

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 1/Ahd/2024

निर्धारणवर्ष/Assessment Year: 2017-18

Amarpadma Credits Pvt. Ltd., 10, Shalval Flat, Mahalaxmi Cross Road, Paldi, Ahmedabad PAN : AAACB 9627 M	Vs.	Income-Tax Officer, Ward 1(1)(1), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Gautam Baid, CA	
Revenue by :	Shri Ankit Jain, Sr. DR	

सुनवाई की तारीख/Date of Hearing : 01.05.2024
घोषणा की तारीख /Date of Pronouncement: 22.05.2024

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal has been filed by the assessee against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 18.12.2023, passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2017-18.

2. The appellant-assessee has taken the following grounds of appeal:-

"1. On the facts and in the circumstances of the case, Ld. CIT(A) erred in upholding disallowance made by Ld. AO for Rs. 45,997/- being deposit of employee contribution for ESI and PF after due date of respective laws. Disallowance sustained may kindly be deleted.

2. On the facts and in the circumstances of the case, Ld. CIT(A) erred in upholding the arbitrary addition for Rs. 50,19,120/- invoking provisions of section 68. The addition so sustained may kindly be deleted.

3. On the facts and in the circumstances of the case, Ld. CIT(A) erred in upholding the disallowance for Rs.25,000/- out of office expenses invoking provisions of section 40A(3). Disallowance so sustained may kindly be deleted."

3. Before us, the counsel for the appellant-assessee submitted that it shall not be pressing for ground numbers 1, 3 and 4 of the appeal filed by the assessee and accordingly, these grounds are dismissed as not pressed.

Grounds of Appeal No. 2:

4. The brief facts of the case in relation to ground number 2 of the assessee's appeal are that the Assessing Officer observed that during the year under consideration, the assessee company had deposited huge amount of cash during the demonetisation period between 9th November, 2016 and 30th December, 2016 amounting to ₹50,19,120/-. The Assessing Officer called for various details from the assessee regarding the source of cash deposits, however, the Assessing Officer observed that the assessee has not furnished PAN details, e-mail ID, and phone number, etc. of various depositors. The assessee had only furnished details of ration card in respect of 32 persons from whom cash amounting to ₹1,93,393/- was received. The claim of the assessee was that the amount that was deposited was out of receipts from various persons to whom money had been advanced in the previous years. The Assessing Officer observed that on comparison of cash receipt between the period 01.11.2016 to 08.11.2016 for Assessment Year 2016-17 and Assessment Year 2017-18, while there were cash receipt of ₹3,06,783/- in AY 2016-17, whereas in AY 2017-18, the cash receipts increased to ₹61,79,997/-, i.e. by 1914%. The Assessing Officer observed that the assessee could not justify under what circumstances it had made such huge cash deposits during the demonetisation period. Further, the Assessing Officer also issued notices under Section 133 (6) to as many as 14 parties; however, there was no response from these parties in response to notices issued by the Assessing Officer. Accordingly, the Assessing Officer made an addition of ₹ 50,19,120/- on the ground that the assessee has not been able to substantiate that the source of

cash deposit of ₹50,19,120/- was on account of recovery of cash advances of ₹61,79,997/- during the demonetisation period. Accordingly, the amount of ₹ 50,19,120/- was added as undisclosed income in the hands of the assessee by invoking the provisions of Section 68 of the Act.

5. In appeal, Ld. CIT(A) confirmed the additions, with the following observations:

"5.5 As regards ground of appeal No.3 is concerned, it is noted that the appellant has claimed that the source of cash deposited in the bank were out of amount received from advances made by the company and the AO has amply highlighted in the assessment order that the demonetization was introduced for removing black money from circulation and SBNs of high value ceased to be legal tender and therefore the transactions were not permitted in SBNs except for certain limited purposes specifically laid down in government guidelines. The receipt of loan advances returned by the customers as is being claimed by the appellant are not covered under the said exceptions. The claim of the appellant that substantial advances highly disproportionate to the regular business trend were received on dates just preceding demonetization is primarily an attempt to pass off the receipt of unaccounted cash in the name of such persons in violation of government guidelines. Therefore, the appellant has not been able to prove the nature and source of these impugned cash deposits. The AO has conducted a detailed factual inquiry after verification of records of the appellant and he has also cited various cases from where inconsistencies and improbability of the claims made by the appellant is amply demonstrated. Now the onus was on the appellant to disprove the findings of the AO with supporting documents and evidences. However, neither has the appellant relied on any documentary evidence nor submitted any evidence or details to counter the findings of the AO. In such circumstances, the provisions of section 68 are clearly attracted in the instant case. The various case laws in this regard are being discussed below:

Provisions of section 68

Even prior to the insertion of the said section or its predecessor, there were ample authorities to the same effect as section 68. In this regard, one may profitably refer to the judgment of the Apex Court in case of Kale. Khan Mohammad Hanif vs. CIT - [1963] 50 ITR 1 (SC), wherein the Court has held as under.

"It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he

disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income".

Similar finding was given by the Apex Court in case of A. Govindarajulu Mudaliar vs. CIT - [1958] 34 ITR 807 (SC). It was only later that the above dictum of the Apex Court found embodiment in section 68 of the Act.

Background of section 68

Section 68 does not need any introduction. To summarise, it taxes any credit appearing in the books of an assessee, where the assessee is not able to or not satisfactorily able to explain the nature and source of such credit. It is a deeming fiction, which taxes a credit as income on unsatisfactory explanation about nature and source thereof and such fiction is applicable whether or not the credit is otherwise income chargeable to tax. Initial onus is on the assessee to demonstrate the "nature and source" of the credit and when the same is discharged, the burden shifts onto the Department to prove that the credit is income chargeable to tax. It is now settled by various judgments that the term "nature and source of a sum found credited" would require an assessee to explain three things (ingredients) viz. Identity of the creditor, capacity of the creditor to advance money and genuineness of the transaction. In the instant case, the judgment of Hon'ble Supreme Court in the case of NRA Iron and Steel Ltd-on the issue of applicability of section 68 of the Act in case of Principal Commissioner of Income-tax (Central)-1 vs. NRA Iron & Steel (P.) Ltd. reported in [2019] 103 taxmann.com 48/262 Taxman 74/412 ITR 161 (SC) is squarely applicable. It has been held that initial onus is on the assessee to establish the identity of the person, creditworthiness of the person in the sense of financial capacity and the genuineness of the transaction, as the facts are within the exclusive knowledge of the assessee. If onus is not discharged to the satisfaction of the AO, then the amount of credit would be treated as income without anything further to be done. Further, reliance is placed on the decisions of CIT vs. Nipun Builders and Developers P. Ltd.-350 ITR 407(Del); CIT vs. Nova Promoters and Finlease (P) Ltd. - 342 ITR 169 (Del.); CIT vs. Oasis Hospitalities Pvt. Ltd. 333 ITR 119 (Del.); and - Rajmandir Estates Private Limited vs. PCIT-386 ITR 162 (Cal)].

5.5.1 In this case, it is clear that the appellant has not been able to discharge its onus to prove the nature and source of impugned credits to the satisfaction of the AO/NFAC. Therefore, the addition made by the AO under section 68 read with section 115BBE of the Act is found correct and accordingly ground of appeal No.3 is dismissed."

6. The assessee is an appeal before us against the aforesaid order passed by Ld. CIT(A), confirming the additions made by the AO. Before us, the Counsel for the assessee submitted that while confirming the additions, the Assessing Officer/ CIT(A) failed to appreciate that the business of the assessee has also increased substantially during the year under consideration. Secondly, the deposits were made out of amounts received back under specified currency notes, from various parties to whom advances had been given in the earlier years. The apparent reason for the same was that these parties were desirous of offloading their old currency (SBN) notes and wanted to settle their accounts with the assessee using the SBN notes by returning back the old currency note during the demonetisation period to settle their accounts with assessee. The Counsel for the assessee submitted that though the assessee had submitted ledger accounts of over 2,600 parties, which was also admitted by the Assessing Officer at para 5.8 at page 18 of the assessment order, however, while making the disallowance in the hands of the appellant-assessee, the Assessing Officer only referred to 8 parties out of over 2600 parties, on selective basis. The Counsel for the assessee submitted that the Assessing Officer failed to appreciate that the assessee has shown increased activity/deposits during the entire year under consideration, and it was erroneous to only refer to only one month to come to the conclusion that there was an astronomical/substantial increase in the deposits made by the assessee. Further, notably, the Counsel for the assessee submitted that the Assessing Officer never confronted the fact that the parties to whom notices had been issued under section 133 (6) of the Act had not responded to notices issued and this fact finds direct mention in the body of the assessment order only at the time of making additions in the hands of the assessee. The counsel for the assessee submitted that the Assessing Officer has given no basis or

justification for choosing only eight parties out of details of over 2,600 parties furnished by the assessee during the course of assessment proceedings.

7. In response, the DR submitted that the assessee was given several opportunities to furnish details, but the assessee kept on giving details of deposits on piecemeal basis till December 2023. Accordingly, DR submitted that the assessee had been given ample opportunities to give details of cash deposits, which the assessee had failed to do, and accordingly, the Assessing Officer, was justified in invoking the provisions of Section 68 of the Act, looking into the instant facts.

8. We have heard the rival contentions and perused the material on record. On going through the facts of the case, we observe that there are certain factual aspects which required further verification/examination by the Assessing Officer before confirming the addition in the hands of the assessee. Firstly, we observe that the first notice asking for details was issued to the assessee in 2018 and the second notice asking for further details was issued after a gap of almost 1 year in the month of September 2019. Therefore, it cannot be said that it was assessee who was at complete fault in submitting the details called for by Assessing Officer till the fag-end of December 2019. Secondly, we observe that the assessee has submitted over 2600 ledger accounts, but the Assessing Officer has selected only eight accounts out of the same to come to the conclusion that the assessee has not been able to substantiate the fact that the deposits were made out of amounts received back from the parties to whom advances had been made in the earlier years. Thirdly, we observe that the fact that the notices issued under section 133(6) of the Act remained un-complied with was never intimated/brought to the knowledge of the assessee and this fact was incorporated in the body of the assessment order for the first time at the time of confirming the addition in

the hands of the assessee under Section 68 of the Act. Fourthly, we also observe that the Assessing Officer has not considered the fact that, during the impugned year under consideration, there was a substantial increase in the business of the assessee as well, and no further analysis/observations of these facts was taken into consideration while confirming the addition in the hands of assessee. Accordingly, looking into the instant facts, and in the interest of justice, we are of the considered view that the matter deserves to be restored to the file of the Assessing Officer for fresh consideration, after giving due observations with regards to the points highlighted by the Counsel for the assessee before us and thereafter, pass appropriate orders in accordance with law after giving due opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 22.05.2024 at Ahmedabad.

Sd/-

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Ahmedabad; Dated 22/05/2024

**%*

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

1. **अपीलार्थी** / The Appellant
2. **प्रत्यर्थी** / The Respondent.
3. **संबंधित आयकर आयुक्त** / Concerned CIT
4. **आयकर आयुक्त (अपील)** / The CIT(A)-
5. **विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर** , /DR,ITAT, Ahmedabad,
6. **गार्ड फाईल** /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad