

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 3956/Mum/2023 (A.Y. 2014-15)

Sagar Realtors D-14, Shop No. 6 Yogi Nagar, Eksar Road, Borivali West Mumbai-400 091. PAN : ABVFS7240Q (Appellant)	Vs.	ITO, Ward 32(3)(3) Kautilya Bhavan 7 th Floor Bandra Kurla Complex, Bandra-E Mumbai-400 051. (Respondent)
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Assessee by	Shri Mahesh Saboo
Department by	Shri Prashant Mahajan
Date of Hearing	24.07.2024
Date of Pronouncement	26.08.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In the above mentioned appeal, the learned Assessing Officer (Ld. AO for short) made an addition of Rs. 1,45,85,000/- towards fictitious creditors and alleged inflated labour payments.

2. Since the appellant did not furnish full particulars of the creditors like identity, creditworthiness and genuineness, it was adjudicated as fictitious creditors and addition was made. From the assessment order, it is observed that the Ld. AO issued letters/notices u/s. 133(6) of the Income Tax Act (the Act for short) to find out the genuineness of the credits. But all the letters sent by the Ld. AO were returned as no one was present in the addresses furnished by the appellant. The appellant was informed about the same and a show-cause notice was given to the appellant in which it was mentioned as to why the credits should not be added u/s. 68 of the Act. The appellant replied that a finance broker arranged these loans and there is a possibility

that the creditors might have changed their addresses. But the appellant has not furnished their new addresses nor given any fresh particulars to prove the genuineness of the transactions. In view of the same, the Ld. AO made addition relating to the 5 creditors, viz., Bio Pharama, D.W. Pharma, Kingsy Pharma, Oskar Remedies and Ridhhi Siddhi Corporation amounting to Rs. 1,42,00,000/-.

3. Aggrieved, by the addition made by the Ld. AO, appellant preferred an appeal before the Learned Commissioner of Income Tax (the Ld. CIT(A) for short) and no fresh particulars were given to the first appellate authority also. The same submissions made before the Ld. AO were repeated before the Ld. CIT(A) also. As the appellant did not furnish fresh particulars nor tried to prove the genuineness of the credit transactions, the Ld. CIT(A) also confirmed the addition made by Ld. AO with regard to the credits mentioned above. The Ld. CIT(A) has relied on several Supreme Court decisions like Sumati Dayal, D.P. More and others to come to the conclusion that the appellant has not discharged its onus with regard to the sources of the credits and failed to prove the genuineness of the transactions but the Ld. CIT(A) deleted the addition relating to the excess labour payments.

4. The appellant preferred second appeal before the ITAT with the following grounds :

1) On the facts and circumstances of the case and in law the authorities below have erred in sustaining the addition amounting to Ms. 1,42,00,000/- u/s 68 in respect of mi-secured loans/Advances received from Customers accepted by the appellant, and reasons assigned by them were wholly wrong, irrelevant and not in accordance with the provisions of the Income Tax Act, 1961 and rules made there under.

2) On the facts and circumstances of the case and in Law, the authorities below have erred in confirming/levying/not adjudicating the interest u/s 234B and 234C of the 1 T which was wholly wrong, and against the provisions of income Tax Act, 1961 and rules made thereunder,

3) On the facts and circumstances of the case and in law, the authorities below have erred in confirming/initialing the penalty proceedings u/s

271(l)(c) of the Income Tax Act, 1961 which were wholly wrong, irrelevant, and not in accordance with the facts and circumstances of the case as no income is concealed nor any inaccurate particulars were furnished.

5. During the appeal proceedings before the ITAT, Ld. AR of the appellant has stated that the Ld. CIT(A) called for a remand report from the Ld. AO to conduct further inquiry with regard to creditors and submit a report. Despite sending a reminder to the Ld. AO, no remand report was received from the Ld. AO. As the remand report is not received from the Ld. AO, the first appellate authority has passed appeal order confirming the addition made by Ld. AO. The main argument of appellant is that without a remand report from the Ld. AO, the first appellate authority has confirmed the credits and hence the same is incorrect.

6. The Ld. CIT(A) passed an appeal order without getting remand report from the Ld. AO, appellant and hence pleaded during the appeal proceedings of ITAT, that the issue may be remitted back to the first appellate authority. Ld. DR opposed the plea of Ld. AR stating that the letters sent by the Ld. AO came back unserved because addresses given by the appellant are incorrect and appellant has not given fresh addresses of the creditors either to Ld. AO or to the Ld. CIT(A). Hence, there is no need to send file back to the Ld. CIT(A) and addition made by the Ld. AO should be confirmed.

7. Heard both the sides. It is a fact that the appellant has not given any fresh evidence before the Ld. CIT(A) and the Ld. AO. But the fact remains that the Ld. AO should have caused further enquiries with creditors after obtaining the particulars of new addresses and sent a report to the Ld. CIT(A) when he was directed by the Ld. CIT(A) to submit a remand report. In view of the same, the issue is remitted back to the file of the Ld. CIT(A) with the direction that he should obtain a remand report from the Ld. AO and then pass order. The Ld. CIT(A) is directed to take into consideration the remand report submitted by Ld. AO with regard to the inquiries relating to the

creditors and pass a speaking order. The appellant is directed to provide the new addresses of the creditors and furnish all required details by the Ld. CIT(A). Accordingly, the issue relating to creditors is remitted to the file of the Ld. CIT(A).

8. The appeal of the appellant is allowed for statistical purposes.

Order pronounced in the open court on 26th August, 2024.

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 26.08.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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