

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH MUMBAI

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 5914/MUM/2024
Assessment Year: 2020-21**

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| Deputy Commissioner of Income Tax - 1(2)1, Mumbai | Vs. | B. Braun Medical India Pvt Ltd A-Wing, 601, 6 th floor, Boomerang, Main Chandivali Farm Road, Chandivali, Andheri (E), Mumbai-400072. (PAN : AAACB7394M) |
| (Appellant) | | (Respondent) |

Present for:

Assessee : Dr.K.Shivaram, Sr.Advocate &
Shri Shashi Bekal, Advocate
Revenue : Ms. Monika H. Pande, SR.AR

Date of Hearing : 31.12.2024
Date of Pronouncement : 31.12.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1068781356(1), dated 18.09.2024 passed against the assessment order by the NeFAC, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 29.09.2023 for Assessment Year 2020-21.

2. Grounds taken by the Revenue are reproduced as under:

- I. *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.2,00,00,000/- made by the AO u/s.68 of the Act without appreciating that the assessee has given contradictory replies during the course of assessment proceedings?"*
- II. *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.2,00,00,000/- made by the AO u/s.68 of the Act without appreciating the fact that genuines of the transaction was not established even in third party verification?"*
- III. *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in directing the AO to delete the addition of Rs.2,00,00,000/- without getting the new facts which were not submitted before the AO during the course of assessment proceedings, such as the fact of negative sign not being put before the outstanding figure, verified by the AO?"*

3. Brief facts of the case are that assessee is engaged in the business of health care catering to therapeutic segment. It is a 100% subsidiary of B. Braun Medical Ind. Sdn. Bhd., Malaysia. Assessee filed its return of income on 27.01.2021 reporting a total loss of Rs.11,90,62,986/-. In the course of assessment proceedings, ld. Assessing Officer found that there is a liability of Rs.2 crores which remained unsubstantiated. According to him, assessee had shown a liability in respect of a creditor i.e., Santosh Trust having PAN – AAITS6921N. He also issued a notice u/s.133(6) on the alleged creditor from which no response was received. Assessee furnished its explanation that there is no amount due and payable to the aforesaid creditor. Instead, assessee had paid an advance of Rs.2 crores for supply of goods. The said sum was paid in the Financial Year 2015-16 relevant Assessment Year 2016-17 for which extract of bank statement reflecting the same payment from the account of the assessee from Santosh Trust was made. Against this payment by the assessee, no supply took place nor the money was returned. Assessee had made a provision for doubtful advances in its books for the

Financial Year 2016-17 relevant to Assessment Year 2017-18. While computing total taxable income, this provision was disallowed. Thus, assessee established its case that there is no liability/obligation payable to Santosh Trust. Rather, it is an amount paid by assessee in advance and recoverable from it. However, on these submissions, ld. Assessing Officer held that this liability is an incorrect entry in the books of accounts and is a bogus credit balance liable to be added back to the total income of the assessee as un-explained liability u/s.68 of the Act.

4. Aggrieved, assessee went in appeal before the ld. CIT(A), who took note of the above stated facts and verified the same with the documentary evidences furnished by the assessee. Ld. CIT(A) found that there had been no credit received by the assessee which is factually verifiable and thus held that addition made u/s.68 is unwarranted and directed the ld. Assessing Officer to delete the same.

5. Aggrieved, Revenue is in appeal before the Tribunal.

6. Before us, ld. Sr. DR submitted that assessee had given contradictory replies in the course of proceedings, while furnishing the details against the show cause notices issued by the ld. Assessing Officer which has led to this addition. He pointed out to the tabulated details reproduced by the ld. Assessing Officer in the impugned assessment order which includes an entry in the name of Santosh Trust with a closing balance of Rs.2 Crores and the purpose stated against it is "ordinary course of business". According to him, genuineness of the transaction was not established since there was no response to the notice issued u/s.133(6).

7. Ld. Counsel submitted that while submitting list of sundry creditors, mistakenly negative symbol (-) was not placed against the amount of Rs.2 crores in the name of Santosh Trust. However, assessee had furnished all the relevant details including bank statements to demonstrate that sum of Rs. 2 crores was paid as advance on 12.01.2015 through banking channel. This amount has been duly reported in the audited financial statement which is a current asset and not a liability. According to the ld. Counsel, this amount stood reflected in the books as a sundry debtor and thus ld. Assessing Officer was not correct in holding that assessee received a credit from Santosh Trust for the purpose of making an addition as unexplained liability u/s.68 of the Act.

8. We have heard both the parties and perused the material on record. The factual position observed by ld. CIT(A) based on his verification has not been controverted by bringing any cogent material on record. Undoubtedly, it is case where the amount paid by the assessee is an asset in its books of account and not the one where it has received the amount and is a liability. Furthermore, it is claimed that assessee has written off this amount as a bad debt/business loss in the books of accounts for the year ending 31.03.2024 relevant to Assessment Year 2024-25. It is noted that the amount was advanced by the assessee in its ordinary course of business in Assessment Year 2016-17 and that there is no credit transaction pertaining to the sum so advanced to Santosh Trust in the year under consideration. Provisions of Section 68 are attracted only in the case of cash credits in the relevant year of credit. In the present appeal before us, admittedly it is a fact that there is no credit for the amount which has been held to be an unexplained liability. Furthermore, the transaction of advancing the amount to Santosh Trust pertains to Assessment

Year 2016-17. In the given set of facts and circumstances as discussed above, we do not find any infirmity in the factual finding arrived at by ld. CIT(A) directed to delete the additions so made. The findings so arrived at is fortified by the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Ivan Singh vs. ACIT (2020) 116 taxmann.com 499 (Bom) which observed in para 9 that *“from the plain reading of the provisions of section 68 of the IT Act, it does not appear that where any sum is found to be credited in the books of account maintained for any previous year and there is no proper explanation for such credit, the sum so credited can be charged to the income tax as the income of the assessee of ‘that previous year’.”* Thus, the grounds raised by the Revenue are dismissed.

In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 31 December, 2024

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 December, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai