

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No. 2613/Mum/2024
Assessment Year : 2016-17

Right Channel Constructions Pvt. Ltd., 101, 1 st Floor, Kailash Ramkripa CHS, Kailashpuri Road, Upper Govind Nagar, Malad East, Mumbai PAN : AAECR2174D	vs.	ACIT, Circle-13(3)(2), Room No. 229, 2 nd Floor, Aayakar Bhavan, M.K.Road, Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Prakash Jhunjhunwala
Revenue by : Smt. Sanyogita Nagpal, CIT-DR

Date of Hearing : 12-11-2024
Date of Pronouncement : 17-12-2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 12-03-2024 passed by the Ld.CIT(A)-NFAC, Delhi and it relates to the Assessment Year (AY.) 2016-17. The assessee is aggrieved by the decision of the Ld.CIT(A) in partially confirming the addition made by the AO u/s 68 of the Income Tax Act, 1961 ('the Act') and also in enhancing the addition.

2. The facts relating to the case are discussed in brief. The assessee is engaged in the business of construction and development of real estate projects. During the course of assessment proceedings, the AO noticed that the unsecured loans balance as at the beginning and end of the year was Rs.23.29 crores and Rs.24.34 crores, meaning thereby, the assessee has taken fresh loans during the year under consideration. He further noticed that the tax auditor has reported following loans in the tax audit report:-

Sr. No.	Name of the Party	Amount Rs.	Details
1.	Devendra Pandey	3,16,64,996	Loan accepted during year from Director
2.	Sanjay Pandey	21,05,032	Loan accepted during year from Director
3.	Prabhat Telecom India P Ltd	57,50,000	Accepted during the year
4.	Shiv Shakti Builders & Developers	94,45,295	Repaid during the year
	Total	4,89,65,323	

According to the AO, the assessee did not furnish any details relating to the above said loan. Hence, the AO assessed the above said amount and unexplained cash credit u/s 68 of the Act in the best judgment assessment passed u/s 144 of the Act.

3. Before the Ld.CIT(A), the assessee submitted that it has furnished many details before the AO and hence, the AO was not right in observing that the assessee did not furnish details. The assessee also furnished certain more details in the form of additional evidences before the Ld. CIT(A), since the AO had made the addition without appreciating complete details. Hence, the Ld.CIT(A) called for a remand report from the AO. The

AO objected to the admission of additional evidences, but proceeded to offer his comments on those evidences. The Ld.CIT(A) also, after examining the remand report, took the view that the additional evidences should not be admitted. However, the Ld.CIT(A) proceeded to adjudicate the issues on the basis of very same remand report and deleted the additions relating to M/s Prabhat Telecom India P Ltd and M/s Shiv Sakthi Builder & Developers.

4. Since the AO himself has given remand report duly considering the remand report and since the Ld.CIT(A) has adjudicated the issues on the basis of additional evidences only, we are of the view that the Ld.CIT(A) has admitted additional evidences and has decided the issues on the basis of remand report given by the AO. Accordingly, we also proceed to adjudicate this appeal duly considering the remand report given by the AO.

5. We noticed earlier that the Ld.CIT(A) has deleted the additions made u/s 68 of the Act in respect of loan received from M/s Prabhat Telecom India Pvt. Ltd., and M/s Shiv Sakthi Builder & Developers. Since the Revenue has not challenged the relief granted by the Ld.CIT(A), it has attained finality. The remaining additions made by the AO u/s 68 of the Act were related to the following two loans received by the assessee:-

Devendra Pandey - Rs.3,16,64,996/-

Sanjay Pandey - Rs. 21,05,032/-

From the additional evidences furnished by the assessee, the Ld.CIT(A) noticed that the summary of transactions entered by the assessee with above said two parties during the year under consideration as under:-

Particulars	Shri Devendra Pandey	Shri Sanjay Pandey
Opening balance of loan as on 01-04-2015	81,58,953	3,56,221
Add:- Amount accepted during the year	10,04,53,965	43,76,817
Less:- Amount repaid during the year	6,71,41,929	22,71,284
Closing balance of Loan as on 31-03-2016	4,14,70,989	24,61,753

The Ld.CIT(A) noticed that the loan amount received during the year was Rs.10,04,53,965/- and Rs.43,76,817/-, respectively from Shri Devendra Pandey and Shri Sanjay Pandey. Hence, the Ld.CIT(A) held that the above said amounts should be assessed u/s 68 of the Act.

6. We noticed earlier that the AO had added a sum of Rs.3,16,64,996/- in respect of loan received from Shri Devendra Pandey and Rs.21,05,032/- in respect of the loan received from Shri Sanjay Pandey. Hence, the addition made by the Ld.CIT(A) to the tune of Rs.10,04,53,965/- and Rs.43,76,817/- has resulted in enhancement of the addition. The Ld.AR submitted that the Ld.CIT(A) has enhanced the addition without providing opportunity to the assessee to show cause against the proposed enhancement as required u/s.251(2) of the Act. In view of the above said contentions, the Ld.DR was asked to ascertain factual position on this matter. The Ld.DR submitted that there is no proof of issuing any show cause notice of enhancement to the assessee as required u/s. 251(2) of the Act.

7. The provisions of Sec.251(2) of the Act read as under:-

“251(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has

had a reasonable opportunity of showing cause against such enhancement or reduction.”

The requirements and effect of Section 251(2) of the Act were examined by the Pune Bench of ITAT in the case of Naresh Sunderlal Chug vs. ITO (2018)(93 taxmann.com 485)(Pune) and it was held that the Commissioner (Appeals) was not right in law in enhancing the assessment, without giving an opportunity or any show cause notice of enhancement to the assessee and accordingly, the impugned order could not be sustained. In the instant case, the Ld.CIT(A) has enhanced the amount of addition made by the AO u/s 68 of the Act, without providing an opportunity to the assessee or without issuing show cause notice of enhancement to it. Since it is in violation of provisions of Section 251(2) of the Act, the enhancement of the addition made by the Ld.CIT(A) cannot be sustained. Accordingly, we delete the enhancement made the First Appellate Authority.

8. We have to adjudicate the additions made by the AO u/s 68 of the Act in respect of loan amount of Rs.3,16,64,996/- and Rs.21,05,032/-, respectively received from Shri Devendra Pandey and Shri Sanjay Pandey. We notice that the Ld.CIT(A) confirmed the additions accepting the remand report given by the AO. We notice that the AO has observed as under in his remand report in respect of above said two loans:-

Devendra Pandey:-

On perusal of the bank statements and ledger confirmation, it appears that loans were advanced by Shri Devendra Pandey through banking channels and no cash deposit were found nearby the said loan transaction. Also from the perusal of the return of income of said AY 2016-17 Shri Devendra Pandey has declared income of RS.10,57,251/-. He is also one of the directors of the assessee company.

However, it is also noticed that Shri Devendra Pandey has not maintained balance sheet for the year under consideration. Further, Shri Devendra Pandey has also taken loan from other entities during the year under consideration and hence identity and genuineness of the transaction is verifiable. However, the creditworthiness of Shri Devendra Pandey cannot be verified at this stage from available records.

Sanjay Pande:-

On perusal of the bank statements and ledger confirmation, it appears that loans were advanced by Shri Sanjay Pandey through banking channels and no cash deposit were found nearby the said loan transaction. Also from the perusal of the return of income of said AY 2016-17 Shri Sanjay Pandey has declared income of Rs.15,78,434/-. He is also one of the directors of the assessee company.

However, it is also noticed that Shri Sanjay Pandey has not maintained Balance Sheet for the year under consideration. Further, Shri Sanjay Pandey has also taken loan from other entities during the year under consideration and hence identity and genuineness of the transaction is verifiable. However, the creditworthiness of Shri Devendra Pandey cannot be verified at this stage from available records.

9. We heard the parties on this issue. Under section 68 of the Act, the assessee is required to discharge his initial burden to prove the cash credits, i.e., he has to prove the identity of the creditor, credit worthiness of the creditor and genuineness of transactions. In respect of the loans received from Shri Devendra Pandey and Shri Sanjay Pandey, we notice that the AO has reported in the remand report that the identity of the creditors and genuineness of transactions have been proved. According to the AO, the assessee has not proved the credit worthiness of the creditors.

We noticed from the report given by the AO, which is extracted above, the AO has given following reasons to hold that the assessee has not proved the credit worthiness of the creditors:-

- (a) Both the creditors have not furnished their personal Balance Sheet.
- (b) They have taken loans from others.

We notice both the above said creditors are promoters and Directors of the assessee-company. They have given loans to the assessee-company. The AO has also reported that the above said loans have been given from their respective bank accounts and further, there are no cash deposits in their bank accounts before giving the loan. This factual observations made by the AO actually proves the credit worthiness of both the creditors. With regard to the observation of the AO that they have not furnished their personal Balance Sheet, the Ld.AR submitted that there is no requirement under the law for the above said creditors to prepare their personal balance Sheet. We accept the same. Non-furnishing of Balance Sheet cannot be a ground to doubt the credit worthiness. Hence, the above said observation of the AO is not maintainable. In respect of other observation regarding of taking loans from others, in our view, there is no bar in section 68 of the Act that the loan cannot be given by a person from the amount borrowed by him from others. What is required to be seen is whether the creditor had enough amounts in his possession before given loan to the assessee. The AO himself has reported that there were sufficient bank balances available with the creditors. Hence, we are of the view that both the reasoning given by the AO to hold that the credit worthiness was not proved would fail. In our view, the comments made by the AO in the remand report shows that both the loan credits have been proved by the assessee. Accordingly, we are of the view that the assessee

has discharged the initial onus placed upon it in respect of above said two creditors u/s.68 of the Act.

10. In view of the foregoing discussions, we set aside the order passed by the Ld.CIT(A) and direct the AO to delete the addition made by him u/s.68 of the Act.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17-12-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 17-12-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai