



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N. K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2618/Mum./2017
(Assessment Year : 2012-13)

Asstt. Commissioner of Income Tax
Circle-16(3), Mumbai

..... Appellant

v/s

Shri Rajiv Saini
9, Jer Mension, 2nd Floor
Off Turner Road
Bandra (W), Mumbai 400 050
PAN – AALPS7287G

..... Respondent

Revenue by : Shri Manish K. Singh
Assessee by : Shri Satish Mody

Date of Hearing – 09.10.2018

Date of Order – 14.12.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal has been filed by the Revenue challenging the order dated 13th January 2017, passed by the learned Commissioner (Appeals)-7, Mumbai, for the assessment year 2012-13.

2. The only issue in dispute relates to deletion of addition of ₹ 70 lakh made by the Assessing Officer towards unexplained cash credit under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee, an individual, filed its return of income for the impugned assessment year on 27th September 2012, declaring total income of ₹ 2,54,02,230. During the assessment proceedings, the Assessing Officer noticing that the assessee has shown unsecured loan availed from Animation Marketing Pvt. Ltd. called upon the assessee to prove the genuineness of the loan transaction by furnishing supporting documentary evidences. As observed by the Assessing Officer, vide submissions dated 25th February 2015, the assessee submitted loan confirmation from animation marketing along with its bank statement and balance sheet. On perusing the bank statement of Animation Marketing Pvt. Ltd., the Assessing Officer was of the view that that it did not had the creditworthiness to advance the loan to the assessee. He observed, the company has made losses in financial year 2011-12 and the year before that. He also observed that the share capital of the company as on 31st March 2012, stands at ₹ 17,42,800. Thus, he concluded that Animation Marketing Pvt. Ltd. lacks creditworthiness to advance loan to the assessee. Accordingly, he treated an amount of ₹ 70 lakh out of the unsecured loan claimed to have been availed from Animation Marketing Pvt. Ltd. as unexplained cash credit and added it to the income of the assessee. Being aggrieved of such addition, the assessee preferred appeal before the first appellate authority.

4. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) found that not only the assessee has filed confirmation letter from the creditor confirming the loan but it had also filed copy of the bank statement, balance sheet and income tax assessment details of the creditor. Thus, the learned Commissioner (Appeals) observed that not only the identity of the creditor has been established but since the entire transaction was through banking channel, genuineness cannot be doubted. As regards the allegation of the Assessing Officer with regard to lack of creditworthiness the learned Commissioner (Appeals) on perusing the balance sheet of the creditor observed that in addition to share capital of ₹ 17,42,000 it had reserves and surplus of ₹ 6,16,00,000. Thus, he opined that creditworthiness of the creditor is established. He also took note of the fact that the assessee has repaid the loan amount to the creditor on 31st March 2015, along with interest. Further, the assessee has also deducted tax at source on interest payment to the creditor and also has filed a TDS return. Thus, in view of the aforesaid facts, the learned Commissioner (Appeals) held that the unsecured loan cannot be treated as unexplained cash credit under section 68 of the Act. Accordingly, he deleted the addition.

5. We have considered rival submissions and perused materials on record. The dispute in the present appeal is in respect of addition made of ₹ 70 lakh under section 68 of the Act. As could be seen from the facts on record, the assessee claimed to have availed unsecured loan from Animation Marketing Pvt. Ltd in the previous year relevant to the assessment year under dispute. Extract of the bank account of Animation Marketing Pvt. Ltd. as reproduced by the Assessing Officer in Para-6.7 of the assessment order reveals that the said company had advanced an amount of ₹ 75 lakh towards unsecured loans to the assessee in two tranches of ₹ 40 lakh and ₹ 30 lakh respectively. This loan was advanced to the assessee on 14th June 2011, through banking channel. It is evident, the Assessing Officer has not disputed the identity of the creditor nor the genuineness of the transaction. The Assessing Officer has treated the unsecured loan availed from Animation Marketing Pvt. Ltd. as unexplained cash credit alleging lack of creditworthiness of the creditor. Though, the actual unsecured loan advanced by Animation Marketing Pvt. Ltd. is ₹ 75 lakh, however, for whatever may be the reason, the Assessing Officer has treated an amount of ₹ 70 lakh as unexplained cash credit. In the process, he has accepted the balance loan amount of ₹ 5 lakh. Be that as it may, the issue which requires consideration is, whether the creditor had the creditworthiness to advance the unsecured loan to the assessee? The Assessing Officer has doubted the creditworthiness of the creditors

primarily for the reason that the creditor company has shown losses in financial year 2010–11 and 2011–12 and the share capital of the company as on 31st March 2012, stands at ₹ 17,42,800. However, as observed by the learned Commissioner (Appeals) and which is also revealed from the financial statements of the assessee, the reserve and surplus of the creditor company for the relevant financial year stood at ₹ 6.16 crore. It is also a fact that before the Assessing Officer not only the assessee had furnished a confirmation from the concerned creditor confirming the advancement of loan but he has also produced the ledger account copies, balance sheet and income tax assessment particulars of the creditor company before the Assessing Officer. It is also relevant to observe that the assessee has also furnished assessment order passed under section 143(3) of the Act for assessment year 2012–13 in case of Animation Marketing Pvt. Ltd., wherein the Assessing Officer has not recorded any adverse opinion either with regard to the activities of the creditor company or the genuineness of the loan transaction between the assessee and the creditor company. In contrast, the Assessing Officer has not conducted any independent enquiry to ascertain the creditworthiness of the creditor. Thus, from the aforesaid facts, it becomes clear that the assessee has discharged the primary onus cast under section 68 of the Act by proving the identity of the creditor, genuineness of the transaction as well as the creditworthiness of the creditor. It is also a

fact that the assessee has re-paid the loan along with interest to the creditor subsequently which is not only reflected in the respective books of account but also bank statements. The assessee has also deducted tax on the interest paid to the creditors and filed TDS return. Though, the Assessing Officer has alleged about suspicious entries in the bank account of Animation Marketing Pvt. Ltd., however, he has not elaborated why the entries in the bank account are suspicious. Further, on a perusal of the extracted portion of the Bank account it appears that subsequent to advancement of loan to the assessee there are further deposits and withdrawals of substantial amounts in the said bank account. Thus, it cannot be said that the loan transaction with the assessee is only a one off instance of transaction appearing in the bank account. Thus, on overall consideration of facts and material on record, we are of the view that learned Commissioner (Appeals) was justified in deleting the addition made by the Assessing Officer as none of the conditions of section 68 of the Act are satisfied. The grounds raised are dismissed.

6. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 17.12.2018

Sd/-
N. K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 17.12.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai