

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.489/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2008-09)

M/s. Erode Annai Spinning Mills P.Ltd., 72, Mudali Thottam, Veerappanchatram(Post) Erode-638 004.	Vs	The Deputy Commissioner of Income Tax, Central Circle-II Coimbatore.
PAN: AAACE 4596N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. R.Anita, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	11.11.2021
घोषणाकीतारीख /Date of Pronouncement	:	30.11.2021

आदेश / ORDER

Per G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals), Coimbatore-3, dated 16.01.2020 and pertains to assessment year 2008-09.

2. The assessee has raised following grounds of appeal:-

"1. The order of the Commissioner of Income Tax (Appeals) - 3, Coimbatore dated 16.01.2020 in ITBA/APL/S/250/2019-20/1023925956(1), for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the addition of Rs. 20,00,000/- as unexplained credit u/s 68 of the Act while computing the taxable total income without assigning proper reasons and justification.

3. *The CIT (Appeals) failed to appreciate that the provisions of Section 68 of the Act had no application to the facts of the case especially in view of the discharge of initial onus/burden by furnishing the relevant documents/details by the appellant at various stages of the assessment/appellate proceedings and further ought to have appreciated that the rejection of explanation offered with evidence in the impugned order was wholly unjustified on various grounds, thereby vitiating the related findings in para 3.3.*

4. *The CIT (Appeals) erred in sustaining the denial of set off unabsorbed depreciation against the income brought to tax in invoking section 68 of the Act while computing the taxable total income without assigning proper reasons and justification.*

5. *The CIT (Appeals) failed to appreciate that the Appellant was eligible for set off of unabsorbed depreciation loss against the income determined u/s 68 of the Act during the assessment year under consideration especially in view of the prospective amendment brought in the provisions of Section 115BBE w.e.f 01.04.2017 and further ought to have appreciated that the judicial trend in this regard was completely overlooked and brushed aside in recording wrong findings from para 4.3 to para 4.7 of the impugned order.*

6. *The CIT (Appeals) failed to appreciate that the decision referred to in para 4.6 of the impugned order to reject the claim of set off of unabsorbed depreciation against the income brought to tax invoking section 68 of the Act was overruled later and hence ought to have appreciated that the findings based on the decision overruled by Gujarat High Court in the later decision(s) should be reckoned as bad in law.*

7. *The CIT(Appeals) failed to appreciate that the assessment of deemed income u/s 68 of the Act should be assigned to a head of income for computation purposes while further ought to have appreciated that the assessment of the disputed sum should be reckoned either under the head 'income from business' or 'income from other sources', thereby negating the decision to presume the addition u/s 68 of the Act as standalone addition.*

8. The ITO failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law."

3. Brief facts of the case are that a search and seizure action u/s.132 of the Act was carried out in the case of Mr. P.K.Duraisamy on 13.03.2008. Consequent to search, assessment has been completed u/s. 143(3) of the Act on 31.12.2009 and determined total income of Rs.20,00,000/- by inter-alia, making additions towards unsecured loan of Rs.20 lakhs received from Mr. M. Raju and Mr. Umamaheswaran u/s.68 of the Income Tax Act, 1961. The assessee carried matter in appeal before first appellate authority, but could not succeed. The learned CIT(A) for reasons stated in his appellate order, sustained additions made by the Assessing Officer. The assessee carried the matter in further appeal before the Tribunal. The Tribunal vide its order dated 18.12.2015 remitted the matter back to file of the learned CIT(A) to give one more opportunity of hearing to the assessee to file necessary evidences and to explain unsecured loans. During appellate proceedings, the learned CIT(A) called upon the assessee to file necessary evidences to prove identity of person, genuineness of transaction and creditworthiness of person. In

response, the assessee has filed necessary details including bank statements to explain unsecured loan taken from Mr. M. Raju and Mr. Umamaheswaran and argued that parties have directly deposited amount into bank account of the assessee maintained at Axis bank. The assessee had also filed confirmation letters from parties to prove identity and genuineness of transaction and also filed their income tax returns to prove creditworthiness of the parties. The learned CIT(A) has accepted identity and creditworthiness of the parties, however disputed genuineness of transaction by holding that the bank has credited two different cheques with two different addresses, two different PANs, two different account numbers and two different names together. Further, narration given in the bank account statement is not self-explanatory. Therefore, he opined that the assessee has failed to prove genuineness of transaction and hence, sustained additions made by the Assessing Officer towards unsecured loan u/s.68 of the Income Tax Act, 1961. Aggrieved by the order passed by learned CIT(A), the assessee is in appeal before us.

4. The learned A.R for the assessee submitted that the assessee has proved identity and creditworthiness of the parties. Further, the assessee has also proved genuineness of transaction by filing bank statements to prove that unsecured loans have been taken through cheque, however, the learned CIT(A) has doubted genuineness of transaction only for reason that bank statement filed by the assessee does not give clear details from whom loans have been taken, ignoring fact that narrations recorded by bank in their books of account is not in the hands of the assessee. What is required to be seen is whether the assessee has discharged its onus by filing necessary evidences and such evidences demonstrate that loan is genuine or not. In this case, except doubting narration recorded by bank, the learned CIT(A) has not given any valid reason to doubt genuineness of transaction. Therefore, he submitted that additions made towards unsecured loans taken from two parties is not in accordance with law.

5. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee has not filed necessary evidences to prove genuineness of transaction which

is evident from facts recorded by the learned CIT(A), as per which bank has not given any reasons to show credits in the name of parties without mentioning cheque number and account number. Therefore, the learned CIT(A) has rightly held that although the assessee has proved identity and creditworthiness of the loan creditors, but genuineness of transaction is doubtful and thus, sustained additions.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the assessee has proved identity and creditworthiness of loan creditors, which is evident from fact that the learned CIT(A) has accepted fact of identity and creditworthiness of parties. The only dispute is with regard to genuineness of transactions. According to the learned CIT(A), although unsecured loans claimed to have been received by cheques, but on perusal of Axis bank statement, there is no clarity from whom said credit was received including cheque numbers, address and PAN. We have gone through reasons given by the learned CIT(A) to doubt genuineness of transaction and we ourselves do not

subscribe to reasons given by the learned CIT(A) for simple reason that as per bank statement filed by the assessee, a sum of Rs.20 lakhs (Rs.10 lakhs each) has been received from Mr. M.Raju and Mr.Umamaheswaran on 28.02.2008 and same has been credited to Axis bank account. The assessee had also filed Axis bank statement of Mr. Umamaheswaran, as per which there is withdrawal of Rs.10 lakhs vide cheque No.471041 on 28.02.2008. The assessee had also furnished Axis bank statement of Mr.M. Raju, as per which there was withdrawal of Rs.10 lakhs vide cheque No.4711012 on 28.02.2008. From the above, it is very clear that Mr. M.Raju and Mr. Umamaheswaran had withdrawn amount from their respective bank accounts on 28.02.2008 and deposited a sum of Rs.20 lakhs on 28.02.2008 in the bank account of the assessee maintained at Axis bank. From the above, it is very clear that there is no doubt of whatsoever with regard to genuineness of transactions. No doubt, bank might not have given narration with regard to cheque no., address and PAN while giving credit to the bank account of the assessee. But, fact remains that the assessee has filed all those details, including confirmation letter from loan creditors which matches with credit in the bank account of the

assessee on 28.02.2008. Therefore, we are of the considered view that the assessee has filed necessary evidences to prove genuineness of transactions. Since, there is no dispute with regard to identity and creditworthiness of the loan creditors and further the assessee has filed necessary evidence to prove genuineness of transactions, we are of the considered view that the learned CIT(A) has erred in sustaining additions made by the Assessing Officer towards unsecured loans u/s.68 of the Income Tax Act, 1961. Hence, we set aside order of the learned CIT(A) and direct the Assessing Officer to delete addition of Rs.20 lakhs made towards unsecured loans u/s.68 of the Act.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 30th November, 2021

Sd/-

(महावीर सिंह)

(Mahavir Singh)

उपाध्यक्ष/ Vice-President

चेन्नई/Chennai,

दिनांक/Dated 30th November, 2021

DS

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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