

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.231/PUN/2024
निर्धारण वर्ष / Assessment Year : 2018-19

Gruha Navnirman Developers, 1A/AB 506 Vishwaneel Apartments, Narayan Peth, Pune – 411030	Vs.	DCIT, Circle – 2, Pune
PAN : AALFG0769P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	N O N E
Department by :	Shri Amol Khairnar
Date of hearing :	06-11-2024
Date of Pronouncement :	26-11-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 13.12.2023 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**"CIT(A)"**] pertaining to Assessment Year (**"AY"**) 2018-19.

2. The assessee has raised the following grounds of appeal :-

1. *The National Faceless Appeal Centre, New Delhi (learned CIT(A)) erred in law and on facts in confirming and National Faceless Assessment Centre, New Delhi (learned AO) erred in law and on facts in assessing the total income of the appellant at Rs. 15,45,28,452/- and disregarding the returned income of the appellant of Rs. Nil.*
2. *Appellant contends that the matter be remanded back to the file of appropriate authority for fair and unprejudiced verification of documents along with the additional evidences if any which could not be submitted before IT authorities earlier.*
3. *The learned CIT(A) erred in law in violating principal of natural justice by not granting reasonable time to submit written rejoinder on the grounds of appeal and dismissing the appeal in haste.*
4. *The learned CIT(A) & learned AO erred in law and on facts in making an addition of Unsecured loans of Rs.8,98,64,724/- u/s 68 alleging that amount received from unsecured loan lenders is unexplained and doubting their creditworthiness.*
5. *The learned CIT(A) & learned AO erred in law and on facts in making addition of Rs.86,63,440/- on account of alleged bogus interest*

expenditure on unsecured loans amounting to Rs.8,98,64,724/- added u/s 68 based on the same footing of non-creditworthiness of the unsecured loan lenders.

6. *The learned CIT(A) & learned AO erred in law and on facts in rejecting books of accounts maintained by the appellant by alleging that provisions of ICDS-3 are applicable to the appellant and thereby estimating the business profit of the appellant for AY 2018-19 at Rs. 5,60,10,288 @ 10% of amount of sale of units and closing work in progress (WIP) during the year.*
7. *The appellant craves leave to add/modify/delete / amend all / any of the grounds of appeal.”*

3. Briefly stated, the facts of the case are that the assessee is a partnership firm registered under the Partnership Act, 1932 and engaged in the business of building and construction by way of undertaking redevelopment projects. For AY 2018-19, the assessee filed its return of income on 31.10.2018 declaring income of Rs. Nil after claiming set off of brought forward business losses. The case was selected for scrutiny through CASS. Statutory notice(s) u/s 143(1) and 142(1) of the Income Tax Act, 1961 (**the “Act”**) were issued and duly served upon the assessee. During the assessment proceedings, several opportunities of hearing were granted to by the Ld. Assessing Officer (**“AO”**). In response thereto, the assessee filed only partial reply, sought adjournment on certain dates and also failed to attend the scheduled video conferencing. The Ld. AO therefore, observed that this non-compliance of the assessee shows that it has no other documentary details available with it and the assessee is trying to buy time by using these tactics. He, therefore, completed the assessment on total income of Rs.15,45,28,452/- u/s 143(3) r.w.s. 144B of the Act on 23.08.2021 based on the details submitted by the assessee and material available on record by making the following additions to the Nil income returned by the assessee.

(i) Addition of Rs.8,98,64,724/- of unsecured loans accepted by the assessee during the AY 2018-19 on account of inadequate proof to establish identity, genuineness and creditworthiness of the lender u/s 68 of the Act as unexplained cash credits. The relevant observations and findings of the Ld. AO is reproduced below :

“4.5 In this case assessee was required to submit confirmation and Bank statement of the lender to establish the genuineness of the transaction and to prove credit worthiness of the lender assessee was required to submit its ITR along with Balance Sheet of the lender but assessee failed to submit the required details despite multiple opportunities being given to the assessee. All that assessee could furnish was confirmation of some unsecured loans and ITRs of only 17 lender out of a total of 135 lenders. Further the ITRs of the lenders does not correspond with the huge amount of unsecured loans advanced by such lenders (including opening balance). Hence the credit

worthiness of the lenders is not established by the assessee during the course of assessment proceedings. Since assessee has failed to submit any details regarding the unsecured loan taken during the year under consideration, therefore assessee has not fulfilled the three basic limbs of section 68, i.e. identity of lender, genuineness of transaction and credit worthiness of the lender. As per section 68 of the Income Tax act, 1961 with regards to cash credit it is onus of the assessee to satisfy the three basic onus i.e. identity, credit-worthiness and genuineness of the transaction but assessee failed to fulfil his onus.”

(ii) Disallowance of interest paid on the above unsecured loans amounting to Rs.86,63,440/- and adding the same to the income of the assessee under the provisions of section 68 of the Act as a consequence to the above addition of unsecured loans. The relevant observations and findings of the Ld. AO is reproduced below :

“4.7 In view of above discussion the amount accepted by the assessee during the year under consideration from the above-mentioned lenders comes to Rs. 89864724/- as per table given above. The amount received remained unexplained in the hand of the assessee and shall be treated as cash credits u/s 68 of the Income Tax Act, 1961. Since the amount received by the assessee is not unsecured loan but cash credits as per section 68, hence the interest paid on such amount is also being disallowed as bogus payment of interest.....”

(iii) Estimating the business profit of the assessee for AY 2018-19 at Rs.5,60,10,288/- @ 10% of amount of sale of units and closing work-in-progress (WIP) during the year and rejecting the books of account u/s 145 of the Act on the ground that the assessee has a high value of closing stock as on 31.08.2018 and provisions of ICDS-III is applicable to the assessee.

4. Aggrieved, the assessee carried the matter before the CIT(A) who confirmed the above additions made by the Ld. AO and dismissed the appeal of the assessee.

4.1 As regards the addition of Rs.8,98,64,724/- u/s 68 of the Act, the relevant observations and findings of the Ld. CIT(A) is as under :

“4.4 I have gone through the assessment order and record available. I have considered the detailed facts. The assessee prima-facie has not complied with the ingredients required u/s 68 of the Act of genuineness, identity and creditworthiness. After considering the available documents regarding, the creditworthiness and identity of shareholders and have come to a reasonable conclusion that the assessee has not discharged its burden on submitting the information. Further, the A.O has made sufficient effort and analysis of the documents submitted by assessee. I find the order of the AO is a reasoned and logical order, where he has dealt on the facts, provisions of law and applied his mind to the present case and gave a reasonable finding on the additions.

4.5 In the Case of ITO-22(3) (2) Mumbai Vs Sai Everest Building & Developers (ITAT Mumbai) Appeal Number: ITA No. 6489/Mu m/2019 Date of Judgement/Order 18/05/2022 Related Assessment Year: 2011-12 (ITAT Mumbai) observed that

In closely held companies/firm where unsecured loan is raised from close knit circles mostly known to partners/owners, onus required under section 68 is very heavy on such firms to prove identity as well as creditworthiness of lenders and genuineness of transaction; mere submission of name and address of creditor, income tax returns, Balance Sheet/statement of affairs of creditor and bank statement of creditor is not sufficient. "Where lender companies immediately after receiving share capital with huge share premium from several entities in its bank account gave further huge amount of loans and advances to several companies with/without charging any interest and lender companies could not prove financial viabilities of their decisions, it could be said that lender companies are shell companies engaged in money laundering by providing bogus accommodation entries through a web of bank accounts, thus, addition under section 68, in the hand of loan taker has to be justified." On perusal of the bank account of the lenders it is revealed that average bank balance maintained by lender in its aforesaid bank account is a very meagre amount. Thus average bank balance maintained by lenders in the aforesaid bank account are very meagre sum, while huge amounts of money suddenly comes into this bank accounts which immediately finds its exit into some other bank accounts, which is another peculiar feature of a shell company engaged in laundering money by providing bogus accommodation entries through a web of shell companies and bank accounts. The orders of the authorities below have been carefully gone through and the assessee is not able to discharge its onus as is casted under section 68 as the assessee could not prove genuineness of the unsecured loan taken and underneath sources for making these investments. The assessee no doubt has produced bank statement/confirmation of the entities from which the money found its place in the bank account of the assessee to be further used in its business but the genuineness of these transactions could not be proved as the assessee did not bring on record cogent evidences to substantiate the unsecured loans taken. Merely bringing confirmations and showing that the payments were made through banking channel is not sufficient. As discussed above about the specifics of lender's financials it can be reasonably concluded that out of three essential ingredients, i.e. Identity of Creditor, Genuineness of the Transaction and Creditworthiness of the lender, only Identity can be assumed to be established. Rest of the 2 essential elements, i.e. Genuineness and creditworthiness not established. Hence Addition made by AO u/s. 68 of the Act upheld and order of Ld. CIT (A) is set-aside.

4.6 In the case at hand, Considering the ratio of the above said judgment and the facts of the case. The action of the AO is confirmed and the ground is dismissed."

4.2 As regards the addition of Rs.86,63,440/- on account of interest paid on unsecured loans disallowed u/s 68 amounting to Rs.8,98,64,724/-, the relevant observations and findings of the Ld. CIT(A) is as under :

"5.2 I have gone through the assessment order and record available. Since the unsecured loan could not be explained by the assessee satisfactorily either during assessment or during appeal proceedings the interest paid on cash credits of Rs. 86,63,440/- was rightly treated as bogus expenditure by AO. Hence this ground is also dismissed."

4.3 As regards estimation of the taxable profit of the assessee for AY 2018-19 at Rs.5,60,10,288/- by rejecting books of account of the assessee, the relevant observations and findings of the Ld. CIT(A) is as under :

“6.2 I have gone through the assessment order and record available. I find that the books of the assessee have not been entirely rejected by the AO and the only issue for rejection was to assess the true profits of the assessee by applying ICDS-III. The AD took the view that the provisions of ICDS -3 mandates in Gross contract receipts. Accordingly, he rejected the books of accounts. Section 145(2) of the Act enabled the Central Government to notify in the Official Gazette from time to time "Income Computation and Disclosure Standards" (ICDS). The Central Government has notified ICDS-III with effect from 1.4.2017, ie., from AY 2017-18 relating to "Construction Contracts". As per sec. 145(2), the ICDS are required to be followed by any class of assessee or in respect of any class of income. As per clause 10 of ICDS-III, the Contract revenue shall comprise of the initial amount of revenue agreed in the contract, including retentions. The construction contract, which commenced on or after 1st day of April, 2016 shall be recognised in accordance with the provisions of this standard. Contract revenue and contract costs associated with the construction contract, which commenced on or before the 31st day of March, 2016 but not completed by the said date, shall be recognised based on the method regularly followed by the person prior to the previous year beginning on the 1st day of April, 2016." "clause 9 of ICDS-III, wherein it is stated that "Contract revenue shall be recognized when there is reasonable certainty of its ultimate collection". (Circular No. 10/2017 dated 23-03-2017 issued by CBDT.) In view of the above said discussion, since the assessee is involved in the construction contracts, should have followed ICDS-III for arriving the taxable income. Hence, the ground taken by the assessee regarding rejection of books is also dismissed.”

5. Dissatisfied, the assessee in appeal before the Tribunal and all the grounds of appeal relate thereto.

6. Hearing was fixed for 14.05.2024, 29.07.2024, 12.09.2024 and finally on 06.11.2024. None attended for the assessee on any of the above dates of hearing. However, the Ld. DR attended all the hearings. We, therefore, proceed to decide the appeal ex-parte on merits after hearing the Ld. DR.

7. We have perused the order of Ld. AO as also of the Ld. CIT(A). It is observed that the assessee's AR made partial submissions before the Ld. AO in response to the details called for, which have been incorporated by the Ld. CIT(A) in para 4.3, 5.1 and 6.1 of his appellate order in respect of the above three additions respectively confirmed by him. We also notice that the Ld. CIT(A) has confirmed the additions made by the Ld. AO after examining the facts of the case and submissions of the assessee and giving detailed reasoning for the same.

8. As stated earlier, notice(s) of hearing issued by the Tribunal remained un-complied with. In the absence of rebuttal of the findings of the Ld. CIT(A)/AO by the assessee before us, we decline to interfere.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 26th November, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th November, 2024.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune