

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, JAIPUR
Before**

**Dr. Manish Borad, Accountant Member
&
Dr. S Seethalakshmi, Judicial Member**

**I.T.A. No.53/JPR/2024
Assessment Year: 2017-18**

***Trimurty Colonizers & Builders Pvt. Ltd. Appellant
(PAN: AAAC6613K)***

Vs.

***Income Tax Officer, Ward-6(2), Respondent
Jaipur***

Appearances by:

*Shri Rajeev Sogani & Shri Rohan Sogani, ARs appeared for Appellant
Sm. Monish Chaudhary, Addl. CIT appeared for Respondent*

Date of hearing : 28.03.2024
Date of pronouncing the order : 30.04.2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 22.12.2023 arising out of the Assessment order u/s 143(3) of the Act by ITO, Wd-6(2), Jaipur dated 30.12.2019.

2. The sole issue for our consideration is that whether Ld. CIT(A) was justified in confirming the action of the AO making addition of Rs. 40,00,000/- being unexplained credit u/s. 68 of the Act and further

invoking the provisions of section 115BBE of the Act for making the impugned addition.

3. Brief facts of the case are that assessee is a Private Limited Company engaged in the business of construction and purchase and sale of immovable properties. Income of Rs.5,52,160/- declared in the return of income for AY 2017-18 furnished on 30.10.2017. Subsequent to selection of case for complete scrutiny under CASS statutory notices were issued and duly served. One of the reasons for selection of scrutiny was large loan taken for loan repayment. On verification, Ld. AO noticed that assessee took unsecured loan from M/s. Uni-Ventures Projects Private Ltd. (M/s. UVPPL) whose registration has been cancelled by Ministry of Corporate Affairs (MCA). Closing balance was Rs.40,00,000/- as on 31.03.2017. Ld. AO further noted that there was an opening balance of Rs. 40,00,000/- and subsequently during the year there was a debit and credit transaction of Rs. 25,00,000/- and again leaving the closing balance of Rs.40,00,000/-. Ld. AO concluded by observing that the opening credit balance is unexplained and needs to be added u/s. 68 read with section 115BBE of the Act. Aggrieved, assessee preferred appeal before the Ld. CIT(A) but failed to succeed. Now, assessee is in appeal before the Tribunal.

4. Ld. Counsel for the assessee submitted that the alleged sum was not received during the year, therefore, section 68 of the Act cannot be invoked.

5. On the other hand, Ld. DR supported the orders of the authorities below.

6. We have heard rival contentions and perused the material available on record. We note that the assessee which is engaged in the real estate business received unsecured loan of Rs. 40,00,000/- in the preceding years from M/s. UVPPL. This fact has not been controverted by the revenue authorities that there is an opening balance of Rs.40,00,000/- in the books of assessee showing as a loan from the alleged cash creditor. So, admittedly, the alleged sum has not been received during the year. Further, perusal of the assessment order indicates that from the very same cash creditor, assessee received Rs.25,00,000/- through its director Mr. Abhisek Mishra and repaid the said sum during the year itself, thus, leaving behind a closing balance of Rs.40,00,000/-. Section 68 of the Act is invoked where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or explanation offered by him, in the opinion of the AO, the sum so credited needs to be charged to income tax. Now, examining the alleged transaction in the light of the provisions u/s. 68, we note that alleged sum of Rs.40,00,000/- has not been credited in the books during the year. It is merely brought forward closing credit balance from preceding year. It has been consistently held by the Hon'ble Court that the credit entry entered into during the year under consideration is only liable for examination u/s. 68 of the Act. Since the alleged sum has neither been received through any banking channel nor is found to be any new credit entry appearing in the books and is basically opening balance in the ledger account of the cash creditor, we fail to find any possibility of invocation of section 68 of the Act read with section 115BBE of the Act. Thus, we set aside the order of the Ld. CIT(A) and delete the impugned addition of

Rs.40,00,000/- made u/s. 68 of the Act. Effective ground of appeal raised is hereby allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced on April, 2024 in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Dr. S. Seethalakshmi)
Judicial Member

Sd/-
(Dr. Manish Borad)
Accountant Member

Dated: 30th April, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – Trimurty Colonizers & Builders Private Limited, 601, Geeta Enclave, Vinoba Marg, C-Scheme, Jaipur, Rajasthan-302001.**
2. **Respondent – ITO, Ward-6(2), Jaipur**
3. CIT(A), NFAC, Delhi
4. CIT
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Jaipur Bench, Jaipur

1. Date of dictation- 15/04/2024
2. Date on which the typed draft order is placed before the Dictating Member and Other member 17/04/2024
3. Date on which the approved order comes to the Sr. P.S./P.S. - 30/04/2024
4. Date on which the file goes to the Bench Clerk 30/04/2024
5. Date on which the file goes to the O.S.
6. Date of Dispatch of the Order.....