

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM**

I.T.A. No. 4248/Mum/2023
(Assessment Year: 2011-12)

I.T.A. No. 4249/Mum/2023
(Assessment Year: 2010-11)

ACIT Circle-4(2)(1), 640, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	Synergy Tradevista Private Ltd. A-604, Building No.27, Mhada Colony, Chandivali, Sakinaka, Andheri (E), Mumbai-400072. PAN: AAACE0896M
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Mehul Talera, AR

Revenue / Respondent by : Shri Bhangapatil Pushkaraj
Ramesh, Sr. DR

Date of Hearing : 09.12.2024

Date of Pronouncement : 16.12.2024

ORDER

Per Padmavathy S, AM:

These two appeals by the Revenue are against the separate orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] both dated 29.09.2023 for AY 2010-11 and 2011-12. The common issue contended by the Revenue in both the appeals pertain to the CIT(A) deleting the disallowance made by the Assessing Officer (AO) under

section 68 of the Income Tax Act, 1961 (the Act) towards loans taken by the assessee.

2. The facts pertaining to AY 2010-11 that the assessee is a company engaged in the business of corporate and financial services. The assessee filed the return of income for AY 2010-11 on 02.10.2010 declaring a total income of Rs. 9,31,770/-. The return was processed under section 143(1) of the Act. Subsequently the AO received information from DDIT (Inv.), Mumbai that there are unusual deposits in the current account belonging to the assessee which does not appear to be in line with the past transactions of the assessee. The AO based on the information had reason to believe that the income chargeable to tax in the nature of huge deposit in bank account has escaped assessment and accordingly issued a notice under section 148 of the Act reopening the assessment. The assessee submitted before the AO that during the year under consideration the assessee has received share application money and some short term loans and advances. The assessee submitted the transactions were routed through bank account and hence no addition can be made under section 68 of the Act. The AO however was of the view that the assessee has not discharged the onus of providing the necessary details in respect of loans received from various parties with regard to the identity, creditworthiness and the genuineness of the transactions. The AO therefore, treated the amount of Rs. 4,16,00,000/- as unexplained under section 68 of the Act and made addition accordingly.

3. The assessee filed further appeal before the CIT(A). The CIT(A) deleted the addition by holding that –

5.4 On perusal of records, it is noticed that all transactions were routed through banking channels only. The money received was subsequently repaid in a very short time to the lenders. The transactions were outcome of the business commitments. The appellant company required some fund to run the business and to meet business contingencies and therefore, appellant raised fund in the form of short term financing from the company related persons.

The amounts received in the bank account of the appellant were found in the form repayment of loan advanced in earlier years by the company and also in the form of short term loans financed to company. The deposits do not represent income of the appellant and hence the same should not have been taxed following the principle of real income theory. The appellant has cited the decision of the Hon'ble Gujarat High Court in case of Vijay Ramanlal Sanghvi v. ACIT (2023) 330 CTR 424/ 146 taxmann.com 55 (Guj.)(HC) wherein it was held that;

"However, it was found that assessee received from a company and same had been returned within two months and assessee had disclosed all relevant facts necessary for assessment which included details of bank statement and even bank interest income from saving bank account and therefore, all requisite details were disclosed which facts were necessary for assessment - Whether in absence is any tangible material to form an opinion that income chargeable to tax had escaped assessment and in absence of any satisfaction recorded by the assessing Officer by merely relying upon information received from Office of Deputy Commissioner, impugned action of reopening assessment while exercising power under section 148 could not be sustained"

In the instant case, it is observed that amount received by the appellant had been immediately repaid on the same day and appellant had disclosed all relevant facts which were necessary for assessment including details of loans, bank statement with narration of the entries found credited in bank account, nature of entries and source of fund. Thus, I am of the opinion that the amounts received do not form part of income of the appellant and should not have been taxed accordingly.

5.5 In view of the above facts and respectfully following the decision of Hon'ble Gujarat High Court mentioned supra, the addition of Rs. 11,11,29629/- made u/s 68 of the Act is hereby deleted and hence, ground of appeal is allowed.

Ground No. 1 of appeal is allowed."

4. We heard the parties and perused the material on record. The main contention of the Revenue is that the CIT(A) has given relief solely based on the fact that the transactions are routed through banking channels and that the loans were repaid within the same Financial Year (FY). Accordingly, it is argued that basis on which relief is given to the assessee is not correct since the assessee has not discharged the onus of proving the identity, creditworthiness and the genuineness of the loans. The ld. AR on the other hand argued that these are short term loans taken by the assessee to meet urgent financial requirements for the purpose of business and when the loans are repaid within the year addition cannot be made under section 68 of the Act. The ld. AR relied on the decision of the Coordinate Bench in the case of DCIT vs. Hetal Nitin Shah (2024) 159 taxmann.com 1618 (Mum. Trib.) to submit that when the loan transactions are routed through banking channel, the AO is not right in making addition under section 68 of the Act. It is a settled legal position that in order to substantiate the nature and the source of loans received by the assessee it is vital to prove the identity, creditworthiness and genuineness of the transaction. The primary onus is on the assessee to submit the relevant documents in this regard before the AO post which the onus shifts to the Revenue to examine the evidences and record findings either accepting the submissions or controvert on the basis of inaccuracies found in the evidences. In assessee's case the documents submitted with regard to the loan borrowed by the assessee is the bank statement and ledger copies to submit that the loans have been repaid within the end of the year. We notice that the assessee did not submit any other documents such as the confirmation from the parties, the ITR etc. of the loan creditors. Therefore, we are of the considered view that the assessee has not discharged the onus of proving the identity, creditworthiness and genuineness of the loan transaction and accordingly, we are not in agreement with

the decision of the CIT(A) to give relief to the assessee based only on the fact that the transactions are routed through bank account. Having held so, we are inclined to give one more opportunity to the assessee to discharge the onus of proving the identity, creditworthiness and genuineness of the loan transaction in view of the submission by the assessee that these loans are short term borrowings taken to meet business exigencies. Accordingly, we remit the appeal back to the AO with a direction to examine the issue afresh by calling for necessary details and decide the issue in accordance with law. The assessee is directed to submit the relevant documents to substantiate the identity, creditworthiness and genuineness of the loan transaction and co-operate with the assessment proceedings. It is ordered accordingly.

5. For AY 2011-12 the assessee filed the return of income on 29.11.2011 declaring a total income of Rs. 2,16,800/-. The AO completed the assessment under section 143(3) r.w.s. 147 of the Act by making an addition of Rs. 11,11,29,629/- under section 68 of the Act towards the loan transactions which were unexplained by the assessee. The CIT(A) gave relief to the assessee based on the bank statements furnished in support of the impugned loan transactions. From the perusal of facts pertaining to AY 2011-12 we notice that the facts are identical to AY 2010-11 wherein the CIT(A) has given relief on the basis of similar documents. Therefore, in our considered view, our decision of the AY 2010-11 is mutatis mutandis applicable to AY 2011-12 also. Accordingly, we remit the appeal for AY 2011-12 also back to the AO with similar directions.

6. In result, the appeals of Revenue for AY 2010-11 and 2011-12 are allowed for statistical purposes.

Order pronounced in the open court on 16-12-2024.

Sd/-
(AMIT SHUKLA)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai