

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER,**

ITA No.4690/Mum/2023 (AY 2010-11)

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| Income Tax Officer – 2(1) Room No. 25, 6 th Floor, B Wing Ashar IT Park, Wagle Indl. Estate Thane (West) 400604 | vs. | Michigan Traders Pvt. Ltd. E 603, Dolphine Garden Poonam Sagar Complex Opp. Shanti Nagar Mira Road, Thane 4011107 |
| PAN/GIR No. : AACMM1605J | | |
| Appellant | .. | Respondent |

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|-----------------|-----------------------------|
| Appellant by : | ----- None ----- |
| Respondent by : | Shri Sunil Shinde, Sr. A.R. |

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| Date of Hearing | 15.05.2024 |
| Date of Pronouncement | 16.05.2024 |

आदेश / O R D E R

PER OM PRAKASH KANT, AM:

This appeal by the Revenue is directed against order dated 05.10.2023, passed by the Id. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi (in short ‘the Id. CIT(A)) for AY 2010-11 raising following grounds:

- “1. Whether on the facts and circumstances in the case, the Id.CIT(A) erred in deleting the addition of Rs.2,89,67,300 on account of bogus unsecured loans to M/s Nina Concrete System Pvt Ltd and M/s Mekaul Construction Technology Pvt Ltd without establishing nexus between the amount credited in

the books of the assessee with the said amount that was provided to the two beneficiaries Le. M/s Ninu Concrete System Pvt Ltd and M/s Mekaul Construction Technology Pvt Ltd.

2. *Whether on the facts and circumstances in the case, the ld.CIT(A) erred in deleting the addition of Rs.2,89,67,380 in the absence of any evidence that money given by the assessee as loan to the two beneficiaries i.e. M/s. Nina Concrete System Pvt. Ltd and M/s. Mekaul Construction Technology Pvt Ltd is out of the money given by them, there is no situation of double taxation.”*

2. Briefly stated facts of the case are that the assessee filed return of income on 13.03.2012 declaring total income at Nil. The case of the assessee was reopened u/s. 147 of the Income Tax Act, 1961 (in short ‘the Act’) on the basis of the information received from the Dy. Director of Income Tax (Inv), Mumbai. The Assessing Officer (AO) accordingly issued notice u/s. 148 of the Act and completed the reassessment on 27.12.2017 determining the total income at Rs.2,89,67,380/-. In the reassessment, the AO made additions on account of the unexplained unsecured loans given to two parties namely M/s. Nina Concrete System Pvt. Ltd. (Rs. 2,52,17,376/-) and M/s. Mekaul Construction Technology Pvt. Ltd. (Rs.37,50,000/-). On further appeal, the ld. CIT(A) deleted the additions vide the impugned order. Aggrieved, Revenue is in appeal before the Tribunal by way of raising the grounds as reproduced above.

3. Despite notifying none attended on behalf of the assessee and therefore the appeal is heard ex-parte qua the assessee after hearing the ld. D.R. and perusing the material on record.

4. The facts in brief of the issue in dispute are that a survey u/s. 153A of the Act was carried out in the case of M/s. Nina Concrete System Pvt. Ltd. on 29.09.14 and during the survey it was found that M/s. Nina Concrete System Pvt. Ltd. and M/s. Mekaul Construction

Technology Pvt. Ltd. has taken accommodation entries from various concerns including the assessee. The assessment in the case of M/s. Nina Concrete System Pvt. Ltd. was reopened and addition for unexplained cash credit u/s. 68 of the Act has been made. Simultaneously, the assessment in the case of the assessee was reopened and the AO added the unsecured loans and advances given by the assessee to M/s. Nina Concrete System Pvt. Ltd. of Rs.2,52,17,376/- and M/s. Mekaul Construction Technology Pvt. Ltd. of Rs.37,50,000/- as unexplained cash credit u/s. 68 of the Act in the reassessment order passed. The Id. CIT(A) has, however, deleted the additions observing as under:

“5.5 I have considered the assessment order, facts of the case and submissions of the appellant filed during the appeal proceedings. It is observed that the appellant had advanced unsecured loans to M/s Nina Concrete Systems Pvt. Ltd. and M/s Meakul Construction Technology Pvt. Ltd. Addition to the tune of Rs.2,52,17,376/- and Rs.37,50,000/-has been made by the Department in the hands of M/s Nina Concrete Systems Pvt. Ltd. and M/s Meakul Construction Technology Pvt. Ltd. respectively u/s 68 of the Act treating the said amount of loans received from the appellant (Michigan Traders Pvt. Ltd.) as unexplained. The said fact was put forth by the appellant before the AO but the AO did not take note of the same and proceeded to assess the said amounts in the hands of the appellant. It is an established fact that the same transaction cannot be added at two places at the same time as this would lead to double taxation. It is further noted that the AO has failed to bring on record any document or evidence to show that the appellant had any other source of income which was undisclosed. Since, the amount of Rs. 2,52,17,376/- and Rs.37,50,000/- have been added in the hands of the receiver of the loan, the addition made in the hands of the appellant is incorrect and is thus deleted. The grounds of appeal are allowed.”

5. We find that in this case the assessee has advanced unsecured loans to M/s. Nina Concrete System Pvt. Ltd. and M/s. Mekaul Construction Technology Pvt. Ltd. and not taken credit from those parties and therefore no addition could have been made as unexplained cash credit u/s. 68 of the Act. Under s. 68 of the Act any credit received by the assessee may be added for any failure on the part of the assessee in satisfactorily explaining the nature and source of the said credit. But in the instant case the assessee has advanced the sums of Rs.2,52,17,376/- and Rs.37,500,000/- to the two parties. It is also to be noted that in the cases of those two parties, the corresponding sums received have already been added u/s. 68 of the Act. In our opinion no addition could have been made in the hands of the assessee u/s. 68 of the Act in respect of loans advanced. These two amounts are appearing as loans and advances on asset side of balance sheet of the assessee at year end. It is settled principle that the source of funds of asset stands explained by the liability side of the balance sheet, therefore, if at all, the AO was having any doubt in respect of the source of those two amounts, then he should have examined the liability side of balance sheet of assessee. It is not the case of the AO that these loans/ advances were not appearing in the balance sheet and in that cases those loan/advance could be considered as unexplained u/s 69 of the Act if the assessee offers no explanation about the nature and source of investment in said loan/advances. In the facts and circumstances of the case , the AO is not justified in making addition for the advances given by the assessee u/s. 68 of the Act. Accordingly, we do not find any infirmity in the order of the ld. CIT(A) on the issue in dispute and we uphold the same. The grounds of appeal of the Revenue are accordingly dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 16.05.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

Sd/-
(OM PRAKASH KANT)
Accountant Member

Place: Mumbai

Date: 16.05.2024

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण/ ITAT, Bench, Mumbai.