



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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 3296/MUM/2023

A.Y.2018-19

ACIT,
Central Circle 1(4),
Mumbai, Pratishta Bhavan,
Mumbai

Vs.

GHV Hotel (India) Pvt. Ltd.,
Kedy Compound , Near
Bombay Mercantile Coop
Bank Limited
Nagpada Junction
Mumbai 400008

(Appellant)

(Respondent)

PAN

AADCG 0971E

Assessee by

None

Revenue by

Dr. Kishor Dhule, CIT(DR),

Date of hearing

20th June, 2024

Date of pronouncement

29th August 2024

O R D E R

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by the Assistant Commissioner of Income Tax, Central Circle 1(4), Mumbai (the learned AO) for A.Y. 2018-19 against the appellate order passed by the Commissioner of Income



Tax (Appeals)-47 Mumbai [the learned CIT(A)] dated 11.07.2023 wherein the appeal filed by the assessee against the reassessment order dated 19.12.2022 passed u/s. 147 of the Income Tax Act, 1961 (the Act) by the Deputy Commissioner of Income Tax, Central Circle 1/2, Mumbai was partly allowed.

2. The learned Assessing Officer is aggrieved by the appellate order stating that the addition of bogus loans have been deleted without going into the merits of the case discussed in the assessment order and not appreciating the fact that there was statements recorded on Oath of the Directors admitting that there was no actual business carried on by the lender companies.
3. The brief facts of the case shows that assessee filed return of income on 16.08.2018 at a loss of Rs. 9,49,99,888/-. The case was selected for scrutiny resulting into an assessment proceedings u/s. 143(3) of the Act as per order dated 28.01.2021 assessing the total loss at Rs. 7,56,29,421/-.
4. Subsequently, survey u/s. 133A of the Act was conducted by the Investigation Wing on 26.02.2021 wherein it was found that the assessee has taken accommodation entries in the form of bogus loans from various parties. The assessment proceedings continued by issue of notice u/s. 148A on 10.03.2022 wherein in the show cause notice, it was stated that assessee has taken bogus loans from three companies amounting to Rs. 11,42,65,000/-. This information was backed by the statement of Mr. Vijay Kadam and Mr. Manohar Kadam, who were Directors in those companies. They admitted that they do not do any real business but provide book entry of unsecured loans to the assessee company without any creditworthiness. The sums were appearing in the books of the assessee company. In response to the show cause notice, assessee submitted a reply. As the assessee company is engaged in the business of Hotel and Hospitality, the Assessing Officer issued a show cause notice that



why the above amount of Rs. 11,42,65,000/- shall not be brought to tax u/s. 68 of the Act. The assessee replied on 14.11.2022 wherein it was submitted that loan has been taken through account payee cheques and during original assessment proceedings assessee submitted all relevant documents and, therefore, identity, creditworthiness and genuineness of the transaction is proved. It further stated that the statement of third parties should not be used against the assessee. The assessee also reiterated by submitting the confirmation, audited statements, and income tax return of all these companies. The assessee also submitted the Bank Statements of those companies. The assessee also submitted that Mr. Vijay Kadam and Mr. Manohar Kadam were never the Directors of the Company except in case of Chartered Research Pvt. Ltd. Therefore, the statement made by them cannot be relied upon. The learned Assessing Officer held that Mr. Mohd. Latif Khan is linked with common Director with all these company and all this companies are run by entry operator Tej Singh Ramola. The AO in Paragraph No.8.2.2 has held that Mr. Manohar Kadam, Mr. Vijay Kadam and Mr. Mohd. Latif Khan were issued summons for appearance by the Investigation Wing. Statement of two of the above Directors were recorded but Mr. Mohd. Latif Khan did not appear. He could not be traced also. Based on this, the Assessing Officer stated that as new facts have emerged during the course of survey the information furnished during the original proceedings u/s. 143(3) of the Act accepting the above loan as genuine does not survive. Therefore, he made an addition of Rs. 11,42,65,000/- u/s. 68 of the Act in the reassessment order dated 19.12.2022.

5. The assessee is aggrieved with that filed appeal before learned CIT(A), wherein reassessment proceedings were also challenged and it was stated that the assessee has proved the identity, creditworthiness and genuineness of the transactions. It was also contested that merely on the basis of the statement of the persons



who were not the Directors of lender companies, the Assessing Officer has made the addition. The learned CIT(A) upheld the proceedings of reassessment holding that Assessing Officer has correctly assumed proper jurisdiction for reassessment on the basis of reasons recorded. On the merits of the case, in Paragraph No.7.3 and 7.4, he held that assessee has submitted confirmation, relevant bank statement, Income tax returns, audited financial and search report of the company secretary during the assessment proceedings and the Assessing Officer did not make any independent enquiry to dispute the identity, genuineness and creditworthiness of all the three companies. He further held that the Assessing Officer has made baseless allegation on assumption and presumption about all the three companies. He relied upon the decision of the Hon'ble Gujarat High Court in 81 CCH 193 and analyzed the balance sheet of lender companies and held that the Assessing Officer has failed to examine the long term loans and advances of these companies. Consequently, he deleted the addition of Rs. 11,42,65,000/- made u/s. 68 of the Act. Against this, the learned Assessing Officer is aggrieved and is in appeal before us.

6. The assessee was issued notices for hearing on 30.04.2024, on which date, none appeared and similarly on 20.06.2024 also none appeared on behalf of the assessee. This is so despite notice of hearing to the assessee by RPAD. The notice did not receive back unserved. In view of this, the issue is decided on the merits of the case as per information available on record.
7. Shri Dr. Kishor Dhule, CIT(DR) extensively referred to the survey report, reasons recorded and the finding of the learned Assessing Officer. His submission was that Mr. Mohd. Latif Khan never appeared before the Investigation Wing as well as before the Assessing Officer and Mr. Manohar Kadam and Mr. Vijay Kadam categorically confirmed that these were the bogus loans. He submitted that non traceability of the main person, who is responsible for maintaining



and controlling the lender party and non availability of lending companies at the address given in the return of income and PAN address coupled with the statement of the Directors prove that the above loans are not genuine. He submitted that the Investigation Wing has carried out the detailed enquiry and nothing more than evidences produced in the original assessment proceeding is available from assessee, the finding of the learned CIT(A) that learned Assessing Officer did not carry out on any enquiry makes the order of the learned CIT(A) unsustainable. He submitted that merely considering the balance sheet of the lender does not prove the creditworthiness and the genuineness of the above loan. He categorically submitted that Mr. Manohar Kadam was Director of Carreon Investment Pvt. Ltd. from 04.07.2018 to 25.09.2020 and further Mr. Vijay Kadam was also a Director of Chartered Capital Research Pvt. Ltd. Merely because somebody was not a Director at the time of recording of the statement but was a Director when the loan was given, admitting bogus loans, clearly proves that the loans were not genuine. He further referred to the order of the learned CIT(A) and stated that what else enquiries the learned Assessing Officer has failed to make is not shown by the learned CIT(A). He stated that the learned CIT(A) has merely looked at the balance sheet and reproduced the screen shot but has not at all looked into the Profit and Loss account where it is stated that these companies do not have any business and mere paper company. It was further stated that deleting the addition merely on the basis of the entries in the books of account of the lender and borrower neither makes the loan genuine and the lender creditworthiness. He submits that the reliance on the decision of the Hon'ble Gujarat High Court and stated that it is not applicable to the facts of the case. In the present case the Investigation Wing has made the complete enquiry and the statement of the Directors confirming the bogus loan on behalf of the lender, failure of the director of the assessee is showing any details in summons u/s 131 of the act, addition could not have been



deleted. Accordingly, the order of the learned CIT(A) is not sustainable

8. We have carefully considered the contentions of the learned DR and have perused the orders of the learned lower authorities. The facts are that after the original assessment was framed survey took place in case of the assessee on 26.02.2021 wherein Investigation Wing, Mumbai found that assessee has obtained bogus loan of Rs. 2.00 crores each from two companies, namely, AZURA Projects Pvt. Ltd. and CARRON Investment Pvt. Ltd. Further, loan of Rs. 7,42,65,000/- was taken from Chartered Capital Research Pvt. Ltd. statement of Mr. Vijay Kadam and Mr. Manohar Kadam, who are Directors of these companies recorded on Oath wherein they have confirmed that these companies do not have any real business but engaged in providing books entries of unsecured loan to the assessee company without possession of creditworthiness to do so. During the course of assessment proceedings, the assessee relied on submission made in the original assessment proceedings stating that it has provided confirmation, audited financial statement, return of income and bank statement of the company. It also provided the search report from practicing Company Secretary to so that these companies are in existence. No further evidences were provided to show the creditworthiness of the lenders and genuineness of the transactions. Further, it is not denied that Mr. Manohar Kadam was a Director of the Company, CARRON Investment Pvt. Ltd. and Chartered Capital Research Pvt. Ltd. The report also says that none of these two persons were the Director of Azura Projects Pvt. Ltd. The Assessing Officer made further observation that Mr. Mohd. Latif Khan was the Director of all these three companies and signatory to the report and the Directors reports / forms etc. He was conduit of accommodation entry provider Mr. Tej Singh Ramola. He was neither produced by the assessee nor by the lenders either before the Assessing Officer or before the Investigation Wing. Even the Inspector Deputed to locate



him could not trace him. Thus, the Assessing Officer categorically held that these companies exist only on papers and do not conduct any business and the Directors are dummies. Further the survey findings were also confronted to Mr. Mustaq Vijapura Director of the assessee company, who could not reply. He further could not justify the nature of credit entries and also the name and contact details of the persons with whom he met for the purpose of raising the above loans. It is important to note that these loans remained unpaid till date. Before the Assessing Officer, the Director was given ample opportunities to prove the genuineness of the loans but he could not provide any information. Based on this, the addition was made. On careful reading of the order of the learned CIT (A), he deleted the addition merely on the basis of written submission of the assessee. May be because of some reason Mr. Vijay Kadam and Mr. Manohar Kadam were Directors for small period but the statement could not be disregarded unless the corroborative evidences are shown that the loans are genuine. The learned CIT(A) in Paragraph-7.4.2 has stated that these companies are actively engaged in the business activities but he has not mentioned or verified what is the business of the lender. There is no reference or reason that why another Director Mr. Mohd. Latif Khan, who is still the Director of the company was not produced before the Assessing Officer or Investigation Wing. Even the statement of Mr. Mustaq Vijapura has also been selectively produced by the learned CIT(A) at Paragraph No.7.4.7. There is no answer that how Mr. Mustaq Vijapura Director of the company obtained the loan and through whom. Thus, the addition was deleted without meeting the findings of the Id AO as well as Investigation wing. Further finding of the AO and Confirmation by the directors of those companies that these companies do not carry any business but accommodation entry providers, The Id CIT (A) held that they have business without looking at the Profit and Loss account of the lender companies do show that non carrying on active business issue are not at all dealt with by the learned CIT(A). In view of above



facts, we find that the addition was deleted by the learned CIT(A) without dealing with the important observation of the Investigation Wing and the learned Assessing Officer. Therefore, we restore the whole appeal back to the file of the learned CIT(A) with the direction to deal with the addition meeting the observation of the learned Assessing Officer and Investigation Wing. Accordingly, we allow both the grounds of appeal of the Assessing Officer and the restore the issue back to the learned CIT(A) to decide the issue afresh, in accordance with law, after giving adequate opportunity of hearing to the assessee.

9. In the result, the appeal of the learned Assessing Officer is allowed for statistical purposes..

Order pronounced in the open court on 29/08/2024.

Sd/-

(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.08.2024

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