

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4677/M/2023
Assessment Year: 2012-13**

Speedking Courier Services Pvt. Ltd. 25/27, Old Hanuman Galli, 1 st Cross Lane, Kalbadevi, Mumbai- 400 002. PAN: AAICS3715M	Vs.	Income Tax Officer- 4(3)(3), Room No. 648, 6 th Floor, Aayakar Bhavan, Maharshi Karve Marg, Mumbai- 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri K. Gopal, A.R.
Revenue by : Shri P. D. Chougule (Addl. CIT) Sr., D.R.

Date of Hearing : 16 . 05 . 2024
Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per : Ratnesh Nandan Sahay, Accountant Member:

1. The appellant has filed this appeal against the order of the Ld. Income Tax Officer- 4(3)(3) Mumbai by raising following grounds of appeal:

"The addition of Rs.1,53,00,000/- made under section 68 of the Act is not justified.

1. The Ld CIT(A) is erred in confirming the addition of Rs. 1,53,00,000/- made by the Ld. A.O. under section 68 of the Act without appreciating that the basic condition to invoke the provisions of section 68 are not satisfied in the present case. Hence, the addition made under section 68 of the Act is not in accordance with the law and the same may be deleted.

2. The Ld. CIT(A) failed to appreciate that the amount of Rs.1,53,00,000/- added by the Ld. A.O. under section 68 was nothing but the amount received by the Appellant from M/s. Averina International Resorts Pvt. Ltd. on 24.08.2011 as an "Investment" as per Memorandum of Understanding (MOU) dated 08.08.2011 for opening the restaurant under Joint Venture. The said amount was subsequently repaid by the Appellant on 24.08.2011 on cancellation of the proposed business plan and the MOU. Thus, as on 31.03.2012 there is no credit balance appearing in the books of accounts of the Appellant. Hence, the addition of Rs.1,53,00,000/- made under section 68 treating the same as unexplained cash credit is not justified and the same may be deleted.

Levy of interest under section 234B & 234C of the Act is unjustified

3. The Appellant denies the liability to pay interest under section 234B & 234C as the same is unjustified.

4. The Appellant seeks leave to add, alter and amend the above grounds whenever required."

2. In addition to the grounds raised as above, the appellant has also raised additional ground of appeal wherein the jurisdiction of the assessing officer to issue a notice u/s. 148 of the Income Tax Act has been challenged.
3. The facts of the case, in brief, are that the assessee is a company which runs a Courier Service Agency in Mumbai. The assessee has e-filed its return of income on 29.09.2012 declaring a total income at Rs.2,55,850/-. The return was processed u/s.143 (1) of the It Act 1961. Thereafter, the case was re-opened u/s.147 of the I.T. Act 1961 after recording reasons and seeking approval of the Pr. Commissioner of Income Tax-4, Mumbai u/s151(1) of the Act, 1961 and accordingly, notice was issued u/s 148 of the I.T. Act, 1961 on 29.03.2019 and was duly served upon the assessee.

In response to that notice, the assessee filed its Return of Income on 16.07.2019 for A.Y. 2012-13 and again declared the same income of Rs.2,55,850/-. Thereafter, statutory notices u/s.143(2) and u/s.142(1) of the Act were issued from time to time and duly served upon assessee company through ITBA portal.

4. During the course of assessment proceedings, the assessing officer noticed that the assessee company received a sum of Rs.1.53 Crores on 24/08/2011 from one M/s. Averina International Resorts Pvt. Ltd for opening a restaurant in Mumbai under joint venture. On further perusal of the bank account of the assessee company, it was found by the Ld. assessing officer the same amount of Rs.1.53 Crores was transferred on very same day to the bank account of one Mr. Francis Xavier Furtado, director of M/s. Averina International Resorts Pvt. Ltd. Assessee company, in his online submissions filed though ITBA portal, has further submitted that because of some reasons said project to open a restaurant in Mumbai in joint venture got cancelled and so the amount of Rs.1.53 crores was liable to be transferred back to M/s. Averina International resorts Pvt. Ltd. However, while executing the transfer of Rs. 1.53 cores through banking system the amount was erroneously transferred to Mr. Francis Xavier Furtado who was a director of M/s. Averina International Resorts Pvt. Ltd. The assessee company has further claimed that after realizing the mistake the assessee company demanded Mr. Francis Xavier

Furtado to return the money of Rs.1.53 crores back to the account of assessee company i.e. M/s. Speedking Courier Services Pvt. Ltd. so that the same could be returned back to the company's account of M/s. Averina International resorts Pvt. Ltd. on account of cancellation of the hotel project.

5. Taking into consideration the above facts, the Ld. assessing officer sought a direction u/s. 144A of the Income Tax Act from Additional commissioner of Income- tax Range 4(3), Mumbai by pointing out following infirmities as noticed by him in the claim of the assessee company: -

1. The assessee company, M/s. Speedking Courier Services Ltd. has failed to furnish any agreement or MOU for Joint venture with M/s. Averina International Resorts Pvt. Ltd. to open a restaurant in Mumbai.
2. Assessee Company, instead of returning the money back to M/s. Averina International Resorts Pvt. Ltd., returned the money very same day to Mr. Francis Xavier Furtado, the director of M/s. Averina International Resorts Pvt. Ltd. The justification of such a transfer on the pretext of a Joint venture is merely an afterthought.
3. The amount, in question, has not been reflecting as a liability in the Balance sheet of Assessee Company as on 31/03/2012. If the assessee company had not returned the money back to M/s.

Averina International Resorts Pvt. Ltd during F.Y 2011-12, the amount of Rs.1.53 crores should have been reflected as a liability in the Balance sheet which is not the case here.

4. In view of above, this is an explicit case of cash credit which was not explained by assessee company and the undersigned proposes to make addition of Rs.1.53 crores u/s. 68 of the IT Act 1961 being the above cash credit remained unexplained by assessee company.
6. In response to the above request, the Addl. Commissioner issued direction u/s 144A as under:-

“In response to the notice issued u/s 144A assessee's representative vide letter dated 27/12/2019 has submitted a copy of MOU by the assessee company with M/s. Averina International Resorts Pvt. Ltd. dated 8th of August 2011. As informed by in your above referred letter, the assessee had not submitted copy of copy of this MOU during the course of assessment proceedings. The same is therefore, forwarded to you with direction to verify the validity and authenticity of MOU. Further, it is the contention of assessee that the assessee company has returned back the amount on the same day of receipt of the same. You are hereby directed to verify the same and if the money is not returned back to M/s. Averina International Resorts Pvt. Ltd. on the same date as mentioned by the assessee, the same may be brought to tax as unexplained cash credit u/s. 68 of the IT Act 1961”.

7. The Ld. assessing officer duly considered the direction issued u/s. 144A by Ld. Additional commissioner of Income-tax range 4(3) Mumbai and came to the finding that the assessee company has not returned the money back to M/s. Averina International Resorts Pvt. Ltd. on the same day i.e. 24/11/2011 and in fact, the amount, in question, was refunded in Mr. Francis Xavier Furtado's bank account who was a director in M/s. Averina International Resorts Pvt. Ltd. Further, the copy of MOU has been examined and found that the same was not a registered copy but only a photocopy which does not carry any authenticity. Thus, prima facie, the MOU does not seem to be a genuine one. The AO, therefore, held that the assessee company has failed to explain the source of cash credit of Rs. 1.53 crores shown in the books of assessee.

8. Aggrieved by the order of the AO, The assessee filed appeal before the Ld. CIT Appeal who decided the appeal u/s. 250 of the Act vide its order dated 31/10/2023 in Appeal order No. ITBA/NFAC/S/250/2023-24/1057536084(1) and held as under:

“I have carefully considered the facts of the case and submissions made by the appellant. I find no force in the arguments of the Appellant. On the whole the entire edifice of the plan to open a restaurant, the MOU, the receipt of money and the consequent return does not seem to be credible. The MOU is signed on 08.08.2011 and the funds are received on 24.08.2011. On the same day, the plan to re-open the restaurant is

shelved and the funds are returned to the investor, albeit 'by mistake' to some other person. What kind of mistake is this? How did the Assessee come to know of the bank account details of Mr. Furtado? It was not a small sum of money but 1.53 crore. And it took only a matter of hours for the Assessee to shelve the business plan. Hence, it is held that the Assessee has not been able to satisfactorily explain the nature and source of this sum credited in the books of accounts of the company. The case laws cited by the Appellant have been considered but they are distinguishable on facts from the instant case. Accordingly, the addition of Rs.1,53,00,000/- made by the AO as unexplained cash credits u/s.68 of the Act, is hereby confirmed. The grounds of appeal no. 1 to 8 are hereby dismissed.”

9. Thus this appeal has been filed against the impugned order of the Ld. CIT (Appeals). Apart from the grounds of appeal already taken while filing the instant appeal, the appellant has also raised additional ground during the course of the appellate proceedings. The reasons for taking additional ground have been given as under:-

“the appellant is moving the present application before this Hon’ble Bench to admit the additional grounds of appeal raised. The appellant submits that through the additional grounds of appeal, the Appellant has challenged the jurisdiction of the Ld. A. O. to issue a notice under section 148 of the act. In the present case, the notice issued under section 148 of

the Act is barred by limitation by four years from the end of the relevant assessment year as per the first proviso to section 147 of the Act. The reopening has been done without having any reason to believe based on any tangible material that the income chargeable to tax has escaped assessment. Thus, the notice issued under section 148 of the Act is without jurisdiction and bad in law. The Appellant submits that the additional grounds raised by the Appellant are legal issues regarding initiation of reassessment proceedings which go to the root of the proceedings. Hence, the same may be admitted.”

10. We have first considered the additional ground raised before us and found that there is no merit in the application of the appellant as the Assessing Officer has rightly assumed the jurisdiction u/s. 148 of the Act in the present case as there was tangible material in his possession to reopen the assessment u/s. 147 of the Income Tax Act in view of the detailed discussion made in Para-5 of the impugned assessment order. Also, there is no legal issue involved in this case. Thus, the additional ground raised by the appellant is rejected and the case is decided on merit.

11. During the course of appellant proceedings before us, the A.R. of the assessee filed a paper book and bank statement and submitted that *“in course of the assessment proceedings, vide letter dated November 7, 2019, a sum of Rs.1,53,00,000/- was received by the appellant from M/s.*

Averina International Resorts Pvt. Ltd. for the purpose of opening a restaurant in Mumbai in a Proposed Joint Venture (JV). The said transfer of the money was as per the terms of Memorandum of Understanding entered between the appellant and M/s. Averina International Resorts Pvt. Ltd. dated August 8, 2011, a copy of which was submitted before the Ld. A.O. vide letter dated December 27, 2019 (Copy of the MOU and submissions made are enclosed in Annexure 1 herein) and was ignored by Ld. AO. Thereafter, since the JV was put on hold as the deal for the property on which the restaurant was planned did not work out, the appellant returned Rs.1,53,00,000/- to M/s. Averina International Resorts Pvt. Ltd. and transferred it to the bank account that was communicated to the appellant by M/s. Averina International Resorts Pvt. Ltd. Effectively Rs.1,53,00,000/- is not reflecting in the Outstanding Credit in the books of accounts of the appellant. In other words, there is no Outstanding Credit in the Books of Accounts of the Appellant, because the money which was received for a proposed business plan, failed to materialize and the money was returned back on closure of the proposed business plans, which is a very common business activity with no complexity or new understanding or explanations required.

The said amount of Rs 1,53,00,000, is not reflecting as an Outstanding Credit/Payable Balance in the Audited Financial Statements of the appellant, as on March 31, 2012. Detailed communications exchanged by

the board of Directors of both the companies as listed below were submitted and are enclosed herein in Annexures 2a, 2b, 2c and 2d.

- i. Letter dated 22.08.2011 for proposed investments,*
- ii. Letter dated 23.08.2011 for transfer of funds by investor company*
- iii. Letter dated 23.08.2011 for receipt of funds by appellant company*
- iv. Letter dated 24.08.2011 by Investor company instructing for refund of the amount transferred by them to appellant company*
- v. Letter dated 24.08.2011 by appellant company confirming transfer back of the money received for the proposed JV being cancelled.*

The said transfer/return of money made in relation to proposed JV, was done by the appellant on a bonafide basis considering that account belonged to M/s. Averina International Resorts Pvt. Ltd.

Subsequently, M/s. Averina International Resorts Pvt. Ltd. communicated to the appellant that the transfer mentioned above had gone to wrong account, by which time revision of return of income for the captioned year was not possible. On realization of this mistake, the appellant immediately re-called Rs.1,53,00,000/- from the account it was inadvertently transferred to and subsequently the said amount was

transferred to the correct account of M/s. Averina International Resorts Pvt. Ltd. after deducting Rs.2,00,000/-, being expenses incurred for the proposed JV.

Hence, while filing return of income in response to the notice u/s. 148 of the Act, Rs.1,53,00,000/- was reflected, both, on Assets side (i.e. receivable from the persons in whose account the amount was wrongly credited) and Liability side (payable to M/s. Averina International Resorts Private Limited). Reiterating the fact that effectively there is no Net Credit Outstanding and both the accounting entries were subsequently rectified and squared off since the proposed business plan was cancelled. (Emphasis Supplied).”

12. We have considered the above submission and also the bank statement filed by the appellant. It is found that the amount in question has been paid back by the assessee on 24/08/2011 on cancellation of the proposed business plan and accordingly, no credit balance was found to be appearing in books of accounts of the appellant. The payment made to the director Mr. Francis Xavier Furtado in his bank account by mistake was subsequently rectified and the said amount ultimately found credited in the bank account of M/s. Averina International Resorts Pvt. Ltd. Thus, the addition of Rs.1,53,00,000/- made by the assessing officer u/s. 68 of the IT Act is not justifiable from any angle and hence, the same is deleted.

13. Regarding the charging of interest u/s 234 B & 234C of the Act is concerned; the AO is directed to charge the same as per rules.

14. In the result, the appeal is allowed.

Order pronounced in the open court on 29.05.2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai, Dated: 29.05.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.