

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM**

ITA No.3221/Mum/2024
(Assessment Year: 2014-15)

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| S P Industries B/601, Harmony Building, Opp. Damodar Wadi CA Road, Kandiali (E), Mumbai-400 101 | Vs. | Asst. CIT-33(3) 4211, Kautilya Bhawan, Bandra (E), Mumbai-400 051 |
| PAN/GIR No. ABBFS 50504 K | | |
| (Assessee) | : | (Respondent) |
| Assessee by | : | Shri Shyam Saboo |
| Respondent by | : | Shri Shambhu Yadav |
| Date of Hearing | : | 19.08.2024 |
| Date of Pronouncement | : | 21.08.2024 |

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2014-15.

2. The assessee has challenged the addition made by the Id. Assessing Officer ('A.O.' for short) u/s. 68 of the Act towards the loan taken by the assessee from four parties aggregating to Rs.1,18,00,000/-.

3. The brief facts of the case are that the assessee is a partnership firm engaged in the manufacturing of plastic bags and had filed its return of income on 29.11.2014, declaring total income at Rs.13,59,670/- and the same was processed u/s. 143(1) of the Act. The

assessee's case was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

4. The ld. A.O. observed that the assessee firm had taken unsecured loans aggregating to Rs.4,70,20,370/- from various parties. The ld. A.O. then sought for details pertaining to the loan transaction with four companies and after considering the submission of the assessee held the same to be unexplained credits u/s. 68 of the Act for the reason that the assessee has failed to prove the identity and creditworthiness of the creditors and the genuineness of the transactions. The ld. A.O. passed the assessment order on 27.12.2016 u/s. 143(3) of the Act, determining the total income at Rs.1,31,59,670/- after making an addition of Rs.1,18,00,000/- u/s. 68 of the Act.

5. Aggrieved, the assessee was in appeal before the first appellate authority who vide order dated 20.05.2024 upheld the addition made by the ld. A.O. on the ground that the assessee has failed to furnish any supporting documentary evidence in support of its contention.

6. Further aggrieved, the assessee is in appeal before us, challenging the order of the ld. CIT(A).

7. During the appellate proceeding, the learned Authorised Representative ('ld. AR' for short) for the assessee contended that the assessee had filed all the relevant documentary evidence such as the confirmation from the creditors, their IT returns, bank statement and the financial accounts of the alleged creditors before the first appellate authority. The ld. AR further contended that the lower authorities have erroneously held

the said loan to be an interest free loan and also stated that the assessee had paid the interest for the said loan to these parties for which TDS has been duly deducted by the assessee and the proof of the same has also been filed to justify that these are not interest free loans taken by the assessee. The Id. AR also brought our attention to the fact that the assessee has repaid the loans to the creditors in the subsequent year which is also reflected in the books of the assessee company along with the interest till the date of repayment. The Id. AR relied on the following decisions:

- *CIT vs. Ayachi Chandrashekar Narsangji* [2014] 42 taxmann.com 251 (Guj)
- *Dy. CIT vs. Rohini Builders* [2003] 127 Taxman 523 (Guj)
- *The DCIT vs. Tripoli Management Pvt. Ltd.* (in ITA No.5/Ahd/2024 vide order dated 01.08.2024)

8. The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said facts and stated that the creditors had not responded to section 133(6) notice issued by the Id. A.O. and contended that the balance sheet of the said creditors did not have sufficient reserves and surplus. The Id. DR also stated that the assessee has failed to prove the identity, creditworthiness of the creditors and the genuineness of the transaction as warranted u/s. 68 of the Act. The Id. DR relied on the orders of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. The only issue that has to be adjudicated in this appeal is whether the loan received by the assessee from various creditors are genuine and whether the said loan pertains to an interest free loan as alleged by the lower authorities. It is observed that the assessee has availed loans from the following companies aggregating to Rs.1,18,00,000/-

which according to the Revenue was not substantiated by the assessee to be a genuine transaction. The Id. A.O. observed that on perusal of the balance sheet of M/s. Ganesh Retailer P. Ltd. which is one of the creditor, there are only reserves and surplus out of the share premium account and not in the business account of the said company and held that the same has to be utilized only for commercial purpose and not for advancing interest free loan as in this case. Even in case of other creditors, the Id. A.O. held that they did not have the credit worthiness to advance loan to the assessee. Further the assessee has submitted that it was unable to furnish the details pertaining to these transactions during the assessment proceeding but had stated that the said loans were repaid during F.Y. 2014-15 itself and the same is reflected in the ledger copy filed by the assessee. The assessee also states that as per the Companies Act, the companies can give loans upto 100% of its reserves and surplus or 60% of its paid up capital, whichever is more. The only restriction on the companies is that it cannot give loan on call money without issuing shares. The Id. A.O. rejected the contention of the assessee and further held that the monies were credited to the bank account of the said companies and were immediately lent to the assessee, raising a suspicion that these are bogus transactions. The Id. CIT(A), on the other hand, has observed that the assessee had filed additional evidences as per Rule 46A(a) of the Rules for which the Id. CIT(A) has sought for a remand report from the Id. A.O. and inspite of several opportunities given, the Id. A.O. never filed the report nor made any compliance before the first appellate authority. The Id. CIT(A) has further held that the assessee has not filed the supporting documents along with its submission, thereby upholding the addition made by the Id. A.O. The Id. DR was unable to controvert the fact that the assessee has filed the supporting documentary evidences before the first

appellate authority and even otherwise in the order of the Id. CIT(A), it is specified that the assessee has filed the additional evidences which were not filed before the Id. A.O. From this, it could be inferred that the assessee has filed the relevant documents to substantiate the transaction to be a genuine transaction. It is also pertinent to point out that the assessee has discharged the initial onus casted upon it as per section 68 of the Act to prove identity, genuineness, creditworthiness of the transaction where the onus shifts on the revenue to enquire into the said documents and to negate the same as non genuine. In the present case in hand, the Id. A.O. during the assessment proceeding had not made any enquiry as to the existence of the alleged companies which has given loan to the assessee. Further, the Id. CIT(A) has also not gone into the veracity of the documents filed by the assessee and the Id. A.O. has also not filed the remand report called for by the Id. CIT(A). Pertinently, the lower authorities have given a finding that the loan is an interest free loan, whereas the assessee has furnished the details of the TDS deducted towards the interest paid to its creditors. The assessee has also contended that the interest paid to the creditors was duly declared as 'income' in the hands of the respective creditors which fact was also not verified by the lower authorities. Though we are conscious of the fact that the initial burden is upon the assessee, we are also in agreement that the lower authorities have not sufficiently made enquiries as to the identity, creditworthiness and genuineness of the transaction on the basis of the documentary evidences filed by the assessee.

10. The Id. AR has placed reliance on the decision of the Hon'ble Gujarat High Court in the case of *Rohini Builders* (supra) which has held that merely because summons

issued to the creditors has not been served or the said creditors have failed to appear, the same cannot be treated as 'non genuine credits'. It has also held that when the Id. A.O. has not disallowed the interest paid on such credits for which TDS has been deducted, the same becomes a ground for deleting the addition. The Id. AR also placed reliance on the decision of the Hon'ble High Court of Gujarat in the case of *Ayachi Chandrashekhar Narsangji* (supra) which has held that when the repayment of the loan in the subsequent year has been accepted and not disputed, the same is held to be a valid reason for not remanding the issue back for verification as to the genuity of the loan transaction.

11. On the above factual matrix of the case, we hold that the Revenue has failed to establish the loan transactions entered into by the assessee with the alleged companies to be a non genuine transaction due to lack of enquiry by the lower authorities and the same does not warrant the matter to be remanded back to the lower authorities for the reason that the Id. A.O. and the Id. CIT(A) ought to have contradicted the documentary evidences filed by the assessee at the very first instance, else there would be no end to the litigation. We are, therefore, inclined to delete the addition made in the hands of the assessee, thereby allowing the grounds of appeal raised by the assessee.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21.08.2024.

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated : 21.08.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai