

IN THE INCOME TAX APPELLATE TRIBUNAL "K(SMC)" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

And

SHRI SUNIL KUMAR SINGH, JM

ITA No. 2305/Mum/2024

(Assessment Year: 2010 – 11)

The income tax officer Ward 11 (1) (1) Room number 201, Aaykar bhavan Mumbai	Vs.	Sandesh projects private limited Unit number 242, B wing Sanjoy building – 5, Mittal industrial estate Andheri Kurla Road Andheri (e) Mumbai – 59
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(Appellant)

(Respondent)

PAN No. AAMCS2433E

Appellant By : Shri Rajnish Yadav , SR DR

Respondent by : none

Date of hearing: 24 July 2024

Date of pronouncement : 29 July 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by The Income Tax Officer – 11 (1) (1) Mumbai (the learned AO) against the appellate order passed by the National faceless appeal Centre (Delhi) (the learned CIT – A) dated 1/3/2024 wherein the appeal filed by the assessee against the assessment order passed by the AO under section 143 (3) read with section 147

of The Income Tax Act, 1961 (The Act) dated 28/3/2016, was partly allowed.

2. The learned assessing officer is aggrieved with the order of the learned CIT – A wherein out of the total addition of Rs. 4,669,000/- , the learned CIT – A has deleted the addition of Rs. 69,000 and confirmed the addition of Rs. 46 lakhs, the learned assessing officer is challenging the deletion of the addition of Rs. 69,000/-.
3. Brief facts of the case shows that the assessee filed its return of income on 17/9/2010 declaring total income of Rs. 30,550/-. This return was processed under section 143 (1) of the act on 14/4/2011. Subsequently the information was received that assessee has obtained accommodation entry from Praveen Jain and group companies out of the search action carried out on 1/10/2013. The assessee is found to be the beneficiary by receiving the said application money from 2 companies operated by the accommodation entry provider of Rs 23 lakhs each. Thus, the learned assessing officer recorded the satisfaction that he has reason to believe that income chargeable to tax amounting to Rs 46 lakhs have escaped assessment. The notice under section 148 was issued, which was responded by letter dated 28/3/2015 stating that the original return filed on 17/9/2010 may be treated as return filed in response to notice. Subsequently the reasons were conveyed to the assessee, assessee raised objections, such objections were disposed of on 27/10/2015. Thereafter notice under section 143 (2) was issued.
4. The assessee was found to be the beneficiary of the accommodation entry in the form of share capital of Rs 46 lakhs received from two companies operated by the Praveen Jain and its group company. The assessee was further asked to furnish the details of transaction made with the parties along with the supporting documentary evidence to substantiate the genuineness of the said transaction. Assessee company filed application form, certificate of investment,

board resolution, copy of investment confirmation by investors, cheque number, bank and branch details, affidavit given by the directors of the investment company, balance sheet and profit and loss account along with the income tax return of the investor company. On examination of the detail the learned assessing officer asked further question to the assessee recorded at paragraph number 5.1 of the assessment order. This information was supplied by assessee on 29/2/2016 the learned assessing officer found that the statement given by the accommodation entry provider Mr Praveenjain has confessed that these are all the bogus parties and he used them to provide the accommodation entries. His statement was extensively used by the learned assessing officer the two investor companies were found to be entities operated by that accommodation entry provider. The learned assessing officer asked the assessee to produce the parties for verification assessee failed to do so. AO was asked to issue notice under section 133 (6) of the act. Learned assessing officer perused the information furnished by the assessee and found that the company who have invested in the assessee company were not of any substance, did not carry on any business etc and therefore the amount of investment made by these companies into assessee company is not genuine. As assessee has failed to prove the identity, creditworthiness, and genuineness of the transaction the addition of Rs. 46 lakhs were made under section 68 of the act.

5. Apart from this as Mr Praveen Jain in his statement has also admitted that he gets a one-time commission of 1.25% to 2% of the total transaction value in such transaction and therefore commission at the rate of 1.5% amounting to Rs. 69,000 was added to the total income of the assessee.
6. Consequently, the assessment order was passed determining the total income of the assessee at Rs. 4,699,550/- against the returned income of Rs. 30,550/-.

7. Aggrieved, assessee preferred an appeal before the learned CIT – A wherein assessee filed additional evidence and reiterated what is submitted before the learned assessing officer. For the identity the assessee submitted the permanent account number, corporate identification number and income tax return of the investors. For the creditworthiness assessee submitted audited balance sheet, bank statement, Ledger account and net worth of the investor companies. For genuineness assessee submitted investment confirmation, affidavit of the directors and bank statement of the assessee at the investors. Assessee also submitted that opportunity of cross examination of the accommodation entry providers was not given to the assessee. The written submission was forwarded to the AO along with additional evidence and remand report was obtained. In the remand report learned assessing officer reiterated the findings of the assessment order and stated that the opportunity of cross-examination cannot be allowed to the assessee as it is the duty of the assessee to produce those persons which assessee failed. Further the learned AO category stated that assessee is having the possession of the retracted statement of the accommodation entry providers and therefore it is the duty of the assessee to produce them before the AO and accordingly there is no need of cross examination. It was further stated that the addition is not made based on only the statement of those persons but on failure of the part of the assessee to prove genuineness of the investment where the investor and the assessee Lack financial credentials. The assessee submitted rejoinder which was considered.
8. Based on the same the learned CIT – A decided the issue against the assessee so far as the addition of Rs. 46 lakhs were concerned. The learned CIT held that except allotment of shares for 14 years the assessee did not make any communication, did not give any benefit, did not interact with the shareholders. Further the

documents produced by the assessee are merely façade and does not prove either the creditworthiness of the genuineness or the investors. He further held that onus is very high on the assessee when all those companies who are investor in the assessee are found to be operated by accommodation entry providers. The learned CIT also stated that the real beneficiaries of this fund are the companies in which assessee has transferred the above money. He referred to schedule D of the balance sheet of the assessee company where identical sum is invested in another companies. Assessee also failed to produce directors of the company before Id AO. Therefore, he held that the addition of Rs. 46 lakhs made by the learned assessing officer is in order as assessee has failed to prove the genuineness of the transaction. Over and above, reopening of the assessment was also confirmed.

9. With respect to the commission of Rs. 69,000 he directed the learned assessing officer to delete the addition. This is because assessee is also one of the conduit companies and the beneficiary is somebody else.
10. The learned assessing officer is in appeal for contesting the addition deleted of Rs. 69,000/-.
11. The learned departmental representative vehemently supported the order of the learned assessing officer and despite notice none appeared on behalf of the assessee. Therefore, the issue is decided on the merits of the case.
12. We find that the learned CIT – Ahas deleted the addition of Rs. 69,000 as unexplained commission under section 69C of the act being the alleged commission paid to Mr Praveen Jain. The learned CIT – A has categorically held that the beneficiary of the above sum is another company wherein the assessee obtained unsecured loan of Rs. 46 lakhs for as the said capital and subsequently the same was shown as a loan/investment in another companies as schedule D of the balance sheet of the assessee company. Therefore, as the

beneficiary is somebody else and not the assessee company and perhaps the assessee is also one of the conduit companies, the commission income chargeable to tax in the hands of Mr Praveen Kumar Jain should have been paid by the beneficiaries and not the assessee. In view of this we do not find any merit in the appeal of the AO and accordingly ground number 1 and 2 of the appeal of the AO are dismissed.

13. Accordingly, the appeal of the learned assessing officer is dismissed.
Order pronounced in the open court on 29 July 2024

Sd/-

(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.07.2024

Sudip Sarkar, Sr.PS/Dragon

Copy of the Order forwarded to:

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

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai