

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE
BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER**

**ITA No.511/PUN/2023
Assessment Year : 2017-18**

M/s. Om Namah Shivay Trading Company Gat No.37/3, Borarde Shivar, Amalner Road, Parola – 425111	Vs.	DCIT, Circle 1, Jalgaon
PAN : AABFO6846M		
(Appellant)		(Respondent)

Assessee by : Shri Sanket M Joshi
Department by : Shri Ramnath P Murkude
Date of hearing : 23-04-2024
Date of pronouncement : 29-04-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 22.02.2023 of the CIT(A)/NFAC, Delhi relating to assessment year 2017-18.

2. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of running of raw cotton ginning pressing unit. It filed its return of income on 31.10.2017 declaring total income of Rs.42,32,160/-. The case was selected for limited scrutiny under CASS to verify the issue of share capital / capital. Accordingly, statutory notices u/s 143(2) and 142(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') were issued and served on the assessee, in response to which the assessee filed details as called for.

3. During the course of assessment proceedings, the Assessing Officer (AO) noted that the assessee firm has introduced the capital through its partners as well as through loan from the banks. From the various details furnished by the assessee, the AO noted that the firm has taken the loan through partner from one M/s. M.M. Traders, Proprietor Shri Harish Kantilal Shah amounting to Rs.1,10,00,000/-. He observed that enquiry in the case of Shri Harish Kantilal Shah showed that the above person is a non filer, therefore, the source of loan given to the firm remained unexplained. Therefore, in order to verify the identity, creditworthiness and genuineness of the transaction, a Commission u/s 131(1)(d) of the Act was issued to the Pr. Director of Income Tax (Inv)-2, Mumbai through proper channel. The DDIT (Investigation), Mumbai carried out the investigation and the statement of Shri Harish Kantilal Shah was recorded u/s 131 of the Income Tax Act, 1961. Shri Harish Kantilal Shah in his statement denied to have maintained any Ledger of the same. He also could not explain the source of the loan given to the partners of the firm. To verify the creditworthiness of Shri Harish Kantilal Shah, notice u/s 133(6) of the Act was issued on Jalgaon Peoples Cooperative bank, Pachora, Jalgaon and his bank statement was obtained. The AO observed from the said statement that the account was maintained in Pachora branch. According to the AO, it is illogical for a man, who is residing in Borivali, Mumbai, doing no business in Pachora/Jalgaon or any kind of business at all, still has a bank account in Pachora. He, therefore, inferred that the entity M.M. Traders is nothing but a route to channelize the entry in the books of assessee's firm.

Rejecting the various explanations given by the assessee, the AO made addition of Rs.1,10,00,000/- u/s 68 of the Act by observing as under:

“7. The submission of the assessee has been considered very carefully. The assessee's submission is not acceptable due to the reasons and findings discussed as follows: -

7.1 The assessee firm is engaged in the business of manufacturing activity is of raw cotton ginning and pressing, extracting the cotton, Cotton Sees & YP dust from Raw Cotton and cotton seed oil mill, extracting the cotton seed oil, cotton seed cake and gad. During the year under consideration, the capital has been introduced in the firm through the partners and it has been found that the assessee firm has received loan from an entity M/s MM Traders, Borivali, Mumbai to the tune of Rs.1,10,00,000/-. The person Shri Harish K Shah (prop. of MM Traders) is a non-filer. Therefore, the identity, creditworthiness and genuineness of the transactions remains unsatisfactorily explained.

7.2 During the investigation by the DDIT, Unit 5(4), Mumbai, in the statement recorded, the person has confirmed that he is non-filer. Further, he has stated that he has no records of the concern M/s MM traders. Thus, it is astonishing that the person has no documents of his own proprietary concern. He also stated that he has no records of his income ledger.

7.3 On perusal of the bank account statement of the person, it was found that the account was maintained in Pachora Branch. It is illogical for a person who is residing in Borivali, Mumbai doing no business in Pachora/Jalgaon or any kind of business at all, still has a bank account in Pachora. This itself speaks about the fact that the entity MM traders is nothing but a route to channelize the entry in the books of M/s Om Namah Shivay Trading Company (ONSTC). This only shows that the entity MM traders is nothing but the channel to route the firms/partners own money into the firm.

7.4 Further, the bank account statement of the Entity MM traders was perused. On perusal of the same it was found that, the person has either received the amount from the firm or the partners of the firm and then transferred to the account of the partners. Apart from the above there are instances of the cash deposits and then transfer to the accounts of the partners. During the year total cash deposit is Rs.36,30,000/- in the bank account of MM traders which is immediately transferred to the accounts of the partners of the firm. This whole arrangement only points to the fact that the entity MM traders is nothing but a front to route the money of the firm through it.

7.5 The assessee in his submission has stated that in earlier submission, it was mentioned that the loan of Rs.1,10,00,000/- was taken from MM traders (Harish Shah), Now, in the submission in response to show cause, the assessee has stated that out of Rs.1,10,00,000/- Rs.1,00,00,000/- was given by Shri Harish Shah and Rs.10,00,000/- was given by Shri Mihir Harish Shah (Son of Harish Shah). The creditworthiness and identity of Shri Mihir Shah also remained unexplained till date.

7.6 The assessee, in its submission, merely stated that all the payments were received to partners in their saving / current account by online payment system of bank i.e. RTGS or account payee cheque. Here it is to be noted that mere banking transaction does not prove the genuineness and creditworthiness of the persons from whom the loan is

received. As the transaction is carried out by the firm, the onus to prove the creditworthiness, genuineness and identity rests with the assessee. In the instant case, the assessee has failed to prove the same. Therefore the credits to the extent of Rs.1,10,00,000/- in the books of the firm remain unexplained. As the credits in the books and corresponding cash deposited by the assessee during the year under consideration is unexplained, the provisions of Section 68 of IT Act, 1961 are clearly attracted.

7.7 The provision of section 68 is attracted when any sum is found credited in the books of accounts of the assessee. The word "any sum" are wide enough to cover the transactions appearing in the books of accounts of an assessee and, therefore, if the assessee offers no explanation about the nature and sources of the capital, then such increase in capital is nothing but the deemed income of the assessee as per the provisions of the section 68 of the Act."

4. In appeal, the Ld. CIT(A) / NFAC sustained the addition made by the AO by observing as under:

"4.5 It is a well established principle of taxation that a person who shows credit in his books has to show the validity thereof failing which it might be reasonably be presumed that this amount is the recipient's own income. From the details filed it would appear that appellant has slowly built up sundry creditors in his books and that Mr Harish Kantilal Shah the so-called creditor to whom the payment has also been made by the firm is a dummy and a bogus entity. Not only this the further credits appearing as a source of capital for Mr Harish Kantilal Shah to advance loans of Rs.20,00,000 each to each of the 5 partners of the appellant from our arising due to cash deposits in the banks of persons advancing the loan to Mr Harish Kantilal Shah.

4.6 Under section 68 the recipient has to prove identity, creditworthiness and genuineness of the transaction. In the present case only identity has been proved as Mr Harish Kantilal Shah in a statement before the investigation wing Mumbai and on the overall perspective of evidence furnished by the appellant do not seem to have much creditworthiness. As regards as genuineness of the transaction the same is highly doubtful and seems to be a circular way in which appellant's own unaccounted income has been routed back to the firm as capital. While promotion of business and creation of employment may be laudable goals the same cannot be said to be on account of unaccounted money as has been apparently sought to be done by the appellant."

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

- 1. The learned CIT(A) erred in confirming the addition u/s 68 of Rs.1,10,00,000/- by holding that the capital introduced by five partners in the appellant firm through banking channel was to be treated as income from unexplained sources without appreciating that the said addition was not justified in law and on facts.*
- 2. The learned CIT(A) failed to appreciate that the source of capital of Rs.1,10,00,000/- introduced by partners into the appellant firm was duly explained by documentary*

evidences and owned up by the respective partners as also reflected in their bank statements and therefore, no addition u/s 68 could have been made in the hands of the appellant firm on the ground that the source of source i.e. source of capital introduced by the partners was allegedly not explained by the appellant firm.

3. Without prejudice, it is submitted that the assessee had also proved the source of source i.e. sources of entire amount of Rs.1.10 Crs introduced by partners to be out of loans advanced by one, Mr. Harish Shah of Rs.1 Copyright. And Mr. Mihir Shah of Rs.10 lakhs who had also admitted the said fact by filing documentary evidences and therefore, there was no reason to make any addition u/s 68 in the hands of the appellant firm.
4. The learned CIT(A) ought to have appreciated that the various reasons stated by the A.O. for making the addition u/s 68 were duly rebutted by the appellant and once the onus lying upon the appellant u/s 68 was duly discharged by filing documentary evidences, no addition could have been made merely on the basis of suspicion, surmises and vague reasons without appreciating the relevant facts of the case.

6. The Ld. Counsel for the assessee submitted that the impugned capital of Rs.1,10,00,000/- was introduced by five partners, the details of which are as under:

Sr.	Name of Partner	Amount introduced	Date of introduction	Sources of capital introduced in the hands of the partners
1	Bhagwan T. More	20,00,000	12.09.2016	Loan advanced by Mr. Harish Shah, Prop., M.M. Traders on 12.09.2016 through bank to the partner
2	Pandurang J. More	20,00,000	15.09.2016	Loan advanced by Mr. Harish Shah, Prop., M.M. Traders on 12.09.2016 through bank to the partner
3	Ravindra S. Marathe	20,00,000 10,00,000	14.09.2016 02.02.2017	Loan advanced by Mr. Harish Shah, Prop., M.M. Traders on 12.09.2016 through bank to the partner. Loan advanced by Mr. Mihir Harish Shah, Prop., M.M. Traders (same firm name) on 27.01.2017 through bank to the partner
4	Samadhan D. Patil	20,00,000	12.09.2016	Loan advanced by Mr. Harish Shah, Prop., M.M. Traders on 12.09.2016 through bank to the partner
5	Sanjay S. Patil	20,00,000	12.09.2016	Loan advanced by Mr. Harish Shah, Prop., M.M. Traders on 12.09.2016 through bank to the partner
		1,10,00,000		

7. He submitted that during the course of assessment proceedings, the assessee has filed the Ledger extract of capital account of partners in the books of the assessee firm, bank accounts, statement of assessee firm, confirmation issued by the partners and bank statements of partners reflecting the payments made to the assessee towards capital introduced. Referring on the following decisions, he submitted that once the partner introduces capital in partnership firm, the addition, if any, can be made in the hands of the partners only and not in the hands of assessee firm:

1. *ACIT v. Ambika Enterprises (ITA No.31/Del/2020) dated 21.07.2023*
2. *Nova Medicare v. ITO (150 taxmann.com 363 (Telangana) dated 15.02.2023*
3. *Keshwarwani Sheetalaya v. CIT [(2020) 315 CTR 815 (All)]*
4. *PCIT v. Vaishnodevi Refoils & Solvex [(2018) 253 Taxman 135 (Guj)]*
5. *Prayag Tendu Leaves Processing Co. v. CIT [(2018) 400 ITR 120 (Jharkhand)]*
6. *CIT v. Metachem Industries [(2000) 245 ITR 160 (MP)]*

8. He accordingly, submitted that the addition made by the AO and sustained by the CIT(A) / NFAC is not justified.

9. The Ld. DR on the other hand, heavily relied on the orders of AO and CIT(A) / NFAC. He submitted that the onus is on the assessee's firm to prove with documentary evidence to the satisfaction of the AO regarding the source of introduction of capital by the partners. The assessee firm in the instant case has failed to substantiate the creditworthiness of the partners by producing necessary

evidence to the satisfaction of the AO. He accordingly submitted that the order of Ld. CIT(A) / NFAC be upheld and the grounds raised by the assessee, dismissed.

10. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A)/NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.1,10,00,000/- u/s 68 of the Act being the capital introduced by five partners, which in turn was out of the loan advanced by M.M. Traders, Proprietor Shri Harish Kantilal Shah on the ground that Shri Shah is a non filer of income tax return and does not have the creditworthiness. Further, the bank statement of M.M. Traders shows that the person has either received the amount from the firm or the partners of the firm and then transferred the amount to the account of the partners. Further, there are cash deposits immediately before transferring the money to the partners. We find the CIT(A) / NFAC sustained the addition made by the AO, the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that since the partners have introduced capital in the partnership firm out of funds available in their bank accounts and have produced the necessary evidences before the AO such as ledger extract, capital account of partners in the books of assessee, bank statement of assessee's firm, confirmation issued by the partners, bank statement of the partners, etc, therefore, the addition, if any, can be made, in the hands of the partners and not in the hands of firm.

11. We find sufficient force in the above arguments of Ld. Counsel for the assessee. We find the Hon'ble Madhya Pradesh High Court in the case of CIT v. Metachem Industries (supra) has decided an identical issue and upheld the decision of Tribunal confirming the order of CIT(A) deleting similar addition by observing as under:

“5. On appeal, the Commissioner of Income-tax (Appeals) examined the matter in detail and found that Shri S. K. Gupta was the real owner of the business. The explanation given by the assessee was found to be satisfactory and he deleted the aforesaid three entries. The same finding of fact has been affirmed by the Tribunal. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount.

6. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is an income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax. It is open to the Assessing Officer to take appropriate action under Section 69 of the Act, against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the Commissioner of Income-tax (Appeals) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries.”

12. We find the Hon'ble Jharkhand High Court in the case of Prayag Tendu Leaves Processing Co. v. CIT (supra) while deciding an identical issue has held that u/s 68 of the Act, the Assessing Officer, while assessing a partnership firm, can go behind the source of income of the partnership firm, but he cannot go to the 'source of source'.

13. We find the Hon'ble Gujarat High Court in the case of PCIT vs. Vaishnodevi Refoils & Solves (supra) under identical circumstances has held that if the AO is not convinced about the creditworthiness of the partners who had made the capital contribution, the inquiry had to be made at the end of the partners and not against the firm. While holding so, the Hon'ble Gujarat High Court followed its earlier decision in CIT vs. Pankaj Dyestuff Industries in IT Ref. No.241 of 1993, order dated 06.07.2005. Similar view has been taken in various other decisions relied on by the assessee, wherein it has been held that the addition, if any, can be made in the hands of partners on account of introduction of capital, but no addition can be made in the hands of firm. In view of the above discussion, we hold that the addition made by the AO u/s 68 of the Act in the hands of assessee firm on account of introduction of capital by the partners is not sustainable in the eyes of law. We, therefore, set aside the order of CIT(A) / NFAC and direct the AO to delete the addition. The grounds raised by the assessee are accordingly allowed.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 29th day of April, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 29th April, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	23.04.2024		Sr. PS/PS
2	Draft placed before author	23.04.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			