



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRISUNIL KUMAR SINGH, JM

ITA No. 308/MUM/2024

A.Y.2011-12

Ranajay Developers Pvt. Ltd.
20, Station View Building,
N.G. Acharya Marg,
Chembur (East)
Mumbai 400071

Vs.

The Income Tax Officer-
14(3)(1),
Mumbai

(Appellant)
PAN
Assessee by
Revenue by

(Respondent)
AACCR 8916M
Shri Haridas Bhatt

Shri Ms. Sanyogita Nagpal,
CIT(DR),

Date of hearing

21st May, 2024

Date of pronouncement

19 August 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. M/s Ranajay Developers Private Ltd. (the assessee/appellant) has filed this appeal for Assessment Year (2011-12) against the appellate order passed by the National Faceless Appeal Centre (NFAC), Delhi (the learned CIT(A)) dated 19/12/2023 wherein the appeal filed by the assessee against assessment order passed under section 143 read with section 147 of the Income Tax Act, 1961 (the Act) dated 27.12.2017 by the Income Tax Officer-14(3)(1) (the Assessing Officer), was dismissed.



2. Assessee is aggrieved and has raised following grounds of appeal: –

“Ground I

- a. On the facts and circumstances of the case, and in Law the Additional / Joint/ Deputy / Assistant Commissioner of Income Tax/ Income-tax Officer, National Faceless Assessment Centre, Delhi, The AO erred reopening the assessment of the appellant under section 147 of the assessment without fresh tangible material . The A erred in reopening application of mind and without having valid reason to believe that income had escaped assessment simply on the basis of information received and without any specific material against assessee.

Ground II

- a. On the facts and circumstances of the case, and in Law, the Additional / Joint / Deputy / Assistant Commissioner of Income Tax/ Income-tax Officer, National Faceless Assessment Centre, Delhi the AO erred in making the addition as unexplained cash credit us 68 of Rs 2,75,00,000 by treating amount received as accommodation entry.
- b. On the facts and circumstances of the case and in law the AO failed to appreciate that before making the addition of Rs 2,75,00,000 ought to have considered the evidenced furnished by the appellant in support to establish genuineness of



transactions like ledger confirmation, Bank statement reflecting receipt of money and repayment of amount received.

Ground III

- a. On the facts and circumstances of the case and in law the AO erred in passing the order u/s 147 r.w.s. 143(3) of the Act instead of section 153 of the Act as the assessee case was selected for scrutiny based on information found from search and seizure in case of third party.
 - b. The appellant craves leave to produce additional evidence if any in support of Its claim in the course of appeal hearing. The appellant craves leave to add to, alter, and/or amend the above grounds of appeal.”
3. The brief fact of the case shows that assessee is a Private Limited Company engaged in the business of buildersand developer who filed return of income on 16.09.2011 at a total income of Rs.2,25,430/-. It was processed u/s.143(1) of the Act.
 4. Subsequently information was gathered by the Investigation Wing that assessee has taken accommodation entries from certain parties and has shown bogus loan/share premium belonging to Shri Shrish Chandrakant Shah who have been found to be an accommodation entry provider. There was a search on him, and field enquiry was also conducted. Based on this, the satisfaction was recorded under Section 147 of the Act, wherein it was noted that on 27.04.2010 and 29.04.2010 in six trenches



assessee had taken accommodation entry of Rs.2,75,00,000/- from M/s. Empower Industries India Limited. Based on this, notice u/s.148 of the Act was issued to the assessee. The assessee filed its objection which was duly disposed of on 05.09.2017. Subsequently, under Section 143(2) notice was also issued wherein assessee submitted that original return of income filed may be treated as return in response to notice under Section 148 of the Act.

5. During the course of assessment proceedings, a show cause notice was issued to the assessee that why the above amount of Rs.2,75,00,000/- should not be treated as non-genuine transaction and be added to the total income of the assessee u/s.68 of the Act.
6. The assessee submitted that it is engaged in the development of slum rehabilitation projects in India. The assessee submitted.
 - i. Confirmation of Empower Industries Ltd.
 - ii. bank account of lender
 - iii. ledger account of lender from the books of assessee
 - iv. utilization of funds received from M/s Empower Industries Ltd
 - v. details of subsequent repayment of loan to the above party.
7. Assessee submitted this information and stated that assessee has discharged onus cast upon , which have not been rebutted. The assessee also relied upon the several judicial precedents stating that when the assessee has discharged its onus by submitting all the details the onus shifts to the Revenue.



8. The learned Assessing Officer held that during the course of search on Shri Shrish Chandrakant Shah, it was found that he has provided the bogus accommodation entry of Rs.2,75,00,000/- from M/s. Empower Industries India Ltd to the assessee. The Assessing Officer was of the view that all these entities are non-existing and have dummy Directors. Further statement of Mr. Shri Shrish Chandrakant Shah also shows that these companies are merely shell Company without any activity or employees. All these entities are also engaged in providing accommodation entry only as Shri Shrish Chandrakant Shah has floated dummy entities. Assessee merely furnished confirmation and bank statement which did not prove the creditworthiness of the lender and genuineness of the transaction. In view of the above facts, the learned Assessing Officer treated the above sum of accommodation entries of Rs.2,75,00,000/- as unexplained cash credit and added u/s.68 of the Act by reassessment order dated 27.12.2017 determining the total income of the assessee at Rs.2,77,25,430/-.
9. The assessee aggrieved with the above assessment order preferred an appeal before the learned CIT(A) challenging the reopening of the assessment as well as the addition on merits. The learned CIT(A) confirmed the reopening of the assessment holding that there is credible information from the Investigation Wing that Shri Shrish Chandrakant Shah has provided accommodation entry to various parties through various dummy entities. The assessee was also found to be a beneficiary of Rs.2,75,00,000/- as a loan from M/s. Empower Industries Ltd. The assessee filed its return of income, which was not picked up for scrutiny, therefore, the Id. AO had tangible material and reason to believe that the income has escaped assessment. The Assessing Officer applied his mind



independently to the information received and, therefore, he had reopened assessment validly.

10. On the issue of the merits, he held that the learned Assessing Officer has clearly brought out the facts that M/s. Empower Industries Ltd. was one of the entities which existed only on the paper to facilitate clandestine transaction like accommodation entries. The same was admitted by Shri Shrish Chandrakant Shah. Therefore, mere facts that the transaction were done through banking channel, or the transactions are squared off in the same year does not prove that the original credit was genuine. Further the confirmation was without any proper date and same was obtained after the search and u/s.132 of the Act of Shri Shrish Chandrakant Shah wherein he has already admitted that these entities were providing only accommodation entries. He held that M/s Empower India Industries Ltd. Lacks requisite creditworthiness to carryout the transaction and also the genuineness is not proved. Accordingly, he confirmed the above of Rs.2,75,00,000/- u/s.68 of the Act.
11. The assessee aggrieved filed this appeal before us. The learned Authorized Representative contesting the issue on the merits of the case referred to paper book filed containing 40 pages and a note on the merits. Learned Authorized Representative claims that assessee has submitted a letter dated 20.11.2017 before the learned Assessing Officer wherein assessee submitted the confirmation from M/s. Empower Industries Ltd. from the books of that company. He referred to the confirmation and submitted that assessee has accepted the loan through banking channel from above company in six trenches amounting to Rs.2,75,00,000/- which was also repaid in three trenches on 28.06.2010, 10th and 13th July 2010. Therefore, the assessee has repaid the sum above. The assessee also submitted the copy of



the Bank Statement of M/s. Empower Industries India Ltd. with YES Bank wherein the above sum is available with the above company. He submitted that the source of funds is also proved in the hands of the depositors. Thus, assessee also proved creditworthiness of the lender. He further submitted that the above amount has been repaid to the lenders, which was also reflected in the above bank statement of lender. He submits that funds received by the assessee from M/s. Empower Industries Pvt. Ltd. have been utilized for the purposes of business of the assessee. The assessee also referred to the statement of source of fund for repayment of the above loan. The learned A.R. further referred to the Bank statement of the assessee with COSMOS Bank wherein the loan is received and wherefrom loan is repaid. The learned A.R. further referred to various submissions made before the learned Assessing Officer and learned CIT(A). He contended that when the assessee gives the explanation along with evidence to establish the genuineness of the loan transaction like ledger confirmation and Bank Statement the learned Assessing Officer without verifying the same has made the addition. The learned CIT(A) has also confirmed the addition. The learned Authorized Representative further referred to the decision of the Hon'ble Supreme Court in PCIT vs. Kuntala Mohapatra wherein the decision of the Hon'ble Orissa High Court in ITA No. 23 of 2022 dated 09.02.2023 was dismissed.

12. He submitted that the company had a slum rehabilitation project at Chembur, Mumbai to execute such project assessee was looking for partners to bring in necessary fundings. After several run of discussion that Empower Industries India Ltd., agreed to invest initially Rs.2.75 crores. On receipt of these funds as the deal could not be decided, assessee used these funds in his group concern because the project of the company was at initial



stage and the funds were not required immediately. As the Empower Industries India Ltd raised strong objection to the funds being utilized in the group concern the company had to return the initial contribution of Rs.2.75 crores immediately. Therefore, these funds were available with the assessee company for a small period.

13. The learned Authorized Representative further submitted that there is a change in management and shareholders, because of this the present promoters and Directors of the Company were not aware about this transaction and, further the loan transaction did not appear in the final account as same was repaid. To prove the above contention, the assessee further submitted proof of change in Directors and shareholder of the Company. He further submitted that because of the change in the shareholder and Director the address of the company was also changed from Andheri West to Chembur East. Requisite Form-18 of the company Act was also filed. He further referred to the declaration of indemnity from the old Director and shareholder to the new Directors. He submitted that the assessee did not have an opportunity to challenge the statement of entry operator and no opportunity to cross examine the same was given to the assessee and in that case the addition could not have been made. He submitted that the assessee did not have an opportunity to challenge the statement of entry operator and no opportunity to cross examine the same was given to the assessee and in that case the addition could not have been made.
14. The learned Departmental Representative submitted that the information dated 21.02.2017 received from the Deputy Director of Income Tax, Mumbai to the Assessing Officer in case of the assessee wherein it was categorically stated that Director Mr.



Akshay Motilal Shah stated u/s.131 that no agreement or any memorandum who understanding was entered by the assessee with anybody, and, therefore, the explanation of the assessee that there was an understanding between the Empire India Industries and assessee is incorrect. He also enclosed the copy of the statement of the Director dated 17.08.2016 wherein Mr. Akshay Shah Director of the company was recorded. The learned Departmental Representative further submitted that the undisputedly the assessee has obtained loan in the form of an accommodation entry of Rs.2.75 crores from M/s. Empower Industries India Ltd. The assessee could not submit anything other than the confirmation from that company and Bank statement of the lenders. Despite opportunities available to the assessee before the Assessing Officer, the assessee could not submit any information about the creditworthiness of the lender as well as the genuineness of the transaction. It was further stated that assessee has never sought cross examination of anybody and, therefore, the decision of the Hon'ble Orissa High Court does not help the case of the assessee. He further submitted neither the balance sheet, nor the activities of the lender were disclosed by the assessee.

15. Ld. DR submits that the claim of the assessee that there was a change in shareholder and Directors of the assessee company and the assessment proceedings were attended by old Directors and Shareholders is irrelevant as before income tax assessee is this company.Ld. AO has nothing to do with the changes in shareholder and directors of the assessee company. He further submitted that as the loan was repaid during the year it did not appear in the balance sheet is an excuse raised by the assessee which does not have any relevance. It was further stated that the repayment of loan does not absolve assessee from proving three ingredients of loan of Identity,



Creditworthiness of lenders and genuineness of the loan. Provision of Section 68 of the Act is required to be seen at the time of credit of the sum. In this case, the assessee has failed to show the identity, creditworthiness and genuineness of the transaction and, therefore, lower authorities have correctly made addition u/s.68 of the Act.

16. In the rejoinder, the learned Authorized Representative submitted that assessee has raised the issue of change in directors and shareholder for the reason that, the old directors and the present directors handled assessment proceedings did not have any information about the transactions made by the old directors. Therefore, till the change in directorship, Old Directors have executed indemnity in favour of the new directors about the tax liability of the company. Therefore, in real sense the present Directors and shareholders did not have any opportunity of hearing or submitting the details. He submitted that all the documents furnished of the change in shareholding clearly show that the real owners of the company did not get any opportunity of hearing.
17. We have carefully considered the rival contentions and have perused the orders of the learned Lower Authorities. The brief facts show that assessee has obtained a loan of Rs.2.75 crores from M/s Empower Industries Ltd. and return during the same financial year. Naturally, therefore, the accounting entries of loan and its repayment did not appear in the balance sheet as the whole transaction concluded during the financial year itself. The Income Tax Department found that the assessee is the beneficiary of accommodation entries provided by entity operator Shri Shrish Chandrakant Shah. The Income Tax Department had information along with statement of the accommodation entry provider that M/s Empower Industries Ltd.



is one of the entities operated by Shri Shrish Chandrakant Shah for providing accommodation entries. Therefore, the assessee is duty bound to prove identity and creditworthiness of the depositor M/s. Empower Industries Ltd. and also the genuineness of the transaction. Assessee merely submitted confirmation and bank statement of lender. These two documents do not prove the three ingredients of any cash credit as per provisions of section 68 of the Act.

18. However, the claim of the Id AR is that there was a change in shareholding and directorship due to take over of the company by a different management then old management. The Transaction happened in the period during the tenure of old directors. Thus, present shareholders and directors were not at the helm of affairs of this company at that time. Due to indemnity agreement between new management and old management, this assessment was handled by the old management through their directors and so present management is not aware about the facts of impugned loan.
19. To examine this argument, it is necessary to look at the facts produced before us. Impugned assessment year is AY 2011-12. In fact , search was conducted at place of Shri Shrish Chandrakant Shah in October 2013. The reassessment proceedings commenced in 2017 resulting in assessment order passed on 27.12.2017. Earlier company had two Directors Mr.Jimit Ramesh Shah and Ramesh Virji Shahwho resigned as a director w.e.f. 29.01.2013 and from the same date Mr. Akshay Shah was appointed as a director w.e.f. 12.02.2013 Mr. Ramesh Raichand Shah Director of the Company also resigned along with Mr. Jagdish RaiChand Shah w.e.f. 1.12.2013. Address of the company has alsochanged, which is reflected in Form-18. There is also a declaration of indemnity executed by Mr. Ramesh Shah



and Mr. Jimit Ramesh Shah on 07.02.2013 wherein both of them have transferred 11,500 shares of the above company in the name of new shareholder. Further, on the receipt of the assessment order dated 27.12.2017 the new shareholder also issued a legal notice to the former Directors and shareholders of the assessee company for the payment of due tax arising on the company due to the impugned proceedings. In the notice it is mentioned that due to the change in the Directors of the above company as the old promoters of the assessee company sold the shares to the new promoters and the current promoters were not aware about the above transaction, they could not represent the case before the Assessing Officer and same was represented by old partners only. This is so for the reason that indemnity agreement was executed between them, naturally present directors of the company did not have any opportunity to represent the case before the Assessing Officer. As the addition has been made without any effective opportunity to incumbent Directors of the company, in the interest of justice, we restore the issue back to the file of the learned Assessing Officer with the direction to the assessee to prove, identity and creditworthiness of the M/s. Empower Industries India Ltd. and the genuineness of the transaction of obtaining loan from above company. We make it absolutely clear that all these three ingredients are required to be satisfied at the time of credit of the sum in the books of the assessee company and subsequent repayment does not prove or disapprove of any or all these three ingredients. Further the indemnity agreement between the old shareholder and the new shareholders of the assessee company has nothing to do with the assessment of the company and it is their internal matter. As the facts are peculiar and it is apparent that old promoters who were part of Shri Shah Group have represented before the Assessing Officer, in the interest of



justice, we give one more opportunity to the assessee to substantiate its claim. All the issues of reopening and any other argument are left open.

20. In the result, the appeal of the assessee is restored back to the file of the learned Assessing Officer with the direction to the assessee to furnish the necessary details before the Assessing Officer with 90 days from the date of receipt of this order. The Id. Ao may decide the issue afresh after pursuing the information furnished in accordance with the law. Sd/-
21. In the result, the appeal of the assessee is allowed for statistical purposes and as indicated above.

Order pronounced in the open court on 19/08/2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 19.08.2024

Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

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