

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.1944/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

Mrs. Karunakaran Leela SF No.33/A8, No.1/255/3, Andan Kovil East Village, Ottapillayar Kovil South Street, Vengamedu Post, Karur-639 006.	बनाम/ Vs.	ITO Ward-1 Karur.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. ABPPL-1478-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. N. Quadir Hoseyn Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Mr. V. Justin (Addl.CIT) - Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	27-11-2024
घोषणा की तारीख / Date of Pronouncement	:	03-12-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 30-05-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 15-04-2021. The grounds taken by the assessee are as under: -

1. The order of the CIT(A), in so far as it is against the assessee, is contrary to law, erroneous and unsustainable on the facts of the case.
2. The CIT(A) erred in sustaining the addition to the extent of Rs.36,50,000/- relating to 12 creditors.
3. The CIT(A) failed to appreciate that the assessee has discharged her onus by providing the PANs, that the entire transactions were carried through the Banking Channels including repayment and hence there was no justification for sustaining the additions to the extent of Rs.36,50,000/-.
4. The CIT(A) further failed to appreciate that many of the creditors were Partnership Firms, that they regularly maintained their books of accounts and hence the additions sustained is untenable in law as well as on facts.
5. That CIT(A) further failed to appreciate that the impugned creditors regularly maintained their regular books of accounts, that the transactions were carried through the banking channels, that it had nothing to do with the returns of income as such and hence the addition sustained is untenable in law.
6. The CIT(A) further failed to appreciate that in the absence of action in terms of section 269SS, the genuineness of transaction was proved per se and hence the CIT(A) ought to have deleted the addition.

As is evident, the sole issue that arises for our consideration is confirmation of addition of Rs.36.50 Lacs u/s 68.

2. The Ld. AR advanced arguments and drew attention to the documents furnished by the assessee before lower authorities to substantiate the creditors. The Ld. Sr. DR also advanced arguments and supported the addition as sustained in the impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before lower authorities

3.1 During assessment proceedings, it transpired that the assessee obtained unsecured loans of Rs.120 Lacs from 17 loan creditors. Notices u/s 133(6) was issued to 5 creditors. Only three parties responded. These parties reflected petty income in their respective ITRs in comparison to loans advanced by them. Accordingly, Ld. AO held that these entities lacked creditworthiness. Further, there were cash deposits in the accounts of the three parties on the same date when the loans

were advanced to the assessee. The assessee could not explain the sources of loan. Accordingly, the aforesaid amount was added u/s 68 r.w.s. 115BBE of the act.

3.2 The Ld. CIT(A) tabulated the loans taken from each of the creditors on Page-12 of the impugned order. It was observed that an amount of Rs.73.50 Lacs was outstanding loan brought forward from previous year. Accordingly, the addition to that extent was deleted. The remaining loan of Rs.46.50 Lacs was taken from 16 persons including firms and individuals. Upon perusal, Ld. CIT(A) accepted creditworthiness of 4 creditors from whom aggregate loans of Rs.10 Lacs were obtained. Accordingly, the addition to that extent was deleted. However, in rest of the cases, with respect to loans aggregating to Rs.36.50 Lacs, the addition was confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

4. Upon perusal of tabulation in the impugned order, it could be seen that in most of these 12 cases, the assessee has not filed copy of ITR. In few cases, ITRs have been filed but the income is not commensurate with the loans granted by the lenders to the assessee. Therefore, the creditworthiness of these creditors could not be established by the assessee. The Ld. AR has stated that source of source could not be enquired into by Ld. AO. Further, the provisions of Sec.68 could be invoked only if there was cash credit in the books of accounts whereas in the present case, the transactions have happened through banking channels. However, both these arguments are to be rejected. In our considered opinion, the onus was on assessee to establish the creditworthiness of the loan creditors and the assessee has failed to file

sufficient documentary evidences, in this regard, to the satisfaction of lower authorities. Further, it would make no difference whether the amounts are received in cash or through banking channel. The provisions of Sec.68 would still be attracted to the assessee in both the cases. In fact, the assessee is debarred from accepting loans in cash beyond specified limits as laid down u/s 269SS. Therefore, these arguments stand rejected. Considering the fact that the assessee has failed to discharge the onus of establishing the creditworthiness of the 12 parties, we provide another opportunity to the assessee to substantiate the same before Ld. AO. Accordingly, the issue of impugned addition of Rs.36.50 Lacs stand restored back to the file of Ld. AO for fresh consideration with a direction to the assessee to substantiate the loan creditors. No other ground has been urged in the appeal.

5. The appeal stand allowed for statistical purposes.

Order pronounced on 3rd December, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 03-12-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Madurai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF