

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM & Shri Sonjoy Sarma, JM]

I.T.A. No. 1844/Kol/2024

Assessment Year: 2016-17

Narayan Tradecom Pvt. Ltd. 1, R. N. Mukherjee Road Martin Burn Building, Room No. 301, Lalbazar, Kolkata-700001. (PAN: AACCN8706D)	Vs.	ITO, Ward-6(1), Kolkata.
Appellant		Respondent

Date of conclusion of Hearing	28.10.2024
Date of Pronouncement	30.10.2024
For the Appellant	Shri Akshay Ringasia, CA & Shri Tarak Nath Jaiswal, AR
For the Respondent	Shri Pradip Kumar Biswas, Addl. CIT, Sr. DR

ORDER

Per Shri Rajesh Kumar, AM

This appeal filed by the assessee is against the order of Ld. CIT(A), NFAC, Delhi dated 02.07.2024 for AY 2016-17 arising out of assessment order passed u/s. 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by Assessing Officer, Assessment Unit, Income Tax Department dated 27.05.2023.

2. The only issue raised in various grounds of appeal is against the order of Ld. CIT(A) confirming the addition of Rs.22,00,119/- as made by the AO u/s. 68 of the Act in respect of unexplained cash credit.

3. The facts in brief are that the assessee filed its return of income on 16.10.2016 declaring total income of Rs.3,01,740/-. The AO received information that assessee has received accommodation entry from M/s. Outlook Highrise Ltd. and M/s. Neelgagan Nirman Pvt. Ltd. aggregating to Rs. 22,00,119/-. Accordingly, case of the assessee was reopened and notice was issued on 30.07.2022. The assessee filed the return of income on

29.05.2021 declaring total income at Rs.3,00,800/-. Thereafter, notice u/s. 142(1) along with questionnaire was issued to the assessee which was duly served on the assessee and replies were filed along with details called for by the AO. The AO also issued notice u/s. 133(6) of the Act to two parties which were duly responded confirming the transactions with the assessee. Thereafter, the AO did not issue any notice u/s.131 or carryout any further investigation to dig out the truth. Finally, addition was made by the AO on the basis of statement recorded of Shri Mukesh Banka during the course of search on the entities controlled and managed by him that those were shell companies and engaged in providing accommodation entries. Needless to say that the said statement was withdrawn and retracted subsequently.

4. In the appellate proceeding, the Ld. CIT(A) dismissed the appeal of the assessee by following the decision of the Hon'ble Calcutta High Court in the case of PCIT Vs. Swati Bajaj [2022] 139 taxmann.com 352 (Cal) and various decisions discussed in the order.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee has received in aggregate Rs.22 lakh from two parties viz. M/s. Neelgagan Nirman Pvt. Ltd. Rs. 8 lakh and M/s. Outlook Highrise Pvt. Ltd. Rs. 16 lakh. These two amounts were received by the assessee during the year for facilitating trading of L&T shares. We note that these advances were also refunded within a period of three months only within the financial year itself. The assessee has filed all the evidences during the assessment proceedings as well as before the Ld. CIT(A) qua these advances received and refund thereof. We note that in the assessment proceedings the AO has even issued notice u/s. 133(6) to both the parties and they have confirmed to have entered into these transactions with the assessee. Thereafter, the AO did not issue any notice u/s. 131 or carry out any further verification but relied on the statement of Mahesh Banka recorded during the course of search which was retracted later on. Considering the facts of the case, in our opinion, the assessee has discharged its onus by filing of necessary evidences before the AO and the AO also confirmed the transaction by issuing of notice u/s. 133(6) to the parties who confirmed these transactions. Therefore, the mere addition on the basis of statement of

third party is not justified. Moreover, the advances received were repaid within a period of three months during the financial year itself. In our opinion, the provisions of section 68 of the Act has been invoked wrongly. The case of the assessee finds support from the decision of Hon'ble Gujarat High Court in the case of PCIT Vs. Ambe Tradecorp (P) Ltd. [2022] 145 taxmann.com 27 (Guj) as well as the decision of Coordinate Bench in the case of Gem Forgings Pvt. Ltd., ITA No. 1423 to 1426/Kol/2023 order dated 22.05.2024. The Hon'ble Court has upheld the order of the Tribunal wherein the Tribunal has recorded a finding of fact that assessee has furnished details such as copy of ledger, bank statement, income tax return, Balance Sheet etc. of the loan creditors and it was also recorded that notices u/s. 133(6) were issued to the loan creditors which are duly responded by them, therefore, entities of the parties could not be disputed. It was also noted that the assessee was not a beneficiary as the loans were repaid by the subsequent year and, therefore, the addition made u/s.68 of the Act on account of the loan amounts was not justified. Similarly, the coordinate bench in the case of Gem Forgings Pvt. Ltd. (supra) has held that the loans received through banking channel and repaid through same channel cannot be added u/s. 68 of the Act. Considering the facts of the case and in the light of the above decisions, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 30th October, 2024

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 30th October, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant– Narayan Tradecom Pvt. Ltd.
2. Respondent – ITO, Ward-6(1), Kolkata.
3. CIT(A), NFAC, Delhi
4. Pr. CIT
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata