

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1347/MUM/2024
(Assessment Year: 2012-13)**

Income Tax Officer - 24(1)(1),
Room No. 604, 6th Floor,
Piramal Chambers,
Lalbaug, Parel, Mumbai - 400012

..... **Appellant**

Vs

Drapewell Garments
7/8 A Wing, 1st Floor, Raj Industrial
Complex, Military Road Marol,
Andheri (E), Mumbai - 400059
[PAN: AAAFD0110C]

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Shri Himanshu Sharma (CIT DR)

Date

Conclusion of hearing : 01.07.2024
Pronouncement of order : 02.08.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order dated 24/01/2024, passed by the Learned Commissioner of Income Tax, Appeals – National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had partly allowed the appeal of the Revenue against the Assessment Order, dated 27/12/2019, passed by the Income Tax Officer 24(1)(5), Mumbai under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The Revenue has raised following grounds of appeal in ITA No.

1347/Mum/2024:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 15,88,890/- made on account of Bogus loan without appreciating the findings of the search and post search M/s. confidence Finance and Trading Ltd. (CFATL) wherein the company has admitted u/s 132(4) of the Act to have indulged in providing accommodation entries to various beneficiaries in the form of loans and to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt Capital Gain or Short term capital Loss in their books of account which clearly falls under the provisions of section 115 of the India Evidence Act and hence, the case is hit by provision of section 115 of the Indian Evidence Act?*
 2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the fact that the Assessing Officer had brought sufficient evidence on record to establish that the identity, genuineness and creditworthiness of the lenders have remained unexplained?*
 3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not upholding the addition made by the A.O. even though it is well established that the modus operandi of obtaining accommodation entries of unsecured loan had to be considered in the light of surrounding circumstances, normal course of human conduct and preponderance of probability?"*
 4. *Whether on the facts and in the circumstances of the case and in law, in consequence to the question of law, the Id. CIT(A) was justified in not upholding the additions made by the A.O. amounting to 15,00,000/- on account of bogus loan taken and 88,890/- on account of interest paid on loan taken."*
 5. *The appellant craves leave to amend or alter or add a new ground which may be necessary."*
3. The relevant fact in brief are that Assessee filed return of income

for the Assessment Year 2012–13 on 20/09/2012, declaring total income of INR3,09,790/-. The return of income was processed under Section 143(1) of the Act. Subsequently, information was received from the Deputy Director of Income Tax (Investigation) Unit 8–(2), Mumbai that a search operation under Section 132 of the Act was carried out in the case of M/s. Confidence Finance and Trading Ltd [for short '**CFT**'], a penny stock company listed on Bombay Stock Exchange, which has been facilitating the introduction of unaccounted income in the form of tax exempt capital gains in the books of accounts of various beneficiaries. During the course of search, it was noticed that the Assessee had also taken a loan of INR 15,00,000/- from CFT. On the basis of the aforesaid information, the Assessing Officer formed belief that the Assessee has availed accommodation entry of bogus loan amounting to INR 15,00,000/- and had claimed deduction for interest of INR.99,616/- paid in respect of the same. Thus, Assessing Officer concluded that income of INR 15,99,616/- had escaped assessment.

4. Accordingly, notice under Section 148 of the Act was issued, to the Assessee requiring the Assessee to file return. In response, the Assessee file return of income. Subsequently, notice under Section 142(1) of the Act was issued to the Assessee calling upon the Assessee to furnish relevant details and/documents. In response the Assessee filed reply letter, dated 19/12/2019, contending that the loan transaction with CFT was genuine transaction undertaken by the Assessee during the normal course of business. In support of the aforesaid contention, the Assessee filed various details and documents. However, the Assessing Officer was not convinced and proceeded to make addition of INR 15,00,000/- in respect of loan taken from CFT under Section 68 of the Act and addition of INR.88,890/- under

Section 69C of the Act in the respect of interest paid on the said loan vide Assessment Order, dated 27/12/2019, passed in section 143(3) read with section 147 of the Act.

5. Being aggrieved, Assessee challenged the above Assessment Order, dated 27/12/2019, in appeal before the CIT(A). Vide order dated 24/01/2024, the CIT(A) dismissed the challenge to the validity of re-assessment proceedings, but granted relief to the Assessee on merits by deleting the aggregate addition of INR 15,88,890/- made by the Assessing Officer.
6. Being aggrieved by the order, dated 24/01/2024, passed by the CIT(A), the Revenue has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
7. We have heard the Learned Departmental Representative and perused the material on record.
8. On perusal of the order passed by the Authorities below, we find that the Appellant had furnished the following documents/details during the assessment proceedings:
 - (a) Loan Confirmation from CFT
 - (b) Relevant bank statement of Citi Bank evidencing the receipt of loan of INR.15,00,000/- by the appellant from CFT on 12/9/2011 which was also reflected in the bank account on 13/09/2011.
 - (c) Relevant bank statement of Citi Bank evidencing the payment of interest of INR.89,654/- by the Appellant to CFT on 27/04/2012 which was also reflected in the bank account on 11/05/2012.
 - (d) Relevant bank statement of Citi Bank evidencing the payment of principal and interest of INR.15,40,833/- by the Appellant to CFT on 2/07/2012 which was also

reflected in the bank account on 04/07/2012.

- (e) Income Tax Return Acknowledgment of CFT for Assessment Year 2012-13 and Assessment Year 2013-14.
- (f) Relevant bank statement of Axis Bank evidencing the payment of loan of INR.15,00,000/- to the Appellant on 13/09/2012 which was also reflected in the bank account on 13/09/2012.
- (g) Relevant bank statement of Axis Bank evidencing the receipt of principal and interest of INR.15,40,833/- by CFT from the Appellant 04/07/2012 which was also reflected in the bank account on 04/07/2012.

9. By filing/furnishing the above documents/details the Assessee had discharged the primary cast upon the Assessee under Section 68 of the Act to prove identity and creditworthiness of the lender as well as genuineness of the transaction. On the other hand, Assessing Officer had failed to bring on record any material to controvert the submissions made by the Assessee or to challenge the veracity of the documents placed on record by the Assessee. Further, on perusal of the Assessment Order we find that the reasoning given by the Assessing Officer lacks clarity. In paragraph 13 of the Assessment Order, the Assessing Officer has recorded as under:

"13. The reply of assessee of show cause notice dated 18.12.2019 for AY 2012-13 is duly considered and find it not tenable. Further, the assessee has requested for an opportunity to cross examine the party. I rely on the judgment of honorable ITAT Delhi 'G' Bench in the case Sliri Nawal Kishore, ITA No. 1705/Del/2019 V/s ITO Wd 47(2) dated 06.09.2019:

"Wherein it has been observed by the Hon'ble ITAT that As far as contention of the learned counsel that no opportunity of cross examination of statement of

share broker relied upon by the AO is concerned, we find that the revenue has not merely relied on the statements of the relevant broker but also has taken into account other circumstantial evidences and the assessee was asked to justify the genuineness of the transactions which he had failed."

In view of the detailed discussions made above, it is only a colorable device adopted by the assessee in connivance with the operator/promoters/entities controlled by the operators to bring in his unaccounted money in the garb of long term capital gains/STCL//Loan/Business Loss to avoiding the payment of taxes and penalties. Though the transaction is through Stock Exchange and even if the payment is by cheque, the transactions cannot be treated as genuine.

Hence, the Loan amount of Rs. 15,00,000/- taken from M/s Confidence Finance and Trading Ltd is treated as unexplained cash credit u/s 68 of the IT Act and added to the total income of the assessee. Penalty proceedings u/s. 271(1)(c) of the Income Tax Act, 1961 is hereby initiated separately for concealment of particulars of income.

The interest paid on loan taken is treated as unexplained expenditure u/s 69C of the Income Tax Act and therefore an amount of Rs.88, 890/- is added back to the total income of the assessee. Penalty proceedings u/s. 274 r.ws. 271(1)(c) of the Income Tax Act, 1961 is hereby initiated separately for concealment of particulars of income." (Emphasis Supplied)

10. In the present case, the Assessee has taken loan from CFT. The question of undertaking transaction through stock exchange does not arise. It is not the case of the Assessing Officer that the Assessee has claimed exemption for long-term capital gains during the relevant previous year. In our view, the addition/disallowance was made by the Assessing Officer on the basis of conjuncture and surmise. The Assessing Officer had failed to carry out any independent enquiry/investigation before rejecting the various document/details furnished by the assessee. The aforesaid aspects were appreciated by the Ld

CIT(A) who decided the appeal in favour of the Assessee observing as under:

"6.4.2 I have perused the assessment order and the submission of the appellant. This is a case where loans have been obtained by the assessee and have been subsequently repaid after payment of interest and deduction of tax at source. If the Assessing Officer suspected the transactions to be non-genuine, he should have done further enquiry to bring some evidence on record to show that the transactions are not genuine. The Assessing Officer is totally silent on this front. When the assessee has discharged its primary onus of proving the transactions as genuine, the onus shifted to the Ld.AO who had not discharged the onus but has merely brushed aside the evidences furnished by the assessee and made the addition on suspicion and presumption. An addition based only on the basis of suspicion and presumptions in the absence of any adverse finding cannot be sustained. The Ld.AO is directed to delete the addition of Rs. 15,00,000/- made u/s. 68. The Hon'ble Jurisdictional High Court in the case of Pr.CIT vs Veedhata Tower Pvt.Ltd, order dated 21.04.2018 has held that "When all the necessary details of the fund provider was available with the assessing officer, he was free to make the necessary enquiry and addition under section 68 in the hands of the recipient were unjustified."

6.4.3 Furthermore, assessee has also paid interest to the lender and has also deducted tax at source. Loan has been duly repaid in the next F.Y. In these circumstances, in my opinion the assessee has discharged the onus cast upon him by the law. The assessing officer has not brought on record any cogent material to make the addition as unproved cash credit. In view of the same the AO is directed to delete the addition of Rs. 15,00,000/- u/s 68 of the Income Tax Act. The ground of appeal 3 is allowed.

6.5 The appellant in its ground of appeal has assailed the AO for disallowing an amount of Rs. 88,890/- being interest paid to M/s CFATL on the loan taken. The appellant has submitted that while doing so, the Appellant has also duly

withheld taxes on the amount of interest. The appellant has further submitted that during the course of re-assessment proceedings, the Appellant had submitted relevant extracts of the bank account statement of the Appellant evidencing the payment of such interest. The appellant has pleaded that since the Appellant has provided all details and documents in respect of the said interest expenditure, no disallowance should be made under Section 69C of the Act.

6.5.1 I have perused the assessment order and the submission of the appellant. It is seen that the loan was repaid in the very subsequent year. The assessee has paid interest after deducting tax at source. The AO needs to verify if M/s CFATL has shown the interest received from the appellant in its return of income. If it is so the interest paid on these loans on which TDS is also made is to be considered genuine while passing the appeal effect order. The ground of appeal 4 is allowed for statistical purpose.

11. On perusal of the above, we do not find any infirmity in the above order passed by the CIT(A). Concurring with the findings returned by the CIT(A), we dismiss Ground Number 1 to 4 raised in appeal by the Revenue
12. In result, the appeal preferred by the Revenue is dismissed.

Order pronounced on 02.08.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 02.08.2024
Poonam Mirashi,
Stenographer

आदेश की प्रतिलिपि ँ त्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai