

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

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

**ITA No.3465/M/2024  
Assessment Year: 2018-19**

**CO No.147/M/2024  
(Arising out of ITA No. 3465/M/2024)  
Assessment Year: 2018-19**

<b>Deputy Commissioner of Income Tax, Central Circle 3(4), Room No. 413, 4<sup>th</sup> Floor, Kautilya Bhavan, BKC, Mumbai - 400051, Maharashtra</b>	Vs.	<b>GSP Impex Private Limited 11 Vikas Park, Jalpankhi CHS Ltd, Juhu Tara Road Mumbai - 400049, Maharashtra  <b>PAN: AACCG8149F</b></b>
(Appellant)		(Respondent)

**Present for:**

**Assessee by** : Shri Jay Bhansali, Advocate  
**Revenue by** : Dr. Kishor Dhule, CIT DR

**Date of Hearing** : 30.10.2024  
**Date of Pronouncement** : 22.11.2024

**ORDER**

**Per : Prabhash Shankar, Accountant Member:**

The present appeal has been filed by the Revenue which emanates from the appellate order passed by the Ld. Commissioner of Income Tax, Appeal, Mumbai-1, with regard to the assessment order passed under section 143(3) of the Income Tax Act 1961, (in short 'the Act') for the A.Y. 2018-19.

2. The Revenue has raised following grounds of appeal :

- “1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition on account of unexplained cash credit of Rs 20,23,18,892/-, made u/s 68 of the Income Tax Act, 1961 being the



*peak credit balance of loan from M/s. Credence Commodities Exports, without appreciating the fact that genuineness of transaction is not proved by Credence.”*

3. The assessee has raised following grounds of Cross-objections:-

- “1. The Commissioner of Income-tax (Appeals) (hereinafter referred to as "the CIT(A)) erred in upholding the action of the Assessing Officer in reopening the case of the assessee vide notice dated 13.04.2022 under section 148 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") without appreciating that such reopening is bad in law. The reasons given are wrong, contrary to facts of the case and against the provision of law;*
- 2. The CIT(A) / Assessing Officer failed to appreciate that the impugned reopening proceeding initiated beyond the period specified in section 149 of the Act is bad in law. Consequently, the reassessment order dated 28.03.2024 under section 147 of the Act (hereinafter referred to as "the impugned assessment order") is liable to be quashed;*
- 3. The CIT(A) / Assessing Officer failed to appreciate that the order dated 13.04.2022 under section 148A(d) of the Act and notice dated 13.04.2022 under section 148 of the Act without the requisite approval under section 151 of the Act is bad in law. Consequently, the impugned reassessment order is liable to be quashed;*
- 4. The CIT(A) / Assessing Officer failed to appreciate that the notice dated 13.04.2022 under section 148 of the Act was required to be issued in a faceless manner in accordance with the e-Assessment of Income Escaping Assessment Scheme, 2022 prescribed under section 151A of the Act and therefore the said notice was bad in*



*law. Consequently, the impugned reassessment order is liable to be quashed;*

5. *The Commissioner of Income-tax (Appeals) / Assessing Officer failed to appreciate that the impugned reopening without bringing on record any cogent material / information to show income chargeable to tax has escaped assessment is bad in law;*
6. *The Respondent craves leave to add to, alter, amend and/or delete all or any of the above grounds of appeal.”*

4. Since both the above appeals were heard together, they are being adjudicated and disposed of vide this composite order for the sake of brevity. We take up Revenue's ground first.

5. Facts of the case are that the made an addition of Rs 20,23,18,892/- u/s 68 of the Act being the peak balance of loan taken from one Credence Commodities Exports. It was stated that the source of fund in the hands of the lender was not proved beyond doubt. The Id.CIT(A) has after detailed analysis of all the relevant facts and circumstances of the case has concluded in para 10.8.12 to 10.10 on pages 40 and 41 of the appeal order, that the appellant has done everything in its power to prove the three ingredients required to prove the loan. The assessee even submitted source of source. It is also observed that assessee even requested the AO to cross examine the lender by issuing notice u/s 133(6) of the Act which the AO did not opt for. The addition made was treated as based on guesswork, surmises and conjectures. The said loan was ably proved by the assessee.

6. The Ld. CIT(DR) has vehemently argued in favour of the order of the Ld. AO stating 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.



7. 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 evidence before the lower authorities. He stated that the assessee offered to the AO to issue notice u/s 133(6) to confirm the transaction from the creditor himself. However, the Ld. AO did not take recourse to such request also. 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.

8. We have carefully considered the entire factual matrix of the case and find sufficient force in the contentions of the ld.AR. In this case, the assessee had given the names, address, ITR, Bank statement of the creditor. The AO did not make any independent enquiry in the matter by examining the lender if at all he doubted the whole transaction. In such circumstances, the assessee could do nothing any further and as such had discharged the burden. Once the assessee has proved the identity of his creditor, the genuineness of the transactions which he had with his creditor, and the creditworthiness of his creditor *vis-a-vis* the transactions which he had with the creditor, his burden stands discharged and the burden then shifts to the revenue. 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 credit as unexplained.

8.1 In view of the above discussion on facts and the circumstances of the case also the provisions of the Act in this regard, we conclude 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 addition made is therefore, deleted and order passed by the Ld. CIT(A) is upheld.



9. Since the appeal of the revenue has already been dismissed on merits, the CO is not pressed by the Ld. AR of the assessee and therefore, stand dismissed.

10. In the result, the appeal of the Revenue and also the cross objections appeal by the assessee are hereby **dismissed**.

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

**Sd/-**  
**BEENA PILLAI**  
(न्यायिक सदस्य / JUDICIAL MEMBER)

**Sd/-**  
**PRABHASH SHANKAR**  
(लेखाकार सदस्य / 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.**

