

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.4740/Del/2019
[Assessment Year : 2009-10]**

Surya Jyoti Software Pvt.Ltd., 206, Hans Bhawan, 1, Bahadurshah Zafar Marg, New Delhi-110002. PAN-AALCS5682G	vs	ITO, Ward-24, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri S.K.Gupta, CA	
Respondent by	Shri Narpat Singh, Sr. DR	
Date of Hearing	07.10.2024	
Date of Pronouncement	12.12.2024	

ORDER

PER PRADIP KUMAR KEDIA-A.M.:

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 04.04.2019 passed by Ld. Commissioner of Income Tax (A)-8, New Delhi [“Ld.CIT(A)”] arising from the assessment order dated 06.12.2017 passed u/s 263/147/143(3) of the Income Tax Act, 1961 [“the Act”] pertaining to assessment year 2009-10.

2. Grounds of appeal raised by the assessee read as under:-

1. *“The initiation of the proceedings u/s 263 and the consequent order u/s 263/147/143(3) is bad in law as*
 - a) *The initiation of proceedings u/s 263 are contrary to provisions of law.*
 - b) *The mandatory procedure laid down in the Act has not been followed.*
 - c) *The information has been collected behind the back of the assessee and the assessee was never confronted with the same nor an opportunity provided for cross-examination of Jain brothers, directors of Shalini Holdings Ltd. alleged*

intermediary, copies of the orders of Jain Brothers and the relevant seized material relied upon has not been provided to the assessee.

2. *The learned assessing officer has erred on facts and in law in making an addition of Rs.1,00,00,000/- u/s.68 on account of unexplained cash credit, treating as an accommodation entry. It is not a case of cash credit. Receiving your own money advanced earlier is not a cash credit. The Ld. AO made no independent effort and transaction is viewed with bias and not considered in its entirety.*
3. *The learned assessing officer has erred on facts and in law in making an addition of Rs.1,80,000/- u/s 69C, as alleged commission paid for obtaining accommodation entry.*
4. *The learned CIT (A) has erred on facts and in law by not adjudicating ground of initiation of penalty proceedings u/s 271(1)(c) without any material on record.”*

3. As per the grounds of appeal, the assessee has challenged the additions of INR 1,00,00,000/- under section 68 of the Act on account of unexplained cash credit and further addition of INR 1,80,000/- as unexplained expenditure under section 69C of the Act.

4. Briefly stated the assessee filed return of income on 17.08.2009, declaring a loss of INR 1,93,992/- for the Assessment Year 2008-09 in question. The return of loss was revised to INR 2,46,797/-. The return of income filed was subjected to scrutiny assessment and the assessment was framed at INR 1,93,992/- under section 143(3) of the Act. Subsequently, the case was re-opened under section 147 of the Act wherein the re-assessed income was determined at NIL. Thereafter, notice under section 263 of the Act was issued and a revisional order dated 24.03.2017 was passed setting aside various assessment orders with a direction to the AO to re-determine the veracity of loan obtained from M/s. Shalini Holdings Ltd. In pursuance of the direction of Pr. Commissioner of Income Tax under section 263 of the Act, the AO framed assessment under section 143(3) r.w.s 147 r.w.s. 263 of the Act dated 06.12.2017. The AO made addition of INR 1,00,00,000/- towards

unexplained cash credit received from M/s. Shalini Holdings Ltd. and also added INR 1,80,000/- towards unexplained interest expenditure under section 69C of the Act.

5. Aggrieved the assessee preferred appeal before the Ld.CIT(A) who in turn denied any relief.

6. Further aggrieved, the assessee preferred appeal before the Tribunal.

7. When the matter was called for hearing, the Ld. Counsel for the assessee challenged the additions made on merits as well as alleged multiple legal infirmities in the action of the Revenue.

8. On merits, the Ld. Counsel for the assessee pointed out that the assessee initially advanced INR 2,00,00,000/- (INR 1,00,00,000/- each) on 12.06.2008 by way of loan to M/s. Shalini Holdings Ltd. and thereafter, in the same Financial Year received back the aforesaid amount of INR 2,00,00,000/- by way of repayment. Thus, the Revenue has proceeded on gross mis-conception of facts that the assessee has received any loan whereas the assessee has not received any loan but only realized the earlier payment of loans to M/s. Shalini Holdings Ltd.

8.1 Besides, the Director of the assessee company appeared before the AO and his statement was recorded under section 131 of the Act on 27.11.2017 and he requested for issuance of notice under section 131 of the Act and calling of the Pr. Officer/Director of M/s. Shalini Holdings Ltd. for cross-examination. The assessee through various letters also demanded copy of seized documents relating to the assessee company, statement of searched person during the searched proceedings and post search proceedings and cross-examination of searched person and Directors of M/s. Shalini Holdings Ltd. The assessment was however framed in complete violation of natural justice.

8.2. The Ld. Counsel for the assessee thus submitted that the instant case is a case of repayment of earlier loan given to the said entity and therefore, the assessee is under no obligation to prove the source of amount collected by way of repayment of loan in view of several decisions such as [a] *Pr.CIT vs Veedhata*

Tower P. Ltd. ITA No.819 of 2015 (Bom-HC); [b] Pr.CIT vs SBD Estates P. Ltd. ITA no.1356 of 2015 (Bom-HC); and [c] ITO vs Vijay Dewellers Pvt. Ltd. ITA No.141/Mum/2018 dated 30.01.2019.

8.3. The Ld. Counsel for the assessee next pointed out that the assessment in the case of M/s. Shalini Holdings Ltd. for Assessment Year 2009-10 in question has been framed under section 153C/153A of the Act vide order dated 28.03.2013. No adverse finding had been recorded by the AO on the activities of M/s. Shalini Holdings Ltd. in the assessment order.

8.4. Thus, the additions have been made, *firstly*, on the basis of wholly incorrect understanding of fact whereby loan and receipt by way of repayment has been wrongly equated; *secondly*, adverse material was never confronted; *thirdly*, cross examination was not provided despite request; and *fourthly*, the assessment framed in the case of M/s. Shalini Holdings Ltd. has been ignored.

8.5. The Ld. Counsel for the assessee submitted that the assessee has done everything within its means to establish the bonafides of receipt from M/s. Shalini Holdings Ltd. whereas the Revenue has failed to provide cross-examination, copy of seized material etc. in violation of principles of natural justice. The action of the Revenue thus is wholly unfounded in law in the light of plethora of judicial precedents.

9. The Ld. Counsel for the assessee also adverted to legal infirmities such as

- (i) assessment order passed is based on re-opening notice which was withdrawn by the AO himself before passing the assessment order. Consequential section 263 proceedings has derived its foundation from nonest re-assessment order which, in turn, has vitiated the present proceedings as held in large number of judicial precedents capitulate in the submissions placed.
- (ii) The AO has issued two judicial notices under section 148 of the Act for the same year when the earlier one was in force. Such action is apparently bad in law resulting in the re-assessment order being null and void. This, in turn, has vitiated the

consequential 263 order and the impugned re-assessment order in the present proceedings.

- (iii) The re-assessment order under appeal is barred by limitation under section 153(5) of the Act.
- (iv) The re-assessment notice in the earlier proceedings was issued without any application of mind and multiple other infirmities while recording the reasons under section 148(2) of the Act.

We shall deal with the contentions raised on behalf of the assessee in the subsequent paragraphs as and when it is considered expedient.

10. The Ld. Sr. DR for the Revenue on the other hand, relied upon the re-assessment order passed in pursuant of revisional directions and first appellate order thereon.

11. We have carefully considered the rival submissions. The assessee has broadly assailed the assessment order and the first appellate order on three grounds:-(i) The additions on merits towards unexplained cash credits and unexplained expenditure thereon is unfounded on facts and law; (ii) The re-assessment order passed under section 147 of the Act which, in turn, gave rise to consequential proceedings itself is bad in law; and (iii) The revisionary order passed suffers from lack of jurisdiction and is result of nonest re-assessment order which was revised.

12. We first advert to the merits of the additions as emerging from the facts on record. The assessee company granted loan to M/s. Shalini Holdings Ltd. and received repayment thereof during the Financial year 2008-09 relevant to Assessment Year 2009-10 in question. The details of relevant entries stipulated hereunder:-

<i>Date</i>	<i>Details</i>	<i>Nature</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
12.06.2008	Andhra Bank Ch.No.150036	Payment	1,00,00,000	
12.06.2008	Andhra Bank Ch.No.150037	Payment	1,00,00,000	
02.08.2008	Andhra Bank Ch.No.252308	Receipt		50,00,000
05.08.2008	Andhra Bank Ch.No.252309	Receipt		50,00,000
29.01.2009	Andhra Bank Ch.No.244595	Receipt		1,00,00,000
		Total Rs.	2,00,00,000	2,00,00,000

12.1. Thus, on a bare reading of the facts tabulated, it is ostensible that receipt of INR 1,00,00,000/- alleged to be unexplained cash credit is offshoot of earlier grant of loan to M/s. Shalini Holdings Ltd. The receipt of money by way of repayment of loan earlier granted cannot be taken in the same pedestal as that of receipt of loan *per se*. The requirement of proving creditworthiness in such a situation of repayment has been read down by the Co-ordinate Bench of the Tribunal in *Pr.CIT vs SBD Estates P. Ltd.* and *ITO vs Vijay Dewellers Pvt. Ltd.* (supra). It was observed that in the case of repayment of loan earlier given by the assessee, there is no requirement on the part of the assessee to prove the source of funds of the borrower making repayment towards its existing obligation. Similar view has been expressed in *Pr.CIT vs Veedhata Tower P. Ltd. & SBD Estate* (supra). Thus on this score itself on standalone basis, the addition made is unsustainable in law. We further advert to the other line of plea such as placing reliance on statement of searched person without providing cross-examination as well as the seized documents involving the assessee. The assessee on its part has duly attended before the AO in pursuance of notice issued under section 131 of the Act and provided the requisite explanations. It is also noticed that the assessment of borrower showing repayment of loan has been duly made wherein no adverse observations have been made by the AO towards providing any accommodation entry to any person. Thus, when seen holistically, the receipt of money can neither be regarded as accommodation entry by way of loan nor the assessee has been provided with the cross-examination of the searched person giving rise to the consequential action against the assessee.

12.2. We thus see overwhelming potency in the plea of the assessee on merits of the additions. Having adjudicated the issue on merits in favour of the assessee, we do not consider it expedient to address ourselves on alleged legal infirmities raised on behalf of the assessee. The order of the Ld.CIT(A) is thus set aside and the AO is directed to delete the additions so made under section 68 & 69C of the Act.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 12th December, 2024.

Sd/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI