

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

ITA NO.2609/MUM/2023
Assessment Year : 2011-12

ITO 27(3)(1), Vashi, Navi Mumbai,
422, 4th Floor, Tower -6,
Vashi Railway Station Complex,
Vashi, Navi Mumbai – 400 703

- Appellant

Vs.

Ravi Shankar Shendge
(PAN :AAKPS-6666-G)
Legal Heir of Late Smt. Suchita Ravi Shendge,
Flat No.401, 4th Floor,
Sai Siddhi Apartment, Plot No.220,
11th Road, Chembur,
Mumbai – 400 071.
PAN:AAKPS-6665-F

- Respondent

Appellant by : Ms. Sujatha Iyengar, Sr.AR
Respondent by : Shri Sanjay N. Kapadia

Date of Hearing : 21/05/2024
Date of Pronouncement : 28/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The Revenue has filed this appeal challenging the order passed by the Commissioner (Appeals), NFAC, Delhi and it relates to the assessment year 2011-12. The revenue is aggrieved by the decision of the learned Commissioner (Appeals) in deleting the addition of Rs. 3.46 crores made by the assessing officer under section 68 of the Income tax Act.

2. The facts relating to the case are stated in brief. The assessee is a partner in certain partnership firms and also derives income from business,

interest income etc. The assessee filed her return of income for the year under consideration declaring total income of Rs. 18.67 lakhs.

3. The income tax Department found out that certain persons are involved in providing accommodation entries by layering funds through various bank accounts. It was noticed that a company named M/s. Minaxi suppliers private limited is one of such entities involved in layering of funds and the assessee has received a loan of Rs.1.00 crore from the above said company. Upon receipt of the above information, the assessing officer reopened the assessment of the year under consideration by issuing notice under section 148 of the Act. The AO noticed that the assessee has shown following loans in the balance sheet:-

(Amount in Rs.)		
Aajivan computers P Ltd	-	50,00,000
Acuity Trading P Ltd	-	41,37,539
Kailash Tex Trading P Ltd	-	55,00,000
Minaxi Suppliers P Ltd	-	1,00,00,000
Nextgen Construction P Ltd	-	1,00,00,000

3,46,37,539
=====

The assessee furnished details of the above said loans to the AO. However, the assessing officer issued notices under section 133 (6) of the Act to the above loan creditors, but did not get any reply from them. Accordingly he treated above said loans as bogus loans and assessed them as unexplained cash credit under section 68 of the Act.

4. The assessee challenged the addition made by the AO by preferring appeal before the learned Commissioner (Appeals). The assessee submitted that she has received loan of Rs.1.00 crore each from M/s Minaxi suppliers private limited and M/s Nextgen construction private limited only, during the year under consideration. It was submitted that the remaining three loans were received in the earlier years and brought forward from the prior

year. Accordingly, it was submitted that the AO could not have made addition of the three loans received in the earlier years. With regard to the two loans received during the year under consideration, the assessee submitted that she has discharged the onus placed upon her u/s 68 of the Act by furnishing all the details in order to prove the cash credit. The learned Commissioner (Appeals) accepted the contentions of the assessee and accordingly deleted the addition of Rs. 3.46 crore made by the assessing officer. The Revenue is aggrieved.

5. We heard the parties and perused the record. The assessee has furnished Ledger account copies of following three parties along with relevant portion of bank account in order to show that these three loans have been received in the earlier years:-

		(Amount in Rs.)
Aajivan computers P Ltd	-	50,00,000
Acuity Trading P Ltd	-	41,37,539
Kailash Tex Trading P Ltd	-	55,00,000

On a perusal of the same, we notice that the assessee has brought forward these three loans from earlier years. It is well settled principle that the addition u/s 68 of the Act should be restricted to the cash credits received in that year only. Since these 3 loans have not been received during the year under consideration, the assessee was right in contending that the addition could not have been made by the AO in this year in respect of these three loans u/s 68 of the Act. Accordingly we do not find any infirmity in the decision of the learned CIT (A) in deleting the addition relating to these three loans.

6. With regard to the loan received from the remaining two parties, it is the submission of the assessee that she has discharged the onus by placing the documents in order to prove the identity of the creditor, credit worthiness of the creditor and the genuineness of the transactions. It was

submitted that the assessee has furnished following documents in respect of loan taken from M/s Minaxi suppliers private limited, which was considered as entity providing accommodation entries :-

- A. Certificate of incorporation
- B. Memorandum and Articles of Association
- C. Copy of Income tax return acknowledgement.
- D. Financial statements consisting of Balance sheet, Profit and loss account along with the schedule for assessment year 2011-12. It is demonstrated that the shareholders fund available as on 31-03-2011 was Rs. 79.45 crores, while the loan given to the assessee was Rs.1.00 crore only.
- E. Confirmation letter from the director of M/s Minaxi suppliers private limited.
- F. Relevant copy of bank statement.

7. With regard to the loan received from M/s Nextgen construction private limited, the learned AR submitted that the assessee has furnished following documents:-

- A. Copy Income tax return filed by the creditor
- B. Financial statements consisting of Balance Sheet, Profit and Loss account along with schedules, wherein the loan advanced to the assessee is duly reflected. This creditor had own funds of Rs.3.32 crores and loan funds of Rs.28.26 crores, while the loan given to the assessee was Rs.1.00 crore only.
- C. Relevant copy of bank statement.

It is the contention of Ld A.R that the assessee has discharged the onus placed upon her by proving the cash credits, while the AO did not find any

fault with any of the documents. Accordingly, he contended that the Ld CIT(A) was justified in deleting the addition.

8. U/s 68 of the Act, the cash credits, which are essentially capital receipts, are deemed to be revenue receipts by legal fiction, 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 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.

9. In this regard, we may gainfully refer to the decision rendered by Hon'ble Bombay High Court in the case of Gaurav Triyugi Singh Vs. ITO (423 ITR 531)(Bom), wherein it was held as under:-

"12 At this stage, it would be apposite to advert to section 68 of the Act, relevant portion of which reads as under :

"68. Where any sum is found credited in the books of an assessee maintained from any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income –tax as the income of the assessee of that previous year."

12.1. From a reading of section 68, as extracted above, it is seen that if an amount is credited in the books of an assessee maintained from any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax, as the income of the assessee of the relevant previous year.

13 Section 68 of the Act has received considerable attention of the courts. It has been held that it is necessary for an assessee to prove prima facie the transaction which results in a cash credit in his books of account. Such proof

would include proof of identity of the creditor, capacity of such creditor to advance the money and lastly, genuineness of the transaction. Thus, in order to establish receipt of credit in cash, as per requirement of section 68, the assessee has to explain or satisfy three conditions, namely : (i) identity of the creditor; (ii) genuineness of the transaction; and (iii) credit-worthiness of the creditor.

14 In *Principal Commissioner of Income Tax vs. Veedhata Tower Pvt. Ltd.*, (2018) 403 ITR 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur

15 In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur i.e. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.

16 Considering the above, we are of the view that the Tribunal was not justified in sustaining the addition of Rs. 14 lakhs to the total income of the assessee as undisclosed cash credit under section 68 of the Act.”

In our view, the ratio laid down in the above said decision by jurisdictional Bombay High Court would apply to the facts of the present case. We noticed that the assessee has discharged its burden placed upon her u/s 68 of the Act by proving the identity and credit worthiness of the creditor and genuineness of transactions. However, the AO did not discharge the burden shifter to his shoulders by disproving those documents. We notice that the AO simply relied upon the information received from investigation wing and did not make any independent enquiry except issuing notice u/s 133(6) of the Act. Accordingly, following the above said decision, we hold that the addition made by the Assessing Officer under section 68 of the Act in the

under consideration, in the facts and circumstances of the case, was not justified and the Id CIT(A) was justified in deleting the addition.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28th May , 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER
Mumbai, Date : 28th 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, "G" Bench, Mumbai
- 5) Guard file

By Order

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