

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" , HYDERABAD**

**BEFORE**

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER  
AND  
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

ITA No.452/Hyd/2024		
Assessment Year: 2018-19		
Zaveri Exports Private Limited, Hyderabad.  PAN : AAACZ1286A.	Vs.	The ACIT, Central Circle – 3(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri H. Srinivasulu, Advocate.	
Revenue by:	Ms. T. Vijaya Lakshmi, CIT-DR	
Date of hearing:	09.07.2024	
Date of pronouncement:	12.07.2024	

**ORDER**

**PER LALIET KUMAR, J.M.**

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Principal Commissioner of Income Tax (Central), Hyderabad dated 19.06.2021 for the AY 2018-19.

2. The assessee has raised the following grounds :

*"1. The PCIT (Central), Hyderabad Order dated 26-03-2024 u/s 263 of the income Tax Act, is bad in law.*

*2 TheLd PCIT (Central) Hyderabad, erred in invoking the provisions of section 263 as the assessment order dated 19-03-2021 of Ld. AO is neither erroneous nor prejudicial to the Interests of the Revenue.*

3. The Ld, PCIT (Central), Hyderabad, failed to appreciate that a Pen drive found during the search on 27-06-2013 and the printout taken thereof was in contravention of section 65B the Evidence Act

4, The Cd, PCIT (Central), Hyderabad, failed to appreciate that the Page No 78 was a dumb document and did not satisfy the conditions stipulated in Section 292C of the Act.

5. The Ld.PCIT (Central), Hyderabad failed to appreciate that during the assessment proceedings Ld.AO made Enquiry about Page No.78 and came to the conclusion that the provisions of section 68 are not applicable for a sum of Rs.2,78,17,040/-.

6. The Ld. PCIT (Central), Hyderabad. failed to appreciate, that a dumb document cannot be construed as book' or books of account for invoking the provisions of Section 38 of the Act

7. The Ld, PCIT (Central), Hyderabad, failed to appreciate that When the provisions of section 38 are not applicable, thereby, the question of proving the identity, creditworthiness and the genuineness does not arise.

8. The Ld. PCIT (Central), Hyderabad, failed to appreciate that a statement recorded u/s 132(4) is not final and it be rebutted with evidence.

9. The PCIT (Central), Hyderabad, failed to notice the findings of Ld. AO at Para 2.8 of the assessment order dated 19-06-2021 and Ld. AO rightly came to the view that section 68 is not applicable based on the ratio laid down by the Apex Court in the Common clause (A Registered society) and others 394 ITR 220

10, The Ld. PCIT Hyderabad, failed to appreciate that the assessee declared a net profit at 3% on the sales advances of Rs 2,78,17,040/- in the return of Income.

11. The Ld PCIT (Central), Hyderabad, erred in relying on the Statement of Sri Sunil Kumar Tayal as he was under mental tension and stated that the names found in Page No. 79 the unsecured loans.

12. The Ld PCIT (Central) Hyderabad failed to appreciate that the Enquiries were caused by the income tax department in respect of Page No.78 and came to the conclusion that the amounts reflected in Page 78 were the sales advances and not unsecured loans u/s 68.

*13. The Ld. PCI T (Central), Hyderabad, failed to appreciate that no interest was paid to any person and section 69C is not applicable.*

*14. The Ld. PCIT (Central), Hyderabad, erred in giving a finding that the page No. 78 contained the principal loan amount the interest payments during the demonetization*

*15. The Ld. (Central), Hyderabad, erred in observing that the contents of Pen drive were not examined by AO which is not a fact.”*

3. Facts of the case, in brief, are that search and seizure operation u/s 132 of the Act were conducted in the group cases of M/s. Zaveri Exports and others on 27.06.2018. Notice u/s 153A of the Act was issued to the assessee for A.Y. 2018-19. In response, assessee filed the return of income on 02.03.2019 determining the total income of Rs.9,33,840/-. Thereafter, assessment order was passed by the Assessing Officer u/s 143(3) r.w.s. 153A on 19.06.2021 interalia making additions of Rs.4,72,38,000/-, Rs.83,00,000/- and Rs.7,23,000 towards unexplained expenditure u/s 69C of the Act and thereby assessed the total income of the assessee at Rs.6,27,85,400/-.

3.1. During the course of assessment proceedings, as assessee company failed to provide the details of identity, creditworthiness of loan creditors and genuineness of the loan transactions, Assessing Officer issued a show cause notice u/s 142(1) of the Act as to why the unsecured loan amounts should not be treated as unexplained credits u/s 68 of the Act. In the sworn statement recorded from the Director of assessee company, he confirmed that the interest payments were made in cash and

were not routed through the books of accounts and that there would not have been any entry in their books and further submitted that he could not produce the sources for the said cash expenditure. In view of the above facts noticed from record, the ld.PCIT opined that Assessing Officer failed to examine the nature of unsecured loans accepted in cash and to examine the application of loan amount and failed to obtain details of identity, creditworthiness of loan creditors and genuineness of the loan transactions and that Assessing Officer also failed to treat interest payments made in cash as unexplained expenditure u/s 69C of the Act and that Assessing Officer merely accepted the explanation furnished by the assessee without making proper verification in this regard. The ld.PCIT opined that the assessment order is erroneous in so far as it is prejudicial to the interest of Revenue. Hence, he proposed to revise the assessment order passed by the Assessing Officer after taking prior approval, by virtue of powers vested u/s 263 of the Act. Accordingly, ld.PCIT issued show notice dt.18.03.2024, for which he filed reply dt.23.03.2024 objecting to the proposed revision. The objections made by the assessee in its reply were not accepted by the ld.PCIT and he set aside the assessment order passed by the Assessing Officer for the purpose of verifying the application of loan amount and verifying details of identity, creditworthiness of loan creditors and genuineness of the unsecured loan transactions made in cash.

.

4. Feeling aggrieved by the order passed by the ld.PCIT u/s 263 of the Act, assessee filed appeal before us.

4.1 Before us, the assessee has sought to challenge the order passed by the ld.PCIT quashing the assessment made u/s 143(3) of the Act vide order dt.19.06.2021 passed under section 263 of the Act.

5. The ld. AR has submitted that the Assessing Officer in the assessment order had examined the seized material and the explanation of the assessee. After examining the explanation of the assessee, the Assessing Officer came to the conclusion that amount mentioned in the seized documents cannot be treated as income within the four corners of Section 68 of the Act. However, on examination, the Assessing Officer came to the conclusion that the amount mentioned in the seized document was in the form of cash flow received by the assessee from various persons. In this regard, the ld.AR has drawn our attention to para 4 to 7 of the assessment order. We are not reproducing the elaborate discussion carried out by the Assessing Officer in these paragraphs for the sake of brevity.

6. On the basis of the above, it was submitted that the Assessing Officer has examined the seized documents, made sufficient enquiries on seized documents, raised questions to the assessee and, thereafter, examined the explanation of the assessee. After examining the explanation of the assessee, Assessing Officer had not considered the receipt of money mentioned in the seized documents as income u/s 68 of the Act, and had held that the receipt was in the form of loan or advances and therefore, deemed it appropriate to initiate the proceedings under Section 269SS/ST r.w.s. 271D of the Act.

7. The Id. AR further submitted that once the Assessing Officer examined the issue u/s 269SS/ST of the Act, then the Assessing Officer must have formed his view that the loans were taken by the assessee in cash and therefore, the Assessing Officer has invoked the provisions of section 269SS / ST of the Act. It was submitted that once the Assessing Officer has examined the issue and has taken one of the possible views, then merely because the Id.PCIT has taken a contrary view then the occasion of invoking section 269SS/ST is not permissible. For the above said purposes, Id. AR has relied upon the following judgments:

- A) Malabar Industrial Co. Ltd. Vs. CIT - (2000) 243 ITR 83 (SC).
- B) CIT Vs. Max India Limited (2007) 295 ITR 282 (SC)
- C) Ultratech Cements Ltd. Vs. State of Rajasthan - (2020) 117 taxmann.com 807 (SC).

- D) CIT Vs. Smt. Neena Krishna Menon – (2021) 123 taxmann.com 205.
- E) CIT Vs. GM Mittal Stainless Steel (P) Ltd. – (2003) 263 ITR 255 (SC)
- F) CIT Vs. Canara Bank – (2021) 123 taxmann.com 207
- G) Narayan Tatu Rane Vs. ITO – (2016) 70 taxmann.com 227.

8. Per contra, ld. DR has relied upon the orders of lower authorities. The ld. DR has submitted that the Assessing Officer has not examined the genuineness of loan transactions, creditworthiness of the creditors and identity of the creditors, who had given the loan. The ld. DR has drawn our attention to para 6 of the order, wherein the ld.PCIT has culled out the fact that the genuineness of loan transactions, creditworthiness of the creditors and identity of the creditors have not been examined.

9. We have heard both the parties and perused the material on record. The reading of Section 263 read with other judicial precedents, make it abundantly clear that phrase 'prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Assessing Officer adopts one of the course permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one

view with which the Commissioner of Income-tax does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law, or the AO has completely omitted to make any enquiry altogether or the order demonstrates non-application of mind. The Supreme Court in the case of Principal Commissioner of **Income-tax-2, Meerut Vs. Canara Bank Securities Ltd[2020] 114taxmann.com 545 (SC)**, dismissed the Revenue's SLP holding that 263 proceedings are invalid when AO had made enquiries and taken a plausible view in law, with the following observations:

*“Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed”*

9.1 For the purpose of invoking provisions of Section 263 of the Act, the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs. CIT - (2000) 243 ITR 83 (SC) held that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the Revenue.

10. In the present case, we have examined the order of Assessing Officer reproduced hereinabove. It is a case where the Assessing Officer has examined the seized material and while examining the case, the Assessing Officer came to the conclusion that the documents found during the course of search do not partake the unexplained credits in the books of accounts. Further, the Assessing Officer once issued notice to the assessee for validity of provision of 269SS of the Act, then the Assessing Officer must have concluded that loans / advances have been accepted in cash which were in violation of provisions of Section 269SS of the Act. Section 269SS of the Act is invoked on account of the transactions either of the loan / advances or any other specified sum which are more than the threshold limit and if the Assessing Officer invoked the same then the Assessing Officer presume to have identified the transactions and identity of the creditors also. Since the issue has been examined by the Assessing Officer on one of the possible views, then merely because the Assessing Officer has not treated the receipt mentioned in the seized documents as income of the assessee, would not make the assessment prejudicial to the interest of the Revenue. In our view, treating of the income under section 68 of the Act and treating the same amount as loan cannot coexist if the receipt is estimated as income then it cannot be treated as loan and vice versa. Therefore, we are of the opinion that the view taken by the Assessing Officer is one of the possible views and therefore, the order passed by the

ld.PCIT setting aside the assessment order cannot be said to be in accordance with the law, as the above said view is contrary to the law laid down by the Hon'ble Supreme Court. Accordingly, the appeal of the assessee is allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 12<sup>th</sup> July, 2024.

<b>Sd/-</b> <b>(G. MANJUNATHA)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
---	--

Hyderabad, dated 12.07.2024.

***TYNN/sps***

Copy to:

S.No	Addresses
1	Zaveri Exports Private Limited, 5-9-279/C2, Mayur Kushal Complex, Gunfoundry, Hyderabad – 500001, Telangana.
2	The Assistant Commissioner of Income Tax, Central Circle – 3(4).
3	Pr.CIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*