

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
MS.KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA NO.3872/MUM/2023
ASSESSMENT YEAR :2012-13

Income Tax Officer, Ward-12(2)(1),
Room No.145, 1st Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

--- Appellant

Vs.

Hak Hiring Pvt. Ltd.
606, Diago D. Sherly Rajan Road,
Bandra (W), Mumbai 400 050.
PAN: AABCH-2001-C

--- Respondent

Appellant by : Shri P.D.Chougule, Sr.DR

Respondent by : Shri Subhash Chhajed

Date of Hearing : 08/05/2024

Date of Pronouncement : 22/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The revenue has filed this appeal challenging the order dated 29/09/2023 passed by learned Commissioner of appeals, NFAC, Delhi and it relates to the assessment year 2012-13. The revenue is aggrieved by the decision of learned CIT (A) in deleting the addition of Rs. 5 crores made by the assessing officer under section 68 of the act.

2. The facts relating to the above said issue are stated in brief. The return of income filed by the assessee for the year under consideration was processed under section 143 (1) of the Act. Subsequently, the assessing officer received information from the investigation wing, Mumbai that the assessee company has induced public to make

deposits with it with a false assurance of doubling the money in 2 years. It is alleged that the assessee has collected Rs.5 crore from public during the financial year relevant to the assessment year 2012-13. Based on this information, the assessing officer reopened the assessment of the year under consideration by issuing notice under section 148 of the Act.

3. Before the assessing officer, the assessee contended that it has not received the Rs.5 crores during the relevant assessment year 2012-13. The AO did not accept the above said submissions of the assessee. He expressed the view that the assessee has got a responsibility to discharge its onus under section 68 of the Act. Since the assessee did not discharge the onus, the AO assessed the sum of Rs. 5 crores as unexplained cash credit after section 68 of the act.

4. Before the learned CIT (Appeals), the assessee reiterated its contentions that it did not receive any deposit from the public during the year under consideration. The learned CIT (A) noticed that the assessing officer has made the addition merely on the basis of information received from investigation wing. The learned CIT(A) also noticed that the assessing officer has written letters to the investigation wing asking for documentary evidences to support the receipt of Rs. 5 crores by the assessee, but did not receive any information. The learned CIT (A) also noticed that the bank account of the assessee did not show receipt of deposits of Rs.5 crores and further, the books of accounts of the assessee also did not show receipt of deposits from public. Under these set of facts, the learned CIT(A) held that the question of making addition under section 68 of the Act will not arise. Since the books of accounts and bank account to not show receipt of money of Rs. 5.00 crores, the learned CIT(A)

deleted the addition made by the AO under section 68 of the Act. The revenue is aggrieved.

5. We heard the parties and perused the record. We are of the view that the order passed by learned CIT(A) does not call for any interference for the following reasons.

(A) The assessing officer does not have any material to prove the receipt of Rs.5.00 crores by the assessee by way of deposits collected from the public, except a letter received by him from the investigation wing. It is evident from the order passed by learned CIT(A) in paragraph 6.4.1, wherein the learned CIT(A) has recorded a finding that the assessing officer has written letters on various dates to the investigation wing asking for the documentary evidences, but did not receive any reply.

(B) During the course of hearing before the Tribunal, the learned DR was asked to get a report from the assessing officer with regard to the evidences available with him in support of the additions made by him. However the assessing officer has only furnished a copy of letter received from the investigation wing. This fact also proves the point that the AO did not have any credible evidence to support the impugned addition.

(C) The Ld CIT(A) has stated that the bank account of the assessee does not show receipt of Rs.5.00 crores and the financial statements furnished by the assessee also do not show any such receipt.

(D) The assessee has all along been denying receipt of any such money. It is well settled proposition that it would be difficult for anyone to prove a negative fact, i.e, A negative fact cannot be

proved by adducing positive evidence (ref.: Laxmibai (Dead) Thru Lr'S. & Anr. vs Bhagwanthbuva (Dead) Thru Lr'S. & ... on 29 January, 2013 (SC))

(E) In the absence of receipt of money by the assessee, the question of invoking the provisions of sec.68 of the Act does not arise.

In view of the foregoing discussions, we uphold the order passed by Learned CIT(A) on this issue.

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22nd May , 2024.

Sd/-

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER
Mumbai, Date : 22nd May, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

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

By Order

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