

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member
Shri Rakesh Mishra, Accountant Member**

**I.T.A. No.1733/Kol/2024
Assessment Year: 2017-18**

**Income Tax Officer, Ward-6(2),
Kolkata,**

Aayakar Bhawan, 6th Floor, P-7,
Chowringhee Square, Room No. 6/13C,
Kolkata - 700069

.....**Appellant**

vs.

Genesis Computech Pvt. Ltd.,

23, Stand Road, Kolkata – 700001
[PAN: AAECG2555R]

..... **Respondent**

Appearances by:

Assessee represented by : Manoj Kataruka, A.R.
Department represented by : Susanta Saha, Sr. DR

Date of concluding the hearing : September 26, 2024

Date of pronouncing the order : October 01, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the Revenue pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Learned. Commissioner of Income Tax (Appeals) Addl/JCIT(A), Thane, dated 28.03.2024 arising out of Assessment Order dated 30.12.2019, passed under Section 143(3) of the Act.

2. The Revenue has raised the following grounds of appeal:

"1. In the facts and in circumstances of the case the Ld.CIT(A) erred in deleting the additions made u/s.68 of the Income Tax Act, 1961 to the tune of Rs.4.36.113/ without going through the merits of the case that there is no explanation available in any way at the assessment stage, hence, deposit of funds remained unexplained. The only economic rationale behind such transaction is to provide accommodation entries for bringing back the unaccounted money/fund of the clients to their regular books of accounts

2 The case falls under exceptional clause 3.1(h) of CBDT's Circular N 0.5/2024 dated 15.03.2024 since it is a case of accommodation entries. Hence, the case despite having tax effect below the monetary limit specified by the CBDT for further filing of appeal before the Hon'ble ITAT, is eligible to contest on merit before the Hon'ble ITAT."

3. That the appellant craves to leave to make any amend, addition, alternation modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings."

3. At the outset, the Ld. Departmental Representative stated that there is a delay of 79 days in filing the appeal by the Revenue. A condonation petition has been filed explaining the reasons for the delay. We after considering the submissions made in the petition, find that there is a sufficient cause for delay in filing the appeal. Accordingly, the delay is condoned and we proceeded to decide the appeal on its merit.

4. Brief facts of the case are that the assessee filed its return of income on 10.08.2017 for the A.Y. 2017-18 by declaring total income of ₹ 760/-. The case of the assessee was selected for limited scrutiny for the examination of two key issues. (a) Expenses relating to exempt income. (b) low income in comparison to high loans, advances and investments. During the assessment proceedings, the Assessing Officer made an addition to the total income amounting to ₹ 4,36,876/- primarily relating to unexplained cash deposit of ₹ 3,90,000/- made during the demonetization period and unexplained cash credit in bank extent of ₹ 46,113/-.

5. Dissatisfied with the addition made by the Assessing Officer, assessee went in appeal before the Learned CIT(A). The Learned CIT(A) allowed the appeal holding that the assessee has furnished copy of cash book for financial years 2015-16 and 2016-17 demonstrating consistent monthly cash balance of more than 8 lacs. The Learned CIT(A) further observed that the AO's findings that the assessee has more than 7 lacs in demonetization currency notes was based on speculation and not supported by any evidences. Therefore, the Learned CIT(A) directed the Assessing Officer to delete the addition made under Section 68 of the Act.

6. Aggrieved by the order of Learned CIT(A), Revenue has now filed this appeal before this Tribunal raising two grounds of appeal:

1. CIT(A) erred in law in setting aside the addition made under Section 68 of the Act of ₹ 4,36,876/- without examining the merits of the case.
2. The Revenue argued that there was no proper explanation from the assessee at the assessment stage regarding the cash deposits.

7. The Learned Departmental Representative contend that the Learned CIT(A) had erroneously deleted the addition made by the Assessing Officer under Section 68 of the Act. He argued that the unexplained cash deposit during the demonetization period were not properly explained by the assessee, therefore, the addition was justified. The Learned Departmental Representative further submitted that the case fell under exceptional clause 3.1 of the CBDT's Circular No. 5 of 2024 dated 15.03.2024 as it involved accommodation entries. Hence, the Revenue's appeal was maintainable despite low tax effect.

8. On the other hand, the Learned Authorised Representative argued that the Assessing Officer had made the addition beyond the scope of limited scrutiny, which was confined to examine the explanation relating to exempt income and the comparison of income with loans and investments. The Learned Authorised Representative further submitted that the assessee had sufficient cash balance throughout the relevant financial year and deposits during the demonetization period were explained with proper documentation. The learned Authorised Representative contended that the Learned CIT(A) had rightly deleted the addition after considering the all relevant evidences. He further argued that the Revenues appeal should be dismissed as the tax effect was below Rs. 50 lacs and the case did not fall under any exceptional as per the CBDT's Circular.

9. We after hearing the rival submissions of parties and perusing the material available on record. We find that the appeal was filed by the Revenue does not fall under any exceptional clause as argued by Learned Departmental Representative, the case primarily involves on the addition made during the demonetization period and the Learned CIT(A) has rightly observed that the assessee had sufficient cash balance during the relevant financial year as evidences by the cash book. We further note that the Learned Assessing Officer made the addition based on assumption and conjecture without concrete evidence to support the claim cash deposit were unexplained. The Learned CIT(A) properly examine the facts and found that the assessee had sufficient cash balance to explain the deposits. Therefore, the learned CIT(A) decision to delete the addition under Section 68 of the Act is well founded. Moreover, the tax effect in the present case is below threshold specified by the CBDT's Circular and the case does not fall under any exceptional category. The Revenue appeal is thus not maintainable on this ground as well. Considering the above facts,

we find that the order passed by the Learned CIT(A) is well reasoned and does not warrant any interference. Accordingly, appeal filed by the Revenue is hereby dismissed.

10. In the result, appeal of the Revenue is dismissed.

Kolkata, the 1st October, 2024.

Sd/-
[Rakesh Mishra]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated:01.10.2024.
AK, PS

Copy of the order forwarded to:

- 1Genesis Computech Pvt. Ltd
2. Income Tax Officer, Ward-6(2),Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches