

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, , माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2486/Chny/2019
निर्धारण वर्ष /Assessment Year: 2016-17

The Asst. Commissioner-
of Income Tax,
Non-Corporate Circle-3,
Chennai.

(अपीलार्थी/Appellant)

v. Mr.Pakkeer Tulkarnai-
Gulam Alam Shah,
No.1, 4th Avenue,
Harrington Road,
Chetpet, Chennai.
[PAN: ACXPA 8156 G]
(प्रत्यर्थी/Respondent)

Department by : Mr.Sanat Kumar Raha,
Addl.CIT
Assessee by : Mr.M.Karunakaran, Adv.
सुनवाई की तारीख/Date of Hearing : 19.04.2022
घोषणा की तारीख /Date of Pronouncement : 13.05.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-4, Chennai, dated 26.06.2019 and pertains to assessment year 2016-17.

2. The Revenue has raised the following grounds of appeal:

1. The order of the Ld. Commissioner of Income Tax(Appeals) is contrary to the law and the facts of the case.

2. The Ld. CIT(A) has erred in law and on facts in holding that the income offered for tax by the creditors may not be the criteria to disprove the credits u/s.68 of the Act, and it is not in the mandate of the Act.

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2.1 The Ld. CIT(A) has failed to note that mere filing of confirmation letters and acknowledgement copy of returns not supported by financial statements are not sufficient to prove the creditworthiness of the creditors.

2.2 The Ld. CIT(A) ought to have noted that the assessee has not fulfilled his primary onus of proving the creditworthiness of the loan creditors by not fully furnishing the documents in support of his claim.

2.3 The Ld. CIT(A) has relied on the bank statements and confirmation letters filed by the creditors without considering the fact that the documents are not supported with financial statements to prove that past accumulations were available in the hands of the creditors to substantiate the loan offered.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer restored.

3. The brief facts of the case are that the assessee is an individual carrying on business in the name and style of M/s.Date Homes, filed his return of income for the AY 2016-17 on 14.07.2017 admitting total income of Rs.30,43,030/-. The case has been taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee had taken loans from the following persons:

Sl.No.	Name of the Party	PAN	Amount of loan (in Rs.)
1	Mr.Mohammed Lawfir	AFOPM 7717 B	3,50,00,000
2	M/s.Seahawk Lines Pvt. Ltd.	AAGCS 0053 E	1,75,00,000
3	Ms.R. Meharunisha	AIJPM 7927 R	20,00,000
4	Mr.Syed Ibrahim	ABQPS 2095 A	65,00,000
5	Mr.Kaja Moideen Rafludeen	AAJPR 4134 K	30,00,000
6	M/s.Rich Gold Hardware	AJLPA 4245 M	28,00,000
Total			6,68,00,000

The assessee was called upon to explain the nature and source of loan taken from the above persons. In response, the assessee had submitted confirmation letters from the loan creditors along with relevant bank statement to show that the amounts were received through banking channel. The assessee had also filed their ITR acknowledgment copies to prove that all loan creditors are Income Tax payers. The AO, however, was not satisfied with the explanation furnished by the assessee and according

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to the AO, although there is no dispute with regard to the identity of the loan creditors and genuineness of transactions, but when it comes to creditworthiness of the parties, none of the loan creditors does have capacity to explain huge amount of loan given to them. Therefore, rejected the arguments of the assessee and made addition of Rs.6.68 Crs. as unexplained credits u/s.68 of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed various details, including confirmation letters from the creditors to prove identity of the parties and genuineness of transactions. The assessee had also filed bank statements of the parties along with their Income Tax Returns, filed copies to prove creditworthiness. The Ld.CIT(A) after taking necessary facts and also considering various evidences filed by the assessee observed that the assessee had discharged onus cast upon him as per the provisions of Sec.68 of the Act, and proved identity of the loan creditors, genuineness of transactions and also creditworthiness of the parties and thus, opined that the assessee has discharged his onus in respect of loans taken from Mr.Mohammed Lawfir, M/s.Seahawk Lines Pvt. Ltd., Ms.R.Meharunisha, Mr.Syed Ibrahim & Mr.Kaja Moideen Rafiudeen. However, in respect of loan taken from M/s.Rich Gold Hardware, amounting to Rs.28 lakhs, the Ld.CIT(A) has sustained the additions made by the AO on the ground that except filing confirmation letters from the creditors, the assessee was not able to discharge genuineness of transactions and

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creditworthiness of the creditors. Thus, out of total additions made u/s.68 of the Act, amounting to Rs.6.68 Crs., the Ld.CIT(A) deleted the additions to the extent of Rs.6.40 Crs. being loan taken from five parties and confirmed addition to the extent of Rs.28 lakhs being amount of loan taken from M/s.Rich Gold Hardware.

5. Aggrieved by the order of the Ld.CIT(A), the Revenue is in al before us.

6. The Ld.DR, submitted that the Ld.CIT(A) erred in deleting additions made by the AO towards loan taken from five parties without appreciating the fact that the assessee needs to satisfy all three conditions including creditworthiness of the parties. The Ld.DR further submitted that although, the AO had accepted identity of the creditors and genuineness of transactions, but doubted creditworthiness of the creditors, mainly on the basis of their ITRs filed for the relevant assessment year. As per which, they had declared meagre income which is not sufficient to explain huge amount of loan given to assessee. The Ld.CIT(A) without appreciating the above facts simply deleted the additions made by the AO.

7. The Ld.AR for the assessee supporting the order of the Ld.CIT(A), submitted that the assessee has discharged onus by filing all evidences, including confirmation letters from the parties, bank statements and their ITRs filed for the relevant assessment year. The AO never disputed identity and genuineness of transactions. However, made additions only on the

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ground that creditors had declared minimum income for the relevant assessment years, ignoring settled position that income earned by a person cannot decide quantum of loan that a person can give. Therefore, he submitted that there is no error in the reasons given by the Ld.CIT(A) to delete additions made by the AO u/s.68 of the Act, and their orders should be upheld.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO has made additions towards loans taken from five parties as unexplained cash credit u/s.68 of the Act. According to the AO, although the assessee proved identity of the creditors and genuineness of transactions, but failed to prove creditworthiness of the parties. The AO has doubted creditworthiness of the parties mainly on the basis of ITRs filed by them for the relevant assessment years. According to the AO, they had declared less income or loss for the relevant assessment years, which is insufficient to explain amount of loan given to them. Except this, the AO has never doubted identity of the parties and genuineness of transactions. In fact, the assessee filed confirmation letters from all five parties along with their bank statements for the relevant assessment years and also ITR acknowledgment filed for the relevant assessment years. From the details filed by the assessee, the Ld.CIT(A) had recorded categorical findings that Mr.Mohammed Lawfir from whom assessee had received a sum of Rs.3.5 Crs. loan through cheque had declared income of Rs.48,98,470/-. Further,

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the loan had been taken through proper banking channel. As regards, the observation of the AO on creditworthiness of the parties, we find that when the AO never disputed identity of the parties and genuineness of transactions, he cannot make additions only on the basis of minimum income declared by the parties, because the income earned by person cannot decide the quantum of loan that a person can give. The loan can be given even by borrower's or from past accumulation and there are many sources for mobilizing funds for making loan to another. As long as the transactions are through proper banking channel and further, the borrower and the lender are income tax assesseees, then the AO cannot make addition towards loan u/s.68 of the Act, only for the reason that they have declared minimum income for the relevant assessment years. In this case, as regards loan taken from five parties, what we noticed from the order of the Ld.CIT(A) is that the assessee has proved identity of parties and genuineness of transactions. The assessee had also proved creditworthiness of the parties by filing their ITR copies for the relevant assessment years, which is part of assessment records. Once, the assessee has discharged his onus by filing all possible evidences, then the onus shifts to the AO to prove otherwise. In this case, the AO only on the basis of minimum income declared by the creditors, has drawn an adverse inference against the assessee, even though, the assessee has discharged its onus cast upon him as per Sec.68 of the Act. This legal principle is supported by plethora of judicial precedents, including the decision of the Hon'ble

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Supreme Court in the case of CIT v. Lovely Exports Private Limited reported in [2008] 216 CTR 195 (SC), wherein, it has been held that once names of creditors are given to the AO, then the Department is free to proceed to re-open their individual assessments in accordance with law, but some received from them cannot regard as undisclosed income of the assessee. This legal position further supported by the decision of the Hon'ble Supreme Court in the case of CIT v. Steller Investment Ltd. reported in (2001) 251 ITR 263 (SC). The sum and substance of ratio laid down by various decisions of the Hon'ble Supreme Court and High Courts is that once assessee discharged its burden by filing various evidences including confirmation letters from the parties, their bank statements and ITR filed for the relevant assessment years, onus cast upon the assessee shifts to the Revenue and the AO should bring some evidences to prove that sum credited in the books of accounts of the assessee is undisclosed income. Further, once name and address, PAN of creditors is furnished to the AO, then the Department is free to re-open the individual assessment of creditors, but some received from the parties cannot be regarded as unexplained credit u/s.68 of the Act.

9. In this case, the assessee has filed all details to prove identity of the loan creditors genuineness of transactions and creditworthiness of the parties. In fact, the loans are taken from close family members and friends. It is not a case of the AO that the assessee had taken loans from certain unknown people whose identity is in doubtful. Therefore, we are of the

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considered view that, the AO is completely erred in making additions towards loan taken from above parties as unexplained credit u/s.68 of the Act. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the Revenue.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 13th day of May, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 13th May, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF