd of Rs.270 Lakhs (iii) M/s Satguru Infocorp Services P Ltd of Rs.486.5 Lakhs and (iv)M/s Starlight System Pvt Ltd of Rs.1818 lakhs. Further the AO has made addition of provision of expenses and provision for other consultancy charges aggregating to Rs.10 lakhs, as it was not a ascertained liability. Similarly the A.O found that the assessee has earned exempt income of Rs.1,35,775/- and the assessee was called to explain the reasons for non disallowance of expenditure incurred in earning exempt income. The AO considering the facts and submissions has invoked the provisions under Section 14A of the Act r.w.r 8D and made addition of Rs. 87,750/- .The A.O has assessed the total income of Rs.216,11,15,166/- and passed the order u/sec 143(3) r.w.s 144B of the Act dated 27.09.2021.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The appellate authority has considered the grounds of appeal, statement of facts, findings of the

AO, written submissions and the judicial decisions. The CIT(A) has observed that the assessee has discharged the burden by submitting the requisite information and has deleted the addition made u/sec 68 of the Act and confirmed the addition of provision for expenses and the CIT(A) has partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed the appeal with the Hon'ble Tribunal.

6. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the additions though the assessee has not proved the ingredients of the Sec. 68 of the Act i.e identity, genuineness and creditworthiness of the lender and further unsecured loan transactions are in the nature of accommodation entries and the loan creditors have not properly responded to notices and the CIT(A) has dealt on the information submitted overlooking the factual facts and enquiries by the assessing officer in the assessment proceedings and the Ld.DR relied on the AO order and prayed for allowing the revenue appeal. Contra, the Ld. AR supported the order of the CIT(A) and substantiated the submissions with the paper book.

7. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.DR that the CIT(A) has erred in deleting the addition of unsecured loans from the four loan creditors though the assessee has not established the genuineness and creditworthiness of the lenders and the assessee has failed to submit the complete details in the Assessment Proceedings. The Ld.AR submitted that the assessee has cooperated in submitting the information in the assessment proceedings, whereas the A.O has ignored the information, evidences and Audited financial statements and unilaterally made addition u/sec68 of the Act. The Ld.DR submitted that the CIT(A) has erred in not considering the factual information and enquiries by the assessing officer in the assessment proceedings and relied on the submissions of the assessee. We find in the course of appellate proceedings before the CIT (A), the assessee has filed the voluminous submissions referred at Page 11 to 25 of the CIT(A) order. Whereas CIT(A) has relied on the submissions and deleted the additions observing at Page 31 Para 9 to 9.12 of the order read as under:

“ Grounds No. 3 and 4 pertain to the addition of Rs. 28,74,50,816/- made by the AO by invoking section 68 by treating the unsecured

loans as unexplained cash credits and charging the same to tax at special rates u/s 115BBE.

9.1 I have gone through the facts of the case and appellant's submissions carefully. The AO during the course of assessment proceedings noticed that the assessee had accepted unsecured loans from various persons/parties during the year under consideration. After considering the material available on record, written submissions filed in response to the show cause notice, oral submissions made during the course of VC, the AO held that the said loan parties have no creditworthiness to advance such loan amount and accordingly held that genuineness of such transactions is also not proved and consequently treated the loan amounts as unexplained credit u/s 68 income. of the Act and added to appellant's total

9.2 During the course of appeal hearing, the appellant reiterated the submissions made before the Assessing Officer. The appellant further submitted that in order to establish the identity, genuineness and creditworthiness of the loan parties, namely, Amenity Software Pvt Ltd, Magenta Computer Software Pvt Ltd, Satguru Infocorp Services P Ltd and Starlight Systems Pvt Ltd, it submitted, during the course of the assessment proceedings, all the details called for by the AO i.e. Copy of ITR, PAN and address of all abovementioned loan parties, Ledger confirmation, Audited financial statement of all the respective parties, Bank statement of the respective parties indicating the amount has been advanced to assessee. According to the appellant, no fault has been found by the AO in these documents.

9.3 The appellant further argued that it has completely discharged its onus to prove that such loan transactions are genuine. The appellant further claimed that it has proved identity and creditworthiness of all the loan parties and also proved genuineness of the transactions, whereas the AO merely going

through the income conclusion that said loan parties creditworthiness to advance such loan amount and accordingly not genuine in nature, The appellant also relied upon the following judicial precedents wherein it has been held no addition can be made u/s 68 if the assessee has duly discharged its onus:

CIT Vs. Orissa Corporation Pvt. Ltd (SC) 159 ITR 78. PCIT-4 Vs. Hi-Tech Residency Pvt. Ltd (Del) 96 taxmann.com 403, CIT-1 Vs. Apex Therm Packaging Pvt. Ltd (Guj) 42 taxmann.com 473.

9.4 I have gone through the assessment order and also, submissions of the appellant very carefully, I find that the AO has contended that the parties did not have appropriate creditworthiness to advance the loan and backed his statement based on income disclosed by such parties in their respective returns. While the appellant has stated in its reply that it has submitted the documents to prove the identity, genuineness as well as the creditworthiness of the parties, the AO has not been able to give any adverse finding regarding the documentary evidence submitted by the assessee. The AO has simply stated that the loan parties are not genuine and do not have creditworthiness. But how it is so, has not been justified by the AO. The AO has simply concluded that the assessee had failed to discharge its onus of proving the actual nature of transactions without giving any cogent reasons.

9.5 I am not really convinced with the AO's arguments that the assessee had failed to discharge its onus of proving the actual nature of transactions, It is undisputed in the present case that the transactions have been effected through banking channel. That the appellant had provided the names, addresses and PAN of the parties. As regards the creditworthiness, the assessee claims to have submitted all the documents and also vide replies in response to notice issued u/s 142(1) of the Act. On the other hand, the AO merely relying on the income of the parties

concluded that they don't have creditworthiness. In present submissions, the appellant has submitted that the modus operandi to determine creditworthiness of a company is its net worth and clarified the following party wise net worth along with loan received during the year:

<i>Sl No.</i>	<i>Name of the Party</i>	<i>Loan amount taken during the year</i>	<i>Net worth of parties as per audited financial</i>
<i>1</i>	<i>Amenity Software</i>	<i>3,00,00,000</i>	<i>4,71,13,000</i>
<i>2</i>	<i>Magenta Computer Software Pvt Ltd</i>	<i>2,70,00,000</i>	<i>4,65,91,000</i>
<i>3</i>	<i>Satguru Infocorp Service P Ltd</i>	<i>4,86,50,000</i>	<i>1,63,55,58,000</i>
<i>4</i>	<i>Starlight Inforcorp Services P Ltd</i>	<i>18,18,00,816</i>	<i>1,47,37,80,000</i>

9.6 The AO has not given any comments on the net worth of the said loan parties or any findings on the document submitted by the appellant. He has not analysed the net worth of the relevant parties and identify the creditworthiness and genuineness of transactions. Since no such exercise was done by the AO, it is incorrect to say that the burden to prove the creditworthiness of the parties has not been discharged by the assessee. I note that the assessee has submitted whatever was in his capacity as a borrower. If at all the AO wanted to prove anything else, the burden was upon the AO himself. Hence it is incorrect to say that the assessee has failed to discharge its onus to prove the genuineness of transaction.

9.7 I find that in present case, the basis of addition made is merely on the basis of considering income of the loan parties in isolation. Though it is one the factors to analyse the creditworthiness, it needs to be considered along with other elements such as net worth of the parties, the channels through which the transactions were executed, etc. By providing all the relevant information to the AO ie Copy of ITR, PAN and address of

all abovementioned loan parties, Ledger confirmation, Audited financial statement of all the parties, Bank statement of the respective parties, the appellant has discharged the initial onus of proving the genuineness of transactions. The undisputed fact is that assessee is showing the amounts received as loan in its books and also, such loans have been confirmed by the lenders. Such loans have been transacted through banking channels. Further on perusal of the net worth of the parties it is clear that they have the creditworthiness to advance such loan. There is no finding given by the AO of any cash returned back in lieu of such loans or cash deposits in such bank statements. In these circumstances there is no choice left but to say that the addition made u/s 68 is based on assumptions and suspicions only, which cannot be accepted to be the basis of any legally valid addition in assessment.

9,8 In this regard, the Hon'ble Bombay High Court in the case of Gaurav Triyugi Singh vs ITO (423 ITR 531) has held that for the purpose of section 68 the assessee has to explain three conditions, namely, identity of creditor; genuineness of transaction; and credit worthiness of creditor. Once the loan amount was given to assessee through cheque, there was no dispute as to identity of the creditor and also there was no dispute about genuineness of V transaction. That apart, once the creditor had explained as to how the credit was given to assessee and if revenue could not prove or bring any material to impeach source of credit, it would be presumed that the assessee had discharged its onus as per requirement of section 68 and it was not required for assessee to explain sources of source i.e. genuineness of receipt of amount by the creditor from his sources. The relevant extracts of the decision are as under:

14. In Pr. CIT v. Veedhata Towers (P.) Ltd. [2018] 403 ITR 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case,

there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.

15. In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur i.e. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.

16. Considering the above, we are of the view that the Tribunal was not justified in sustaining the addition of Rs. 14 lakhs to the total income of the assessee as undisclosed cash credit under section 68 of the Act.

17. Consequently, finding of the Tribunal to the above extent is set aside. The question framed is favour of answered in the assessee and against the Revenue.

9.9 TAY Similarly, in the case of CIT-1 vs Apex Therm Packaging Pvt Ltd (42 taxmann.com 473), the Hon'ble Gujrat High Court has held that where name, address, PAN, copy of IT Returns, balance sheet, profit and loss account of all creditors/lenders as well as their confirmation had been furnished, Assessing Officer could

not make addition on account of unsecured loan and interest thereon. The relevant extract of the said judgment is as under:

6. We are in complete agreement with the reasoning given by the CIT(A) as well as the ITAT. When full particulars, inclusive of the confirmation with name, address and PAN Number, copy of the Income Tax Returns, balance sheet, profit and loss accounts and computation of the total income in respect of all the creditors/lender were furnished and when it has been found that the loans were received through cheques and the loan account were duly reflected in the balance sheet, the Assessing Officer was not justified in making the addition of Rs. 33,55,011/-. Under the circumstances, no question of law, much less substantial question of law arises in the ciresent Tax Appeal. Accordingly, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.

9.10 Also in the case of PCIT v. Hi-Tech Residency Pvt Ltd (96 taxmann.com 403), the Hon'ble Delhi High Court has held that where assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors to whom shares were allotted by assessee as well as lenders from whom unsecured loans were taken, addition made Section 68 could not be sustained. The relevant extract of the said judgment is as under:

4. The Court finds that the exercise for determining the identity, genuineness and creditworthiness of the investors of the share capital of the Assessee as well as lenders was undertaken in an elaborate manner by the CIT (A). Comments from the AO were sought. Detailed reasons have been given by the CIT (A) to come to the conclusion that the Assessee had discharged its onus of establishing the identity, genuineness and creditworthiness of both the investors as well as the lenders. This has been

concurrent with by the ITAT in the impugned order which is again an extremely detailed one.

5. The concurrent factual findings of both the CIT (A) and ITAT have not been shown to be perverse by y the AppellantThis LThis virtually the fourth DEPAR stage stage of the litigation.

6. Question (1) is accordingly answered in the negative, i.e., in favour of the Assessee and against the Revenue. Question (2) is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue. Question (3) is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.

7. The appeal is accordingly dismissed.

9.10.1 It is also pertinent to point out that the SLP filed by the Department against the aforesaid judgment of the Hon'ble Delhi High Court has been dismissed.

DCIT (ITA 3800/Del/2017 order dated 03.12.2020), the Hon'ble ITAT held that once the assessee filed confirmation of all the creditors supported by their computation of income, acknowledgment of filing of the returns, copy of the balance-sheet, copy of the ledger account of the assessee in their books and bank statements, merely low income declared in the return of income by the creditors is no ground to reject the explanation of assessee because their creditworthiness is proved by the assessee beyond doubt. The relevant extract of the said decision is as under:

7. We have considered the rival submissions. It is not in dispute that assessee filed confirmation of all the creditors supported by their computation of income, acknowledgment of filing of the returns, copy of the balance- sheet, copy of the ledger account of the assessee in their books and bank statements. Copies of the same are also filed in the paper book which reveal that all the creditors are assessed to tax and have given loans to the

assessee through banking channel. The name of the assessee appears in their balance-sheet as giving loans to the assessee, their capital and assets are sufficient to give small loan to the assessee. There are no cash deposits found in the bank accounts of the creditor. All entries are through banking channel. The assessee has also furnished details of their capital and assets before the Ld. CIT(A) which have not been disputed by the authorities below. Thus, all the evidences on record clearly indicates that assessee has received genuine loans from all the three parties and in case of one party even amount have been returned in assessment year under appeal which have not been doubted by the A.O. Thus, the initial burden upon the assessee to prove identity of the creditors, genuineness of the transaction and creditworthiness of the creditors have been discharged by the assessee. It is well settled Law that assessee need not to prove source of the source. We rely upon the Judgment of the Hon'ble Delhi High Court in the case of CIT vs., Dwarkadhis Investment Pvt. Ltd., [2011] 330 ITR 298 (Del.) and Judgment of Hon'ble Gujrat High Court in the case of DCIT vs., Rohini Builders [2002] 256 ITR 360 (Guj.). The A.O. has also accepted that entries in the account of the creditors are through RTGS. Therefore, there should not be any doubt on the explanation of the assessee. The A.O. noted that in assessment year under appeal assessee has shown unsecured loans to the tune of Rs.2.79 crores but made only small addition. The return of income declared by assessee is also of Rs.1.42 crores. Therefore, the explanation of assessee should not have been doubted by the authorities below. All facts were explained. Since the A.O. did not conduct any enquiry on the documentary evidences filed by the assessee and merely disbelieved the entries in the bank accounts of the creditor without any justification, therefore, there were no justification for the authorities below to make or confirm the additions. Merely low income declared in the return of income by the creditors is no ground to reject the explanation of assessee because their creditworthiness is proved by the assessee beyond doubt.

In view of the above, we are of the view that the issue is covered by the Order of the ITAT, Delhi G-Bench, Delhi in the case of M/s. Thirubala Chemicals Pvt. Ltd., New Delhi vs., ITO, Ward-25(2), New Delhi (supra). In view of the above, we set aside the Orders of the authorities below and delete the entire addition.

8. In the result, appeal of the Assessee allowed.

9.12 In view of the above, it is well laid out in the judicial pronouncements that when the assessee has filed the confirmation of all the creditors supported by their computation of income, acknowledgment of filing of the returns, copy of the balance-sheet, copy of the ledger account of the assessee in their books and bank statements, it would be presumed that the assessee has discharged its onus of establishing identity, genuineness and creditworthiness of the creditors and it would not be required for the assessee to explain sources of source in respect of the loan creditors. By providing all the relevant information to the AO ie Copy of ITR, PAN and address of all the relevant loan creditors, ledger confirmation, audited financial statements of all the parties, bank statement of the respective parties, the appellant has discharged the initial onus of proving the genuineness of transactions. There is no adverse finding given by the AO in respect of the documents filed by the assessee or of any cash returned back in lieu of such loans or cash deposits in such bank statements. In these circumstances the addition made by the AO of Rs. 28,74,50,816/- u/s 68 cannot be sustained and is hereby deleted. Accordingly, the provisions of section 115BBE would also not be applicable. Therefore, these grounds of appeal are allowed.

8. We find on perusal of the CIT(A) order, the CIT(A) has relied only on the submissions of the assessee referred at Page 11 to 25 of the order and has not called for the

comments of the assessing officer on the submissions of the assessee nor called for the remand report and has granted relief. Whereas CIT(A) observes at Para 9.5 of the order, that the modus operandi to determine creditworthiness of a company is its net worth and whereas at the same time based on the net worth details of parties referred at page 33 of the order, it was mentioned that the A.O has not given any comments on the net worth of the loan parties. Whereas the scope of powers vested with the first appellate authority under section 251 of the Act are co-terminus with the Assessing officer in exercising the quasi judicial functions. The CIT(A) should have made suitable inquiries on the net worth of unsecured loan creditors or should have called inquiry report through the assessing officer by remand proceedings but relied on the submissions and came to unilateral decision and deleted the additions ignoring the facts and findings of the assessment proceedings. Further the Ld.DR submitted that the decisions relied by the assessee before the CIT(A) are distinguishable on facts. Therefore, we considering the overall facts, circumstances and to meet the ends of justice, set aside the order of the CIT(A) and restore entire disputed issues to the file of the CIT(A) to adjudicate

afresh as discussed above and the assessee shall be provided adequate opportunity of being heard and the assessee should also cooperate in submitting the information for early disposal of the appeal. Accordingly, the grounds of appeal of the revenue are allowed for statistical purposes.

9. In the result, the appeal filed by revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 18.04.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 18.04.2024

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

ITA No. 2167/Mum/2023
Starlight System (I) LLP, Mumbai.

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(Asst. Registrar)
ITAT, Mumba