

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “C”, MUMBAI  
BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT  
MEMBER  
AND  
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER  
ITA NO. 3918/MUM/2023 (A.Y.: 2017-18)**

Dy. Commissioner of Income Tax Central Circle-4(4), Mumbai Room No. 1918, Air India Building, Nariman Point – 400 021.	Vs.	IRIS Computers Limited, Delhi. A-155, Road No. 4, New Delhi, Mahipalpur – 110037. <b>PAN: AAACI9670H</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	:	<b>Shri. Anil Gupta</b>
<b>Department Represented by</b>	:	<b>Shri. Ms. Madhu Malti Ghosh CIT D.R.</b>
<b>Date of conclusion of Hearing</b>	:	<b>25.04.2024</b>
<b>Date of Pronouncement</b>	:	<b>27.05.2024</b>

**ORDER**

**PER RAJ KUMAR CHAUHAN (J.M.):**

1. This appeal bearing ITA No. 3918/MUM/2023 for the assessment year 2017-2018 is directed against the order dated 25.08.2023 of Learned Commissioner of Income Tax (Appeals) - 26, [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961

[hereinafter referred to as “*the Act*”] wherein the order of the Ld. Assessing Officer, Central Circle, 14, Delhi dated 22.09.2021 is set aside.

2. Aggrieved by the impugned order, the present appeal has been instituted by the department on following ground:

*“On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the additions of Rs. 15,00,00,000/- ignoring the fact that the assessee company failed to prove the creditworthiness of the loan creditor and the genuineness of the transaction.”*

3. The brief facts as culled out from the assessment order as well as from the impugned order are that the assessee company filed regular return of income under section 139(1) of the Act on 22.10.2019 showing the total income of Rs. 6,94,58,650/-. The case was selected for scrutiny through CASS, notice under section 143(2) of the act was issued on 10.08.2018 and also on 26.09.2018.
4. In response to the aforesaid notices, the assessee filed partial replies. On verification of the return of income and other records it was noticed that the assessee as shown to have received unsecured loan of Rs.15 crores from one person viz. Shri Sanjiv Krishen. The assessee was asked vide notice under section 142(1) of the Act dated 24.06.2019, to furnish details of unsecured loans received during the year with confirmation containing complete addresses, PAN and period of loan. The said notice

was replied by letter dated 05.09.2019 but the assessee has not submitted any details in respect of Shri. Sanjiv Krishen.

5. It is further stated that since the assessee company has neither furnished any confirmation nor copy of the ITR, Balance Sheet, etc. with respect to the lenders from whom an amount of Rs. 15 Crores has been claimed to be received during the relevant year under consideration and as such the credit-worthiness of such party remained unsubstantiated. It was therefore concluded by the Ld. AO that the assessee has failed to prove identity, credit-worthiness of the creditors and also failed to prove the genuineness of the transaction despite having been given sufficient opportunities. Hence, an amount of Rs. 15 crore was added on account of unexplained unsecured loans.
6. It is further stated that the assessment order was challenged in appeal before the CIT(A), who vide impugned order dated 23.08.2023 has set aside the order holding that the addition of Rs. 15 Crore made by the Ld. AO are not maintainable because from the document furnished, it has been found that Shri. Sanjiv Krishen is promoter director of the company and had paid unsecured loan to the appellant company from his bank account with HDFC and the source of fund was found to be

7. The present appeal has been filed by the department/revenue on the ground that in the facts and circumstances of the case, the assessee company failed to prove the creditworthiness of the loan creditors as well as the genuineness of the transaction hence, the Ld. CIT(A) has committed an error in deleting the addition of Rs. 15 Crore.
  
8. We have heard the Ld. DR on behalf of the appellant as well as the Ld. AR on behalf of the assessee. The Ld. DR vehemently argued that the material brought on record by the assessee to show the creditworthiness of the creditor and genuineness of the transaction are not the correct and relevant documents, therefore the impugned order of the Ld. CIT(A) is liable to be set aside and the order of the Ld. AO needs to be restored.
  
9. The Ld. AR on behalf of the appellant submitted that all necessary documents to prove the identity and creditworthiness of Shri. Sanjiv Krishen were placed before Ld. CIT(A) because at the time of assessment proceedings due to Covid pandemic, those documents could not be produced before the Ld. AO and such the documents were reliable and transaction was genuine. Hence, the Ld. CIT(A) has rightly deleted the addition of Rs. 15 Crores made by the Ld. AO which was wrongly done and as such there is no illegality in the impugned order and the appeal is without any substance and liable to be rejected.

10. We have considered the rival submissions and carefully examined the record. Since the addition was made under section 68 of the Act so let us examine the said provision which is as under: -

“68. *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 of that previous year:*

*Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

*Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”*

11. The Ld. CIT(A) has dealt with the addition of Rs. 15 crores i.e., ground no. 4 in the appeal in para no. 7 which is reproduced as under:

*“7. Ground no 4: This Ground is raised on the issue of addition made by the AO of Rs 15,00,00,000/- an account of unsecured loan taken by the company from Mr. Sanjiv Krishen, the director of the company.*

*7.1 The appellant submitted that the Ld. Assessing Officer has added Rs. 15 Crores. on account of unsecured loans taken by the company from Shri. Sanjiv Krishen U/S 68 of the Income Tax Act, 1961. In this context it is necessary to read the section 68 here.*

*"68 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 Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."*

*The appellant has submitted that the nature of payment is very much known to the assessing officer which was shown in the Tax Audit report of the assessee and PAN No. and address of Sanjiv Krishen from whom unsecured loan was taken, was also known to the assessing officer. The assessee company could not be able to submit the documents to prove the creditworthiness and genuineness of the unsecured loan due to already mentioned Covid lockdown issue. Now during the appellate proceedings, the appellant has submitted the following details: -*

- a. Copy of ITR for the A.Y. 2016-17 and 2017-18 along with computation of taxable income.*
- b. Copy of Bank account showing the transactions.*
- c. Copy of ledger account of Shri Sanjiv Krishen.*

d. *Copy of Balance Sheet Net worth certificate of Sanjiv Krishen.*

e. *Confirmation of Loan taken from Sanjiv Krishen.*

*The appellant also placed reliance of the following judgements:*

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a. *M/s Pravir Polymers Pvt. Ltd. vs. ITO ITA No. 2595/Mum/2019 & CO No. 103/M/2021, Income Tax Appellate Tribunal Mumbai Bench "C" Mumbai Several Hon'ble Courts have settled the issue of onus of the assessee u/s. 68 of the Act and it been held that where any assessee submit the details of investors, submit confirmation of chare capital from them, submit the assessment details of the investors and prove that the transaction under considerations have been made through proper banking channel it can be paid that the assessee has discharged its onus of proving identity, genuineness and creditworthiness of the investors within the meaning of provisions of section 65 of the Act It is important to note that the Hon'ble Courts have held that the assesses is not required to prove source of the source as held in the case of Tolaram Duga vs. CIT reported in 39 IT 632. The Hon'ble High Court in the case of Addl. CTT vs. Hamaman Agrawal reported in 151 17 150 held that it can never he within the exclusive knowledge of the debtor to know the source of income of the investors and once he has furnished the true Identity, the correct address and the correct PAN/GIR number of the creditors he fulfils his obligation under the Act. Further, the various Hon'ble Courts have held as under: -*

b. *Shree Barkha Synthetic Ltd. Vs ACTT, 155 Taxmen 289 (Rajasthan) - The Hon'ble court held that where the assessee company had received share application money from a company and from an individual Investor through banking channels and had furnished*

*confirmation of the investment in share capital by the said company and had also proved the genuineness of the said transactions, then the AO could not make any addition to the income of the assessee in respect of said share application money by treating the same as unexplained cash credit is 68 of the Act.*

- c. Nemi Chand Kothari vs CIT. 264 ITR 154 (Gau) - The Hon'ble Court held that the assessee's burden is confined to prove creditworthiness of investors with reference to the transactions between the assessee and the creditor.*
  
- d. M/s Pravir Polymers Pvt. Ltd. 25 ITA No. 2595/M/2019 & CO No. 103/M/2021.*
  
- e. DCTT vs. Rohini Builder, 256 ITR 360 (Guj) - The Hon'ble Court held that if the identity of the parties proved and the transaction is through cheque and the income tax assessment particulars are provide the assessee has discharged its onus u/s. 68 of the Act.*
  
- e. Ranchor Jivabhai Nakhava vs. CIT, 21 Taxman 159 (Guj)- The Hon'ble Court held that once the assessee has established that he has taken money by way of account payee cheques from the investors who are all income tax assessee whose PAN have been disclosed, the initial burden u/s 68 of the Act was discharged.*
  
- f. The Kolkata 'A' Bench of the Tribunal in the case of ITO vs. M/s. Goodpoint Commodeal Pvt. Ltd. in ITA No. 1204/Kol/2015 for AY 2012-13 order dated 07.06.2019 held as follows:*

*"6. Thus, we note that we find all the four share subscribers have been assessed by the Department and that too u/s. 143(3) of the Act and the genuineness of the transactions,*

*cannot be disputed since the payments have been made through banking channel and we note that there cannot be any dispute in respect to creditworthiness of the share subscribing companies since they had sufficient net worth/own fund in its kitty to invest in the assessee company. It would be worthwhile to take note of the observation by Hon'ble Justice A. K. Sikri while delivering the judgment in CIT Vs. Mayawati when His Lordship then was in Hon'ble Delhi High court reported in 338 ITR 563 (Del) observed that -*

*"The capacity of any person does not mean how they earn monthly or annually but the term capacity is a wide term and that can be pursued by how wealthy he is. All the formalities, as per the law are made by the assessee and donors as well."*

*Therefore, the Hon'ble High Court was pleased to uphold the action of the Tribunal in deleting the addition made by the Department against the assessee Mayawati.*

- 7.2 *I have considered the facts of the case and the submissions filed by the appellant. The assessing officer has made addition of Rs. 15 crs. as the assessee has not been able to substantiate the capacity and creditworthiness of Sh. Sanjiv Krishen from whom an amount of Rs. 15 crs. has been claimed to have received as unsecured loan during the year. From the documents furnished, it has been observed that Sh. Sanjiv Krishen is the promoter director of the company and had paid unsecured loan to the appellant company from his bank account with HDFC and the sources of such fund found to be genuine. In the Income Tax return, he has shown gross total income of Rs. 1,59,38,959/- for the AY 2017-18*

*and Rs. 1,96,13,603/- for the AY 2016-17. From the confirmation ledger submitted by the appellant it is also evident that the amount of unsecured loan taken was refunded back to Shri. Sanjiv Krishen within a month. From the certificate of net worth of Sh. Sanjiv Krishen, it is also noticed that his net worth was much higher than the loan amount advanced to the appellant.*

*7.2.1 After considering the above facts and judicial pronouncements, it is ascertained that the appellant has taken unsecured loan from Sh. Sanjiv Krishen and submitted corresponding documents which proves the genuineness and creditworthiness of the person who have advanced the loan to the appellant company. In view of the above clarification, circumstances and documents submitted, I do not find any merit in the addition made by the AO treating the unsecured loan received by the appellant from its director as unexplained credit u/s 68 of the Act. Therefore, the addition of Rs. 15 cr. made by the AO is deleted and accordingly the ground of appeal taken by the appellant is allowed.”*

12. On perusal of observation of the Ld. CIT(A), it is noticed that he has explained the material and documents produced by the assessee and also the reasons for non-submissions of these documents before the Ld. AO. Nothing contrary to the observations and the documents referred by the Ld. CIT(A) having been submitted by assessee, has been brought on record by the revenue. Nothing is brought on record by the appellant to

dispute the genuineness of transaction and creditworthiness of the creditors with respect to the unsecured loan of Rs. 15 Crores by Shri Sanjiv Krishen. We find no reason to doubt the correctness of the documents submitted by the assessee as find mentioned in the para no. 7.1. of the impugned order and the same has been duly and rightly considered by the Ld. CIT(A) while returning finding in favour of assessee.

13. For these reasons, we find no merit in the appeal of the revenue and the order of the Ld. CIT(A) is accordingly upheld.

14. For the above reasons, the grounds of appeal raised in this appeal stands rejected/dismissed.

15. In the result, appeal filed by the revenue is accordingly dismissed.

Order pronounced in the open court on 27.05.2024

Sd/-/-  
**(PRASHANT MAHARISHI)**  
**(ACCOUNTANT MEMBER)**

Sd/-/-  
**(RAJ KUMAR CHAUHAN)**  
**(JUDICIAL MEMBER)**

Mumbai / Dated 27.05.2024  
*Karishma J. Pawar, (Stenographer)*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mumbai**