

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.1086/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2016-17)

Income Tax Officer Non- Corporate Ward-9(1) Chennai.	बनम/ Vs.	M/s Pride Enterprises A92, 136/950, Akshaya 36, Carat Poonamallee High Road, Flowers Road S.O., Purasawalkam, Chennai-600 084.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAPFP-9375-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Samdariya Fateh Chand (CA)-Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	09-09-2024
घोषणा की तारीख / Date of Pronouncement	:	09-10-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by revenue for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 05-09-2023 in the matter of an assessment framed by the Ld.AO u/s.147 r.w.s. 144B of the Act on 28-09-2021.

1.2 The registry has noted delay of 141 days in the appeal, the condonation of which has been sought by Ld. CIT-DR. The Ld. AR did

not raise any serious objection against the same. Therefore, the delay is condoned and the appeal is admitted for adjudication on merits.

1.3 The grounds raised by the revenue read as under: -

1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.
2. The learned CIT(A) erred in holding that the appellant furnished the details of source of fund towards payments made for purchase of property whereas the assessee has furnished merely the address, PAN, ITR Acknowledgment of the loan Schedules etc., required for proving the credit worthiness of the creditors and also the genuineness of the transaction?
3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

As is evident, the sole issue that arises for our consideration is addition made by Ld. AO on account of unexplained cash credit.

1.4 The Ld. CIT-DR advanced arguments supporting the case of the revenue. The Ld AR, on the other hand, maintained that the onus as casted upon assessee was duly discharged. The Ld. AR referred to various documents as placed on record. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

2.1 The assessee being resident firm is stated to be engaged in real estate business. It filed regular return of income which was processed u/s 143(1). However, pursuant to certain information that the assessee purchased certain immoveable properties, the case was reopened and notice u/s 148 was issued to the assessee after obtaining due approvals.

2.2 It transpired that the assessee entered into agreement for sale in respect of 107 plots on 01-10-2015 for sale consideration of Rs.17.35 Crores. However, all these agreements were stated to be cancelled subsequently on 21-06-2016.

2.3 From assessee's reply, Ld. AO noted that the assessee made total payment in this year for Rs.869.97 Lacs which was sourced out of unsecured loans. The assessee furnished details of payment made during the year along with the sources of investments along with copies of relevant bank statements. It was stated that the payments were sourced out of unsecured loan and amounts received from the partners. To substantiate the same, the assessee furnished confirmation of ledger statements, Income Tax Return copies and bank statements of respective parties / lenders / loan creditors duly highlighting the transactions. All the loans were stated to be received through banking channels. By furnishing the same, the assessee submitted that it had duly established the identity, creditworthiness and genuineness of the loan creditors. The assessee obtained loans of Rs.1309.59 Lacs from various parties, the details whereof has been extracted in para-9 of the assessment order.

2.4 However, Ld. AO made following observations with respect to these parties: -

9.1 The assessee has not submitted evidences regarding unsecured loans in respect of parties mentioned at Sr.Nos.2,3,6,7,12,17,20,35,36,38,40 and 41. Therefore, source of investments has not been proved to the extent loans taken from these parties.

9.2 In respect of serial no. 1, 4, 5, 8, 9, 10, 11, 15, 18, 19, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34 and 37 although the assessee has filed confirmation copy of ITRV (Acknowledgment) and copy of bank statement in respect of these unsecured loans. The assessee has filed only copy of acknowledgement of ITR. No P&L Balance Sheet, Audit Report nature of business and a note on the capacity of the lender have been filed. From the acknowledgement showing return income it is seen that the return income do not commensurate with the loan given by these parties. Therefore, these loans are also not acceptable.

9.3 In respect of serial no. 13,14,15,22,23,39 the assessee has filed confirmation copy of ITRV (Acknowledgment) and copy of bank statement in respect of these unsecured loans. From the return income it appears that they have capacity to advance loan. The total loan amount from these lenders have been shown at Rs.1,09,17,000/-.

The Ld. AR thus held that the assessee could not fully substantiate the loan creditors.

2.5 The assessee refuted the allegations of Ld. AO and submitted that it has duly filed date-wise details of payments along with the source of funds on that date. Further, names and full address of the parties from whom the funds were received were also furnished along with statement of confirmation and their respective Income Tax Returns (ITR-V) as well as relevant bank statements highlighting the transactions. The quantum of investment made by the assessee during this year was tabulated as under: -

Total value of transaction entered by the assessee as stated by your good self on page no. 16 of the show-cause notice	Rs.14,97,69,500
Less: Transaction relating to agreement to sale and which were subsequently cancelled.	Rs.7,39,65,000
Value of sale deed executed	Rs.7,58,04,500
Value of amount paid by the assessee during A.Y 2016-17.	Rs.8,69,97,338

2.6 However, rejecting the submissions of the assessee, Ld. AO held that out of investment of Rs.1497.69 Lacs, the assessee could prove sources to the extent of Rs.109.17 Lacs only. Therefore, the balance amount of Rs.1388.52 Lacs was treated as unexplained credit and added to its income u/s 69.

Appellate Proceedings

3.1 The assessee assailed the impugned addition by way of elaborate written submissions which have already been extracted in the impugned order. The assessee, inter-alia, submitted that only part consideration was paid in most of the cases. The assessee also pointed out glaring discrepancies in the observations made by Ld. AO by submitting that the names of the lenders were repeated in the list whereas Ld. AO accepted

part of the amount and did not accept the other part which was wholly unjustified. It was also submitted that requisite documents were furnished for all the lenders and Ld. AO erred in noting that no documents were furnished for all the cases. It was also submitted that no notice u/s 133(6) was issued by Ld. AO to confirm these loans and therefore, the impugned addition would be unsustainable in law as per various judicial pronouncements.

3.2 The submissions of the assessee were subjected to remand proceedings on 18-05-2023. But despite reminders, the same was not forthcoming and accordingly, Ld. CIT(A) proceeded to examine the claim of the assessee.

3.3 The Ld. CIT(A) noted that the assessee entered into various agreements with Mr. Rose through his Power of Attorney holder Mr. Prem Kumar. However, only part amount was paid as Token Advance. During the year, the assessee paid amount of Rs.325 Lacs towards purchase of property and also paid advance of Rs.544.97 Lacs towards purchase of property to be registered during next AY 2017-18. The total amount thus paid during this AY was Rs.869.97 Lacs only. The assessee already submitted date-wise details of payments. The properly transaction with Mr. Rose and Mr. Prem Kumar took place over a period of three years from F.Y. 2014-15 to F.Y. 2016-17. All the payments except for an amount of Rs.18.75 Lacs were paid through banking channels only. During the course of assessment proceedings, the assessee had furnished copies of all documents, i.e., sale deeds and agreements to sale entered into by the assessee during the year. Almost all the agreements to sale entered by it during the year were cancelled

during the next year due to various reasons. The same was evident from encumbrance certificates.

3.4 It was further noted that the assessee had furnished the details of sources of funds so paid for purchase of property. In respect of the loan creditors, the assessee had furnished their full address and their respective PAN and also their Income Tax Returns and Bank Statements. The AO rejected the same merely on the ground that the assessee was unable to furnish the Balance Sheet and Profit and Loss account of the Loan Creditors. However, the assessee had submitted all the evidences such as confirmations from the lenders, their PAN and complete address, their ITR Copies and the bank statement towards evidence for the loan received. The onus was duly discharged by the assessee. Considering the same, the impugned addition was deleted against which the revenue is in further appeal before us.

Our findings and Adjudication

4. Upon due consideration of material facts, it could be gathered that the assessee has purchased certain properties which have been registered during this year and also paid advance for various properties which were to be registered in subsequent years. The transactions were spread over FYs 2014-15 to 2016-17. In this year, it is a factual finding of Ld. CIT(A) that the assessee has made aggregate investments of Rs.869.97 Lacs only.

5. We find that the aforesaid investments have been sourced by the assessee out of various loan creditors. The complete details such as name, address, PAN of these loan creditors was furnished by the assessee during the course of assessment proceedings. To substantiate the same, the assessee also furnished the confirmation of accounts

along with copies of Income Tax Returns (ITR-V) and bank statements of all the loan creditors. Under these circumstances, it could very well be said that the assessee had duly discharged the onus as casted under law i.e., to establish identity of the lender, their creditworthiness and the genuineness of the transactions. All loans have come through banking channels. The assessee has paid interest thereon and deducted applicable TDS against the same. The loans have duly been confirmed by all the lenders. The complete documents of all the loan creditors have been placed by Ld. AR in the paper-book on Page Nos. 1 to 115. Upon perusal of the same, it could be seen that in many cases, the assessee has repaid the loan back to the lenders. All the loan creditors have confirmed the transactions. As against this, Ld. AO rejected the same without any cogent reasons. The Ld. AO, while accepting a part of the loan from a particular lender has rejected the other part of the loan which is without any logic or justification.

6. It could also be seen that no independent enquiries whatsoever has been conducted by Ld. AO to verify the claim of the assessee. No notice u/s 133(6) has been issued to any of the lenders. Once the assessee has furnished the requisite documents to support its case, the onus would shift on Ld. AO to controvert the same. However, no investigation is shown to have been carried out by Ld. AO during the course of assessment proceedings to ascertain the genuineness of loan creditors. During appellate proceeding, remand report was sought by Ld. CIT(A). However, even during remand proceedings, no action is shown to have taken place. In such a case, the appellate authority would have no option but to proceed further to examine the claim of the assessee. The power of Ld. CIT(A) is co-extensive with that of Ld. AO. Therefore,

in our considered opinion, the impugned issue has been clinched in right perspective by Ld. CIT(A) and the impugned addition has rightly been deleted. We concur with the same and do not find any reason to interfere in the same.

7. The appeal stands dismissed.

Order pronounced on 9th October, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 09-10-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF