

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

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

ITA No. 3963/Mum/2024
Assessment Year : 2022-23

Income Tax Officer, Ward-3(1)(1), Aayakar Bhavan, M.K.Road, Mumbai.	vs.	Shivi Impex Pvt. Ltd., Mittal Court, Mumbai. PAN : ABBCS2097N
(Appellant)		(Respondent)

Assessee by : Shri Satyaprakash Singh
Revenue by : Dr. Kishore Dhule, CIT-DR

Date of Hearing : 01/10/2024
Date of Pronouncement : 26/12/2024

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dated 27-06-2024 passed by the Ld.CIT(A)-NFAC, Delhi and it relates to the Assessment Year (AY.) 2022-23. The Revenue is aggrieved by the decision of Ld.CIT(A) in deleting the addition made by the AO u/s 68 of the Income Tax Act, 1961 ('the Act').

2. The assessee is engaged in the business of growing of agricultural crops and processing them to make it marketable. It also engages in trading of all agricultural commodities. During the course of assessment proceedings of the year under consideration, it was noticed by the AO that the assessee has received loans from the following parties during the current year.

Sr. No.	Name & Address of the party	PAN	Amount of loan taken
1.	Ashtabhujja Ventures Pvt Ltd 281, floor 1, Plot 407, Doulat Bhawan, Kalba Devi Road,, Kolbhat Lane,, Kalbadevi, Mumbai-400002	AARCA5682L	24,96,33,140/-
2.	KBJ Developers Pvt Ltd. Prabhodhan Thakre Playground, R7/B2, Siddharth Nagar No. 1, Road No. 9, Goregaon West, Mumbai400104	AADCK2847D	10,00,000/-

Hence, the AO asked the assessee to prove the above said loans in terms of sec.68 of the Act, i.e. to prove identity, creditworthiness and genuineness of the transactions. The assessee submitted copy of ITR & confirmations obtained from the lenders, but did not provide their bank statement. The assessee submitted extract from its own bank statement, reflecting the transactions with the above entities. Accordingly, the AO took the view that the assessee has not submitted all the documentary evidences. Hence, the AO requested the Verification Unit to physically inspect the creditors at their respective addresses. The verification unit reported that both the creditors were not available at their given addresses. The AO noticed that the address given to him and the address available in the ITRs of both the creditors and also in MCA website are different. Accordingly, he asked the assessee to clarify the same.

3. The assessee replied that both the lender companies are its group companies only and all the three companies are having common Directors. The assessee contended that the verification official would not have visited correct address. It also furnished certain documents like lease deed, photographs, MCA details etc., to prove existence of both the lender companies. But the AO found fault with those documents. Since both the lender companies did not exist at the addresses submitted by the assessee, the AO took the view that they are non-genuine companies. The AO also noticed from the financial statements that both the lender companies were incurring losses. Accordingly, the AO took the view that the assessee has not discharged the onus placed upon it u/s 68 of the Act. Accordingly he assessed both the loans aggregating to Rs.25.06 crores as unexplained cash credit u/s 68 of the Act.

4. In the appellate proceedings before the Ld.CTI(A), the assessee submitted that it has discharged the onus placed upon its shoulders u/s 68 of the Act to prove the cash credits. The assessee has advanced following arguments in this regard:-

“4.0. Submissions during the course of appellate proceedings:

4.1. During the course of appellate proceedings, the appellant had submitted a detailed paper Book which contains all the relevant submissions and documentary evidences submitted by the appellant before the AO. The major contention of the appellant is that the appellant had proved all the three requirements to prove the credit, i.e. the identity of the creditor, the creditworthiness of the creditor and the genuineness of the transaction and the AO had simply brushed aside the plethora of evidences and made addition u/s 68 of the act. The relevant submissions are grouped as under.

Identity of the creditors.

The appellant argued that it had submitted all the necessary documentary evidences required to prove the identity of M/s Ashtabhujia ventures pvt ltd and KBJ developers pvt ltd. The appellant had submitted PAN, income tax returns and details of jurisdictional assessing officer (AO jurisdiction), copy of loan confirmation from the parties, copy of ledger account of the parties,

copy of bank statements, books of account of the parties etc., Further both the lender companies had promptly responded to the 133(6) notice of the AO and filed all the required details called for. The appellant further submitted that all the three companies, the lender and the borrower had one common director namely one Shri. Jitendra Gulshan Kapoor. The companies are closely held companies and having common directors and hence the AOs stand that the identity is not adequately proved is bad in law. The appellant further submitted that during the course of hearing proceedings, the appellant had produced further details to contradict the findings of the Verification unit (VU), such as registered lease agreement of the premise, copy of NOC of the owner of the leased property, details of rent paid and copy of form MGT-71 annual return filed before ROC, GST returns, photograph of the premises of the lender companies with employee photographs and GST number.

Creditworthiness of the lenders.

The appellant submitted that the financial strength of the lender companies are proved in adequacy by submitting all details of bank account, books of account of the lender, details of loan availed and proof of the lender companies having sufficient funds to lend the same. The appellant relied on the decisions of honourable apex court in the case of lovely exports (P) ltd wherein, the apex court held as under.

“Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money/loan is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.”

5.0. Genuineness of the transactions.

5.1. The appellant company argued that the transaction of amount between the parties were through undisputable banking channels by way of account payee cheque and genuineness of transaction was thus proved. The appellant relied upon the honourable ITAT decision in the case of GPM developers pvt. ltd wherein the honourable Delhi ITAT held that where the payments are through account payee cheques, the genuineness of the transaction cannot be doubted.”

The assessee also placed reliance on various case laws in support of its contentions. Accordingly, the assessee contended that the addition made by the AO u/s 68 of the Act should be deleted.

5. The Ld.CIT(A) noticed that the assessee has furnished all the documents to prove all the three ingredients in order to prove the loans in terms of sec.68 of the Act. He noticed that the AO has taken negative view mainly for the reason that the lender companies were not available at the given addresses. The Ld.CIT(A) noticed that the assessee has furnished various documents like, copy of lease agreement, electricity bill, photographs of offices, to prove its addresses, affidavit of common director etc. However, the AO rejected all of them, citing one reason or other. The assessee also contended that the officials of verification unit might not have visited the addresses. Accordingly, the assessee requested the AO to give details of the officials, so that it could file criminal complaint against them. However, the AO rejected the said request stating that it would not be possible to provide those details in faceless regime. The Ld.CIT(A) has summarized the observations made by the AO in this regard as under:-

“6.6. The AO after considering the evidences filed by the appellant observed that these evidences are neither tenable nor authentic and proceeded to make the addition as unexplained income u/s 68 based on the following observations in the assessment order.

1. The address in the ITR of the assessee company is different from the address given by the assessee in case of the lender companies and this disproves the fact that they all are residing in the same address.

2. The lease agreement has only thumb impression of the SRO without the rubber stamp.

3. Reply received from Ashtabhujja ventures is from address 15 C wing, Mittal court whereas the lease agreement address is different.

4. Address mentioned in ITR of KBJ developers is different from the address assessee had provided during scrutiny proceedings.

5. Electricity bill address is different from ITR address of KBJ developers.

6. The photographs provided by the assessee company had names typed in paper and pasted in window instead of Boards.

7. The AO observed that too much reliance on documentary evidences cannot offset the condition of the company not existing physically at the given address.

8. The locals in the surrounding didn't know anything about the alleged reputed company.

9. Falsification and fabrication of evidences of existence is done by the assessee company after the verification unit enquiry.

10. The assessee company's request to disclose the name of the officer of verification unit to file a criminal case against him, indicates in proving the fact that the assessee is trying to pressurize the department through unfair means which implies that the assessee's transactions are not genuine.

11. Affidavits filed by the lender companies were dated 24.08.2023 and 14.03.24 whereas the stamp paper was brought only in the year 2023 (date of purchase).

12. Verification unit has conducted enquires in both the ITR address and the address given by the assessee as per MCA and the concerns was not found existing.

13. The assessee company had not paid any interest to the lender companies and had not received any interest from the loans given by the assessee company. 14. Assessee company is incurring huge lose even though it is received enough funds. 15. Closing stock of the finished goods of lender company KBJ developers have become zero from 46.10 crores."

6. We notice that the AO's primary case was that the lender companies did not exist at the given addresses. The AO has also observed that different documents furnished by the assessee mentions different addresses. Accordingly, the AO has taken the view that the genuineness of the lender companies has not been proved. The Ld.CIT(A) examined the documents furnished by the assessee to prove their identity and existence. The observations made by the Ld.CIT(A) are extracted below:-

"The appellant submitted the following documentary evidences in support of identity of the lender company Ashtabhujia Ventures P Ltd and KBJ developers p ltd. All the three companies i.e. Shiv impex pvt Ltd, Ashtabhujia Ventures P Ltd and KBJ developers Pvt Ltd are having

common directors namely one Mr. Jitendra Gulshan Kapoor and both Shiv impex and Ashtabhuja are operating in same premises.

1) Copy of registered lease agreement showing property had been taken on lease by the appellant Shiv impex private limited.

2) Copy of no objection certificate from the owner of the leased property for usage of the property by both the companies i.e. Shiv impex and Ashtabhuja ventures

3) Lease rent payment details.

4) ROC master data copy for Ashtabhuja ventures p ltd

5) Copy of form no. MGT-71- Annual return filed before ROC of Ashtabhuja ventures pvt ltd.

6) GST returns of Ashtabhuja ventures p ltd.

7) Copy of photographs of the premises along with employee photograph with name of the company Ashtabhuja ventures.

8) Copy of electricity bills with address of KBJ developers pvt ltd

9) ROC incorporation certificate for KBJ developers.

10) ROC master data copy for KBJ developers.

11) GST return of KBJ developers.

12) Copy of photographs of the premises along with employee photograph with name of the company KBJ developers.

13) Details of address of 24 story towers 10 in number called by the name Goregaon -1 Project which is work under progress done by KBJ developers near the office address of the company.

14) Copy of 133(6) notice and reply thereof.

7. Upon examination of the above said documents, the Ld.CIT(A) took the view that the assessee has proved the identity and existence of the lenders. In this regard, the Ld.CIT(A) observed as under:-

“6.7. I have carefully considered the findings presented by the Assessing Officer (AO) in the assessment order, the submissions made by the appellant, the various documentary evidences submitted by the appellant during the appellate proceedings and the pertinent facts of the case. The appellant has produced several documents issued by third parties, such as the electricity department, the Registrar of Companies (ROC), Sub-Registrar Office (SRO), and bank statements. These documents are inherently credible and cannot be fabricated at will. For instance, the electricity bill address of the lender company could not have been fabricated by the appellant within the brief period between the Verification Unit’s visit and the completion of the scrutiny assessment, as alleged by the AO in the assessment order. ROC documents, similarly, hold significant weight since the ROC and banks conduct thorough due diligence on KYC norms before proper registration.

6.8. On the similar footing, the relocation of the company's premises for administrative reasons should not be construed as falsification of identity; an address stated in an Income Tax Return (ITR) is not intended to be permanent indefinitely. Nothing could be more irrational than to assume that, if the addresses given in the return of the income does not match with the current address which the appellant had given, it means that the lender company does not exist. Such presumption has not based more so when the contrary is proved by the appellant by placing evidence on record. The AO’s conclusion that the lender parties does not exist, which means even the directors of the appellant company also does not exist, which is a thoroughly ridiculous proposition as the lender companies and the appellant companies are closely related companies having common directors. Additionally, the AO's observation that the company's office premises display only paper boards instead of larger boards, as depicted in photographs, indicates a biased conclusion drawn by the AO.”

8. The AO had also commented upon the manner of usage of loan taken by the assessee from the above said lenders. The Ld.CIT(A) held that the AO cannot question the wisdom of the businessman in this regard. He also held that the AO cannot brush aside the documents furnished by the assessee, particularly those given by the Government Agencies, without conducting further enquiries. Following observations made by the Ld. CIT(A) are apt in the facts of the present case:-

“In the case of ITO v. Anant Shelters (P.) Ltd. [2012] 20 taxmann.com 153/51 SOT 234, the honourable Mumbai tribunal held that “Phrase

appearing in the section “ nature and sources of such credits” should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner.

4. This observation of the honourable tribunal is squarely applying to the instant case. The appellant has produced various evidences which one can possibly collect to prove the identity, genuineness and credit worthiness of the lenders. Providing a robust business or defending the business strategies of the lenders; proving that the physical existence of the lenders in confirmation with the verification unit/AOs expectation, that the lenders to be remain in the address given in ITR is beyond the reasonable capacity of the appellant...”

9. Accordingly, the Ld.CIT(A) took the view that the assessee has discharged the initial onus placed upon its shoulders to prove the cash credits u/s 68 of the Act. In support of his decision, he also placed reliance on various other case laws. Accordingly, he deleted the addition made u/s 68 of the Act. The Revenue is aggrieved.

10. We heard rival contentions and perused the record. In the instant case, the addition has been made u/s 68 of the Act, wherein cash credits in the nature of loan received by the assessee, has been added. Sec. 68 enables assessment of such types of cash credits, if the assessee fails to prove the nature and source of cash credits. “Nature of cash credit” would mean that the assessee is required to show that it is not of revenue nature. In order to prove the sources, the assessee should discharge initial burden to prove the cash credits placed upon his shoulders of the assessee u/s 68 of the Act, i.e., the assessee is required to prove three main ingredients, viz., the identity of the creditor, the genuineness of the transactions and the credit worthiness of the creditor. If the assessee discharges the initial burden, then the burden would shift to the shoulders of the AO i.e., it is the responsibility of the AO to disprove the claim of the assessee by bringing evidences on record.

11. We shall now examine the facts prevailing in this case. We notice that both the lender companies are group companies of the assessee. Both the companies are registered under the Companies Act. Further, all the three companies have common directors.

12. We shall now examine as to whether the identity of the creditors has been proved or not? We notice that the assessee has furnished Name, Address, PAN number, Company registration details, GST registration details etc., in this regard. We notice that the AO himself has downloaded the lender companies' details from MCA website. Both the lender companies have been filing returns of income under the Income Tax Act. The AO has raised a lot of doubts about the very existence of the lender companies, since they were not available at their given addresses as per the report given by the verification unit. First of all, as contended by the assessee, it is not shown that the verification unit has verified correct address and given its report. We noticed that the assessee offered to take them along with it to their office, the AO did not provide that opportunity. When the AO proposes to place his reliance fully on the report given by the verification unit, then it is imperative for him to support the report with cogent evidences. Since it is a verification of fact, the AO could not have rested his case, when the assessee is challenging the report given by the verification unit. We notice that the assessee has furnished photographs of the offices, but the AO has simply rejected them citing some reasons. Most important of all, we notice that the assessee has furnished details of registration made by the lender companies with various Government authorities, viz., Income Tax Department itself, Ministry of Corporate Affairs, GST authorities etc. We are unable to understand as to how the AO could reject the registration certificates given by the above said Government authorities. Further, the assessee has furnished an affidavit given by one of the common directors and also copy of lease deed for

taking the premises on rent. The AO has rejected them also on some flimsy grounds. We notice that the AO has also issued notices u/s 133(6) of the Act to both the lenders and they have duly replied to the same. Thus, we notice that the AO appears to have approached the issue in a predetermined manner. The fact that the provisions of sec.68 of the Act is a deeming provision, making the non-taxable receipt as taxable, appears to have escaped the mind of the AO. Accordingly, we are of the view that the assessee has proved the identity of the lenders.

13. With regard to the credit worthiness, the assessee has furnished the financial statements of both the lender companies. The assessee has also furnished ledger account copies of the lender companies. Though the AO has observed that the bank account copies of the lender companies were not furnished before him, we notice from the paper book that the assessee has furnished its own bank account copies and also the bank account of copies of lender companies. The AO has further observed that both the lender companies were incurring losses. However, in order to prove credit worthiness, it is required to be shown that the lenders were having enough funds with them before lending money to the assessee. The money available with the lenders need not always be its own funds. The lenders can use loan funds also to lend money to the assessee. It is pertinent to note that the banks and financial companies lend money mainly out of borrowings made by them by way of deposit collections. Hence, so long as, it is shown by the lenders that they had enough funds available with them, when they lend money to the assessee, the creditworthiness of the lenders would stand proved. In the instant case, we noticed that the assessee has furnished the financial statements of the lenders. It is not the case of the AO that the borrowers did not have enough funds available with them before lending money to the assessee. He has only observed that they were incurring losses. Further, he has also observed that the loans taken by the

assessee have been advanced by the assessee to other related persons or entity. Both these observations are not relevant in the context of the provisions of sec.68 of the Act. Accordingly, we are of the view that the assessee has proved the creditworthiness of the creditors.

14. With regard to the genuineness of the transactions, we notice that the loan transactions have been transacted through banking channels only. Routing the loan transactions through the external bank route would prove that the transactions undertaken by the parties are genuine. In any case, in this matter, it is not the case of the AO that the transactions undertaken by the parties are not genuine.

15. We notice that the assessee has placed its reliance on various case laws before the Ld.CIT(A) in support of its contentions that it has discharged the onus placed upon its shoulders to prove the cash credits in terms of sec.68 of the Act. We extract some of those decisions below:-

“1. Principal Commissioner of Income-tax vs. Hareshkumar Manilal Somaiya [2023] 154 taxmann.com 432 (Gujarat): Wherein Hon'ble Gujrat High Court has held that Where assessee received unsecured loans and produced confirmation of lenders and other relevant documents such as copy of PAN, ledger account, bank statement and audited books so as to establish creditworthiness, genuineness and identities of lenders in transactions, impugned addition made under section 68 on account of said unsecured loan by AO without considering such documents/details produced by assessee was unjustified.

2. K.P. Manish Global Ingredients (P.) Ltd vs. Assistant Commissioner of Incometax, Company Circle-II(4), Chennai[2021] 131 taxmann.com 158 (Chennai - Trib) Wherein Hon'ble Chennai ITAT has held that Where assessee-company received an unsecured loan from three parties, in view of facts that assessee had produced various details such as financial statements and bank statements of creditors and their confirmation letters to prove transactions and, further, all transactions were routed through proper banking channel, impugned addition made on account unsecured loan received by assessee was unjustified

3. *Principal Commissioner of Income-tax vs. E-City Projects Lucknow 143[2022] taxmann.com 423 (Orissa) Wherein Hon'ble High Court of Orissa has held that where assessee-company received unsecured loans from an entity and AO made additions under section 68 by treating same as undisclosed income received from a paper company, since assessee disclosed loans in returns filed and during search, accounts of assessee proved that disclosed loan amount was received through banking channels, impugned additions were to be deleted*

4. *Principal Commissioner of Income tax vs. Overtop Marketing (P.) Ltd[2023]148 taxmann.com 94 (Calcutta) Wherein Hon'ble Calcutta High Court has held that Where assessee-company had discharged onus to prove identity, creditworthiness and genuineness of its loan transactions with various companies by providing income-tax acknowledgements, audited accounts, etc. and some lender companies had also replied to notice issued on them under section 133(6), since Assessing Officer failed to discharge his onus to prove them wrong, impugned additions made under section 68 treating loan amount as unexplained cash credit was to be deleted*

5. *Gaurav Triyugi Singh vs. Income Tax Officer 24(3)(1), Mumbai [2020] 121taxmann.com 86 (Bombay) Wherein Hon'ble Bombay High court has held that Where assessee had received unsecured loan of certain amount from an individual, since loan amount was received by assessee through cheque, no addition under section 68 could be made on account of this loan amount."*

6. *Abhijavala Developers (P.) Ltd vs. Income Tax Officer 9(1)(1), Mumbai[2021] 124 taxmann.com 72 (Mumbai - Trib.) Wherein Hon'ble ITAT Mumbai has held that where assessee received share capital and unsecured loan from several entities and produced documentary evidences such as copy of confirmation of accounts, copy of PAN card, bank statement ITR acknowledgement and financial statements of all investors/lenders so as to substantiate these transactions and funds were transferred to assessee through proper banking channels, no addition under section 68 could be made on basis of third party statements"*

16. Accordingly, following the ratio laid down in the above said decisions of the Hon'ble Courts and Tribunals, we are of the view that the assessee, in the instant case, has discharged the initial onus placed upon it to prove the identity of the creditors, creditworthiness of the creditors and the genuineness of transactions in terms of sec.68 of the Act. Accordingly, we

are of the view that the Ld.CIT(A) was justified in deleting the addition made by the AO u/s 68 of the Act. Accordingly, we uphold his order.

17. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26-12-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

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

Mumbai,
Dated: 26-12-2024

TNMM

Copy to :

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

By Order

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