

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 476/Ind/2023
Assessment Year: 2014-15

Shri Prateek Soni, 49, Krishna Bagh Colony, Indore (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	Income-tax Officer, NFAC, New Delhi (Revenue/Respondent)
PAN: BKSPS0203G		
Assessee by	Shri Pankaj Shah and Shri Soumya Bumb, ARs	
Revenue by	Shri K.Bala Murali Krishna, Sr. DR	
Date of Hearing	22.08.2024	
Date of Pronouncement	30.08.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 15.11.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 22.09.2021 passed by learned NFAC, Delhi ["AO"] u/s 147 r.w.s. 144B of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2014-15, the assessee has filed this appeal on following effective grounds:

"1. On the facts and circumstances of the case and applicable law, the learned CIT(A) has erred in making confirmation of reopening of the case u/s 148 of the Act and further initiating assessment proceedings of the case u/s 147 of the Act.

2. *The Learned CIT(A) has erred in making confirmation of the addition made by Learned Assessing Officer of Rs. 6,00,000/- on account of unexplained cash credit u/s 68 of the Act."*

2. The background facts leading to present appeal are such that the assessee-individual filed original return of income of AY 2014-15 on 19.03.2015 declaring a total income of Rs. 2,22,380/- which was processed u/s 143(1). Subsequently, based on an information received from DDIT(Inv.), Unit-2(1), Kolkata ["Investigation Wing"], the AO re-opened assessment u/s 147 by issuing notice dated 19.03.2020 u/s 148. In response to such notice, the assessee re-filed return repeating the same total income of Rs. 2,22,380/-. Thereafter, the AO issued notices u/s 143(2)/142(1) which were complied with by assessee. Ultimately, the AO completed re-opened assessment vide order dated 22.09.2021 after making an addition of Rs. 6,00,000/- on account of unexplained cash credit u/s 68 in respect of a loan of Rs. 6,00,000/- taken by assessee from 'M/s Suzlon Securities Private Limited' renamed as 'M/s Salween Securities Private Limited' ["S"]. Aggrieved, the assessee carried matter in first-appeal before CIT(A) but did not get any success. Still aggrieved, the assessee has come in next appeal before us.

3. We first take up **Ground No. 2** which challenges the merit of addition for unexplained cash credit u/s 68 of the Act at Rs. 6,00,000/- made by AO for the loan received by assessee from "S".

4. We have heard learned Representatives of both sides peacefully and perused the documents held in case record including the orders of lower-authorities. We have considered rival submissions of both sides including the following 'Written-Submission' filed by Ld. AR:

1. Following addition u/s 68 in respect of unsecured loan received during year is under appeal:

Name of lender	Addition based on alleged loan
<i>Salween Securities Private Limited formerly known as Suzlon Securities Private Limited</i>	6,00,000
Total	6,00,000

2. The unsecured loan taken from Suzlon Securities Private Limited was held as genuine in appellants own case by the decision of Hon'ble Income Bench Prateek Soni v. ITO ITA 493/Ind/2023.

3. At the outset it is submitted that the reopening is made based on incorrect information and without carrying out proper verification based on conjectures and surmises. Reliance is placed on decision of ITAT Delhi in case of Kunwar Ayub Ali, Ghaziabad v. ITO.

4. Primary onus u/s 68 of Act discharged by Appellant as follows:

<i>Name of lender</i>	<i>PAN</i>	<i>Amount received during the year</i>	<i>Confirmation</i>	<i>ITR</i>	<i>Bank statement of lender</i>	<i>Audited Financials</i>
<i>Salween Securities P Limited</i>	<i>AANCS5746H</i>	<i>6 Lakhs</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>

5. Creditworthiness of lenders

<i>Lender</i>	<i>Share capital [A]</i>	<i>Net Reserves & Surplus [B]</i>	<i>Share application money and loans [C]</i>	<i>Total Investible surplus [A+B+C]</i>	<i>Loan advanced to Appellant</i>	<i>Capacity to advance loan (Investible surplus/ Loan) approx.</i>
<i>Salween Securities P Limited</i>	<i>33.16</i>	<i>340.40</i>	<i>0</i>	<i>373.56</i>	<i>6.00</i>	<i>62 times</i>

(Rs. in Lakhs)

6. *That the lender company is 'active' companies in ROC records till date.*
7. *Only reason for making the addition is borrowed satisfaction of AO relying on findings of investigation in different cases related to Shri Sharad Darak.*
8. *Copy of statement of Shri Sharad Darak which is foundation of the reopening and additions has not been confronted to Appellant therefore the addition based thereon is not permissible in law. Reliance is placed on decision of SC in C. Vasantlal [1962] 45 ITR 206 (SC)*
9. *Further inspite of specific request no opportunity to cross examine has been provided. In absence of such cross examination the addition made by AO based on statement is not tenable in law. Reliance is placed on decision of SC in Andaman Timber Industries vs. CCE [2015] 62 taxmann.com 3 (SC)[02-09-2015]*
10. *The Appellant has discharged its primary onus by proving identity, credit worthiness and genuineness of the loans however learned AO has merely relied on the investigation wing report without any application of mind and conducting any enquiry in assessment on borrowed satisfaction which is not permissible. See. PCIT v. Shodiman Investments (P.) Ltd.*
11. *Without prejudice to above the jurisdiction existed in Section 153C of the Act and not under S.148 since the reopening is based on search as stated in AO order. See. Flexituff International Ltd v. DCIT at pg 1 of PB*

In view of above it is submitted that the reopening be held as without jurisdiction, based on incorrect information, made on borrowed satisfaction in violation to principles of natural justice. It be further held that the loans are genuine and proved and the consequent addition be deleted.”

5. Emphasizing Para 2 of above 'Written-Submission', Ld. AR pointed that an exactly same issue also arose in the case of this very assessee for succeeding AY 2015-16 wherein the AO made an addition of Rs. 1,50,000/- qua the loan taken by assessee from very same creditor i.e. "S". The matter ultimately travelled upto **ITAT, Indore "SMC" Bench in ITA No. 493/Ind/2023**. The ITAT has already decided assessee's appeal vide order dated 09.08.2024 whereby the addition made by AO has been deleted. The relevant portion of ITAT's order is re-produced below:

“3.4 Ld. Counsel for the assessee referred to the following written submissions:

1. Following addition u/s 68 in respect of unsecured loan received during year is under appeal:

Name of lender	Addition based on alleged loan
Salween Securities Private Limited formerly known as Suzlon Securities Private Limited	1,50,000
Total	1,50,000

2. At the outset it is submitted that the reopening is made based on incorrect information and without carrying out proper verification based on conjectures and surmises. Reliance is placed on decision of ITAT Delhi in case of Kunwar Ayub Ali Ghaziabsaly ITO.

3. Primary onus u/s 68 of Act discharged by Appellant as follows:

Name of lender	PAN	Amount received during the year	Confirmation	ITR	Bank statement of lender	Audited Financials	Repayment status
Salween Securities P Limited	AANCS5746HY	Y	1.5 lakh	Y	Y	Y	Continuing

4. Creditworthiness of lenders

lender	Share capital (A)	Net Reserves & surplus (B)	Share application money and loans (C)	Total Investible surplus (A+B+C)	Loan advanced to applicant	Capacity to advance loan (Investible surplus/loan)
Salween Securities P Limited	33.16	342.12	0	275.28	1.5	250 times

5. That the lender company is 'active' companies in ROC records till date.

6. Only reason for making the addition is borrowed satisfaction of AO relying on findings of investigation in different cases related to Shri Sharad Darak

7. Copy of statement of Shri Sharad Darak which is foundation of the reopening and additions has not been confronted to Appellant therefore the addition based thereon is not permissible in law. Reliance is placed on decision of SC in C. Vasantlal [1962] 45 ITR 206 (SC).

8. Further inspite of specific request no opportunity to cross examine has been provided. In absence of such cross examination the addition made by AO based on statement is not tenable in law. Reliance is placed on decision of SC in Andaman Timber Industries vs. CCE (2015) 62 taxmann.com 3 (SC) 02-09-2015).

9. *The Appellant has discharged its primary onus by proving identity, credit worthiness and genuineness of the loans however learned AO has merely relied on the investigation wing report without any application of mind and conducting any enquiry in assessment on borrowed satisfaction which is not permissible. See. PCIT e Shodiman Investments (P) Ltd.*

10. *Further the major loans have been repaid which establishes the genuineness.*

11. *Without prejudice to above the jurisdiction existed in Section 153C of the Act and not under S.148 since the reopening is based on search as stated in AO order. See. Flexituff International Lid v. DCIT at pg 1 of PB.*

In view of above it is submitted that the reopening be held as without jurisdiction, based on incorrect information, made on borrowed satisfaction in violation to principles of natural justice. It be further held that the loans are genuine and proved and the consequent addition be deleted.”

3.5 *He further submitted that so far as the addition for unexplained expenditure incurred on construction/development of the house at Rs. 5,13,654/- is concerned out of total expenditure of Rs.12,63,654/- Ld. A.O has accepted the claim only to the extent of payments made cash withdrawn from bank at Rs. 7,50,000/- but failed to give any credit for the accumulated savings of the assessee and his family members for the past many years.*

4. *On the other hand Ld. Departmental Representative vehemently argued supporting the orders of lower authorities and also stated that assessee failed to provide any evidence of cash expenditure of Rs.5,13,654/-.*

5. *I have heard rival contentions and perused the records placed before me. The first issue for my consideration is the addition for unexplained cash credit u/s 68 of the Act at RDs.1,50,000/- for the loan received by the assessee from M/s Suzlon Securities Private Limited (presently known as M/s Salween Securities Private Limited). Both the lower authorities have confirmed the addition based on their observation that M/s Salween Securities Private Limited is allegedly controlled by the accommodation entry provider Shri Sharad Darak and is a paper company.*

5.1 *I however on going through the documents filed by the assessee notice that the confirmation of the account has been filed along with the copy of Income Tax Return of the alleged cash creditor for Assessment Year 2015-16 as well as the bank statement. Perusal of the bank statement indicates that there are consistent withdrawals from the bank and there is no cash deposit prior to the cheque issued to the assessee. Bank statement also reveals that sufficient bank balance is regularly maintained and at some point of time the balance is approximately 79 lakhs also. The financials of the alleged cash creditor as stated in the written synopsis shows that the share capital and reserves & surplus are more than approximate 250 times of the loan advanced to the applicant. The alleged cash creditor company is also active and regularly filing its Income Tax Returns and furnishes its Annual Report and Financial statement on the portal of Ministry of Corporate Affairs. All these factual details were there before the Ld. A.O and Ld. CIT(A) but they have not been controverted except for giving general remarks that the lender is a shell company. Section 68 of the Act can be invoked only if the assessee is unable to discharge its primary onus casted upon it if and fails to prove nature and source of the alleged sum to the satisfaction of the Ld.*

A.O. However in the instant case assessee has successfully discharged its primary onus and what was needed to explain the nature and source of alleged sum has been complied by the assessee and as held consistently by Hon'ble Courts that Ld. A.O in order to make addition u/s 68 of the Act had to first controvert the evidence filed by the assessee indicating any discrepancy in such documents but in the instant case revenue authorities have failed to negate the correctness of details filed by the assessee.

5.2 Under the given facts and circumstances since Ld. Counsel for the assessee has proved the identity and creditworthiness of the cash creditor and genuineness of the transaction to my satisfaction, I hold that the impugned addition u/s 68 of the Act is uncalled for. Accordingly the findings of Ld. CIT(A) is deleted and the impugned addition of Rs.1,50,000/- is deleted and Ground No.2 raised by the assessee is allowed.”

6. Ld. AR submitted that the reason which prompted the AO to make impugned addition i.e. the creditor “S” was a shell company allegedly controlled by an accommodation entry provider ‘Shri Sharad Dark’; the underlying facts of the issue and the documentary evidences filed by the assessee to prove three ingredients of section 68 i.e. the identity and creditworthiness of the creditor “S” and genuineness of transaction, are identical in AY 2015-16 already decided by ITAT in assessee’s favour and AY 2014-15 with which were are concerned in present appeal. Therefore, the assessee must succeed in present appeal for this reason alone. After a careful consideration, we find sufficient merit in this very reasoning advanced by Ld. AR. We find that the ITAT, Indore has already accepted genuineness of transaction of loan taken by assessee in succeeding AY 2015-16 on the very same facts as in present case and deleted addition. We find no reason to deviate from the view already taken by ITAT. Accordingly, adopting the same view as taken by ITAT in AY 2015-16, we are inclined to delete the addition of Rs. 6,00,000/- made by AO in present AY 2014-15.

7. Since we have deleted addition following the view already taken by ITAT, there is no necessity to go into other pleadings made by both sides or even adjudicate Ground No. 1 which challenges legality of proceeding done by AO.

8. Resultantly, this appeal is allowed.

Order pronounced in open court on 30.08.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30.08.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore