

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.3148/Mum/2023
(Assessment Year :2014-15)**

Canbara Infra Private Limited 55-178, Taluka Palghar West, Tarapur Ti S.O. Salwad Thane- 401 506	Vs.	Assistant Commissioner of Income Tax, Ward-1 Palghar
PAN/GIR No.AAFCC4589A		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhupendra Shah
Revenue by	Shri Manish Ajudiya
Date of Hearing	21/11/2024
Date of Pronouncement	18/12/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 10/07/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2014-15.

2. In various grounds of appeal assessee has challenged the validity of reopening u/s.147/148 and addition of Rs.3,01,48,500/- being loan taken from the Directors of the assessee company u/s.68.

3. The brief facts are that the assessee has filed its return of income for A.Y.2014-15 on 15/12/2014 declaring net loss of Rs. (-23,702). Later on assessment was selected for scrutiny and order u/s. 143(3) was passed on 23/12/2016 and income was assessed as 'Nil' income. Thereafter, assessee's case has been reopened u/s.147 on the following reasons recorded: -

The company has received Unsecured Loans wherein the Creditworthiness is not proved. This fact came to the notice of the AO while assessing the company for A. Y. 2015-16. It was noticed that during the A.Y. 2015- 16, the assessee company had received Rs. 143,60,000/- as fresh loans during the year from it's three directors. However, the assessee could not prove the creditworthiness of the lenders and the source of funds in their hands, owing to which the amount of Rs. 1,43,60,000/- was added to the income of the assessee as "Unexplained Cash-credits" u/s. 68 of the Act. The assessee has received loans from these directors during the A. Y. 2014-15 as well to the tune of Rs. 5,01,48,500/-.

On the basis of the above facts, I have reason to believe that an amount of Rs 5,01,48,500/-has escaped assessment within the meaning of the provisions of Section 147 of the Income Tax Act, 1961."

4. The ld. AO noted that assessee company has received unsecured loan to the tune of Rs.5,01,48,500/- from its Director, the details of which are as under:-

Sr. No.	Name of the loan lender	Loan received during the year
1	Shri Karunakar Menka Shetty	(Rs.) 2,00,00,000/-
2	Shri Shaikh Sajid Aziz	(Rs.) 1,54,01,000/-
3	Shri Rajesh Chintaman Wade	(Rs.) 1,47,47,500/-
	TOTAL	(Rs.) 5,01,48,500/-

5. In response to the show-cause notice assessee provided the copies of income tax returns of the Directors, bank statements, confirmation as well as ledger account showing loan given and received from the Directors. However, on perusal of the details, the ld. AO noted the following facts:-

1. Shri Karunakar Shetty: In the case of this Director, from the confirmation furnished, it is seen that unsecured loan of Rs. 2,00,00,000/- has been given, However, on perusal of the Balance Sheet & Schedule-5 of Shri Karunakar Shetty as on 31.03.2014 submitted, the loan is not reflected. As per the Capital A/c., an amount of Rs. 12,22,00,000/- has been introduced.

2. Shri Shaikh Sajid Aziz: In the case of this Director, it is seen from the balance sheet as on 31.03.2014 submitted that, the unsecured loan of Rs. 1,54,01,000/- is lent to the company out of the borrowings made by him from various persons.

3. Shri Rajesh Chintaman Wade: In the case of this Director, it is seen from the Balance Sheet as on 31.03.2014 submitted that, the unsecured loan of Rs. 1,47,47,500/- is lent to the company out of the borrowings made by him from various persons.

6. Thus, Ld. AO deduced that Directors have lent the unsecured loans to the company out of the borrowings made by them from various persons. The details of unsecured loan borrowed by the three Directors and advanced to the assessee company were tabulated in the following manner:-

Name of the director	Unsecured loan borrowed by the director from various person (Rs.)	Unsecured loan advanced by the director to the company (Rs.)	Remarks
Shri Karunakar Menka Shetty	12,22,00,000/-	2,00,00,000/-	Capital introduced. Unsecured loan is not reflected in the lender's Balance Sheet as on 31.03.2014.
Shri Shaik Sajid Aziz	1,77,00,000/-	1,54,01,000/-	The directors have lent the unsecured loans company to the out of the borrowings made by them from various persons.
Shri Rajesh Chintaman Wade	1,75,57,000	1,47,47,500/-	The directors have lent the unsecured loans company to the out of the borrowings made by them from various persons
TOTAL	15,74,57,000/-	5,01,48,500/-	

7. Ld. AO thus, inferred that assessee company had failed to establish the creditworthiness of the Directors for loan advanced to it and added the entire unsecured loan of Rs.5,01,48,500/-.

8. The ld. CIT (A) has confirmed the validity of reopening however, has deleted the addition on account of loan received from Shri Karunakar Menka Shetty has provided a loan of

Rs.2,00,00,000/- on the ground that his return of income was Rs.50,82,320/- and in his profit and loss account there was a profit of Rs.6,94,10,111/- from his proprietorship concern and the loan was shown in the balance sheet. For other two Directors, i.e., Shaikh Sajid Aziz and Shri Rajesh Chintaman Wade who have given loan of Rs.1,54,01,000/- and Rs.1,47,47,500/- respectively Ld. CIT (A) has confirmed the addition. Regarding Mr. Shaikh Sajid Aziz, Ld. CIT (A) noted that he has shown net income of Rs.37,47,346/- and had also filed the balance sheet, statement of total income and bank statements, however, he noted that loan has been advanced to the assessee out of borrowings made from various persons and he has not provided the details of persons from whom these loans have been raised. Although in the balance sheet he has declared unsecured loans taken from various parties however, break-up was not given. Similarly, in the case of Shri Rajesh Chintaman Wade, he had shown return of income of Rs.41,16,493/- and has also filed his balance sheet, statement of total income and bank statements and loan has been shown in the balance sheet however, the said loan again was advanced to the M/s. Canbara Infra Pvt. Ltd. out of borrowing made from various persons.

9. We have heard both the parties at length and also perused relevant finding given in the impugned orders as well as material placed on record. As noted above, the assessee has taken loan from three of its Directors and before us it has been submitted that these money was given by the Directors prior to the

incorporation of the assessee company for purchase of land for the construction purpose. After the incorporation of the company, it owed the liability to the Directors and therefore, there was a credit balance in the hands of the Director which was shown as unsecured loan from the Directors in the first year of balance sheet. Ld. Counsel further submitted that that earlier assessment u/s.143(3) was completed on 23/12/2016 and during the course of original assessment proceedings, specific query was raised by the ld. AO wherein assessee has given copy of income tax returns, copy of confirmations and bank statements of these Directors and after verifying the same, ld. AO accepted the loan shown in the balance sheet. Even during the course of assessment proceedings, assessee had filed all the requisite details as noted by the ld. AO and ld. CIT (A) and the only ground taken by the ld. AO and ld. CIT(A) that these Directors have given loan out of unsecured loans received by them which has been declared in the balance sheets from various other persons. Thus, both the authorities have challenged source of the source which was not the criteria under the section 68 in the A.Y.2 014-15 as amendment has been brought in the statute w.e.f. A.Y. 2023-24. Thus, no addition could have been made as assessee discharged the onus cast upon it.

10. On the other hand, ld. DR relied upon the observation and finding of the ld. AO and ld. CIT (A) and submitted that assessee has to prove the source from where the Directors have received the loan and should have provided the details to examine the

source in their hands. Thus, this was the onus cast upon the assessee only.

11. On the perusal of the material facts brought on record it is seen that although in case of one of the Directors Id. CIT (A) had deleted the addition on the ground that Shri Karunakar Menka Shetty had declared net profit of more than Rs.6.94 Crores and he had huge funds in his balance sheet apart from loan. However, in respect of other two persons despite noting the fact that they were regular assesseees showing their income and also filed balance sheets, statement of total income and bank statements, however, the source of loan given to the assessee company was out of source from unsecured loans shown by them, which he has confirmed. It is an admitted fact that two Directors namely, Shri Shaikh Sajid Aziz and Shri Rajesh Chintaman Wade have declared the source of the funds in the balance sheet from where they have given the loan the details of such funds. Shri Rajesh Chintaman Wade has shown unsecured loan of Rs.1,75,57,000/- apart from net profit of Rs.38.61 lakhs. In his balance sheet he has duly disclosed the loan given to the assessee company. Thus, the source of the funds has been duly explained in the balance sheet and in income tax returns filed by him. There is no requirement that onus is on the assessee to prove the source of the source that is from where Directors have taken the loan. If Id. AO had any doubt, he could have issued a notice u/s. 133(6) and asked for the details of the unsecured loans, when these persons have given the entire details of the persons alongwith documentary evidence who have provide loan

to the Directors. Similarly, in the case of Shri Shaikh Sajid Aziz, he declared income from other sources of Rs.34,59,734/- and income from business and profession at Rs.3,97,702/-. He has duly disclosed the loans given to the assessee and has filed the confirmation and bank statement before the ld. AO and ld. CIT (A). One very important fact here in this case which proves the genuineness of the loan is that, these are not direct loan given to the assessee company but payment was made to various persons on behalf of the company in respect of the property to be purchased in the name of the company. These details of payments made to 169 people were filed alongwith their confirmations. Thus, it is not a case of direct loan been given to the assessee company, albeit all the Directors have made payment to various persons for the purchase of the property to start the project of the company and the company has shown this as liability in the balance sheet in the name of the Directors. Accordingly, it cannot be said that the onus cast upon the assessee has not been discharged. Once all these facts have been brought on record, then simply because these Directors have taken unsecured loan for making payments to various parties for purchase of land in the name of the company cannot be added u/s.68 once all these documents have been furnished. Accordingly, addition made by the ld. AO and as confirmed by the ld. CIT (A) is deleted.

12. Once we have deleted the addition on merits, the validity of reopening u/s.148 is treated as academic.

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

Order pronounced on 18th December, 2024.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Mumbai; Dated 18/12/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai