

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

**ITA NO.3831/MUM/2023
Assessment Year 2010-11**

Sanjay Vimalchand Borana,
3, Nanji Rawji Bldg, A.D.Marg ,
Sewree, Mumbai 400 015.
PAN:AEYPB-2999-F

- Appellant

Vs.

Income Tax Officer -20(3)(2),Mumbai
Room No.612,Piramal Chambers,
Lalabaug, Parel,
Mumbai -400 012.

- Respondent

Appellant by : Mr. Margav Shukla &
Ms. Fransi Shah

Respondent by : Shri Suni Mathews, Sr.DR

Date of Hearing : 02/05/2024

Date of Pronouncement : 06/05/2024

ORDER

The assessee has filed this appeal challenging the order dated 28/08/2023 passed by CIT(A), NFAC, Delhi and it relates to the Assessment Year 2010-11. The assessee is aggrieved by the decision of CIT(A) in confirming cash credit addition of Rs.25 lacs and also interest disallowance of Rs.81,247/- made by the Assessing Officer.

2. The facts relating to the case are stated in brief. The assessee filed his return of income for the year under consideration declaring total income of Rs.5,73,470/- and the same was processed u/s.143(1) of the Act. Subsequently, the Revenue carried out search operations u/s. 132 of the Act in the cases of Bhanwarlal Jain Group. The search revealed that the aforesaid group was providing accommodation entries, inter-alia, in the form of loans. It was noticed

that assessee has taken a loan of Rs.25 lacs from a concern named M/s. Euro Diam during the year under consideration, which is one of the Group Companies of Shri Bhanwarlal Jain. The assessee also paid interest of Rs.81,247/- on the aforesaid loan and claimed the same as deduction. On the basis of information mentioned above, the Assessing Officer took the view that there was escapement of income and accordingly reopened the assessment of the year under consideration by issuing notice u/s. 148 of the Act. Though the assessee furnished documents in order to prove the cash credit, the Assessing Officer rejected them and accordingly, assessed loan amount of Rs.25 lacs as unexplained cash credit u/s. 68 of the Act. The Assessing Officer also disallowed interest expenditure of Rs.81,247/- claimed by the assessee. In the appellate proceedings, the CIT(A) confirmed both the additions. Hence, the assessee has filed this appeal.

3. I have heard rival contentions and perused the record. In the instant case, the addition has been made u/s 68 of the Act, wherein cash credits in the nature of loan received by the assessee, has been added. Sec. 68 enables assessment of such types of cash credits, if the assessee fails to prove the nature and source of cash credits. "Nature of cash credit" would mean that the assessee is required to show that it is not of revenue nature. In order to prove the sources, the assessee should discharge initial burden to prove the cash credits placed upon his shoulders of the assessee u/s 68 of the Act, i.e., the assessee is required to prove three main ingredients, viz., the identity of the creditor, the genuineness of the transactions and the credit worthiness of the creditor. If the assessee discharges the initial burden, then the burden would shift to the shoulders of the assessing

officer, i.e., it is the responsibility of the AO to disprove the claim of the assessee by bringing evidences on record.

4. I shall examine the facts available in the present case. I notice that the AO issued notice u/s 133(6) of the Act to M/s Euro Diam. In response to the same M/s Euro Diam has furnished the details to the AO all the details that were called for. Thus, M/s Euro Diam has confirmed that it has given loan to the assessee. The Ld A.R submitted that the assessee has obtained copies of documents filed by the above said creditor from the Assessing officer through RTI and they are furnished in the paper book. On a perusal of the same, I notice that the above said creditor has furnished its financial statements, wherein the loan given to the assessee is duly reflected. Further, I noticed that the above said creditor has also confirmed the loan transaction and they have been carried through banking channels. Since M/s Euro Diams has responded to the notice issued by the AO, the identity of the creditor could not be doubted with. Accordingly, in my view, the identity of the creditor, the genuineness of the transactions and the credit worthiness of the creditor have been proved by the assessee through the documents furnished by the creditor. Hence the burden has been shifted to the shoulder of AO and the AO has failed to disprove the documents furnished by the assessee. Hence the AO could not have made the impugned addition of Rs.25.00 lakhs.

5. In this regard, I take support from the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Orchid Industries (P) Ltd (397 ITR 136)(Bom), wherein it was held that the addition u/s 68 could not be made once the assessee had produced the documents to prove the cash credits.

6. In view of the foregoing discussions, I am of the view that the assessee has discharged initial burden placed upon him u/s 68 of the Act in respect of loan of Rs.25.00 lakhs taken from M/s Euro Diam. Accordingly, I am of the view that the tax authorities are not justified in assessing the above said amount u/s 68 of the Act. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the addition of Rs.25.00 lakhs made u/s 68 of the Act.

7. Since I have deleted the addition relating to the loan of Rs.25.00 lakhs, the disallowance of corresponding interest payment is not required. Accordingly, I set aside the order passed by Ld CIT(A) and direct the AO to delete the disallowance of interest expenditure of Rs.81,247/-.

8. The assessee has also raised certain legal grounds. They have been rendered academic, since we have deleted the additions on merits.

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

Order pronounced in the open court on 6th May, 2024.

Sd/-

(B.R. Baskaran)
Accountant Member

Mumbai, Date : 6th May, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "SMC" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai