

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.2887/MUM/2023

(Assessment Year :2018-19)

ITO, 27(3)(1)

Room No.422, 4th Floor,

Tower No.6,

Vashi Railway Station Complex, Vashi

Navi, Mumbai- 400703

..... Appellant

v/s

Triveni Lifestyle Developers,

Excel Plaza, Office No. 1303/1304,

13th Floor, 90 Feet Road, Pant Nagar,

Ghatkopar East,

Mumbai - 400051

PAN: AAKFT2758G

..... Respondent

Assessee by :Shri Vijay Mehta

Revenue by :Shri Manoj Kumar Sinha, Sr.DR

Date of Hearing – 02/08/2024

Date of Order 16/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 23.06.2023 passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["*Id. CIT(A)*"], which in turn arose from the assessment order passed under section 143(3)r.w. section 143(3A) and 143(3B) of the Act, for the assessment year 2018-19.

2. In this appeal, the Revenue has raised the following grounds: -

"1. On the facts and circumstances of the case, the Ld. CIT(A) (NFAC) erred in deleting the addition of Rs.36,31,07,260/- made w/s.68 of the Act on account of introduction of capital without appreciating the fact that during the course of assessment proceedings the assessee has not proved the creditworthiness of the partners and source of the capital introduced and has not even submitted complete documentary evidences to prove that the transaction was genuine.

2. On the facts and circumstances of the case, the Ld. CIT(A) (NFAC) erred in deleting the addition of Rs.36,31,07,260/- made by the AO on account of unexplained cash credit us 68 of the Act, without appreciating the fact that explanation submitted regarding the source of capital introduced by the partners including Triveni Lifestyle Developers Pvt. Ltd. and Rajesh R Patel, are not matching with the accounts submitted in this regard.

3. On the facts and circumstances of the case, the Ld. CIT(A) (NAC) erred in taking into consideration the additional documents submitted by the assessee during course of appellate proceedings even after holding that the additional evidences are not admitted.

4. The appellant prays that the order of the CIT(A), NFAC on the above ground(s) be set aside and that of the Assessing Officer restored."

3. The only dispute raised by the Revenue is against the deletion of addition made under section 68 of the Act on account of the introduction of capital by the partners in the assessee firm.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a Limited Liability Partnership firm and filed its return for the year under consideration declaring a total income of Rs.2,09,03,580/-. The return filed by the assessee was selected for complete scrutiny and statutory notices under section 143(2) and section 143(2) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the capital of the assessee increased substantially during the year under consideration and new capital amounting

to Rs.36,31,07,260/- was introduced. Accordingly, the assessee was asked to furnish the nature and source of the capital introduced. In response to the notice issued under section 142(1) of the Act, the assessee furnished the bank account statement and income tax return. The assessee was further asked to furnish information such as the ledger of the partners in another firm from where capital is withdrawn and bank account statement of the firm from which capital is withdrawn. In the absence of aforementioned details sought during the assessment proceedings, the Assessing Officer ("AO") treated the entire capital of Rs.36,31,07,260/- as unexplained and added the same to the total income of the assessee under section 68 of the Act on the basis that the assessee could not explain the nature and source of capital introduced during the year under consideration.

5. The Id. CIT(A), vide impugned order after considering the evidence/documents furnished by the assessee during the assessment proceedings, concluded that the assessee has submitted ample evidence to discharge the primary onus of establishing the identity of the creditor, creditworthiness and genuineness of the transaction. The Id. CIT(A) further held that all the 3 conditions have been established and the onus of the assessee has been discharged under section 68 of the Act. The Id. CIT(A) also held that the AO neither pointed out any deficiency in the documents furnished by the assessee nor controverted the same by bringing on record any contradictory evidence to satisfy the impugned addition. It was also held that there is no evidence on record whether the capital introduced in the assessee firm is from its undisclosed sources or the same is bogus in

nature. Accordingly, the Id. CIT(A) deleted the addition made by the AO. The relevant findings of the Id. CIT(A) on this issue are reproduced as follows:

"As per provisions of section 68 of the Act onus is on the person in whose books of account such money has surfaced. If an amount has surfaced in the books of an assessee either in the shape of share application money, investments or deposit/loan, it is presumed that such money belongs to the person in whose name it has been shown. However, as per provisions of section 68 of the Act, deeming provisions postulates that it is possible that the assessee may circulate its own unaccounted money in the shape of bogus persons and therefore legal onus has been created. What is relevant is the identity, creditworthiness of the depositor and genuineness of the transaction. All these three conditions have been established and onus of the assessee/Assessee has been discharged u/s 68 of the Act. The Assessee has amply proved and discharged its burden by filing the necessary relevant documentary evidences in support of capital raised during the year.

The AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence. Reliance is placed on the decision of the Hon'ble Bombay High court in the case of PCIT v. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Pan) wherein it was held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case.

AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee with regards to the partners that have introduced capital during the concerned year. These evidences furnished have been neither controverted by the AO during the assessment proceedings nor did anything substantive to bring on record to justify the addition made by him. Thus, going by the records placed by the assessee of its partners and their capital addition, it can be held that the assessee has discharged his initial burden and the burden shifted on the AO to enquire further into the matter which he failed to do so.

AO did not bring any evidences on record to suggest that capital introduced in the Assessee firm is from its own undisclosed sources nor any material was brought on record to show that the capital introduced were bogus. AO could not prove that these transactions are not genuine. Assessee filed all the evidence in his possession and AO simply rejected it and made the addition u/s.68 of Act. AO failed to carry his suspicion to logical conclusion. The law is settled that if the initial burden is discharged by assessee by producing sufficient materials in support of credit transactions, the onus shifts upon the AO and the AO needs to disprove that submissions made by the assessee are not correct, after carrying out necessary investigation/examination in this regard.

Assessee filed the name, address and PAN of firm before the AO confirming the identity of said firm before the AO. The AO has not made any further enquiries and has levelled allegations against the said firm without any basis. The above facts clearly show that the capital introduced by the said firm in

Assessee firm stands fully explained and all the three limbs of section 68 stands proved. In the paper book the Assessee filed the following documents before AO to provide the identity, creditworthiness & genuineness of the transaction containing: -

- *ITR ACKNOWLEDGEMENT OF ALL THE PARTNERS FOR AY 2017-18 & A.Y 2018-19.*
- *COMPUTATION FOR A.Y 2017-18 & A.Y 2018-19*
- *FINANCIAL STATEMENTS FOR A.Y 2017-18 & A.Y 2018-19 (Wherever Applicable)*
- *BANK STATEMENT OF PARTNERS*

As per the facts outlined in the above paras it can be established that documentary evidences filed prove the identity and creditworthiness of the partners as well the genuineness of transaction, Further the Assessee has also briefed the A.O regarding the source of such capital that has been introduced by the partners during the concerned year. The AO in the impugned Assessment Order has made additions regarding the following ground on the following basis:

"Since the assessee could not explain nature and source of capital introduced during the year under consideration, this amount is added to total income of the assessee u/s 68 of the Income Tax Act, 1961."

Thus on careful perusal of the Assessee's submissions during the course of assessment proceedings justifying the Identity of the partners, Creditworthiness of the partners and genuineness of the transactions a conclusion can be derived that the AO has disregarded the Assessee's submission and has not brought forward any other evidences supporting his claims and arbitrarily rejected the said submissions has made the additions"

6. During the hearing, the learned Departmental Representative ("*Id. DR*") submitted that the assessee did not furnish the complete details as sought by the AO and therefore, the AO could not make a detailed inquiry. The *Id. DR* also submitted that the *Id. CIT(A)* considered additional evidence while deciding the issue in favour of the assessee, without granting any opportunity to the AO to furnish a remand report.

7. On the other hand, the learned Authorised Representative ("*Id. AR*") at the outset by referring to the various judicial pronouncements submitted that once the identity of the partner is established and the factum of

introduction of capital by the partner into the partnership firm has not been disputed, the addition cannot be made in the hands of the partnership firm and addition if any can only be made in the hands of the partners if he is unable to prove the source. On merits, the Id. AR submitted that no new evidence was furnished by the assessee before the Id. CIT(A) and only on the basis of the documents furnished during the assessment proceedings, the Id. CIT(A) came to the conclusion that the assessee has sufficiently discharged the onus cast on it to prove the identity and creditworthiness of the partners and the genuineness of the transaction in respect of capital introduced in the assessee-firm.

8. We have considered the submissions of both the sides and perused the material available on record. Admittedly in the present case, the assessee is a partnership firm and during the year under consideration total capital amounting to Rs.36,31,07,260/- was introduced by its various partners, details of which are as follows: -

<i>S.No.</i>	<i>Name of the partner</i>	<i>Capital Introduced</i>
1.	<i>Dinesh R Patel</i>	<i>29700000/-</i>
2.	<i>Harilal K Patel</i>	<i>11705000/-</i>
3.	<i>Harilal K Patel</i>	<i>10125000/-</i>
4.	<i>Kishore R Patel</i>	<i>16250000/-</i>
5.	<i>Rajesh R Patel</i>	<i>13600000/-</i>
6.	<i>Ratilal R Patel</i>	<i>11349500/-</i>
7.	<i>Ravilal R Patel</i>	<i>10124500/-</i>
8.	<i>Ravilal R Patel</i>	<i>15815000/-</i>
9.	<i>Sanjay N Mehta</i>	<i>20000000/-</i>
10.	<i>Triveni Lifestyle Ltd.</i>	<i>225428250/-</i>
	<i>Total</i>	<i>363107260/-</i>

9. As per the assessee, all the partners have joined to carry out various real estate projects and for each project they have separate Special Purpose

Vehicle ("SPV") in the form of partnership firm, LLP, etc. It is further the claim of the assessee that once the project is over in one SPV, the partners would withdraw money and introduced the same in the other SPV. Accordingly, the impugned capital was introduced in the assessee firm during the year under consideration. From the record, it is evident that during the assessment proceedings, the assessee furnished the bank account statement and income tax return of each of the partners to discharge the onus cast on it under section 68 of the Act, i.e, identity and creditworthiness of the partners and genuineness of the transaction. However, in absence of certain documents, the AO treated the nature and source of capital introduced as unexplained and added the entire amount to the total income of the assessee under section 68 of the Act.

10. We find that in *CIT vs. Jaiswal Motor Finance*, as reported in (1983) 141 ITR 706 (All), the Hon'ble Allahabad High Court held that it is well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exists and it is found as a fact that cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, such sum could not be assessed in the hands of the firm. Accordingly, the Hon'ble High Court held that the Tribunal did not commit any error of law and rightly held that the deposits shown in taxpayer's accounts were satisfactorily explained.

11. Similarly, the Hon'ble High Court of Andhra Pradesh and Telangana in *CIT vs. M. Venkateswara Rao*, reported in (2015) 57 taxman.com 373 (AP&T), in a case wherein contribution made by the partners to the capital

was treated as income of the firm by the Revenue held that the amounts contributed constitute the very substratum for the business of the firm and the pooling of such capital cannot be treated as credit. The relevant findings of the Hon'ble High Court, in the aforesaid decision, are as follows: -

"8. Section 68 of the Act no doubt directs that if an assessee fails to explain the nature and source of credit entered in the books of account of any previous year, the same can be treated as income. In this case, the amount, that is sought to be treated as income of the firm is the contribution made by the partners to the capital. In a way, the amount so contributed constitutes the very substratum for the business of the firm. It is difficult to treat the pooling of such capital, as credit. It is only when the entries are made during the course of business that can be subjected to scrutiny under section 68 of the Act.

9. Even otherwise, it is evident that the respondent explained the amount of Rs.76,57,263 as the contribution from its partners. That must result in a situation, where section 68 of the Act can no longer be pressed into service. However, in the name of causing verification under section 68 of the Act, the Assessing Officer has proceeded to identify the source for the respective partners to make that contribution. Such an enquiry can, at the most be conducted against the individual partners. If the partner is an assessee, the concerned Assessing Officer can require him to explain the source of the money contributed by him to the firm. If, on the other hand, the partner is not an assessee, he can be required to file a return and explain the source. Undertaking of such an exercise, vis-a-vis the partnership firm itself, is impermissible in law. In the judgment relied upon by the appellant itself, the Patna High court held as under (page 137 of 142 ITR):

"If there are cash credits in the books of a firm in the accounts of the individual partners and it is found as a fact that cash was received by the firm from its partners, then in the absence of any material to indicate that they are the profits of the firm, they cannot be assessed in the hands of the firm, though they may be assessed in the hands of the individual partners. Cash credits in the individual accounts of members of a joint family with third party cannot be assessed as the income of the family unless the Department discharges the burden of proof to the contrary."

10. Therefore, the view taken by the Assessing Officer that the partnership firm must explain the source of income for the partners regarding the amount contributed by them towards capital of the firm cannot be sustained in law."

12. Thus, from the careful perusal of the aforesaid decision, we find that the Hon'ble Andhra Pradesh and Telangana High Court held that the inquiry regarding the source of respective partners to make the contribution can at

most be conducted against the individual partners and the view taken by the Revenue that the partnership firm must explain the source of income of the partners regarding the contribution made by them towards capital of the firm is not sustainable in law. We find that similar findings have been rendered by the Hon'ble High Courts in the following decisions: -

(i) Nova Medicare vs. ITO; (2023) 459 ITR 477 (Telangana)

(ii) CIT vs. Anurag Rice Mills; 282 CTR 200 (Patna)

13. Therefore, respectfully following the aforesaid judicial pronouncements, we are of the considered view that the AO erred in examining the source of income of the partners in respect of the capital introduction into the assessee firm, as the said examination cannot be made in the hands of the assessee firm.

14. Further, on merits, it is evident from the record that the assessee furnished the bank account statement and income tax return of the partners during the assessment proceedings. From the details of the Partners'Capital Account, forming part of the financials of the assessee on page 3 of the paper book, we find that the details of the introduction of capital and withdrawal by the assessee firm were also available. Thus, from the summary of various evidence, as considered by the Id. CIT(A) in its order on pages 4-8, we find no merits in the submission of the Id. DR that additional evidence was considered during the appellate proceedings before the Id. CIT(A) without granting the opportunity to the AO to furnish the remand report. As per the assessee, the summary of withdrawal and deposit

considered by the Id. CIT(A) was prepared on the basis of bank account statements which were already available on the record of the AO.

15. As regards, the copy of ledger account of the partner in the books of the partnership firm from where the capital was withdrawn and the bank account statement of the firm from which capital was withdrawn, as sought by the AO, it is pertinent to note that by these documents the AO required the assessee to prove the source of the source, which requirement under the Act was introduced vide provisoto section 68 only w.e.f. 01.04.2023 by the Finance Act, 2022, and thus is not applicable to the year under consideration.

16. Therefore, in view of the facts and circumstances of the present case, legal position and judicial pronouncements as noted above, we are of the considered view that addition made under section 68 of the Act on account of capital introduced by the partners in the assessee firm was rightly deleted by the Id. CIT(A). Accordingly, we find no infirmity in the findings of the Id. CIT(A) on this issue. As a result, the grounds raised by the Revenue are dismissed.

17. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 16/10/2024

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

MUMBAI, DATED: 16/10/2024
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai