

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA Nos.845, 889 & 890/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Gangamagrotech, Hindupur (A.P.) PAN:AALFG9830D	Vs.	Income Tax Officer, Ward-1, Hindupur (A.P.)
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Ashwani Kumar, C.A.	
राजस्व द्वारा / Revenue by::	Shri Waseem UR Rehman, SR-DR	
सुनवाई की तारीख / Date of hearing:	25/11/2024	
घोषणा की तारीख / Pronouncement:	29/11/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

These appeals are filed by M/s. Gangamagrotech, Hindupur ("the assessee"), feeling aggrieved by the separate orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 13.08.2024, 30.08.2024 and 30.08.2024 respectively for the A.Y. 2013-14. For the sake of convenience and brevity, they are heard together and consolidated order is being passed.

2. The brief facts of the case are that the assessee is a partnership firm and did not file any Return of Income (“ROI”) for the A.Y. 2013-14. A search operation u/s.132 of the Income Tax Act, 1961 (“the Act”) was conducted on Shri Nawal Kishore Jalan of Kolkata, who was engaged in providing accommodation entries to various beneficiaries through shell company. On the basis of the statement of Shri Nawal Kishore Jalan, the information was made available to the Learned Assessing Officer (“Ld. AO”) that the assessee was one of the beneficiary and has availed accommodation entry of Rs.2.65 Crores in the form of loan taken by the assessee. Accordingly, the Ld. AO issued notice u/s.148 of the Act to the assessee. Finally, the Ld. AO concluded that the assessee failed to establish identity, credit-worthiness and genuinity qua loan taken of Rs.2.65 Crores and completed the assessment u/s.147 r.w.s. 144 r.w.s. 144B of the Act on 25.03.2022 making addition of Rs.2.65 Crores treating the loan taken as unexplained cash credit u/s. 68 of the Act (“impugned loan”).

3. Aggrieved with the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) uphold the order of Ld. AO.

4. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Learned Authorised Representative (“Ld. AR”) submitted that the solitary ground in this appeal is on account of addition of Rs.2.65 Crores u/s. 68 of the Act. The Ld. AR further submitted that the assessee came

into existence on 16.04.2013 and in support of his contention, he filed copy of the PAN and brought our attention to page nos.8 to 14 of paper book containing the copy of partnership deed. The Ld. AR submitted that during A.Y. 2013-14, the assessee was not in existence, then how can the assessee take any loan during the said A.Y. . Further, except making the allegation, the Ld. AO did not provide any details regarding the receipt of loan of Rs.2.65 Crores by the assessee. The Ld. AO did not provide the details of the lender, the date of the loan transaction, the details of bank account in which the impugned loan has taken place. Hence without providing any detail, the Ld. AO emphasised on the assessee to prove the identity, credit-worthiness and genuinity of the loan transaction of Rs.2.65 Crores. The assessee consistently submitted before the Revenue authority that during the A.Y. 2013-14, the assessee was not in existence, not having any bank account and the assessee had not taken any loan from any person. Finally, the Ld. AR prayed before the bench to delete the addition made by the Ld. AO.

5. Per contra, the Learned Department Representative (“Ld. DR”) relying on the order of Revenue authorities brought our attention to para nos.4.7 and 4.8 of the order of Ld. AO and submitted that the assessee did not respond to the show cause notice dated 13.03.2022 issued by the Ld. AO. Therefore, the assessee failed in his duty to prove the identity, credit-

worthiness and genuinity of the impugned loan. Therefore he submitted that there is nothing wrong in the addition made by the Ld. AO. Finally, the Ld. DR reiterated to dismiss the appeal of the assessee.

6. In rebuttal, the Ld. AR brought our attention to the page no.21 of the paper book which contains the details of copy of submission made by the assessee on 21.03.2022 towards the show cause notice dated 13.03.2022 issued by the Ld. AO. The Ld. AR also submitted that the Ld. AO has passed the assessment order on 25.03.2022 and the assessee has filed his submission much before passing of order by the Ld. AO. The Ld. AR also submitted that there was no non-compliance on the part of the assessee before the Revenue authority.

7. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. We have also gone through the copy of PAN submitted by the assessee and also the page nos.8 to 14 of the paper book containing the copy of partnership deed and found that the date of constitution of the assessee firm was on 16.04.2013. Therefore, according to these documents, the assessee was not in existence during A.Y. 2013-14. However, the allegation made by the Ld. AO is related to A.Y. 2013-14. The Ld. AO did not bring any evidence on record regarding the existence of the assessee during A.Y. 2013-14. Therefore on this count we are of the considered opinion that no addition can be made

with respect to any assessment year in which the assessee is not existing. Therefore the addition made by the Ld. AO for A.Y. 2013-14 is liable to be deleted on this count.

7.1 Further the Ld. AO did not provide the details of the lender, the date of the loan transaction and the details of bank account in which the impugned loan transaction has taken place. Without providing any such details, the Ld. AO insisted on the assessee to prove the identity, credit-worthiness and genuinity of the impugned loan transactions. In this regard, we are of the considered view that, it was the first obligation of the Ld. AO to provide the details of the impugned loan transaction and then to ask the assessee to prove identity, credit-worthiness and genuineness of impugned loan transaction. The Ld. AO has made the addition of Rs.2.65 Crores in the hands of the assessee treating the impugned loan as unexplained cash credit u/s.68 of the Act. As per the provisions contained under provisions of section 68, there must be a cash credit found by the Ld. AO in the books of the assessee before calling any explanation from the assessee. In the present case, the Ld. AO has not established the existence of any loan in the hands of the assessee. Therefore in our considered opinion, no addition can be made on account of a loan, the existence of which has not been established by the Ld. AO. Therefore, on this count also,

the addition made by the Ld. AO is liable to be deleted. Therefore we delete the addition made by the Ld. AO.

ITA No.889/Hyd/2024

8. This appeal of the assessee is against the levy of penalty u/s.271A of the Act, which has been made by the Ld. AO for failure to keep and maintain books of account of business in accordance with section 44AA of the Act. As per our discussion and observation in ITA No.845/Hyd/2024 above, the assessee was not in existence during the A.Y. 2013-14. Therefore, we are of the considered opinion that when an assessee is not in existence in a particular year, no question of maintenance of any books of account arises for that particular year. Therefore, we are of the considered opinion that no penalty u/s. 271A of the Act can be levied on the assessee for A.Y. 2013-14. Accordingly, we delete the penalty levied by the Ld. AO.

ITA No.890/Hyd/2024

9. This appeal by the assessee is against the levy of penalty u/s.271F of the Act, which has been levied by the Ld. AO for default by the assessee in furnishing ROI u/s. 139(1) of the Act. As per our discussion and observation in ITA No.845/Hyd/2024 above, the assessee was not in existence during the A.Y. 2013-14. Therefore, we are of the considered

opinion that when an assessee is not in existence in a particular year, no question of filing of any ROI arises for that particular year. Therefore, we are of the considered opinion that no penalty u/s. 271F of the Act can be levied on the assessee for A.Y. 2013-14. Accordingly, we delete the penalty levied by the Ld. AO.

10. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open Court on 29th Nov., 2024.

Sd/-

**(VIJAY PAL RAO)
VICE PRESIDENT**

Sd/-

**(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER**

Hyderabad.

Dated: 29.11.2024.

** Reddy gp*

Copy of the Order forwarded to :

1. M/s. Gangamagrotech, D.No.26-4-1201/B, Beside Sreenivasa Nursing Home, R P G T Colony, Hindupur-515 201
2. ITO, Ward-1, Hindupur.
3. Pr.CIT, Tirupathi.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,