

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 2937/MUM/2023

(Assessment Year : 2014-15)

DCIT, Central Circle -5(4),
Room No.1927, 19th Floor,
Air India Building, Nariman Point,
Mumbai

..... Appellant

v/s

Rajendra Gulabchand Shah,
601 Konark Appartment Gurjar
Apartment CHSL Roshan Nagar Off
Chandawarkar Road Borivali West
Mumbai - 400092
PAN : ALCPS7884H

..... Respondent

Assessee by : Shri Rushabh Mehta

Revenue by : Smt. Mahita Nair, Sr.DR

Date of Hearing – 12/08/2024

Date of Order - 07/11/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed challenging the impugned order dated 21/06/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-53, Mumbai [*"learned CIT(A)"*], for the assessment year 2014-15.

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

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made u/s. 68 of the Income Tax

Act, 1961 of Rs. 3,18,48,400/- ignoring the fact that the assessee has failed to prove the capacity, creditworthiness of the loan givers parties and genuineness of the said loans and therefore the A.O. rightly treated the same as unexplained cash credit u/s.68 of the Act.?"

2. Whether on the facts and circumstances of the case and in Law, Ld. CIT(A) has erred in deleting the addition made u/s. 68 of the Income Tax Act, 1961 ignoring the fact that assessee failed to produce two said parties for verification of loan taken along with desired documentary evidences to establish the creditworthiness of parties?"

3. "Whether on the facts and circumstances of the case and in Law, Ld. CIT(A) has erred in deleting disallowance of 10% of Transport and Hiring charges of Rs. 1,13,90,636/- and reducing disallowance under 'Wage and labour charges" of Rs.2,77,75,470/- from @ 10% to 2% ignoring the fact that assessee has failed to produce bills and vouchers related to these expenses?"

3. The issue arising in grounds no. 1 and 2, raised in Revenue's appeal, pertains to the addition made on account of the loan received by the assessee during the year under consideration.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: For the year under consideration, the assessee filed its return of income on 30/09/2014 declaring a total income of INR 1,88,66,420. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the year under consideration, the assessee has shown income from 3 business establishments, which include- M/s RGS & Co, the assessee is carrying on the business of contracting and the assessee is engaged in the construction of multi-residential building projects and thirdly, the assessee has shown commission income. During the assessment proceedings, it was observed that the assessee had shown an unsecured loan amounting to INR 21,32,42,300. Regarding verification of unsecured loans, notices under section 133(6) of the Act were issued, which

were received back unserved. Accordingly, a show cause notice was sent to the assessee. In response, the assessee filed its reply along with copy of account regarding the verification of the unsecured loan. After considering the documents produced by the assessee, it was noticed that Mr. Mahesh Purohit and Mr. Ramesh Purohit, from whom the assessee has received loans amounting to INR 1,45,00,000 and INR 1,73,48,400, respectively, have not proved the creditworthiness and genuineness. It was further noticed that the signatures are different in the loan confirmations of Mr. Mahesh Purohit, submitted during the assessment proceedings. Thus, the identity of Mr. Mahesh Purohit was doubted during the assessment proceedings. Further, the total income of INR 1,82,582 was shown in the income tax return of Mr. Mahesh Purohit filed by the assessee. Similarly, in the case of Mr. Ramesh Purohit, it was noticed that his total income was shown at INR 7,82,090. Since no other document was presented regarding the income, business activity, creditors, debtors and information about assets and liabilities of Mr. Mahesh Purohit and Mr. Ramesh Purohit, the Assessing Officer ("AO") vide order dated 30/12/2016 passed under section 143(3) of the Act concluded that the assessee has failed to establish the creditworthiness and genuineness of loan lenders. The AO further held that more than once, Mr. Mahesh Purohit and Mr. Ramesh were given the opportunity about the dealings they had with the assessee, so as to prove their identity, creditworthiness and genuineness, but both only filed the submissions in Tapal. The AO held that both persons have shown a total income of INR 10 lakh, and thus the same doesn't prove the creditworthiness to lend loans of INR 1,45,00,000 and INR 1,73,48,400 to the assessee. Thus, the AO treated

the aforesaid loan as unexplained as the assessee failed to prove the identity and creditworthiness of the loan lender and the genuineness of the transaction. Accordingly, the AO made an addition of INR 3,18,48,400 under section 68 of the Act in respect of the loan received by the assessee from Mr. Mahesh Purohit and Mr. Ramesh Purohit.

5. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue and deleted the addition of INR 3,18,40,400 made under section 68 of the Act, by observing as under: –

"4.3 I have considered the facts of the case before me. It is seen that during the assessment proceedings, the appellant has furnished (i) copy of confirmation of the parties (ii) copy of Acknowledgment of Return of income (iii) copy of bank statement of the parties highlighting the deposit given and (iv) copy of bank statement of the alleged parties highlighting repayment of deposit made in the same year. It is seen that both the parties have complied to notices issued u/s.133(6), after updated addresses were provided to the AO. As regards non-production of parties and difference in signature, the appellant has provided a reasonable explanation. The appellant has stated the nature of funds as being deposits received for the purpose of work orders to be tendered and that the funds were obtained for meeting the working capital requirement / business obligations during the year. It has also been pointed out that both the loans have been squared up during the same year in February 2014. Thus, a reasonable view can be formed that the appellant has discharged the onus laid on it. In view of these factual aspects, the addition of Rs.3,18,48,400/- u/s.68 of the Act on account of loans is deleted. This ground stands allowed."

Being aggrieved, the Revenue is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee is a registered civil contractor for MCGM. The assessee executes various types of work contracts for the authorities, either directly or on a subcontract basis. The scope of work includes repair and maintenance of roads/footpaths,

sewerage systems, public toilets, SRA toilet/wall maintenance, government school maintenance, and all other works of similar nature, etc. As per the assessee, during the year under consideration, he obtained funds in the form of short-term deposits from Mr. Mahesh Purohit and Mr. Ramesh Purohit of INR 1,45,00,000 and INR 1,73,48,400, respectively. As per the assessee, the funds were obtained for meeting the working capital requirement/business obligations of the assessee and the said deposits were also repaid on 24/02/2014, i.e. in the year under consideration itself.

7. In order to prove the identity and creditworthiness of the loan lender and the genuineness of the transaction, the assessee has placed on record the copy of the ledger confirmation, PAN, ITR acknowledgement and bank statement highlighting the transactions in respect of the loan received from Mr. Mahesh Purohit and Mr. Ramesh Purohit. From the perusal of the aforementioned documents, forming part of the paper book from pages 34-43, we find that both parties have acknowledged the grant of loan to the assessee and also acknowledged the repayment of the same on 22/02/2014. We find that the aforesaid transaction of loan and repayment of same is duly substantiated with the bank account statement of Mr. Mahesh Purohit and Ramesh Purohit maintained with Vijaya Bank, Borivali, Mumbai. From the perusal of the aforesaid bank account statement, we further find that these parties had sufficient bank balance to advance the loan to the assessee and there is no cash deposit prior to providing the funds to the assessee. As per the assessee, Mr. Mahesh Purohit and Mr. Ramesh Purohit are partners in M/s Raj Purohit Construction, which is also in the business of execution of

civil work contracts. Since the alleged parties are engaged in a similar line of business, therefore they agreed to initially fund the assessee for maintaining a deposit with MCGM in relation to invitation of tenders for the requisite work orders. However, after a short span of around 10 months, due to some unsuitable factors, the potential business plan did not fructify and thereafter, the assessee immediately repaid the funds to the alleged parties in the year under consideration itself without any interest.

8. Further, as regards the notices issued under section 133(6) of the Act, from the perusal of the record, we find that both parties, i.e. Mr. Mahesh Purohit and Mr. Ramesh Purohit filed their replies on 20/12/2016 and furnished the copy of loan confirmation, bank statement, and ITR acknowledgement. From the perusal of the copy of replies filed by Mr. Mahesh Purohit and Mr. Ramesh Purohit, in response to the notice issued under section 133(6) of the Act, we find that the correct address for the purpose of correspondence was also furnished to the AO. As regards the mismatch in signatures of Mr. Mahesh Purohit, we find that the assessee submitted before the learned CIT(A) that signatures on the confirmation originally submitted vide letter dated 21/11/2016 match with the submission dated 20/12/2016 filed in response to the notice issued under section 133(6) of the Act. We are of the considered view that merely because the signature of Mr. Mahesh Purohit was different in the submission dated 14/12/2016 cannot raise a doubt on the identity of Mr. Mahesh Purohit as the transaction confirmed in all the aforementioned confirmations is the same, which is duly substantiated with the bank account statement

submitted during the assessment proceedings. At this stage, it is also pertinent to note that there is no dispute regarding the fact that both parties, who have lent a loan to the assessee, have furnished their PAN, ITR acknowledgement and also complied with notice issued under section 133(6) of the Act. Thus, we are of the considered view that identity in the present case of the loan lender cannot be doubted. Further, as regards the allegation of the Revenue that the assessee failed to produce both parties for evidence, it is pertinent to note that both parties made due compliance and responded to the notice issued under section 133(6) of the Act and filed the documentary evidence to prove their identity and creditworthiness and genuineness of the transaction. From the perusal of the record, it is evident that the AO has merely raised doubt as regards the loan confirmation submitted by Mr. Mahesh Purohit only on account of a mismatch in signature, which we found to be only in respect of one out of three loan confirmations pertaining to the said transaction and in view of the fact that the said transaction is duly supported by the bank statement, such a doubt appears to be merely a pretext to doubt the transaction by the assessee without any substantial material being brought on record. In any case, the Revenue has not denied the submission of the assessee that the loan was ultimately repaid on 24/02/2014, i.e. in the year under consideration itself. Thus, we are of the considered view that in the present case, the assessee has discharged the initial onus of proving the identity and creditworthiness of the loan lenders and the genuineness of the transaction. Accordingly, we find no infirmity in the findings of the learned CIT(A) in deleting the addition of INR 3,18,48,400 made under section 68 of the Act. As a result, the

impugned order on this issue is upheld and grounds no.1 and 2, raised in assessee's appeal, are dismissed.

9. The issue arising in ground no. 3, raised in Revenue's appeal, pertains to the deletion of disallowance on account of transport and hiring charges and reduction of disallowance on account of wage and labour charges.

10. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that from the audited accounts presented by the assessee, it was observed that the assessee has claimed an expenditure of INR 1,13,90,636 on account of material and transport/hiring charges in the year under consideration. Further, it was observed that the assessee has claimed an expenditure of INR 2,77,75,470 under the head "*wage and labour expenses*". Accordingly, during the assessment proceedings, the assessee was asked to furnish a copy of the account, any bills and vouchers or other documents in support of its claim of aforesaid expenditure. In response, the assessee submitted that submitting vouchers for each and every expense is neither possible for him nor possible to verify, as they are voluminous. However, the assessee submitted sample vouchers/invoices. The AO vide order passed under section 143(3) of the Act held that the assessee has not produced documentary evidence regarding verification of expenses during the scrutiny assessment proceedings and even after giving the opportunity, the assessee has only replied that the books of accounts and bills and vouchers are in abundance/voluminous quantum. Accordingly, the AO proceeded to make disallowance on a presumptive basis @10% of the

aforementioned expenditure on account of material and transport/hiring charges and wage and labour expenses claimed by the assessee.

11. The learned CIT(A), vide impugned order, deleted the disallowance made by AO on account of transport and hiring charges, however restricted the disallowance made on account of wage and labour charges to 2% instead of 10% made by the AO. Being aggrieved, the Revenue is in appeal before us.

12. From the perusal of the financial statement, we find that the assessee claimed expenditure on account of material and transport/hiring charges of INR 1,13,90,636 and wage and labour charges of INR 2,77,75,470. As per the assessee, to execute work orders, he regularly incurs various expenses, such as cess, insurance charges, legal and professional charges, loading and unloading charges, wages and labour charges, material, hiring and transport expenses, sub-contract charges, etc. From the record, we further find that in response to the notice issued by the AO, the assessee filed a submission providing the details of material, transport/hiring charges as well as details of labour charges paid during the year under consideration. From the perusal of the details of material, transport and hiring charges, forming part of the paper book on page 28, we find that the assessee has provided the names of parties to whom transport charges have been paid along with their PAN no. As regards the parties to whom the contract/hiring charges have been paid, the assessee has mentioned the name of the parties and the amount of TDS deducted while making the payment. As regards the balance payment of INR 42,150, we find that the same has been referred to as the

miscellaneous charges for which no details have been provided by the assessee. It is evident from the record that the AO neither controvert any of these details furnished by the assessee nor examined the parties to whom payment was made despite the availability of PAN details and only on the basis that bills and vouchers have not been presented in respect of material and transport/hiring charges made the disallowance. It is further pertinent to note that the disallowance was only restricted to 10% of the expenditure and the entire expenditure of INR 1,13,90,636 as claimed by the assessee was not disallowed. At this stage, it is also relevant to note that in the year under consideration the assessee has shown a total sale of INR 12,16,47,493. Such being the facts, we find no infirmity in the impugned order in deleting the ad-hoc disallowance of 10% made on account of material, transport and hiring charges by the AO.

13. As regards the labour charges amounting to INR 2,77,75,470 incurred by the assessee, we find that the assessee has merely provided the list of parties to whom such charges have been paid, which forms part of the paper book from pages 29-33. As also noted by the learned CIT(A) these payments have been made in round figures and no address or other supporting details have been provided in respect of the majority of these parties. We are of the considered view that even if these parties are daily wagers, the assessee being a contractor would have maintained a record having at least the details regarding the date of payment made to these parties and the work contract in respect of which these payments have been made. However, it is evident from the record that the said details were not

provided by the assessee. It is evident from the record that the AO made a disallowance at 10% in respect of wage and labour expenses which has further been reduced by the learned CIT(A) to 2%. However, in view of the fact that the assessee is a registered civil contractor for MCGM and has undertaken various work contracts for authorities, it cannot be denied that the assessee would have incurred wages and labour charges for the purpose of its business. Therefore, in view of the peculiar facts and circumstances of the present case as noted above, we are of the considered view the disallowance @2% made by the learned CIT(A) on account of wage and labour charges is justified and thus the same is upheld. As a result, ground no.3 raised in Revenue's appeal is dismissed.

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

Order pronounced in the open Court on 07/11/2024

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 07/11/2024

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