

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ " सी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.5/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2016-17

The DCIT Ahmedabad	बनाम/ v/s.	Tripoli Management Pvt.Ltd. 8-301, Safal Pegasis 100 Ft. Road Prahladnagar Ahmedabad- 380 015
स्थायी लेखा सं./PAN: AABCT 0588 J		
(अपीलार्थी/ Appellant)	(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Vartik Chokshi, AR	
Revenue by :	Shri Kamlesh Makwana, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 29/07/2024
घोषणा की तारीख /Date of Pronouncement: 01/08/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the Revenue as against the order dated 19/10/2023 passed by the Ld.Commissioner of Income Tax(Appeals)-12, Ahmedabad [hereinafter referred to as "the Ld.CIT(A)" in short] arising out of the assessment order dated 27/12/2018 passed by the Assessing Officer (AO) under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2016-17.

Facts of the case:

2. During the year under consideration, the assessee-company was engaged in the business of Non-Banking Finance Companies. The assessee company furnished its return of income for the A.Y. 2016-17 on 17.10.2016 disclosing a total income of Rs. 20,48,130/-. The case was selected for scrutiny and notices under sections 143(2) and 142(1) of the Act were issued to the assessee. The assessee filed required documents online. During the assessment proceedings, the AO observed that the assessee-company has taken unsecured loan amounting to Rs.55,05,27,020/- and paid interest thereon amounting to Rs.3,94,15,139/-. The AO asked to furnish details along with confirmations and present address of the loan creditors. The assessee submitted the list of such parties and also provided the confirmations from the parties. In order to verify these parties notices were issued u/s.133(6) of the Act and to some parties summons u/s.131 of the Act were also issued through e-mail as well as speed post. These summonses were served by e-mail but could not be served by speed post. Notices could not be served as these companies were found to be non-existing on their addresses. Departmental Inspector was deputed to verify the existence of companies, who provided unsecured loan to the assessee-company. The Inspector submitted the report in which he stated that the companies were not in existence at given addresses. From the documents and submission filed by the assessee company it is observed that the business activity of the assessee was carried out in State of Gujarat, but the unsecured loans were taken by the assessee company from the aforesaid parties which are based in Kolkata. Notice/Summon issued to parties

remained unserved due to non-existence of the concern at the given address. The details of peak credit and interest paid to such parties were:

Name of the party	Interest Paid in Rs.	Peak Credit in Rs.
M/s. Vrindavan Furnishing Pvt. Ltd.	18,69,192/-	11,17,82,000/-
M/s. Shanti Educational Institute Ltd.	16,82,2291/-	7,19,05,2421-
M/s.Aastha Commotrade Pvt. Ltd.	25,31,638/-	3,68,00,000/-
M/s.Gainwell Mercantiles Pvt. Ltd.	18,14,326/-	2,66,25,000/-
Total	78,97,385/-	24,71,12,242/-

2.1. The AO further observed that these companies were declaring negligible income in their returns of income and tax deducted were claimed as refund. The AO also concluded that these are mere paper companies operated by entry operator for the purpose of providing accommodation entries. Relying on some judicial pronouncements and principle of preponderance of human probability, the AO added the peak credit as detailed above in the total income of the assessee u/s.68 of the Act and treated the interest paid to these parties totalling to Rs.78,97,385/- as unexplained expenditure u/s 69C of the Act.

3. The assessee preferred an appeal before the Ld.CIT(A), who deleted the additions by partly allowing the appeal of the assessee. While doing so, the Ld.CIT(A) dealt with the remand report called from the Assessing Officer, who recorded following main observations relating to

M/s.Vrindavan Furnishing Pvt. Ltd. and M/s.Shanti Educational Initiatives Ltd.:

- That, both the companies have no fixed assets except motor car.
- That, the company earned Interest Income on its Finance business and almost 60% to 65% of its gross income was set off against trading losses in last 3 financial years.
- As the company is trading in Cloths but no corresponding expenses like Godown Rent, Carriage and Transportation charges was debited in Profit & Loss account only sale & purchases ore appeared in profit & loss account and loss was booked.
- All the funds are kept invested in investments in shares and loans. The interest income is adjusted in each year against trading loss from sale of cloths and only a nominal amount was shown as income claiming substantial TDS on loans as refund.

3.1. The assessee also submitted detailed rejoinder to the remand report and stated that the details called for as per notice u/s.133(6) of the Act were also provided to the AO which mainly include ID proof of directors, assessment orders u/s.143(3) of the Act, Acknowledgement of return of income filed, confirmation of the party along with bank statement and statement of funds, etc. which duly establishes genuineness of transactions. The assessee also stated in his rejoinder that the AO has not recorded any adverse comment on the reply submitted. He further contented with the help of relevant documents that the company is in existence, and it has a capacity to advance unsecured loans. The assessee further stated that since some of these companies have changed their registered offices, notices remained unserved and furnished new addresses of these parties. The assessee also stated that the companies from whom the amounts were borrowed are separate identities and fully operational. The assessee also

stated that the directors of these companies are residing at Ahmedabad, and they are shifting the company head office to Ahmedabad, necessary formalities are under process.

3.2. During the course of appellate proceedings, the assessee furnished all necessary details relating to identity of the lenders, genuineness of the transactions and creditworthiness of the lenders. The assessee also stated that the AO has not relied on any concrete evidence or information to prove that the lender companies do not have creditworthiness to lend money. The assessee placed reliance on the decision of **Hon'ble High Court of Gujarat in the case of DCIT Vs. Rohini Builders 256 ITR 360(Guj.)** and other judicial pronouncements. The assessee also rebutted the judicial pronouncements relied on by the AO. Regarding the disallowance of interest as unexplained expenditure, the assessee stated that the AO has disallowed the same only based on assumptions and surmise.

3.3. The Ld.CIT(A) deleted the additions both u/s.68 and 69C of the Act and allowed the appeal of the assessee. While doing so, the Ld.CIT(A) recorded his satisfaction on genuineness, creditworthiness of the lenders. He also recorded that in the remand report AO has not mentioned any substantial comment regarding identity, genuineness and creditworthiness of the lenders. He also noted that the AO has recorded statement of directors of the lender companies on oath who admitted that the loans were advanced to the assessee-company. The Ld.CIT(A) also recorded his observation that the AO has not objected to the identity as well as genuineness of the transactions in subsequent years.

4. Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before us with following grounds of appeal:

"a) In the facts and on the circumstances of the case, Ld.CIT(A) erred in directing to delete the addition of Rs.3,68,00,000/- and Rs.2,66,25,000/- on account of unexplained cash credit u/s 68 of the IT Act being bogus unsecured loan from M/s Aastha Commtrade Pvt. Ltd. and M/s Gainwell Mercantiles Pvt. Ltd. respectively.

b) In the facts and on the circumstances of the case, Ld. CIT(A) erred in directing to delete the addition of Rs.25,31,638/ and Rs. 18,14,326/- on account of unexplained expenditure u/s 69C of the IT Act being bogus interest claimed on the loans shown in the name of the above parties."

5. Before us, the Ld.Departmental Representative (DR) stated that the loans are accommodation entries as concluded by the AO. The DR stated that the appeal is filed only against deletion of addition on account of two unsecured loans. One from M/s.Astha Commtrade Pvt. Ltd. and another from M/s.Gainwell Merchantile Pvt. Ltd. He pointed out that there was no compliance in response to notices under sections 133(3) and 131 of the Act during the course of assessment proceedings. He also pointed out that the companies are from Kolkata and, therefore, the genuineness is doubtful. The Ld.DR placed reliance on the order of the AO.

6. The Ld.Authorized Representative (AR) of the assessee explained the issue in detail and stated that the assessee is Non-Banking Finance Company, and the assessee has proved the genuineness and creditworthiness of these loans. He also placed on record the ledger account extracts to support the fact that the loans are repaid in subsequent years. The Ld.AR also explained the assessee has not only explained the source by also the source of source. Since the additions are made u/s. 68 of the Act, the assessee has discharged his onus to prove the source of loan,

genuineness of transactions and creditworthiness of the lenders. He placed reliance on the judgement of **Hon'ble Gujarat High Court in the case of Commissioner of Income-tax, Rajkot-I vs. Ayachi Chandrashekhar Narsangji [2014] 42 taxmann.com 251 (Guj.)**, wherein it was held that where Department had accepted repayment of loan in subsequent year, no addition was to be made in current year on account of cash credit. The Ld.AR also stated that the interest is paid to the party after due compliance of provisions of TDS and, hence, no interest should be disallowed u/s 69C of the Act.

6.1. We have also reviewed the decision of Hon'ble Gujarat High Court in case of DCIT Vs. Rohini Builders 256 ITR 360, wherein the Hon'ble High Court decided that the assessee had discharged its initial onus by providing necessary evidence, and the Department failed to prove that the credits were non-genuine. It was held that mere non-compliance of summons by some creditors cannot be a ground to treat the loans as non-genuine, the Department should have pursued further investigation, if necessary. The Hon'ble High Court also discussed Section 68 of the Act highlighting that the unsatisfactoriness of the explanation does not automatically result in deeming the amount credited as the income of the assessee.

6.2. Upon careful consideration of the facts, submissions, and judicial precedents, we find that the assessee has provided substantial evidence to establish the identity, genuineness, and creditworthiness of the loan creditors. The AO's conclusions were largely based on assumptions and the principle of preponderance of human probability, without substantial evidence contradicting the assessee's claims. The assessee complied with

statutory requirements, including the provision of confirmations, ID proofs, bank statements, and tax return details of the loan creditors. The repayment of loans in subsequent years further supports the genuineness of the transactions. The reliance on the decisions of **Hon'ble Gujarat High Court are well placed. The case of Ayachi Chandrashekhar Narsangji** is appropriate, wherein the Hon'ble Court held that no addition should be made, if the repayment of loans is accepted by the department in subsequent years.

6.3. The Ld.CIT(A) has rightly noted that the AO's remand report did not provide substantial adverse comments on the identity and genuineness of the transactions. The AO's reliance on the principle of human probability without concrete evidence does not warrant the additions made under sections 68 and 69C of the Act. Based on the above findings, and following the judicial precedents relied upon, we conclude that the appeal of the Revenue lacks merit and the Ld.CIT(A)'s order deleting the additions under sections 68 and 69C of the Act is upheld. Revenue's grounds of appeal are, therefore, dismissed.

7. In the result, the Revenue's appeal stands dismissed.

Order pronounced in the Open Court on 1st August, 2024 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 01/08/2024

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-12, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad