

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**Shri Manish Borad, Judicial Member
Shri Sonjoy Sarma, Accountant Member**

**I.T.A. No. 906/Kol/2024
Assessment Year: 2011-12**

Umang Nemani,
Block-E, Rajvillas 12,
Shivnath Sastri Sarani,
New Alipore - 700053
[PAN: ABOPN7213K].....**Appellant**

vs.

**Income Tax Officer,
Ward 44(2), Kolkata,**
3 Govt. Place,
Kolkata – 700001 **Respondent**

Appearances by:

Assessee represented by : Miraj D. Shah, AR
Department represented by : P.P. Barman, Addl. CIT, Sr. DR

Date of concluding the hearing : October 03, 2024
Date of pronouncing the order : October 07, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2011-12 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, National Faceless Appeal Centre (NFAC), Delhi, dated 28.09.2023 arising out of Assessment Order dated 15.12.2016, passed under Section 143(3) of the Act.

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

*"1. That the Order passed u/s 250 is bad in law as well as on facts of the case.
That the Hon'ble CIT(A), NFAC erred in law as well*

*2 as on facts of the case in not considering the appeal submission filed on
28.09.2023.*

*3. That the Hon'ble CIT(A), NFAC erred in law as well as on facts of the case by
confirming the addition*

*4. in respect of loan received from M/s Beejay Investment and consultancy Pvt Ltd
to the tune of Rs. 5,02,50,000/- as unexplained cash credit u/s 68 of the Income
Tax Act, 1961*

*That the Hon'ble CIT(A), NFAC erred in law as well as on facts of the case by
confirming the addition in respect of a sum of Rs. 129707/- disallowed u/s 14A r/w
rule 8D of the Income Tax act, 1961. 4*

*5. That the appellant craves to leave, add, amend or 5 adduce any of the grounds
of appeal during the course of appellate proceedings."*

3. At the time of hearing, Ld. AR stated that there is delay of 149 days in filing the appeal before the Tribunal. On this aspect assessee had filed petition praying for condonation of such delay.

4. We after perusing application filed by the assessee, find that there is a reasonable cause for the delay in filing the appeals by the assessee. Considering the same, condone such delay in filing the appeal by the assessee.

5. Brief facts of the case are that the assessee is engaged in trading in securities and commodities through the stock exchange. During the course of assessment proceedings for AY 2012-13, it came to the notices from the AO that the assessee had raised significant unsecured loan of Rs. 5,02,50,000/- from M/s Beejay Financial Consultants Pvt. Ltd. The AO suspected that the loan was non-genuine based on suspicion, the AO reopened the assessment u/s 147 of the Act and issued notice u/s 148 of the Act on 06.04.2015. In response to the notices the assessee filed return

of income for the AY 2011-12 on 22.07.2015 declaring total income of Rs. 'Nil'. During the course of assessment proceedings, the Ld. AO issued notice u/s 143(2) and 142(1) of the Act seeking information regarding unsecured loans. The assessee submitted the details regarding the loan including the payment relating to identity, genuineness and creditworthiness of the lenders. The Ld. AO also issued notice u/s 133(6) of the Act to the loan creditor, i.e. M/s Beejay Financial Consultants Pvt. Ltd. and received reply. However, the Ld. AO founded the reply unsatisfactory and treated the entire loan of Rs. 5,02,50,000/- as unexplained income u/s 68 of the Act. Additionally, the Ld. AO made disallowance of Rs. 1,29,777/- u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') stating that the assessee had invested Rs. 2,71,09,300/- in shares for earning exempt income.

6. Aggrieved by the assessment order, the assessee filed an appeal before the Learned CIT(A) where the Learned CIT(A) upheld the addition made by the Learned Assessing Officer by rejecting the assessee's submission. Although in the impugned order, the Learned CIT(A) stated that no reply was submitted by the assessee. However, the assessee has furnished e-proceeding response generated acknowledgement which clearly shows that the assessee made submission on the portal. Therefore, the contention of the Learned CIT(A) that no submission was made was not correct. The Learned Authorised Representative as the reasons for reopening based on incorrect information, the Learned Authorised Representative contended that the Assessing Officer reopened the case on the basis of letter dated 21.11.2017 stated that the assessee was a beneficiary 19,77,50,000/- which was transferred through intermediary companies including M/s Beejay Financial Consultants Pvt. Ltd. However, reopening the notice did not pertain to the actual transaction informed the

assessee which was ₹ 5,02,50,000/- and even within that amount received was only ₹ 77 Lacs during the relevant year. The Learned Authorised Representative further argued that the assessee submitted sufficient evidence regarding identity, genuineness and creditworthiness of the loan creditor, the loan creditor had appeared before the Learned Assessing Officer and confirmed the loan transaction along with interest payment details. Therefore, the impugned order passed by the Learned Assessing Officer as well as the Learned CIT(A) needs to be set aside.

7. On the other hand, the Learned Departmental Representative argued that the Assessing Officer had rightly reopened the assessment based on information received and the loan transaction appeared dubious as M/s Beejay Financial Consultants Pvt. Ltd. lacked the financial capacity to land such a significant amount. The learned Departmental Representative further submitted that the Learned Assessing Officer had followed due process in issuing notice and by providing opportunities for the assessee to substantiate the loan transaction. The assessee has failed to provide satisfactory explanation.

8. We after hearing the rival submission and perusing the material on record, we find that the reopening of the assessment based on incorrect information. The reasons for reopening as stated in the letter dated 21.11.2017 indicated that the assessee was a beneficiary of ₹ 19,77,50,000/- which does not match the facts of the case. Accordingly, the loan transaction for ₹ 5,02,50,000/- which is only ₹ 77 lacs during the relevant year. Therefore, there is no nexus between the reasons for reopening and actual assessment made which make reopening the assessment. Moreover, the assessee had furnished sufficient evidence regarding the loan transaction including the confirmation from the loan creditor M/s Beejay Financial Consultants Pvt. Ltd. along with details of the

interest payment, the creditor appeared before the Learned Assessing Officer and confirmed the transaction. In such a circumstance, the addition made under Section 68 of the Act cannot be sustained. In view of the above findings, we set aside the reopening of the assessment order under Section 147 of the Act which is bad in law and liable to be quashed. Significantly, the addition made under Section 68 of the Act and disallowance under Section 14A of the Act are also deleted. The appeal of the assessee is allowed. In terms of the above, appeal of the assessee is allowed.

9. In the result, appeal of the assessee is allowed.

Kolkata, the 7th October, 2024.

Sd/-
[Manish Borad]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated:07.10.2024.
AK, PS

Copy of the order forwarded to:

- 1Umang Nemani
2. Income Tax Officer, Ward 44(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches