

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**Before Sh. Kul Bharat, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 1507/Del/2023 : Asstt. Year : 2011-12

Income Tax Officer, Ward-24(1), New Delhi-110002	Vs.	Sun Infraestate Pvt. Ltd., Triveni Apartment, A-94, Shop No. 1, Swayam Sewa Group, Housing Society, Vivek Vihar, New Delhi-110095
(APPELLANT)		(RESPONDENT)
PAN No. AANCS5532K		

**Assessee by : Sh. Gautam Jain, Adv. &
Sh. Lalit Mohan, CA
Revenue by : Ms. Deepti Chandola, Sr. DR**

Date of Hearing: 18.06.2024

Date of Pronouncement: 02.07.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of National Faceless Appeal Centre (NFAC), Delhi dated 17.03.2023.

2. Following grounds have been raised by the Revenue:

"1. The Id. CIT(A) has erred in deleting the addition of Rs.4,57,50,000/- made u/s 68 of the Income Tax Act, 1961 without appreciating that the assessee failed to prove the genuineness and creditworthiness of the loan taken from M/s Premium Realcon Pvt. Ltd."

3. The Assessing Officer made addition on account of loans received by the assessee of Rs.4.57 Cr. from M/s Premium Real Con. holding that the PE company is nothing but a dummy company and no actual business is being done by this company.

The AO relied on the statements of Sh. V. K. Singh and Sh. Narendera Kumar and held that the lender company did not file any return of income and not shown any profit earned.

4. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition made by the AO.

5. For the sake of ready reference, the order of the Id. CIT(A) deleting the addition is reproduced hereunder in *toto*:

"FINDINGS & DECISION

5.11 have gone through the Assessment Order and submissions of the appellant. The learned AO has invoked section 68 and added sum of Rs.4.57 crores on account of unexplained cash credit. The appellant had received advances from the company named Premium Realcon Private Limited towards identification of land parcel required by Premium Realcon.

5.2 In this backdrop the appellant has filed appeal and all grounds pertains to one addition i.e., on account of unexplained cash credit and therefore are disposed of collectively as under.

5.3 The learned AO contested that Premium Realcon is not a genuine company is merely a paper company. The learned AO issued a notice u/s 133(6) to seek confirmation from Premium Realcon and the same was filed as well. However the learned AO contested that the office address mentioned by Premium Realcon is occupied by some other entity named Balaji Associates. Therefore there is no real company named Premium Realcon.

5.4 The appellant submitted following documents to substantiate its claim before learned AO

- (i) copy of ledger account of Premium Realcon*
- (ii) copy of the bank statement reflecting money received from Premium Realcon*

- (iii) copy of confirmation of account*
- (iv) copy of income tax returns of Premium Realcon*
- (v) Premium Realcon's bank statement and financial statements of Premium Realcon*

5.5 The contention of appellant is also evaluated on merits and found that the appellant has discharged its onus of providing relevant documentation to substantiate genuineness and creditworthiness of Premium Realcon moreover the underlined amount is not in the nature of loans and advances but they are given with a specific instruction to identify land parcel. Therefore, the nature of underlined transaction is very clear.

5.6 In this regard, reliance is placed on following few judicial pronouncements-

"A] In CIT v. Daulat Ram Rawat Mull, the Supreme Court held that the fact that the depositor had not been able to give a satisfactory explanation regarding the source of deposit would not be decisive even of the matters as to whether the depositor was or was not the owner of the amount, that a person could still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money was found to be incorrect, and that from the simple fact that the explanation regarding the source of the money had been found to be false, it would be a remote and farfetched conclusion to hold that the money belonged to the assessee.

B] In A. Govindarajulu Mudaliar v. CIT the Court came to the conclusion that:

There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipt is of an assessable nature.

C] In Kale Khan Mohammad Hanif v. Commissioner of income-tax the Supreme Court, in answering the question Whether the burden of proving the source of the cash credit is on the assessee observed that 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 to as taxable income."

5.7 Further, it is pertinent to look at provisions of section 68 as under:

"Where any sum is found credited in the books of an assessee maintained for 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 >pf that previous year..."

5.8 In order to invoke section 68, the most essential aspect is that the tax payer do not offer any explanation towards source and nature of such cash credit. The tax payer also needs to establish the identity and credit worthiness j of the lender.

5.9 During the course of assessment proceedings the appellant filed 1 supporting documents to the transactions comprising of bank statements I reflecting receipt of money, confirmation from Premium Realcon, financial statements and explanation towards source of funds of lenders.

The appellant demonstrated the source of funds of Premium Realcon by way of producing its financial statements. On perusal of financial statements, it has been observed that Premium Realcon has sufficient funds in form of credit balance in the bank

account and therefore the creditworthiness of the lender is also established.

5.10 In view of the above as the nature of credit is very explained provisions of section 68 shall not apply.

5.11 In view of the above I am of the considerate view that the appellant has duly discharged its onus however the learned AO has failed to conduct specific enquiries and come out with findings that the underlined transactions is sham transaction. Therefore, the addition made by learned AO for sum of Rs.4,57,50,000/- is not tenable in law and being deleted."

6. Aggrieved, the Revenue filed appeal before the Tribunal.

7. Before us, the Id. DR argued that based on the record, the assessee could not provide any authentic details regarding the communication between the assessee and the lender company. It was argued that M/s Premium Realcon Pvt. Ltd. had no revenue generated, only meager expenses claimed on account of administrative nature of Rs. 88,616/- and the company M/s Premium Realcon Pvt. Ltd. does not have single penny of own fund except share capital of Rs. 1,00,000/- which is the minimum requirement to exist as a company in Companies Act, 1956. The Id. DR submitted that M/s Premium Realcon Pvt. Ltd. depends for all its activities from the funds available in the form of current liabilities which are payable within a period of short duration i.e. within one year and furthermore it is clearly evident from the balance sheet of M/s Premium Realcon Pvt. Ltd. that the company is planning for long-term projects on the basis of short term borrowing and this clearly throws the blanket of suspicion on the future of the company and this kind of planning of business is not practical but a planned way to do

other unethical things. The Ld. DR further argued that the amount transferred by M/s Premium Realcon Pvt. Ltd. to M/s Sun Infraestate Pvt. Ltd. is sourced through M/s Starlite Builders Pvt. Ltd. Ld. DR submitted that from the ledger confirmation filed by the assessee of M/s Startite Builders Pvt. Ltd. it is evident that the funds received by M/s Premium Realcon Pvt. Ltd. from M/s Startite Builders Pvt. Ltd. on following dates:

Data	From	To	Amount
22.11.2010	M/s Starlite Builders Pvt. Ltd.	M/s Premium Realcon Pvt. Ltd.	13,75,00,000/-
16.12.2010	M/e Starlite Builder Pvt. Ltd.	M/s Premium Realcon Pvt. Ltd.	2,25,00,000/-
29.12.2010	M/s Starlite Builder Pvt. Ltd.	M/s Premium Realcon Pvt. Ltd.	2,00,00,000/-
04.01.2011	M/s Starlite Builder Pvt. Ltd.	M/s Premium Realcon Pvt. Ltd.	7,00,00,000/-
Date	From	To	Amount
30.03.2011	M/r Premium Realcon Pvt. Ltd.	M/s Starlite Builder Pvt. Ltd.	5,75,00,000/-

8. And hence there is no *iota* of doubt that the amounts received by M/s Premium Realcon Pvt. Ltd, from M/s Starlite Builders Pvt. Ltd. The Ld. DR argued that the assessee has failed to provide the reasons and basis for receiving the loan along with the copies of agreement and conditions. It was further argued that the amount has been credited to one Shri Sunil Malik and again the assessee has failed to explain why an amount so huge received from M/s Premium Realcon Pvt. Ltd. was allegedly credited to Shri Sunil Malik. The Ld. DR argued that the assessee was requested on 04.12.2018 by the AO to produce the directors of the M/s Premium Realcon Pvt. Ltd. from whom such large sum of Rs. 4.57 Crores had been received

during A.Y. 2011-12 on or before 10.12.2018. However, the assessee could not produce the Directors of M/s Premium Realcon Pvt. Ltd. before the AO, thus, the assessee failed to discharge the onus of proving the authenticity of loan received by the assessee. In addition, notice u/s 133(6) issued to M/s Premium Realcon Pvt. Ltd. and enquiries conducted that currently one Balaji Associates are working from the address mentioned for M/s Premium Realcon Pvt. Ltd. and the lender is not the occupant and it is only a small shop just having enough space for a sofa-set.

9. The Id. DR argued that from the field enquiries it was proved beyond doubt that the assessee do not have any physical existence, no revenue was generated by the lender company in the last 8 years and only meager expenses were charged to P&L account and hence, the loans received by the assessee have not been proved as genuine and hence ought to be confirmed.

10. Rebutting the arguments of the Revenue, the Id. AR argued that the assessee has submitted all the documents to prove identity, creditworthiness and genuineness of the lender company and the transactions thereof. Referring to page 102/111 of the paper book, the Id. AR argued that the advances received by the company were to the tune of Rs.19.25 Cr. whereas advances given to the assessee are only Rs.4.58 Cr. and it is very clear from the record that the lender company also owns land worth Rs.11.39 Cr. and hence, the identity, creditworthiness, and genuineness of the transactions cannot be doubted upon. The Id. AR further argued that in the previous

year to the lending of the amount to the assessee, the lender had advances of Rs.25.01 Cr. and given advances of Rs.24.59 Cr. It was argued that the lender is a real estate company having land base of Rs.11.39 Cr. and hence the genuinity cannot be doubted. The Id. AR further taken us to the inventories, cash in hand, bank balances and current assets at page no. 124 of the paper book to prove that the lender company had sufficient resources to accord loan to the assessee company.

11. With regard to the receipt of amount from M/s Starlite Builder Pvt. Ltd., the Id. AR submitted that the said company had CCDs worth Rs.70 Cr. out of which Rs.68.25 Cr. have been given as advances to various parties and hence, the source of source is also proved.

12. Heard the arguments of both the parties and perused the material available on record.

13. Keeping in view, the facts and arguments taken, we hold that the assessee has substantiated its claim before the AO by producing all the relevant documents viz. copy of ledger account of Premium Realcon, copy of the bank statement reflecting money received from Premium Realcon, copy of confirmation of account, copy of income tax returns of Premium Realcon and Premium Realcon's bank statement and financial statements of Premium Realcon, we affirm the decision of the Id. CIT(A) holding that appellant has duly discharged its onus but the AO has failed to conduct specific enquiries and come out with findings that the underlined transactions is sham transaction.

14. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 02/07/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 02/07/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR