

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

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

**ITA No.272/M/2024
Assessment Year: 2012-13**

Sparrows Home Appliances Private Limited 803, 8 th Floor, Jay Antriksh, Makhwana Road, Marol Naka, Andheri (East), Mumbai- 400059. PAN: AAOCS5028F	Vs.	ITO- Ward 11(2)-3 Aayakar Bhawan, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai- 400020.
(Appellant)		(Respondent)

Present for :

Assessee by : Ms. Kinjal Bhuta, A.R.

Revenue by : Shri R. R. Makwana- SR. D.R.

Date of Hearing : 25 . 06 . 2024

Date of Pronouncement : 26 . 07 . 2024

ORDER

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]

vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058742598(1)

Dated 14/12/2023 for the Assessment Year 2012-13.

2. Following grounds of appeal have been raised by the appellant:

- a. *“The Ld. Commissioner of Income Tax Appeals - NFAC erred in not granting the opportunity to be heard through video conference facility, that an order passed without a hearing is against the principles of natural justice and ought to be quashed.*
- b. *The Ld. Commissioner of Income Tax Appeals- NFAC erred in confirming the actions of the Assessing Officer in re-opening the assessment under section 147 of the Income Tax Act, 1961. That the reassessment is void and bad in law.*
- c. *The Ld. Commissioner of Income Tax Appeals- NFAC erred in confirming the actions of the Assessing Officer in treating the loan taken and repaid amounting to Rs.45,00,000/- as unexplained cash credit under section 68 of the Income Tax Act, 1961.*
- d. *All of the above grounds are without prejudice to each other. The appellant craves leave to add, amend, alter, or delete any of the above grounds of appeal.”*

3. The facts of the case, in brief, are that the assessee is a company and has filed a return of income for assessment year 2012-13 declaring total income of Rs.21,100/-. The return was processed u/s. 143(1) of the Income Tax Act. Subsequently, the case was reopened u/s. 147 of the Income Tax Act and the notice u/s. 148 was issued on 24/03/2017 after recording the reasons. In response to that the assessee submitted that original return filed by it be treated as return of income filed in response

to the notice u/s. 148 of the Act. Statutory notices u/s. 143(2) and 142(1) were issued to the assessee from time to time.

4. The case was reopened by the Ld. AO on the ground that the information was received from the DGIT (Inv.) Mumbai that the assessee has taken accommodation entries in the form of loans/advances, equity shares and share application money from Shri. Praveen Kumar Jain and companies of his group concerns which were created for the purpose of providing accommodation entries. It was found from that information that the assessee was one of the beneficiaries of that accommodation entry taken from one, M/s. Josh Trading Pvt. Ltd., which was being controlled and managed by Shri. Praveen Kumar Jain. The Ld. AO, therefore, added a sum Rs.45,00,000/- to the total income to the assessee u/s. 68 of the Income Tax Act on the ground that the assessee company failed to establish the identity, credit worthiness and the genuineness of the transaction.
5. Aggrieved by the order of the Ld. AO, the assessee filed appeal before the Ld. CIT (A) who confirmed the order of the Ld. AO and dismissed the appeal of the assessee on the ground that the assessee had not discharged his onus as required u/s. 68 in respect of the unsecured loan taken from M/s. Josh Trading Company Pvt. Ltd.
6. Aggrieved by the order of the Ld. CIT (A), this appeal has been filed before us. During the appellate proceedings, it was submitted by the

appellant that the loans were taken through banking channels and confirmation of loans were submitted both before the AO during the assessment proceedings and the Ld. CIT (A) during appellate proceedings the gist of which is given as under:-

- *“That the amount of Rs.45,00,000/- was received in the current year itself from Josh Trading Pvt. Ltd. The loan confirmation and bank statement related to receipt of loan amount were submitted during the course of assessment proceedings.*
- *On scrutiny of balance confirmation, it can be observed that the party from whom loan is obtained is identified and have credit worthiness.*
- *It is also important to note that the said loan of Rs.45,00,000/- was repaid in subsequent year quite before the initiation of assessment proceedings. The confirmation along with bank statements was submitted to AO during the course of assessment proceedings. However AO failed to consider the same.*
- *We further state that the appellant had also taken unsecured loans from other parties during the year and confirmation along with bank statements were submitted to AO. The copies of submissions to AO are also attached here with.*

- *The other loans have been duly considered and accepted by AO. However only loan from Josh Trading Pvt. Ltd has been treated as accommodation entries merely on the statement of director of the company given under duress at the time of action u/s.132 of Income Tax Act without considering the facts and circumstances.*
 - *Moreover, the said confession made during search has been subsequently retracted by him. The copy of affidavit of retraction were also submitted during the assessment proceedings but rejected by Ld. AO without considering the facts and circumstances. The copies of affidavit relating to retraction attached here with.*
 - *We totally deny the reasons stated by AO for adding the loan amount u/s.68 of Income Tax Act. Even, though the amount has been repaid in subsequent year.*
 - *We reiterate that appellant has taken genuine loan from Josh Trading Pvt. Ltd and they were not accommodation entries at all but valid loan transactions through proper banking channel.”*
7. The assessee also submitted the confirmation letter from the concerned parties which were submitted before the Ld. AO during the course of assessment proceedings. The appellant thereafter placed reliance on various case laws the decisions of which are given as under:-

- a. *“Moreover, AO cannot make addition u/s. 68 without making proper Inquiries as held in Khandelwal constructions v. CIT 227 ITR 900(Gau). The judgement says that section 68 of Income Tax Act empowers the AO to make inquiries regarding cash credit. If he is satisfied that these entries are not genuine, he has every right to add these as income from other sources. But before rejecting the assessee's explanation, AO must make proper inquiries and in absence of proper inquiries addition cannot be sustained. Moreover, in our case, there is no such entry found.*
- b. *Orient Trading Co. Ltd. v. CIT [1963] 49 itr 723 (Bom.), Jagdamba Construction Co. v. ITO [2004] 82 TTJ (Jd.) (Trib.), ACIT v. Krishna Sheet Processors Pvt. Ltd. [2015] 44 CCH 0280 (Mum Trib), When the entry stands in the name of the third party and the assessee establishes the identity of the creditor and produces evidence showing that the entry is not fictitious, initial burden lying on the assessee stands discharged. If applicant produces the details which establish the identity, capacity and genuineness of the transaction then no addition can be made unless a contrary finding is established by the A.O.*
- c. *In case of CIT vs. Chandela Trading Co. Pvt. Ltd. [2015] 372 ITR 232(Cal). It was held that omission on the part of the creditors to subject themselves to the inquiry initiated by revenue of their*

failure to furnish accounts could not lead to the conclusion that the creditors lacked identity, without any other contradictions of facts and particulars of the transaction between them furnished by the assessee being uncontroverted.

- d. *Bhagwanda Sharda v. Asst. CIT [2004] 82 TTJ (Hyd.) (Trib) 982*
Lender an income-tax assessee confirmed the loan but could not be produced as he was not available. The loan was cleared by assessee before assessment proceedings started. Onus on assessee stood discharged. The addition based on non-production of lender was unjustified. The A.O. had also enquired from the bank the only ground for addition being that cash was deposited and cheque issued to assessee on same day could create a suspicion but not proof. The addition deleted CIT v. Daulat Ram Rawatmull 87 ITR 349 (SC), Sreelekha Banerjee & Ors v. CIT [1963] 49 ITR 112 (SC), CIT v. Laxmi Trading Co. [1979] 117 ITR 439 (cal.) and Dhakeshwari Cotton Mills Ltd. V. CIT [1954] 26 ITR775 (SC) relied on.
- e. *That the assessee had established the identity of the creditors. The assessee had also shown, in accordance with the burden, which rested on him u/s. 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors which was not dispute. Once the assessee had established these,*

the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter, the burden had shifted to the A.O. to prove that contrary.

- f. In a recent decision of Hindusthan Tea Trading Co. Ltd. V. CIT [2003] 263 ITR 289 (Cal.) it was held that the power of the A.O. u/s 68 is not an absolute one. It is subject to his satisfaction where an explanation is offered. The power is absolute where the assessee offers no explanation. The satisfaction with regard to the explanation is in effect an in-built safeguard in section 68 protection the interest on the assessee. It provides for an opportunity to the assessee to explain the nature and source of the fund. Once it is explained, it is incumbent on the A.O. to consider the same and form an opinion whether the explanation is satisfactory or not.*
- g. Duty of A.O. if the conclusion is adverse: if the conclusion is adverse wholly or in part to the interest of the assessee, it is incumbent on the A.O. to intimate or inform the conclusion arrived at to the assessee. When such information or intimation is received by the assessee, the onus shifts on the assessee. He may furnish further explanation or information to support its contention. If further information or materials are furnished, the A.O. is bound to examine the same and form his final opinion and pass an*

appropriate order. Such opinion is also subject to examination by the commissioner (Appeals) or the Tribunal and if it involves a question of law, it is also subject to scrutiny by the High Court.

Considering the above, we request you to delete the addition made under section 68 of Income Tax Act which is not justified.”

Besides above, the appellant also submitted the following decisions in support of its contention:-

- i. Commissioner of Income - tax vs. Orchid Industries (P.) Ltd.
[ITA No. 1433 of 2014] July 5, 2017.
- ii. H. R. Mehta vs. Assistant Commissioner of Income-tax, Mumbai
[ITA No. 58 of 2011] June 30, 2016.

The Departmental Representative of the Revenue, on the other hand, relied on the orders of the authorities below.

8. We have considered the rival submissions. The appellant, in its submissions, has stated as under:

“if the conclusion is adverse wholly or in part to the interest of the assessee, it is incumbent on the A.O. to intimate or inform the conclusion arrived at to the assessee. When such information or intimation is received by the assessee, the onus shifts on the assessee. He may furnish further explanation or information to support its contention. If further information or materials are furnished, the A.O. is bound to examine the same and form his final

opinion and pass an appropriate order. Such opinion is also subject to examination by the commissioner (Appeals) or the Tribunal and if it involves a question of law, it is also subject to scrutiny by the High Court.

Considering the above, we request you to delete the addition made under section 68 of Income Tax Act which is not justified.”

9. It is found from the assessment order that the contentions of the appellant, stated as above, are correct as the AO, before reaching the conclusion that the assessee couldn't establish the identity of the party, credit worthiness and the genuineness of the transaction, should have given the appellant a chance for rebuttal on its finding. In the absence of that, no addition can be sustained.
10. Thus, we set aside the impugned order and remand the matter back to the file of the AO to provide the appellant adequate opportunity of being heard to rebut the finding of the AO. We are not commenting on the merit of the case.
11. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 26.07.2024.

**Sd/-
AMIT SHUKLA
JUDICIAL MEMBER**

**Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.07.2024.

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.