

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA Nos. 582 & 583/Coch/2023
Assessment Years : 2012-13 & 2013-14

M/s. SML Finance Ltd., Bethany Complex, Thrissur Road, Kunnamkulam, Thrissur – 680 503. PAN: AADCS2801F	Vs.	The Assistant Commissioner of Income Tax, Circle – 1(1), Thrissur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Abraham Joseph Markose, Advocate
Revenue by	:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing	:	20-03-2025
Date of Pronouncement	:	23-04-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These appeals are filed by the assessee against the order of Ld.CIT(A)-3, Kochi both dated 07/06/2023 in respect of A.Ys. 2012-13 and 2013-14 and raised the following grounds:

Assessment Year 2012-13:

A. The impugned order of the Commissioner of Income Tax (Appeals) is clearly arbitrary, erroneous and against the provisions of law.

B. The Order of the Commissioner of Income Tax (Appeals) is in violation of the principles of natural justice. No

personal hearing as mandated under Section 246 was granted to the Appellant and this has vitiated the Order.

C. The Commissioner of Income Tax (Appeals) failed to appreciate that the Appellant is a fully compliant NBFC and all returns pursuant to issue of debentures has been filed before the Registrar of Companies and this has been fully accepted. The entire receipts have been duly accounted.

D. The Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.8,70,45,000/- under Section 68 of the Act. He failed to appreciate that the amount was received from 4568 persons to whom non convertible debentures were issued from 14 separate branches of the Appellant. The assessing officer himself has accepted the debentures issued to persons for amounts in excess of Rs.20,000/- and the addition was made only with respect to debentures issued for face value of less than Rs.20,000/- received in cash. The Appellant has produced the names and address of all the debenture holders as well as the PAN of some of the debenture holders. Signed Debenture Application forms and closure receipts of all the NCD holders were available. The assessing officer has not conducted any separate enquiry or issued any summons to any of the persons even though full address was furnished. The NCDs were issued to genuine persons and there is no reason to disbelieve their identity. The AO himself did not advert to the additional details furnished on 25.03.2015.

E. The Commissioner of Income Tax (Appeals) clearly erred in disallowing the interest of Rs.1,04,45,400/- paid to the above debenture holders. This is a genuine expense allowable as a deduction.

F. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of ESI amounting to Rs.2,11,365/- paid before the due date for filing the income tax returns.

G. The Commissioner of Income Tax (Appeals) erred in disallowing Rs.18,233/- being gratuity premium paid to LIC.

H. The consequential demand for interest is also bad in law.

I. The assessment for this year was settled before the Hon'ble Settlement Commission and therefore the additions made in the impugned assessment should be deemed to have been settled and no further demand should have been made."

Assessment Year 2013-14:

"A. The impugned order of the Commissioner of Income Tax (Appeals) is clearly arbitrary, erroneous and against the provisions of law.

B. The Order of the Commissioner of Income Tax (Appeals) is in violation of the principles of natural justice. No personal hearing as mandated under Section 246 was granted to the Appellant and this has vitiated the Order.

C. The Commissioner of Income Tax (Appeals) failed to appreciate that the Appellant is a fully compliant NBFC and all returns pursuant to issue of debentures has been filed before the Registrar of Companies and this has been fully accepted. The entire receipts have been duly accounted.

D. The Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.48,03,000/- under Section 68 of the Act. He failed to appreciate that the amount was received from 200 persons to whom non convertible debentures were issued from 17 separate branches of the Appellant and 6 persons to whom Subordinate Debts were issued. The assessing officer himself has accepted the debentures issued to persons for amounts in excess of Rs.20,000/- and the addition was mainly made only with respect to some debenture and subordinate debt holders whose PAN was not furnished. The Appellant has produced the names and address of all the debenture holders. PAN of some of the debenture holders and subordinate debt holders are available. Signed Application forms and closure receipts of all the NCD and Subordinate debt holders were available. The assessing officer has not conducted any separate enquiry or issued any summons to any of the persons even though full address was furnished. The NCDs and Subordinate Debts were issued to genuine persons and there is no reason to disbelieve their identity.

E. The Commissioner of Income Tax (Appeals) clearly erred in disallowing debenture issue expenses of Rs.5,50,720/- as revenue expenditure. The expenses were the stamp

duty, debenture trustee charge, writing charges and ROC filing fees which are revenue expenses and not be amortised under Section 35D. Alternatively, direction should have been given for allowing balance expenses under Section 35D in subsequent years.

F. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Provident Fund amounting to Rs.1,03,593/-- paid before the due date for filing the income tax returns.

G. The Commissioner of Income Tax (Appeals) erred in disallowing Rs.27,085/- being NPA of personal loan granted by the Appellant. As far as the Appellant is concerned it is its business to grant different types of advances including personal loans

H. The consequential demand for interest is also bad in law.

I The assessment for this year was settled before the Hon'ble Settlement Commission and therefore the additions made in the impugned assessment should be deemed to have been settled and no further demand should have been made."

2. Both these appeals are related to the same assessee and the issue involved in both the appeals are similar. We decided to take up both the appeals together and pass a common order for the sake of convenience. We will take up the appeal in ITA No 582/Bang/2023 as the lead case and the decision arrived will be applicable to the other year mutatis mutanda.

3. The brief facts of the case are that the assessee is a Non Banking Financial Company registered with the Reserve Bank of India and regularly filed their return of income. During the A.Y. 2012-13, the assessee had issued 9 series Non-convertible debentures and bonds of the face value of Rs.1,000/ to the public and the said receipts are duly accounted and regular returns were filed before the Registrar of Companies in which all the details about the debentures issued were mentioned which was also duly accepted by the Registrar of Companies. The assessee's books of accounts were audited and audit reports in Form 3CA and 3CD were also filed. The

debenture series are supported by registration of mortgage u/s 132 of the Companies Act, Debenture Trustee agreement, Deed of Hypothecation, etc along with Form 10 which are filed before the Registrar of Companies.

4. During the scrutiny assessment, the AO called for the details regarding the non-convertible debentures and subordinate debts for which the assessee filed the details in excel form in a CD. Later, on 25/03/2015, the assessee submitted the additional details in which all the details relating to the debenture holders were furnished. In the said additional details, the name of the person, his address and PAN No. if available and Aadhaar or Voter ID card if no PAN was available were furnished, to show that the transactions are genuine. The AO had not accepted the non-convertible debentures of Rs. 8,70,45,000/- issued to 4568 debenture holders which face value is less than Rs. 20,000/-. Therefore the assessing officer had treated the said amount as unexplained cash credit u/s. 68 of the Act. Similarly, the interest payments made to the said debenture holders were also not accepted by the AO.

5. Insofar as the A.Y. 2013-14 is concerned, the AO had also disallowed the debenture issue expenses of Rs. 5,50,720/-. Similarly, the AO had disallowed the payment of PF and the deduction claimed as not approved by the PCIT.

6. As against the said orders, the assessee filed appeals before the Ld.CIT(A) and contended that all the details were submitted before the AO and therefore the addition made u/s. 68 is not correct. The assessee also contended that the consequential interest payments made during the A.Y. 2012-13 is also eligible for deduction. The assessee also raised a contention that they are entitled to avail the benefit granted by the Settlement Commission since the A.Ys. were mentioned in the order of the Settlement Commission. Insofar as the claim of the debenture issue expenses, the assessee contended that the said expenses are revenue expenditure and therefore the said expense is an admissible one. In respect of the payment

of PF amount, the assessee had paid the said amounts before the return of income was filed and therefore entitled for deduction u/s. 36(1)(v)(a) of the Act.

7. The Ld.CIT(A) had dismissed the appeals on the ground that the appellant had failed to substantiate the credit worthiness and genuineness of transactions relating to the issue of debenture and consequently confirmed the disallowance claimed on interest on loans. The Ld.CIT(A) had also dismissed the other grounds raised by the assessee. Insofar as the contention that the incomes assessed would also cover under the settlement order passed by the Settlement Commission, the Ld.CIT(A) had observed that the assessment proceedings u/s. 143(3) were completed before the initiation of the proceedings before the settlement commission and therefore even though the assessment year was mentioned, these additions were not available for settling the matter.

8. As against the said orders of the Ld.CIT(A), the assessee filed these appeals before this Tribunal.

9. At the time of hearing, the Ld.AR filed a paper book containing pages from 1 to 187 enclosing the annual return in form NBS 1 filed for the A.Ys. 2012-13, 2013-14 and 2014-15 and also the sample copy of the quarterly return filed before the Reserve Bank of India. The Ld.AR also filed the annual report for the Financial Years 2011-12 and 2012-13. The Ld.AR further contended that the AO had not considered the details filed on 25/03/2015 which contains all the details of the debenture holders including their address, PAN No. if any and other proof of identification such as Aadhaar and Voter ID cards. The Ld.AR further submitted that since the face value of the debentures are less than Rs. 20,000/-, as per section 114B, there is no compulsion to mention the PAN No. of the debenture holder. The Ld.AR further submitted that only from 01/01/2016, section 114B made it compulsory to quote the PAN No. when the payment is made to a company or an institution for acquiring debentures or bonds issued by

it when the amount exceeds Rs. 50,000/-. The Ld.AR therefore contended that non-mentioning of PAN is not an omission and prayed to allow the appeal. The ld AR further submitted that the AO had not directed the assessee to furnish the debenture application forms before passing the assessment order otherwise they could have furnished the application forms and prayed that if an opportunity is granted they will produce the same before the AO. The ld AR also filed a compilation No.1-Paper Book in which the private placement offer letter with respect to issue of 45th series NCD, receipt of fees for filing Form 10 from Ministry of Corporate Affairs in G.A.R 7, Certificate of registration of mortgage u/s 132, Form No 10, Debenture Trustee agreement, Deed of Hypothecation, Abstract of Minutes of Board meeting with respect to issue of 45th series NCD and list of subscribers with complete details were submitted in support of their contention.

10. The Ld.DR relied on the orders of the lower authorities and submitted that the assessee had not proved the credit worthiness and genuineness of the transactions and therefore the authorities below had rightly added the said amount u/s. 68 of the Act and also the disallowance of the interest payment on loans is also in order and prayed to dismiss the appeal. Insofar as the disallowance of ESI and PF in respect of the A.Y. 2013-14, the Ld.DR submitted that these issues were already decided against the assessee and prayed to dismiss the appeal.

11. We have heard the arguments of both sides and perused the materials available on record.

12. In this appeal, the main issue to be decided is whether the amounts received by the assessee company for issuing the debentures could be treated as unexplained cash credit u/s. 68 of the Act. In order to appreciate the said facts, first we will take up the statement of facts filed before the Ld.CIT(A) in which in para no. 2, it was clearly explained as under:

“2. The data of debenture and bonds made available vide CD as well as by hard copies reveal that the debenture issue without mentioning PAN & accepted in cash amount to Rs752,84,000 and not Rs.870,45,000, as cited in the assessment order page 5 para 4.3.

Moreover the debenture holders of 752, 84,000 are all identifiable and we have provided the complete particulars of either PAN or Adhar card or Electoral Card. Hence the identity of the creditors (ie Debenture /Bond holders), credit worthiness of the debenture holders and the genuineness of the transaction are established.

There are 4568 debentures holders to whom the company has issued debentures amounting to Rs.870,45,000 during the financial year 2011-12 ,out of which 960 has quoted PAN number and the balance 3608 holders has either quoted Adhar card or Election Identity card, so it is clear from the records that all the debentures are genuine.

The Ld Assessing officer, while preparing the assessment order has ignored the details produced by the assessee on 25/03/2015, instead he has considered the data made available vide CD by the assessee on 12/02/2015, which was incomplete to some extent and the assessing officer had granted the time to produce the full particulars.”

13. From the above said contention, we came to know that the assessee had filed the details as sought for by the AO in excel format vide letter dated 12/02/2015. Subsequently, again the assessee filed the details on 25/03/2015 which comprises the details of the 4568 debenture holders to whom the assessee had issued debentures for a value of Rs. 8,70,45,000/-. In the said details, the assessee had quoted PAN No. of the 960 beneficiaries and for the balance 3608, their Aadhaar card / Voter ID card were given in order to prove that the transactions are genuine. The assessing officer at the time of passing the assessment order in para 4.5 had observed as follows:

“4.5 However, as per the data made available now, for the amount accepted in cash, PAN is not available with the assessee for Rs. 8,70,45,000/-.”

14. As seen from the observation made by the AO, the main contention of the AO is that the PAN card details are not available in respect of the debenture value of Rs. 8,70,45,000/- which amount was received in cash from 4568 debenture holders. It is seen that the AO had committed the mistake that out of the 4568 debenture holders, 960 debenture holders had their PAN No. but the AO had stated that for all the debenture holders, PAN was not made available. The AO also alleged that the assessee had not furnished the copies of the debenture application forms. It is the case of the assessee that no such details were called for by the AO. We also did not find any such notice issued by the AO.

15. As rightly contended by the Ld.AR that mentioning of the PAN No. in transactions are compulsory when the payment of the amount exceeds Rs. 50,000/- as per the provision available during the relevant year and also as per the new amended provision came into effect from 01/01/2016. It is the case of the assessee that the total amount of Rs. 8,70,45,000/- was received from 4568 debenture holders and the payment received is below Rs. 20,000/- for which no mandate of PAN No. is required. The assessing officer had not properly considered the documents / details filed before him in support of their contention that all the debenture holders are identifiable and therefore there is no ground for making an addition u/s. 68 of the Act. We also understand that the debenture holders who had invested Rs. 20,000/- need not be an assessee and also need not holds a PAN card. We do not find non-furnishing of the application forms obtained from the debenture / bond holder could be a reason to disallow the claim.

16. The judgment relied on by the AO in the case of CIT vs. Divine Leasing and Finance Ltd. reported in (2007) 158 Taxman 440 is also on the shares issued by the company and therefore the company might have kept the application and other forms whereas in the present case, it is a debenture issue and the AO also not called for the same and therefore the non-filing of the debenture application is not a valid reason to make addition u/s. 68 of the Act. We also found that the finding of the AO that the assessee has not

given the bank account number of the debenture holders in order to verify the genuineness of the transactions is also not correct when the assessee had submitted the debenture holders' details. It is not the case of the assessee that the amount was received in cash cheque and therefore the reasons stated by the AO is also not correct. It is also not in dispute that the accounts of the assessee were audited and a report in form 3CA and form 3CD were filed before the AO which indicates that the accounts of the assessee are properly maintained and no defect has been pointed out by the auditors. Further, we have also gone through the documents filed in the compilation which establishes that the assessee had issued debentures by creating charge in the debenture issue and also filed the form no. 10 before the Registrar of Companies duly certified by the debenture trustees which was verified by the Registrar of Companies and no defect has been pointed out by them. We have also gone through the assessment order in which the AO had also relied on the letter issued by the ITO, TDS, Thrissur in order to allege that the debenture and bonds are not genuine which in our opinion is not correct. If there is any mistake in the non-deduction of TDS by the assessee, then there are several provisions under the Act to take action on the assessee but the same could not be a reason for doubting the genuineness of the debenture and bonds.

17. In the present case, we found that the assessee had submitted the details of the debenture holders and their addresses and their ID proofs and PAN details. But in spite of that, the AO had alleged that the assessee had not proved the identity of the creditor, credit worthiness of the creditor and doubted about the genuineness of the transaction. When the assessee was able to produce all the details, the assessee had discharged the burden of proving the identity of the creditor. The second condition i.e, the credit worthiness of the debenture holder is concerned, as already stated, the debenture holders numbering about 4568 have paid the cash which is only Rs. 20,000/- and therefore for proving the said credit worthiness of the debenture holders, we don't know how the assessee can prove the credit worthiness of the debenture holders. If the assessee had received a huge

amount from an individual, then the credit worthiness of the individual has to be established by the assessee but in this case, from each debenture holders, the assessee had received a sum of Rs. 20,000/- and therefore the allegation that the credit worthiness of the debenture holders were not proved is also not correct.

18. By considering the small quantum of amount, the Government had considered that no PAN is required if the payment by cash for obtaining a debenture does not exceed Rs. 50,000/- as per section 114B of the Act. When the Statute itself had granted exemption for the said class of persons from providing the PAN No. in the transactions, the finding of the AO that PAN No. was not provided by all the debenture holders and on that basis the AO could not come to the conclusion that the assessee had not discharged his burden. Insofar as the next contention that the transactions are doubtful, we have gone through the entire records filed before the RBI and the Registrar of Companies who are all the competent authorities to regulate the Non-Banking Financial Companies (NBFCs) and the said authorities had accepted the details furnished by the assessee including the form no. 10 which relates to the issue of debentures and therefore unless and until the AO had any other records to show that the transactions are not a genuine one, he cannot presume that the transactions are not genuine and thereby made the addition u/s. 68 of the Act.

19. The assessee filed all the details asked for by the AO and the AO ought to have conducted further enquiry by issuing notices to the various debenture holders u/s. 133(6) of the Act and obtained necessary statements from them and on that basis, he could have made the assessment if the debenture holders gave some contra evidence. But no such exercise was done by the AO while making assessment u/s. 68 of the Act. The assessee had discharged their burden by providing all the details and simply because the debenture applications were not produced and simply because the PAN No. details were not made available, the AO cannot presume that the

transactions are bogus and therefore liable to be added as income u/s. 68 of the Act.

20. Even though the facts were explained before the Ld.CIT(A), the Ld.CIT(A) had also erred in not considering the same but confirmed the addition made u/s. 68 of the Act which in our opinion is not correct.

21. In these circumstances, we are setting aside the order of the AO as well as the Ld.CIT(A) and restore this issue to the file of the AO to consider the issue afresh by conducting proper enquiry. While passing a fresh order, the AO is also directed to consider the findings given in this order and pass the order denovo after hearing the assessee and in accordance with law. The assessee is also directed to produce the required documents including the debenture application forms before the AO.

22. Insofar as the ground number (e) raised by the assessee in A.Y. 2012-13, it is consequential to the main issue of addition made u/s. 68 and in the previous paragraph, we have set aside the addition and remitted the same to the AO and therefore this issue also remitted to the AO for deciding the issue afresh based on the proposed order passed by him pursuant to our direction.

23. Insofar as ground number (f) is concerned, we find that the Ld.CIT(A) had followed the Hon'ble Supreme Court judgment and confirmed the disallowance which in our opinion also is a correct one and requires no interference.

24. Similarly, in respect of ground number (g), we have perused the finding of the Ld.CIT(A) in which the Ld.CIT(A) had observed that the gratuity fund in question was not approved by the PCIT and therefore the disallowance of the said claim is in order. The said finding is also in accordance with the provisions of the Act and requires no interference.

25. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 23rd April, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Cochin,
Dated, the 23rd April, 2025.
/MS /

Copy to:

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|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin