

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “K(SMC)”, MUMBAI**

**BEFORE SHRI MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.2373/M/2024  
Assessment Year: 2010-11**

<b>M/s. Maa Momai Realty Pvt. Ltd.</b> 17/A, Kanti Bhavan, Ground Floor, 1 <sup>st</sup> Parsiwada Lane, Mumbai- 400004. <b>PAN: AAGCM2087E</b>	<b>Vs.</b>	<b>Income Tax Officer- 5(2)(4)</b> Lalbaug, Parel, Mumbai- 400011.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for :**

**Assessee by** : Shri S. R. Lodhe

**Revenue by** : Shri Kiran Unavekar, SR. D.R.

**Date of Hearing** : 25 . 09 . 2024

**Date of Pronouncement** : 25 . 10 . 2024

**O R D E R**

**Per : Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the ‘Act’ in short]



vide DIN & Order No. CIT(A)-10/ITO-5(2)(3)/69/2013-14 Dated 03/04/2017 for the Assessment Year 2010-11.

2. Following grounds of appeal have been raised by the appellant:

1. *“The Ld.AO erred in not following the procedure u/s 147 Rs.8,22,800/- r.w.s.148, when the assessee has given names and details about 44 lenders and calling them for investigation before making the addition of Rs.8,22,800/-.*
2. *The AO erred in passing the order under surmises and-conjecture when the assessee has shown that all the 44 lenders are relative and family members came to Mumbai to earn livelihood and hence knows the assessee.*
3. *The AO erred in not considering that the amount taken from these 44 lenders were taken in urgent need of assessee at 11 hours when all sources of money was closed for assessee.*
4. *The Ld.AO erred in not investigating the issue as per the provisions of section 68 of the Act.*
5. *The Ld. CIT(A) erred in upholding the action of the Id.AO without passing the reasoned order and simply presumed that the assessee has taken the advantage of section 269SS of the Act.*
6. *Appellant deserve rights to add, amend, delete or alter any of the grounds if need so arises.”*

3. The facts of the case, in brief, are that the assessee company was a newly incorporated company with the intention to acquire property and earn income therefrom. During the assessment year under consideration, the assessee has acquired one immovable property with structure thereon at Bhilad, Dhanoli Road, Zaroli Village, Taluka Umbergaon, Valsad, Gujrat. Regarding the source of acquiring the property, the assessee stated that it has taken unsecured loan from various parties. The Ld. AO, during

the assessment proceedings noticed that there are a total of 44 lenders who gave loan of Rs.1,95,33,800/- to the assessee out of which M/s. Poonam Enterprises, a group concern, has given Rs.1,86,11,000/- out of which a sum of Rs.34,75,000/- was returned back leaving the remaining amount of Rs.1,51,30,000/- to its credit at the end of the year. All the remaining lenders except the Director of the company, Shri. Ravindran P. Angara, have given cash loan of Rs.20,000/- each totaling to Rs.8,22,800/- The Ld. AO asked the assessee to establish the identity, creditworthiness of these lenders and the genuineness of the transactions, however, the assessee failed to prove the same. The Ld. AO, therefore, added a sum of Rs.8,22,800/- as unexplained income u/s. 68 of the Income Tax Act.

4. Aggrieved by the order of the Ld. AO, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) vide the impugned order partly allowed the appeal of the assessee by confirming the addition of Rs.8,22,800/- except Rs.19,292/-. Aggrieved by the order of the Ld. CIT(A), this appeal has been preferred before us. During the appellate proceedings before us, the assessee submitted that:

*“2.7. During the course of assessment proceeding, the assessee has submitted details of these lenders including the addresses and sources of income. The Appellant also cooperated in the said*



*scrutiny proceedings and submitted all the documents, evidences and material available with the appellant to the possible extent, but no cognizance has taken by the Id.AO and presumed that the cash introduced by the assessee of Rs.8,22,800/- is unexplained cash introduced by the assessee. Accordingly, added the same to the income of the assessee.*

*2.8. The presumption of the Id.AO is that these lenders are from small villages of Rajasthan and they have no capacity to give such amount of Rs.20000/- in a ten days, the assessee- company is in Mumbai and these people are far away from the Mumbai.*

*2.9. The assessee-Appellant-company located at Mumbai, though these lenders are originally from Rajasthan but for their livelihood they are in Mumbai. The earning of these lender is just to manageable the episode of the household expenses. They are belonging to same family of the Directors of the Assessee-Company and hence they know to each other they just came to Mumbai to earn livelihood. Their earning are not questionable to Income Tax as well as they are not maintaining the books of account and bank account. The question of giving amount below Rs.20000/- is worthwhile as these lenders are not bank account holders, therefore, they were not maintaining bank account and keeping such type of money in cash would have not been question. The amount of Rs.8,22,800/- managed by the assessee-company within 10 days is not impossible as 10 days period is too long period to contact and accumulate the amount as questioned by the Ld.AO.*



2.10. *The assessee further submits that the Learned Assessing Officer had sent few notices to the various parties at the very fag end of March 2013 to the various parties including one of the Relative Shri Ravindra Angara. The said notice though dated 20/01/2013 received by Shri Ravindra Angara on 06/03/2013. Thus it can be seen that though the notice was dated 20/01/2013, the same was dispatched very late. The time of date of letter is 20.1.2013, which was received by Shri Ravindra Angara on 6.3.2013 allowing the time to reply was very short.*

2.11. *The appellant states that said addition of Rs.8,22,800/-, the Learned Assessing Officer had raised the issue of unaccounted/unexplained cash credit vide show cause notice dated 20/01/2013 received by the appellant on 06/03/2013 thereby giving time to file the details and comply with the order of Id.AO was only 2 days to comply, the final hearing was scheduled on 08/03/2013. The assessee had given written submissions on 02/03/2013 wherein the assessee submitted that the appellant had already submitted the confirmations of all the parties. Thereafter, the Id.AO asked the appellant to submit the identity proof of all these parties within two days. This was very short time and was not possible since the said parties though were working in Mumbai but their residential proof were from remote village in Rajasthan. The assessee had also produced the cash book before the Id.AO for verification.*

2.12. *The assessee submits that during this prime time, the grand father of the accountant of assessee was also very serious and had expired during the said period. Hereto annexed and marked as Annexure-A-4 is a copy of death certificate of Shri. Vishal S*

*Mishra. The said accountant had to rush to his native place and therefore, the assessee become handicap due to unavoidable circumstances and the assessee could not gather the requisite Information during that time as called for by the Id.AO and the AO presumed that the assessee failed to comply with the orders and instructions given by the Ld.AO.*

*2.13. The explanation and documentary evidences given by the assessee-company did not find favour of the Id.AO and accordingly, the Id.AO rejected the explanation of the assessee by invoking the provisions of section 68 of the Act, made the addition of Rs.8,22,800/- to the total income of the assessee.*

*2.14. The assessee appealed before the first appellate authority by filing appeal dated 16.4.2013 by taking the following grounds of appeal:*

- 1. On the facts and in the circumstances of the case and in law the AO erred in making addition of Rs. 8,22,800-as unexplained cash credits u/s 68 of the Act on account of alleged unexplained cash credits made by the appellant.*
- 2. On the facts and in the circumstances of the case and in law the AO erred in not adjusting the loss during the year as per the profit and loss account without giving the proper opportunity"*
- 3. The order u/s 143(3) of the Act is illegal, bad in law, ultra virus without allowing reasonable opportunity of the hearing and without appreciating the facts, submission and evidence in their proper perspective.*



2.15. *The Ld.CIT(A) upheld the finding of the Ld.AO without giving any reason and confirmed the addition made by the Ld.AO amounting to Rs.8,22,800/-. The relevant observation of the Ld.CIT(A) has been incorporated in the order of CIT(A) at para 4.2.1 is only repetition of finding of the Id.AO without any reason and is on presumptive basis. Therefore, needs to be deleted.*

2.16. *The assessee-company located at Mumbai, though these lenders are originally from Rajasthan but for their livelihood they are in the Mumbai. The earning of these lender are just to manageable the episode of the household expenses. They are belonging to same family and hence they know to each others, they just came to Mumbai to earn livelihood.. Their earning are not questionable by the Income Tax Department as well as they are not maintaining the books of account. The question of giving amount below Rs.20000/- is worthwhile as these lenders are not bank account holders, therefore, they were not maintaining bank account and keeping such type of money in cash would have not been questioned.*

2.17. *The requirement of this amount at 11th hours of transaction within 10 days was the compulsory and by following the due procedure of banking transaction it was not possible to collect amount and complete the transaction within such short time as huge amount more than Rs.1,95,33,800/- was involved in the transactions and lenders having bank account, Income Tax Returns and books of accounts were already exhausted for satisfying the transaction. Therefore this the amount of Rs.8,22,800/- collected from these 42 lenders.*



2.18. *The assessee submits that the Id.AO issued notices u/s 133(6) of the Act to some of the lenders which are returned back unserved. It is also observed by the Id.CIT(A) in para 4.2.1 of the order that the assessee very articulately used section 269SS to make this money white. The possession of bank account is not mandatory and there is no such rule imposed by government of India to keep the money into the bank. The bank account is a facility given to citizen and it considered as tool, which makes the life easier for transactions, safety of money & accountability in terms of answering the information about the earning, while filing the Income Tax Return.*

2.19 *The requirement of the funds were urgent to patch up the shortage of funds at 11th hour and hence, the assessee requested to these lenders. These lenders are nothing but some of the family members and some are well known to the assessee- director of the company.*

2.20. *The assessee submits that it has submitted all the relevant documents as called for by the Ld.AO. Since, these lenders are small shareholders of the company, they do not have bank account. It is also the duty of the Id.AO, when the assessee has supplied material available with it, to call for inquiry. Accordingly, the Ld.AO called the lenders u/s 131 of the Act, but they did not respond to the notice of the Ld.AO. Accordingly, the Ld.AO presumed these are bogus lender and hence added the amount of Rs.8,22,800/- to the total income of the assessee. 2.21. The identical issue has been decided by the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC)*



*wherein it has been held that no addition can be made under section 68 of the Act on account of unexplained investments where the assessee furnished before the AO the evidences to prove identity of the investors.”*

5. We have considered the facts of the case and the submissions made by the appellant stated as above. It is found that, though, the assessee had taken cash loan of Rs.20,000/- each from 41 parties, it could not establish the identity of the parties, their credit worthiness and the genuineness of the transaction which are required u/s. 68 of the Income Tax Act. In catena of cases the Hon'ble Supreme Court has already stated that the onus is on the assessee to prove the three ingredients i.e. identity of the parties, credit worthiness of the parties and the genuineness of the transaction when loan has been taken by the assessee and credited in its books of accounts. In the present case, it is found that the assessee has failed to discharge its onus and thus, the explanations given by the appellant during the course of appellate proceedings cannot be accepted as the loans are very old and some of the parties have also died and they are not available on the given addresses. The decision of the Hon'ble Supreme Court on the Lovely Exports will not hold good as the assessee failed to establish the genuineness of the loans taken by it. We, therefore, found no infirmity in the order of the Ld. CIT(A) and the order of the Ld. CIT(A) is uphold.



6. In the result, the appeal is dismissed.

**Order pronounced in the open court on 25.10.2024.**

**Sd/-**  
**KAVITHA RAJAGOPAL**  
**JUDICIAL MEMBER**

**Sd/-**  
**RATNESH NANDAN SAHAY**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 25.10.2024.

*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.