

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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.1331/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2012-13)

DCIT Corporate Circle-1(1) Chennai.	बनम/ Vs.	Shri Anirudh Khemka Y-202, Anna Nagar, Chennai-600 040
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AHAPA-7558-G		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Ms. Kavitha (Addl.CIT)-Ld. Sr. DR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri B.Ramakrishnan (FCA) & Shri Shrenik Chordia (CA)- Ld. ARs

सुनवाई की तारीख/ Date of Hearing	:	28-08-2024
घोषणा की तारीख / Date of Pronouncement	:	10-10-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 18-09-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 14(3) of the Act on 26-03-2015. The grounds taken 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 Ld.CIT(A) has erred in deleting the addition of Rs.5,05,00,000/- being unexplained cash credit u/s.68 of the Act by merely stating the documents submitted by the Assessee but without any proper reasoning.
3. The Ld, CIT(A) has erred in deleting the addition of Rs.5,05,00,000/- being unexplained cash credit u/s.68 of the Act without discussing or bringing on record his findings on the material before him.
4. 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 u/s 68 as unexplained cash credit.

2. The Ld. Sr. DR submitted that Ld. CIT(A) erred in granting relief to the assessee whereas Ld. AR submitted that the assessee discharged the onus as required to be discharged u/s 68. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The impugned addition stem from the fact that the assessee jointly with his brother had purchased a residential house property situated at Old no.2, New no.3, Gajapathy Road, Kilpauk, Chennai for aggregate consideration of Rs.700 Lacs (excluding registration fees and stamp duty) on 4-11-2011 vide Document Nos. 4201/2011 & 4202/2011. The assessee was accordingly required to explain the source of payment so made towards his share. It transpired that the assessee obtained loan of Rs.280 Lacs from M/s Aakash Advisory Pvt. Ltd. and another loan of Rs.175 Lacs from M/s Rasili Barter Pvt. Ltd. besides loan of Rs.69 Lacs from Madhusudan Khemka.

3.2 To establish creditworthiness, the assessee produced ledger confirmations. However, the aforesaid corporate entities, as per information received from DGIT (Inv.), Kolkata, were amongst shell /

paper companies operated for the purpose of providing accommodation entries as per the statement of one Shri Jivendra Mishra recorded on 11-04-2014. Accordingly, Ld. AO held an opinion that these entities lacked creditworthiness and therefore, the amount of Rs.505 Lacs was added to assessee's income as unexplained cash credit u/s 68 with respect to loan obtained from two corporate entities. The same include opening balance of Rs.50 Lacs as standing against M/s Rasili Barter Pvt. Ltd. The Ld. AO also estimated commission @0.2% against the same and made further addition of unexplained expenditure u/s 69C for Rs.1.01 Lacs while framing the assessment on 26-03-2015.

Appellate proceedings

4.1 During appellate proceedings, the assessee submitted additional evidences and accordingly, a remand report was called form Ld. AO on 19-07-2016. However, despite lapse of more than 6 years, no such report was received despite various reminders. Accordingly, Ld. CIT(A) proceeded to examine the claim of the assessee in the light of submitted evidences.

4.2 The assessee submitted that the addition was merely based on third-party statement which is against the principle of natural justice and the additions were unjust. The assessee also furnished various documents to establish the fulfillment of requirement of Sec.68. The same include ledger confirmations, Income Tax Returns of lenders, Balance Sheet, affidavit of lenders confirming the payment of loan to the assessee.

4.3 The Ld. CIT(A), upon perusal of documents, noted that the assessee applied for loan from HDFC Bank but he could not get the same before the registration of documents. Accordingly, the assessee

obtained loans from these two entities. The loan from Bank was disbursed on 08-11-2011 & 25-11-2011. Immediately upon receipt of the loan, the assessee repaid the loans to both the entities. Considering this fact as well as other documentary evidences as furnished by the assessee, Ld. CIT(A) concurred with the claim of the assessee and deleted the impugned addition as made by Ld. AO u/s 68 as well as estimated commission allegedly paid against these loans. Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

5. From the fact, it emerges that the assessee has purchased certain property and in the process, obtained loan from two corporate entities. The loan so obtained by the assessee has been utilized to purchase the properties. Another fact is that the assessee applied for certain bank loan which got delayed which led the assessee to obtain loan from these two corporate entities. When the loan was disbursed to the assessee by the Bank, the loan to both these entities was repaid within a very short time. The Ld. AO has added the loan so obtained by the assessee from two corporate entities as unexplained cash credit u/s 68 merely on the basis of third-party statement as recorded by DGIT (Inv.) in independent proceedings. However, no separate enquiries, whatsoever, have been conducted by Ld. AO to ascertain the genuineness of these loan transactions. The Ld. AO has merely borrowed the findings of DGIT (Inv.) and on the basis of the same, alleged that the lenders lacked creditworthiness. However, the same is third-party statement in independent proceedings and no opportunity of cross-examination has ever been provided to the assessee to controvert the same. The same is in gross violation of principle of natural justice and the assessment so

framed, in such a case, is liable to be treated as bad-in-law as per the decision of Hon'ble Supreme Court in the case of **Andaman Timber Industries vs CCE, Kolkata-II [2015] 62 taxmann.com 3 (SC)** holding that when the statements of witnesses are made basis of demand, not allowing assessee to cross-examine witnesses, is a serious flaw which makes order nullity, as it amounts to violation of principles of natural justice. Therefore, on this fact only, the assessment order is to be held as nullity.

6. Proceeding further, it could be seen that the assessee has furnished various documents during the course of appellate proceedings to establish the identity of the lender, genuineness of the transactions as well as creditworthiness of the lender as per the requirement of Sec.68. These include ledger confirmations, Income Tax Returns of lenders, Balance Sheet, affidavit of lenders confirming the payment of loan to the assessee. These additional evidences were subject matter of remand proceedings. Despite lapse of more than 6 years, the aforesaid report was never furnished / not forthcoming. Left with no option, Ld. CIT(A) proceeded to examine the claim of the assessee in the light of these additional evidences. It is settled law that the powers of Ld. CIT(A) is co-terminus with the powers of Ld. AO. If Ld. AO has failed to do something, it is well within the powers of Ld. CIT(A) to examine the claim of the assessee after conducting necessary enquiries and verification. The present case is exactly like this only wherein Ld. AO has failed to culminate remand proceedings and left with no option, Ld. CIT(A) went ahead with adjudication of the appeal. The aforesaid action is well within four corners of law and could not be faulted with. Even during hearing before us, no remand report has been shown to us.

7. On merits, upon perusal of ledger statements of lenders as well as affidavit of the lenders as extracted in the impugned order, it could be seen that the assessee has obtained loan of Rs.80 Lacs from M/s Aakash Advisory Pvt. Ltd. on 11-06-2011 & 15-06-2011. The same has fully been repaid on 08-07-2011. The assessee has obtained another loan of Rs.200 Lacs on 03-11-2011 which has substantially been settled to the extent of Rs.175 Lacs between 08-11-2011 to 26-11-2011. Similarly, M/s Rasili Barter Pvt. Ltd. has opening balance of Rs.50 Lacs. The same is a carried forward amount which could not be held to be unexplained cash credit for this year. The assessee has obtained fresh loan of Rs.175 Lacs on 03-11-2011. Out of aggregate loan of Rs.225 Lacs, the assessee has repaid substantial loan of Rs.170 Lacs during this year itself leaving closing balance of Rs.55 Lacs. Both the lender entities have furnished affidavit to that effect. The creditworthiness of the lenders is supported by Income Tax returns and Balance Sheet of the lenders. Once the substantial loans have been settled by the assessee in this year itself, the same could not be held to be unexplained cash credit u/s 68 since the initial burden as required u/s 68 has duly been discharged by the assessee. On all these facts, it could very well be said that the onus as required under law was duly discharged by the assessee and the onus was on Ld. AO to rebut the same. There is nothing on record which would controvert the documents furnished by the assessee. The Hon'ble High Court of Gujarat in the case of **PCIT vs Ambe Tradecorp (P) Ltd. in [2022] 145 Taxmann.com 27 (Gujarat)** held that where the assessee took loan from two parties and the assessee had furnished requisite material showing identity of loan givers and that assessee was not beneficiary as loan was repaid in subsequent

year, no addition under section 68 could be made on account of such loan. The same duly supports the adjudication of Ld. CIT(A). Therefore, we see no reason to interfere in the same.

8. The appeal stands dismissed.

Order pronounced on 10th 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 : 10-10-2024
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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