

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "I", BENCH MUMBAI

सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं श्री आर.सी.शर्मा, लेखा सदस्य

**BEFORE SHRI JOGINDER SINGH, JM
&
SHRI R.C.SHARMA, AM**

आयकर अपील सं./ITA No.45/Mum/2014

(निर्धारण वर्ष / Assessment Year :2009-2010)

M/s ISS Hicare Private Limited, Phirojsha Nagar, Eastern Express Highway, Vikroli (East), Mumbai-400079	Vs.	ACIT-10(2), Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG 0539 K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Ms. Rachana Agarwal

राजस्व की ओर से /Revenue by : Shri E. Shankaran

सुनवाई की तारीख / Date of Hearing : **5th August, 2015**

घोषणा की तारीख/Date of Pronouncement **30-10-2015**

आदेश / O R D E R

Per R.C.Sharma, AM

This is an appeal filed by the assessee against the order of CIT(A), Mumbai, dated 10-10-2013, for the assessment year 2009-2010, in the matter of order passed u/s.144 of the IT Act.

2. The assessee in its appeal is aggrieved by the addition made u/s.68 of the Act.

3. Rival contentions have been heard and record perused. As per the Tax Audit report, the assessee company has shown to have obtained inter corporate deposits and unsecured loans amounting to Rs.27,52,70,000/- from various concerns during the year, in the absence

of any supporting evidences/confirmations, it was construed in the assessment order that the assessee company has not discharged its onus of proving the identity, genuineness and creditworthiness of the lender and hence, the above amount of Rs.27,52,70,000/- was added as unexplained cash credit under sec. 68 of the Act. After considering the remand report the CIT(A) deleted the addition of Rs.26.60 crores, however, he has confirmed the addition of Rs.2.10 crores. The precise observation of the CIT(A) is as under :-

8.4 I have considered the facts and circumstances of the case. The AO in his remand report has verified the transactions. The appellant proved the identity of the debtors, genuineness of the creditors and creditworthiness of the creditors of Rs.26,60,00,000/- only and AO had added Rs.2,10,00,000/- for the four parties in which the appellant could not prove the transactions fully. AO has stated in remand report as under :-

“As the assessee company was not able to furnish any documentation in respect of the creditworthiness of the above loan lenders, the AR of the assessee company was asked during the course of remand proceedings, vide order sheet noting dated 30.0.2013, to produce the above 4 loan creditors for verification along with evidence of their creditworthiness. The assessee company has shown to have obtained following amount of loan from the 4 parties mentioned above.

<i>N.T.Doshi</i>	<i>Rs.97,70,000/-</i>
<i>N.T.Doshi(HUF)</i>	<i>Rs.10,30,000/-</i>
<i>Asha Kirtilal Shah</i>	<i>Rs.25,00,000/-</i>
<i>Vikman Steel Ball Industries</i>	<i>Rs.77,00,000/-</i>

However, despite being given specific opportunity, the assessee's AR failed to produce the above loan creditors before the undersigned and also failed to file any evidence to establish the creditworthiness of the above loan lenders to provide the loans to the assessee company. In absence of any verifiable documentary evidence to establish the creditworthiness of the loan creditors, it is submitted that the creditworthiness of the loan lenders, genuineness of the transaction and their identity cannot be verified.

8.5 Regarding the addition under sec.68, the appellant has to prove the identity of the creditors, genuineness of the transactions and creditworthiness of the creditors. Regarding the four parties in which the AO had made additions, the appellant had proved the

identity of the transaction, genuineness of transaction and appellant had failed to prove the creditworthiness of the transaction. Regarding the four creditors for Rs.2,10,00,000/-, the appellant has to prove identity of the creditors, creditworthiness of the creditors and genuineness of the creditors in view of the following decision:

- i) Roshan De Hatti Vs. CIT(SC) reported in 107 ITR 938;*
- ii) C.Kant & Co. Vs. CIT(Calcutta) 126 ITR 63;*
- iii) Dhanalakshmi Steel Re-rolling Mills Vs. CIT(AP) 228 ITR 780;*
- (iv) CIT Vs. Biju Patnaik (SC) 160 ITR 674*
- v) Malabar Agricultural Co. Ltd. Vs. CIT(Kerala) 229 ITR 548*

8.6 In view of the above decisions, the appellant has to prove all the three conditions i.e. identity of the creditor, creditworthiness of the creditor and genuineness of the transaction. As the appellant could only prove the identity of the creditors and genuineness of the transactions and failed to prove the creditworthiness of the creditors, hence, the addition of Rs.2,10,00,000/- is sustained. The AO's addition on the above ground is for Rs.27,52,70,000/- and only Rs.2,10,00,000/- was confirmed and the rest of the amount is deleted. Ground of appeal is partly allowed."

4. Against the above order of CIT(A), the assessee is in further appeal before us.

5. We have considered rival contentions and carefully gone through the orders of the authorities below and found that by furnishing the details before the lower authorities, the assessee has not only proved the identity of the creditors but also genuineness of the transactions. The AO has made the addition because the creditors were not produced before him for verification. The AO also observed that the assessee could not prove the creditworthiness of the creditors. Asking the creditors to appear before the AO is not in hands of the assessee, however, the AO has sufficient power to call the creditors independently by issue of notice u/s.131 of the Act. In the interest of justice and fair play, we restore this issue back to the file of the AO for deciding afresh after calling the creditors by issuing notice u/s.131. We direct the assessee to

prove the creditworthiness of the creditors by producing the evidentiary documents before the AO. We direct accordingly.

6. In the result, appeal of the assessee is allowed in part for statistical purposes.

Order pronounced in the open court on this 30/10/2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 30/10/2015 को की गई ।

Sd/-

(जोगिन्दर सिंह)

(JOGINDER SINGH)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(आर.सी.शर्मा)

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 30/10/2015

प्र.कु.मि/pkm, नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai