

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

S.P. No. 203/Coch/2023 (in ITA No. 740/Coch/2023) & ITA No. 740/Coch/2023 Assessment Year : 2012-13
--

M/s. Orient Drugs Pvt. Ltd., Orient Tower, Vadakkemanna, P.O., Kodur, Malappuram. Kerala – 676 504. PAN: AAACO2826R	Vs.	The Assistant Commissioner of Income Tax, Tirur.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Krishna K, Advocate
Revenue by	:	Smt. Girly Albert, Snr.DR

Date of Hearing	:	25-09-2024
Date of Pronouncement	:	12-11-2024

ORDER

PER BENCH

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 28/08/2023 in respect of the A.Y. 2012-13.

2. The brief facts of the case are that the assessee is acting as a super stockist of Pharmaceutical products and filed their return of income on 29/09/2012. Thereafter the case was selected for scrutiny under CASS and several details were required for which the assessee produced the details. In respect of the loans received during the year as well as for the earlier years,

the AO not accepted the explanation offered by the assessee and treated the said loan amount as unexplained cash credit u/s. 68 of the Act and to that effect an assessment was made. The assessee challenged the said proceedings before the Ld.CIT(A) and contended that the cash credits during the year are only Rs. 36,46,901/- and the opening balance as on 01/04/2011 amounting to Rs. 1,23,87,390/- could not be treated as unexplained cash credit and assessed as unexplained cash credit u/s. 68 of the Act during the A.Y. 2012-13. The Ld.CIT(A) also got a remand report from the DCIT, Circle – 1, Tirur and on that basis, the Ld.CIT(A) had allowed the appeal insofar as the opening balance of unsecured loans and in respect of the loans received during the year, had confirmed the same.

3. As against the said order, the assessee is in appeal before this Tribunal and contended that the assessment made on the loans received during the year is not correct. The assessee also raised the following grounds of appeal:

“1. Order of learned Commissioner of Income tax (Appeals), National Face Less Appeal Centre, New Delhi, in so far as it is prejudicial to the appellant is opposed to law and facts and circumstances of the case.

2. As regards the addition of 36,46,901/= sustained by learned Commissioner of Income tax, (Appeals), National Face Less Appeal Centre, New Delhi, it is submitted that this sum was advanced by shareholders / directors and confirmation letters were filed. As all the persons who had advanced this sum are share holders / directors of the company, their identity is also established. They were not examined by the assessing authority. Thus, initial burden cast on the company is fully discharged and it is established that these are not bogus credits. So, the addition ought to have been deleted.

3. Learned Commissioner of Income tax (Appeals) overlooked that closing balance of 31/03/2011 comprised of advances from same persons and has been accepted in the Remand Report of Deputy Commissioner of Income tax, Tirur. The Remand Report states the sums advanced by shareholders / Directors for Assessment Year 2007-08 to Assessment Year 2012-13 and that there was scrutiny

assessment in 2 years. The Remand Report accepts the identity and credibility of the persons who had advanced sums. Hence, the addition of Rs. 36,46,901/= ought to have been ordered to be deleted.

4. In Para 4.ii of the remand report dated 26/09/2018, Deputy Commissioner of Income Tax, Circle 1, Tirur, who assumed jurisdiction of the appellant, has accepted as genuine the explanation for the credit to the extent of Rs. 33,63,901/=. So, the addition to that extent ought to have been deleted by the learned Commissioner of Income tax, National Face Less Appeal Centre, New Delhi.

5. Without prejudice to the above ground, it is agitated that the learned Commissioner of Income tax (Appeals), National Face Less Appeal Centre, New Delhi, ought to have seen that the proviso to section 68 applies only from Assessment Year 2013-14 and hence is inapplicable to the appeal under consideration.

6. The facts of the case proves that the assessment as well as appellate order are made without considering / appreciating the facts and legal aspects and hence the impugned order may kindly be held to be arbitrary and untenable and the return of income filed may be kindly be ordered to be accepted.

7. For these amongst other grounds that may be raised and evidence adduced at the time of hearing, it is prayed that the Honourable Income Tax Appellate Tribunal, may kindly intervene and cancel the impugned assessment or pass such other order as is considered to be fit and proper.”

4. At the time of hearing, the Ld.AR relied on the remand report given by the DCIT and brought to our notice that the loans advanced during the year also from the very same persons and therefore, the Ld.CIT(A) ought to have deleted the addition based on the loans received during the year. The Ld.AR also filed the copy of the remand report and prayed to allow the appeal.

The Ld.DR relied on the orders of the lower authorities.

5. We have heard the arguments of both sides and perused the materials available on record.

6. We have perused the remand report dated 26/09/2018 in which the Ld.DCIT, Circle – 1, Tirur had given a statement in which he had accepted that a sum of Rs. 33,63,901/- has been received by way of cheque from the persons who had already granted the loans and the balance Rs. 5 Lakhs was received by way of cash from the very same persons from whom the assessee had obtained loans during the previous years. The relevant portion of the remand report in paragraph 4.i and 4.ii are extracted as below:

“4.i The assessing officer had made an addition of Rs.36,46,901/-. The receipt of loan in the books of accounts of the assessee is as under:

Sl. No.	Name	PAN	Total Credit	Supported by Bank a/c	Unexplained credit
1	K. Baiduzaman	AISPB9229N	9,00,000/-	9,00,000/-	
2	Suraya Ismail	AAPPI7313F	1,75,000/-	1,75,000/-	
3	N. Mohamed Basheer	ARBPM7295F	8,00,000/-	8,00,000/-	
4	VK Abdu	ADUPV4022G	7,06,973/-	7,06,973/-	
5	M Ismail	CTBPM5366H	1,75,000/-	1,75,000/-	
6	Mumtaz P	ALTPP8718J	2,17,100/-	2,17,100/-	
7	Fathima Shaik	AHRPA6991L	3,09,214/-	3,09,214/-	
8	Nazeer K	AJGPK3857L	3,00,000/-	0	3,00,000/-
9	Ummer Alavi T	AENPT3665D	2,80,614/-	80,614/-	2,00,000/-
	Total		38,63,901/-	33,63,901/-	5,00,000/-

4.ii On verification it is found that a sum of Rs. 33,63,901/- has been received by way of cheque and a sum of Rs. 5,00,000/- has been received by way of cash. It is seen that there is no proper explanation for the amount received in cash.”

7. As seen from the report, all the loans were given by the same persons through cheques. The said loan amount received in the earlier years from the said persons were accepted by the department in scrutiny assessments made for the years 2007-08 and 2008-09. Therefore the very same persons had offered loans during the assessment year that too by way of cheques which was also properly accounted for by the assessee. In the remand report, the Ld.DCIT also verified the bank accounts and gave a clean chit insofar as a sum of Rs. 33,63,901/- but inspite of that the Ld.CIT(A) had confirmed the same. In such circumstances, we are unable to accept the

finding of the Ld.CIT(A) insofar as the loan amount of Rs. 33,63,901/- is concerned and we therefore set aside the assessment made u/s. 68 of the Act on the above said loan amount. Insofar as the balance amount of Rs. 5 Lakhs, the remand report itself pointed out that the loan amount was received by cash whereas one of the debtor is having a Nil bank balance and the another one is having a bank balance of Rs. 80,614/- for which the assessee had no valid explanations and therefore we are not accepting the case of the assessee insofar as the cash payments of Rs. 5 Lakhs given by the debtors Nazeer K and Ummer Alavi T.

8. In the result, the appeal filed by the assessee is partly allowed and the stay petition is dismissed as infructuous.

Order pronounced in the open court on 12th November, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 12th November, 2024.
/MS /

Copy to:

- | | |
|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin