

**IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA 5003 /MUM/2024
(A.Y. 2015-16)**

DCIT-Central Circle- 7(1), 653, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai 400020, Maharashtra	v/s. बनाम	Royal India Corporation Limited, 34, 2nd Floor, Plot - 45, 47, Shanti Bhavan, Dhirubhai Parekh Marg, Ladwadi, Kalbadevi, Mumbai 400002, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AABCN3770A		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Sharwan Kumar Jha,AR
Respondent by :	Shri R. R. Makwana (Sr. DR)

Date of Hearing	13.11.2024
Date of Pronouncement	22.11.2024

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 31.07.2024 is filed by the Revenue against the order passed by the Learned Commissioner of Income-tax (Appeals) [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 28.12.2017 as passed by the Deputy Commissioner of Income Tax, Mumbai for the Assessment Year [A.Y.] 2015-16.

2. The grounds of appeal are as under:

1. *On facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that the appellant has proved the identity, creditworthiness of the creditor and genuineness of the transaction, as required under the provisions of Section 68 of the Act.*
2. *On facts and circumstances of the case and in law. The Ld. CIT(A) erred in not treating the unsecured loan of Rs. 5 Cr. in question as unexplained cash credit u/s. 68 of the Act.*
3. *On facts and circumstances of the case and in law. The Ld. CIT(A) erred in deleting the addition of Rs.5 Cr. made by the AO u/s. 68 of the Act.*
4. *The appellant craves leave to add to alter, amend, modify and/or delete any or all of the above said grounds of appeal. The appellant reserves its right to file further submission in the appeal."*

2. Brief facts of the case are that the return filed for Rs 45,84,304/- was subsequently assessed by the Ld. Assessing Officer at Rs 5,45,84,300/- by making an addition of Rs 5 cr. u/s 68 of the Income Tax, 1961. The AO treated the loan taken from one Safal Developers Pvt. Ltd. as paper transaction and bogus. Contentions of the assessee that the said loan was taken for business purposes through banking channels from an existing company were rejected. It was also stated that the lender company had announced a new building project and received advance of Rs 87,75,00,000/- from clients. Submissions made are duly reproduced in the appellate order pages 35 to 43 of the appellate order. The Ld. CIT(A) has made a detailed discussion of all the relevant facts of the case and has in para 21 on page 49/50 concluded that the AO's observations of the lender being a paper company were untrue. He went on to hold that all the three ingredients u/s 68 being identity, credit worthiness and



genuineness were duly established by the assessee. He accordingly deleted the addition.

3. The Id.CIT(DR) has vehemently argued in favour of the Ld. Assessing Officer reiterating that the assessee failed to discharge onus cast upon it in proving the impugned case credit which was rightly treated as unexplained in terms of section 68 of the Act.

4. Per contra, the Ld. AR has argued that all the primary details proving identity, credit worthiness and genuineness of the credit have been duly satisfied as the assessee produced all the relevant evidences before the AO. He has drawn attention to the observations of the Id.CIT(A) in various paras which are based on its submissions made during appeal proceedings. It is stated that as per para 10, it the lender SDPL received Rs 29.50 cr. from Oberoi Reality P.Ltd. out of which it lent Rs 5 cr to the assessee which is duly reflected in assessee's bank account. As regards Nil return filed by SDPL, it was observed in para 11 that the company was following Project completion method of accounting being engaged in the business of real estate. The expenses incurred every year were added to the Work-in Progress and no profit was booked. It was stated that the loan was received and repaid through banking channels. The company had submitted copies of Bank statements, ITRs, Financials and confirmations of accounts to prove identity, credit worthiness and genuineness of the transaction. The primary onus has been duly discharged.

5. We have carefully considered the entire matrix of the case and find sufficient force in the contentions of the Ld.AR. In this case, the primary onus has been duly discharged by filing relevant



confirmation, ITR, Bank statements etc which all have been glossed over and ignored by the AO. In such circumstances, the assessee could do nothing any further and as such had discharged the burden. It has been rightly pointed out that although the AO issued notice u/s 133(6) of the Act and obtained all relevant documents from SDPL, he without making any further enquiry or investigation summarily treated it as paper company. Before us, the learned AR has submitted a paper book enclosing bank statements of the lender, ledger account, ITR copies, Auditors report, annual accounts, which all negate the observations that the co. was paper company.

5.1 Once the assessee has proved the identity of his creditors the genuineness of the transactions which he had with his creditors, and the creditworthiness of his creditors *vis-a-vis* the transactions which he had with the creditors, his burden stands discharged and the burden then shifts to the revenue to show that the amount in question, actually belonged to, or was owned by the assessee himself. A delicate balance must be maintained while walking the tightrope of section 68. The burden of proof cannot be discharged to the hilt by the assessee. If the Assessing Officer harbors any doubt about the legitimacy of the loan, he is empowered to carry out investigations thoroughly. But if he is unable to unearth any discrepancy, he cannot obdurately adhere to his suspicion and treat the loan as unexplained.

5.2 In view of the above discussion on facts and the circumstances of the case as also the provisions of the Act in this regard, we hold that the Assessing Officer was not justified in invoking provisions of section 68 of the case on the facts and the



circumstance of the case. The AO is directed to delete the addition made and order passed by the Id.CIT(A) is upheld.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 22/11/2024.

Sd/-

BEENA PILLAI

(न्यायिकसदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकारसदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 22.11.2024

Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

