



IN THE INCOME TAX APPELLATE TRIBUNAL  
(SMC) "H" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1734/MUM/2024

A.Y.2010-11

Sandesh Projects Pvt. Ltd.,  
Unit No. 242, B-Wing,  
Sanjay Building No.5,  
Mittal Industrial Estate, Vs.  
Andheri Kurla Road,  
Andheri-East,  
Mumbai

Income Tax Officer  
11(1)(3),  
Mumbai

(Appellant)

(Respondent)

PAN

AAMCS 2433E

Assessee by  
Revenue by

Shri Vimal Punmiya, CA  
Shri Akhatar Hussain Ansari,  
SR.DR

Date of hearing

03<sup>rd</sup> September, 2024

Date of pronouncement

14 October, 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. ITA number 1734/M/2024 is filed by Sandesh projects private limited, Mumbai (assessee/appellant) for



- assessment year 2010 – 11 against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) dated 1/3/2024 wherein the appeal filed by the assessee against the reassessment order passed under section 143 (3) read with section 147 of The Income Tax Act, 1961 (the act) dated 28/3/2016 by The Income Tax Officer – Ward – 11 (1) (3), Mumbai (the learned AO) was partly allowed.
2. Only grievance of the assessee is confirmation of the addition under section 68 of the income tax act with respect to 2 companies namely Casper Enterprises private limited and Duke business private limited from whom assessee has received share capital of Rs. 23 lakhs each, which was added by the learned assessing officer under section 68 of the income tax act in reopened assessment proceedings.
  3. Brief facts of the case shows that assessee is a company engaged in real estate development , filed its return of income on 17/9/2010 declaring total income of Rs. 30,550/-. This return was processed under section 143 (1) of the income tax act 1961 on 14/4/2011.
  4. Subsequently notice under section 148 was issued on 24/3/2015 recording the reasons that the DGIT (investigation) Mumbai vide letter dated 7/7/2014 has provided information regarding beneficiaries of the accommodation entry provided by an accommodation entry provider unearthed during search action carried out on 1/10/2013 wherein the assessee was found to



- be a beneficiary of obtaining loan of Rs. 23 lakhs each from 2 companies namely casper Enterprises private limited and Duke business private limited. These two companies have provided an accommodation entry to the assessee thus there is an escapement of income of the assessee.
5. In response to the notice issued, assessee submitted a letter dated 28/3/2015 and 23/4/2015 stating the original return of income filed originally be treated as return in response to notice of reopening. Assessee requested for the reasons of reopening which were provided to the assessee on 28/7/2015 which was responded and objected to the assessee on 10/8/2015 and such objections were disposed of on 27/10/2015.
  6. Subsequently in the assessment proceedings the assessee was asked to prove identity, creditworthiness and genuineness of share capital of Rs. 46 lakhs obtained from the above two companies.
  7. The assessee company filed share application form, certificate of investment, copy of board resolution, investment confirmation by the investor, cheque number, bank, and branch of the banker, copy of affidavit of the directors of the investor company along with their audited balance sheet, profit, and loss account of investor company, copy of return of acknowledgement of the investor company and confirmation of the investors.
  8. On verification of the above detail a further notice under section 142 (1) was issued on 19/2/2016 the learned assessing officer raised several questions. In



response to the same the assessee submitted the information on 29/2/2016 which is discussed at page number 4 – 5 of the assessment order. The main reason of the discussion by the learned assessing officer was with respect to the statement of the accommodation entry provider given during the course of search wherein it was confirmed by him that he is engaged in the activity of the provision of accommodation entries and the above two parties are operated by him.

9. Assessee Reiterated the submission and also requested the learned assessing officer to exercise the option of section 133 (6) of the act because the assessee has furnished all the information available and further the investment made by the above two companies in the assessee company have already been sold on 28/5/2010 by those companies to the new shareholders. The assessee also gave the name of the new shareholders. Assessee also asked for the cross-examination of the parties on who is statement the learned assessing officer was relying upon.
10. The learned assessing Officer on examination of the documents found that though the identity of the above companies is proved however the creditworthiness and genuineness of the transaction is not proved. The learned assessing officer further relied upon the surrounding and corroborative details and found that the above increase in share capital of Rs. 46 lakhs, the assessee has failed to discharge the onus. Accordingly, the above sum has been added to the total income of



- the assessee under section 68 of the act and consequently the amount of 1.5% of the above share capital in the form of unaccounted commission expenditure was also added to the total income.
11. Accordingly, the total taxable income of the assessee was determined at Rs. 4,699,550 as per assessment order dated 28/3/2016 passed under section 143 (3) read with section 147 of the act.
  12. Assessee aggrieved with the same preferred an appeal before the learned CIT - A the learned CIT - A confirmed the addition holding that the above accommodation entry provider Mr Praveen Kumar Jain has confirmed that these are the entities who have provided loan to the assessee and these are accommodation entries. Assessee also filed certain additional evidence before him which were forwarded to the learned assessing officer and after obtaining the remand report same are admitted the additional evidence were with respect to the genuineness of the above transaction in the form of permanent account number and income tax return of the investors and share certificate issued by the assessee. The learned CIT - A further asked the assessee to submit the Ledger account of the investors from the date of receipt of share application money till date and details of dividend or any other benefits extended by the assessee to the investor.
  13. The assessee submitted such details which were produced by the learned CIT - A at paragraph number seven of his order. the learned CIT - A noted that no



transaction between the appellant and the investors have occurred after 15/10/2009 and assessee has also not paid any dividend. With respect to the identity, the learned CIT - A agreed that the assessee has established the identity of the investors. With respect to the creditworthiness, the claim of the assessee that the investors have sufficient net worth but the learned CIT - A noted that income tax return did not reveal any high income in the relevant assessment year and sufficient source on date of investment. With respect to the genuineness of the transaction assessee was asked to prove how the genuine business was generated to create such a huge reserve and what is the understanding between the investor and the appellant to make the investment, The learned CIT - A held that as the assessee has not given any return on the investment made by the so-called company as the share capital in the assessee, for 14 years, there is no justification to show the genuineness of the above transaction. Accordingly, the addition of Rs. 46 lakhs were confirmed. With respect to the addition of Rs. 69,000, same was deleted. He further confirmed the reopening of the assessment. Accordingly, the appeal of the assessee was partly allowed.

14. Assessee is aggrieved with the same and has preferred this appeal. Assessee submitted a detailed paper book containing 77 pages, a written submission along with the other evidence containing 68 pages and several judicial precedents in a legal paper book containing 132 pages.



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15. The learned authorised representative submitted that according to the provisions of section 68 of the income tax act it is the duty of the assessee to prove the identity, genuineness, and creditworthiness of the shareholder. Assessee has submitted details of share application money, copy of the Ledger account in the books of investor companies, name address permanent account number in tax jurisdiction etc of the investor companies, income tax return of the companies and directors report ,audit report and balance sheet of the investor companies. Further the assessee also submitted the company master data downloaded from the website of the government of India wherein the company name, identification number, date of incorporation, registered address, email ID and name of directors is mentioned. With respect to the genuineness of the transaction assessee submitted that assessee has received the shareapplication money through banking channel and the funds were received through account payee cheques. The assessee has also submitted the bank statement and other documents which were submitted before the learned assessing officer to prove the genuineness of the transaction. All the investor companies also confirmed the above investment before the learned assessing officer. With respect to the creditworthiness of the parties it was submitted that in case of Casper Enterprises private limited wherein the amount of Rs. 23 lakhs were received has a share capital of 46 lakhs, reserve, and surplus of Rs 119 lakhs, and investment in the



company is merely 13.92% of the net worth of the above investor. With respect to Duke Business Private limited it was submitted that share capital of the above company is 45 lakhs, a reserve of Rs. 143 lakhs and therefore the investment is meagre 12.12% of its net worth. It was further submitted that it is not necessary for the assessee to always declare dividend to the shareholders. It would always depend on the profitability of the company. But that does not make the investment of shareholders nongenuine. It was submitted that the sole reason for which the addition has been made by the learned assessing officer is the statement of the accommodation entry provider. It was further stated that that accommodation entry provider has retracted his statement before the income tax Department which was also pointed out before the learned assessing officer. He further referred to the several judicial precedents of the coordinate benches wherein the statement of the same accommodation entry provider and its retraction was considered and addition was deleted. He further submitted that if the learned assessing officer has used the statement of an accommodation entry provider, then the assessee has asked for the cross-examination of the same which is also not given by the learned assessing officer and therefore the addition itself deserves to be deleted on this account.

16. In the end he relied upon the decision of Bharti lifestyle private limited versus income tax officer in ITA number 2416/M/2021 for assessment year 2014 – 15 wherein



M/s Casper Enterprises private limited was one of the companies who has given a loan to the assessee and addition was deleted. He also referred to the decision of the coordinate bench in case of Shri Lakshmi estate private limited in ITA number 6557/M/2017 in case where both the above investor in the assessee company were considered and the addition was deleted. Similarly, he relied upon the decision of coordinate bench in case of Shri Ganesh developers in ITA number 1477/M/2017 for assessment year 2008 - 09 where both the investors in the assessee company are also the investor in that company and the addition was deleted. He further relied upon the decision of the coordinate bench in case of ITA number 1477/M/2017 for assessment year 2008 - 09 in case of perfect filaments Ltd wherein Casper Enterprises private limited was one of the share applicants and the addition on identical facts was deleted. He further referred to the decision of coordinate bench in ITA number 193 and 233/M/2024 assessment year 2010 - 11 and 2012 - 13 wherein both these investors were also there and identically the addition was made which was deleted by the coordinate bench. He further referred to the decision of the Sharda lapse private limited in ITA number 1680/M/2020 wherein duke business private limited was one of the entities which is also the shareholder of the assessee company and the addition identically made by the learned assessing officer was deleted by the coordinate bench.



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17. Therefore, it was submitted that both these companies' shareholders are already considered by the ITAT in series of decisions wherein both the above companies are held to be credit of the transactions with them and transactions with them held to be genuine and therefore this issue is squarely covered in favour of the assessee.
18. The learned departmental representative vehemently supported the orders of the learned lower authorities and submitted that the case of the assessee was reopened based on the information received by the investigation wing that during the course of search in case of one accommodation entry provider, the above 2 investor companies were found to be entities operated by him, and both these entities have invested Rs. 23 lakhs each in the assessee company as share capital, therefore it was held to be an accommodation entry and hence the case of the assessee was reopened.
19. With respect to the addition on its merit, the learned departmental representative vehemently submitted that both these entities are bogus entities, operated by an accommodation entry provider, therefore there is no reason for accepting their creditworthiness and the genuineness of the above transaction. He further referred to the order of the learned CIT – A that when the assessee could not return any dividend or any sum to the investors, it itself proves that the above entities are not genuine. Accordingly, he relied upon the orders of the learned lower authorities and submitted that the



- addition has rightly been confirmed by the learned CIT – A.
20. We have carefully considered the rival contention and perused the orders of the learned lower authorities. In this case the assessee was stated to be engaged in the business of developer and real estate. It filed its return of income which was accepted as it is. Subsequently on account of information received by the learned assessing officer from investigation Wing that based on the search operation carried out by the income tax Department on an accommodation entry provider, the name of two companies were found which have invested Rs. 23 lakhs each in the assessee company. Investor in assessee company was found to be operated by those accommodation entry providers. In their statement also he confirmed that the above 2 companies which has invested in the assessee company are merely paper companies and the amount of investment made by these companies are only accommodation entries. Based on this the case of the assessee was reopened.
21. During the course of assessment proceedings, the learned assessing officer asked the assessee to prove the identity, creditworthiness and genuineness of the transaction of the above sum of Rs. 46 lakhs received by the assessee company from about two companies as share capital.
22. The assessee submitted that it has received Rs. 23 lakhs each from Casper Enterprises private limited and Duke business private limited. To prove the identity



and creditworthiness of the above parties as well as the genuineness of the transaction assessee submitted the complete address of the shareholders and their permanent account numbers. Assessee also submitted the income tax jurisdiction of those companies along with the income tax return filed by these investor companies. Assessee produced the share application made by the above investor company; allotment made through allotment advice issued by the assessee to show that the investment is in the form of share capital. To prove the creditworthiness, assessee submitted the directors report, audit report, profit and loss account and balance sheet of the investor companies along with the copies of the bank statement and the confirmation of the investor. To show the sources of the funds, assessee submitted that it has received total payment of Rs. 23 lakhs from each of the above company for which the share capital is issued at the face value only. These investors have their own share capital and reserves and surplus. It was submitted that in case of Casper Enterprises private limited to whom shares at the face value of Rs. 23 Lacs were issued has share capital of Rs. 4,611,500 and reserves and surplus of Rs. 1,19,12,733 which makes the net worth of the investor at Rs. 1,65,24,233/- and net investment in the assessee company of the shareholder is merely 13.92%. With respect to the investment made by Duke business private limited to whom the share capital of Rs. 23 lakhs were issued, assessee submitted that that



company has share capital of Rs. 4,592,000 and reserves and surplus of Rs. 14,387,184/- making the net worth of the investor at Rs. 18,979,184 and the investment made by the investor in the assessee company is merely 12.12% of its net worth. Assessee has also submitted that these are two investors have already sold the investment in the assessee company to other parties. The assessee has also given the name that the new shareholders are Surajbhan Rajkumar private limited and Navkiran developers private limited. If, the above investment would not have been genuine, at least the other parties would not have purchased the above shares in the assessee company from those investors. It is not the case of the learned assessing officer that those parties are also bogus and are merely accommodation entry providers. With respect to the observation of the learned CIT – A that assessee has not paid any dividend to the shareholders despite holding the share capital in the assessee company by those investors for substantially long time, we do not find any reason that if an assessee company does not declare a dividend, the investment of the share capital by the investors can be considered as nongenuine. Further it is also the claim of the learned CIT – A that there is no transaction between the assessee and these investors over and above the investment originally made of Rs. 23 lakhs each, therefore the above sum invested by these companies are merely an accommodation entry. We do not find any reason to subscribe to the view of the learned CIT – A because



the shareholders does not have any other financial transactions with the investee company after they make investment in the share capital of the assessee company. Even otherwise the learned assessing officer has categorically noted that assessee has stated that these investments have been sold by these companies to the other companies, therefore naturally, the finding of the learned CIT - A does not help the case of the revenue.

23. In this present case the assessee has explained the nature of the above investment as share capital invested by the two companies in the assessee wherein assessee as well as the investors have confirmed the transaction. In the books of account of the assessee the amount is shown as share capital and in the books of the investor same is shown as an investment in the assessee company. With respect to the source of the funds, the assessee has produced the bank account of the investor company along with the audited annual accounts and income tax return. The funds have been invested in the assessee company by the investors through account payee cheque. Therefore, the assessee has also explained the source of the funds. Thus assessee has explained the nature and source of the credit in the books of account of the assessee.
24. The learned CIT - A questioned that how these companies have such a huge reserve and surplus, these answer could not have been provided by the assessee because assessee is not required to prove the source of source of the cash credit and share capital for



the impugned assessment year. The only onus cast upon the assessee is to show the identity, creditworthiness of the investor as well as the genuineness of the transaction. This has been fulfilled by the assessee.

25. With respect to the genuineness of the transaction assessee has submitted all the requisite details as are available with it and also provided all the details by the investor to show that there are transaction in the assessee company of investment in share capital is genuine. The only reason why the learned assessing officer and the learned CIT - A has considered the above investment as nongenuine is because of the statement made by an accommodation entry provider. The assessee has categorically stated that such accommodation entry provider has retracted his statement . This has come to the notice through several decisions of the coordinate benches wherein the addition in respect of the above two companies were made under section 68 when these companies have made investment in other assesses, the coordinate benches, have deleted the addition. It was categorically noted that the accommodation entry provider has retracted the statement. When retraction happens, the reliance on the original statement as well as the retracted statements should not have been made by the either parties. As the request of the assessee for cross-examination of the accommodation entry provider was rejected, similarly he should not



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- have considered and relied upon the statement of the accommodation entry provider.
26. In fact, the learned assessing officer should have further carried out the enquiry of the investors on the basis of details furnished by the assessee. The learned that assessing officer was also informed by the assessee that those investors have sold their share in the assessee company to the other companies and the names and addresses were provided. But the learned that assessing officer did not make any enquiry either with the existing shareholders or with the old shareholders.
27. The learned assessing officer is duty-bound to throw the onus back to the assessee by making an investigation of the evidences produced before him, the learned assessing officer should have summoned those parties or ask the assessee to produce them or issued notices under section 133 (6) of the act to the investors. In absence of any enquiry but merely considering the statement of third-party which was found to be retracted subsequently, the addition could not be made in the hands of the assessee. It is to be noted that assessee has produced overwhelming evidence before him which remained uninvestigated by the learned AO.
28. It is the claim of the learned authorised representative that in case of both these investor companies, the matters have reached to the coordinate benches, where these companies have made investment in other companies and addition in those other companies were



made under section 68 of the act on the similar basis, were deleted by the coordinate benches holding that the assessee has proven the identity and creditworthiness of the investor as well as the genuineness of the transaction. First such case was put before us in case of Bharati lifestyle private limited in ITA number 2416/M/2021 for assessment year 2014 – 15 wherein based on the decision of the coordinate bench in case of Nisarg life space llp ITA number 629/M/2020 dated 11 June 2021, where, the identical addition was deleted as per paragraph number 15 of that decision wherein Caspar Enterprises private limited was one of the party and the same accommodation entry provider was also involved. Further in case of Shri Lakshmi estate private limited in ITA number 6557/M/2017 for assessment year 2013 – 14 as per order dated 3/5/2019 wherein both the above parties were considered at paragraph number 3 of that order and the addition was deleted. This is also the same assessment year for which the appeal is filed before us. Further in case of ITA number 1477/M/2017 for assessment year 2008 – 09 where both the parties namely Casper Enterprises private limited and Duke business private limited were considered. Similarly, both these parties were also considered in ITA number 193 and 232/M/2018 and further in ITA number 1680/M/2020 for assessment year 2012 – 13. Therefore, in the series of the decision of the coordinate benches, where the statement of the same accommodation entry provider was considered and the



same investor are also involved. The claim in all these cases of the revenue was that this is an accommodation entry and the coordinate benches have deleted such addition. Therefore, on the merits of the case this issue is covered in favour of the assessee by all these above decisions.

29. In view of the above facts, we direct the learned assessing officer to delete the addition of Rs. 46 lakhs made under section 68 of the income tax act with respect to the above 2 companies for the reason that assessee has discharged its initial onus by producing overwhelming evidence before the learned assessing officer but the learned assessing officer has made the addition only on the basis of the statement of accommodation entry provider without making any enquiry on the evidences produced. Accordingly ground number 2 – 5 of the appeal are allowed.
30. On the issue of the reopening of the assessment we do not find any merit in the arguments of the assessee that the reopening is not valid. we find that the reopening has been made on the basis of the tangible information received by the learned assessing officer wherein assessee was found to be a beneficiary of the accommodation entry provided by an accommodation entry provider who was searched. The companies which have invested in the assessee were found to have been operated by the same person. Therefore, the assessing officer has tangible material to reopen the case. Further at the time of reopening of the assessment, the learned assessing officer is required to



merely form a prima facie opinion about escapement of income. He need not show that there is escapement of income.in view of this all the arguments of the learned authorised representative are dismissed. Accordingly ground number 1 is dismissed.

31. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 14/10/2024.

Sd/-

(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 14.10.2024

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