

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER  
आयकर अपील सं./ ITA No.1723/Chny/2024  
निर्धारण वर्ष /Assessment Years: 2018-19

Sri Sowbagya Financiers,  
No.28/9-1, Ramakrishnapuram,  
KASPA, Karur Town,  
Karur-639001.  
[PAN: ABGFS4214D]

Income Tax Officer,  
Ward-1  
Karur

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यर्थी की ओर से /Revenue by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख /Date of Pronouncement

(प्रत्यर्थी/Respondent)

Shri N.Quadir Hoseyn, Advocate

Ms.Gouthami Manivasagam, JCIT

12.09.2024

29.11.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1065130413(1) dated 25.05.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2018-19. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 25.05.2024 passed by NFAC, Delhi.

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2.0 The assessee has raised some 10 grounds of appeal contesting the disturbance made by the Ld. AO to its return of income and its consequent confirmation by the Ld. CIT(A). Ground of appeal No.1 and 10 had been found general in nature and hence bereft of any adjudication.

3.0 The first issue raised by the assessee through grounds of appeal Nos 2 to 5 are regarding the confirmation by the Ld. CIT(A) of the action of the Ld. AO in treatment of the amount of Rs.7,99,325/- as interest income falling under the domain of section 57 of the act as against assessee's claim of the same being a business income offered u/s 44AD of the act. The Ld. Counsel for the assessee submitted that the assessee has been engaged in the business of giving commercial loans to small farmers etc. It was submitted that the assessee is a partnership firm engaged in money lending business. The appellant had reportedly obtained license to carry on the finances business, intimation of which was also given to local police authorities. The appellant was procuring loans and also advancing the same. Both procurement and advancing entailed a charge of receipt or payment of interest. As the appellant was into the financing business the excess of interest receipts over payments was offered as business income. As the assessee was not maintaining any regular books of

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account, the impugned income was offered on presumptive business income u/s 44AD of the act. The appellant had reportedly filed copies of partnership deeds, ledger accounts of interest receipts, returns of income filed for AY-2016-17, 2017-18, 2019-20 and 2020-21 etc, copies of which have been provided in the paper book filed during the present proceedings in support of its contentions. The Ld. AO on page-4 of his order held that the submissions of the assessee are without any documentary support and hence rejected. The Ld. AR of the assessee argued that the view taken is against consistent history of the case and that the observation of assessee not providing requisite details is not correct as it had provided all the details to the Ld. AO as well as Ld. CIT(A). The Ld. DR would like to make us believe upon the correctness of the order of the Ld. CIT(A).

4.0 We have heard the rival submissions in the light of material available on records. At the outset, we have noted that the order passed by the Ld. AO appears to have been passed in reckless haste without any application of mind. We have noted that in second para on page-3 of his order the Ld. AO has indicated that that *"....in response of the same the assessee furnished return submissions along with copy of computation of income with comprehensive details of income from business and profession. The scanned copy of the*

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*same is reproduced hereunder....”* We have noted that no submissions of the assessee have been reproduced by the Ld. AO except for above observations. In the following para the Ld. AO proceeds to conclude the contradictions and deficiencies noted in assessee’s reply compelling him to assess the impugned receipts as interest income as against the claim of business receipts. We have also noted that the Ld. AO has not even cared to make the customary computation of total income towards the end of the assessment order which includes final income after making due additions to the returned income. The approach of the Ld. AO has been found to be highly unsatisfactory and unwarranted. The order of Ld. CIT(A) also consequently becomes suspect because he has merely confirmed without any analysis, Ld. AO’s findings as evident from para 7.3 of his order.

5.0 The assessee through its paper book has filed detailed evidences indicating that in AY-2016-17, 2017-18, 2019-20 and 2020-21 it has consistently offered its interest receipts as income from business and profession and that the disturbance now is unwarranted more so because there has been no change in facts. We have noted that the orders of lower authorities do not allude as to how they have been able to controvert this hypothesis of the assessee. The

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assessee has filed before us evidence comprising its returns of income which indicate that it has been consistently filing the impugned interest receipts as business income. The lower authorities have not been able to allude any change in facts of the case for the present year so as to warrant a different conclusion. Principles of consistency demand identical treatment unless there is change of facts. Accordingly, we set aside the order of the lower authorities and direct the Ld. AO to delete the impugned addition of Rs.7,99,325/-. Accordingly, the grounds of appeal Nos 2 to 5 are allowed.

6.0 The next issue raised through ground of appeal No.6 to 8 are regarding the addition of Rs.64,14,209/- u/s 68 of the act as unexplained cash credits. Further through the ground of appeal No. 9 the appellant has contended that as Rs.64,14,209/- was cumulative figure of earlier years and during the year only Rs.16 lakhs were procured only that much ought to have been added. The Ld. Counsel for the assessee informed that the assessee is in regular business of obtaining interest bearing loans which are then advanced as interest bearing loans to prospective customers. It was submitted that the Ld. AO made the impugned addition on the premise that details of only 20 persons out of total 349 persons were provided and which also comprised stereo typed confirmation. The Ld. AO noted that the loans

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were in cash below Rs.20,000/- possibly with an intent to avoid provisions prohibiting receipt of cash loans as well as to avoid routing through banking channels. Thus, the Ld. AO concluded that the assessee had failed to prove the troika of identity, genuineness and credit worthiness and proceeded to make the additions. On the issue of earlier years loans he observed that assessee had not provided anything except one page of ITR of AY-2017-18 showing amount of Rs. 47, 47,070/- as sundry creditors and proceeded to reject the assessee's claim. The Ld. CIT(A) also chose to toe the line of Ld. AO qua non-submission of details. He contended that the primary onus u/s 68 is cast upon a taxpayer to, inter-a-alia, prove the credentials of lender and transactions thereof. He therefore proceeded to sustain the order of the Ld. AO holding that the assessee had failed in the discharge of its primary responsibility. The Ld. AR argued that the lower authorities have ignored the basic facts of the case and make erroneous addition. The Ld. DR vehemently argued that the assessee had not provided sufficient evidences, before the lower authorities, to prove the three conditions mandated u/s 68 and therefore no relief can be given to the assessee.

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7.0 We have heard the rival submissions in the light of material available on records. We find sufficient force in the argument of the lower authorities that the primary responsibility of discharging the onus placed u/s 68 squarely rests upon the assessee. It is his fundamental duty to provide the requisite details upon which the Ld. AO has to consider as to whether the borrowed capital is a case of genuine transactions with identifiable entities having sufficient credit worthiness or they are just sham transactions undertaken to defraud the revenue. The crux of the matter is that the evidence has to flow from taxpayer side. To this extent we find that the assessee has not been able to fulfil its obligations wholly.

8.0 At the outset, we have once again noted that the addition u/s 68 made in the order passed by the Ld. AO appears to have been a case of reckless haste without any application of mind. We have noted that in last para on page-3 of his order the Ld. AO has indicated that that *"...the assessee has furnished a copy of confirmation of 20 persons out of 349 persons which contain same content, typed in same manner and same style. It is pertinent to mention here that in all these cases, the amount of unsecured loans is below Rs.20,000/- and all are routed through without banking channel which seems highly suspicious and not as per law. Scanned specimen of some confirmations furnished by*

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*the assessee is reproduced as under....”*. It has been *observed* that no reproduction of any scanned specimen has been done by the Ld. AO. In the next para the Ld. AO has proceeded to conclude “....as *mentioned above, the assessee has given confirmation from 20 persons out of 349 so called depositors. The 20 confirmation given on random basis by the assessee cannot be relied upon because they are self-serving documents created to evade taxes therefore they are rejected....”*. Thus non-application of mind by the Ld. AO is clearly established in this case.

9.0 We have also noted that in the present appeal on the issue of unsecured loans the conduct of both the assessee as well as the Ld. AO has been far from satisfactory. Assessee’s submission of details in respect of just 20 lenders as against 349 cannot be even considered a decent sample to justify the loans. At the same time the conclusions drawn by the Ld. Lower authorities qua the same being in genuine so as to warrant addition of the entire amount of loan is also not found to be an acceptable conduct. The mere fact that the Ld. AO noted deficiencies in the 20 confirmations filed by the assessee should have been a sufficient trigger to initiate in depth enquiries, including recording their personal depositions, analysis of bank statements etc, into the lenders of the assessee. It is seen that the Ld. AO has

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merely drawn his superfluous conclusions and proceeded to make the addition. On the issue of giving the assessee the claimed benefit of previous year's loans also, the Ld. AO has chosen to reject the arguments by not relying upon the evidences produced. Assuming that the Ld. AO was not convinced with the evidence placed by the assessee, nothing prevented him from examining the position with reference to earlier year records maintained in his office. The Ld. Lower authorities must have been conscious of the fact that during an assessment proceedings, provisions of section 68 can only be invoked with reference to fresh / new loans acquired during the year and not the loans taken on earlier years.

10. Be that as it may be, we are of the view that the matter concerning unsecured loans claimed to have been received by the assessee have not been objectively and comprehensively analyzed by the lower authorities. We are of the view that ends of justice would be met if the assessee is given one last opportunity to present its case and filed supporting evidences before the Ld.AO. The decision to remit it back to the Ld. AO is taken in view of the fact that an Assessing Officer is the fulcrum of assessment proceedings. He possess the first right and responsibilities to examine facts of a case before arriving at his decision qua determination of taxable income in a

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particular case. Without prejudice it has also been noted that in this case the Ld. AO did not have adequate opportunities to examine the varied facts seminal therein. We have noted with respectful deference the decision of Hon'ble Apex Court in the case of TIN box 249 ITR 216 on the subject matter. Accordingly, the issue of addition u/s 68 made by the Ld. AO amounting to Rs. 64,14,209/- and the accompanying plea of assessee of adding only new loans of Rs. 16 lakhs app. which have been contested by the assessee through grounds of appeal No.6 to 9 supra stands remitted back to the Ld. AO for fresh adjudication de novo by passing a speaking order. To the extent the order of lower authorities on this issue stands set aside. The Ld. AO shall give opportunities of being heard to the assessee and it shall be bounden upon the assessee to comply with the notices issued by the Ld. AO. Any non-compliance on the part of the assessee can be adversely viewed. The assessee is at liberty to produce all the evidences filed through its paper book before us including any other evidences deemed relevant in support of its claims before the Ld. AO during the readjudication proceedings. Accordingly, the grounds of appeal No.6 to 9 raised by the assessee are therefore allowed for statistical purposes.

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11.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 29<sup>th</sup>, November-2024 at Chennai.

**Sd/-**

(यस यस विश्वनेत्र रवि)

**(SS Viswanethra Ravi)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

(श्री अमिताभ शुक्ला)

**(Amitabh Shukla)**

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 29<sup>th</sup>, November-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF