

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.811 & 812/Chny/2022
निर्धारण वर्ष /Assessment Years: 2010-11 & 2011-12

Mr.Ritesh Rai,
No.5, Ethiraj Lane, Egmore,
Chennai-600 105.

[PAN: ADXPR 9660 F]
(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by
सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of Pronouncement

v. The Dy. Commissioner-
of Income Tax,
Central Circle-2(3),
Chennai.

(प्रत्यर्थी/Respondent)

: Mr. B.Ramakrishnan, FCA
: Mr. R. Mohan Reddy, CIT
: 13.07.2023
: 19.07.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

These two appeals filed by the assessee are directed against common order passed by the Commissioner of Income Tax (Appeals)-18, Chennai, both dated 01.08.2022, and pertains to assessment years 2010-11 & 2011-12. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

2. The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2010-11, are re-produced as under:

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1. For that the Order of the Learned Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case

2. For that the Learned Commissioner of Income Tax (Appeals) erred in upholding the action of Assessing Officer in treating the Loan received from individuals amounting to Rs.1,12,94,904/- as bogus.

For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is prayed that the Hon'ble Tribunal may be pleased to delete the addition / disallowance made and/or provide such other relief as this Hon'ble Tribunal deems fit.

3. The assessee had also filed a petition for admission of additional grounds by way of letter dated 12.05.2023, and relevant additional grounds of appeal filed by the assessee is reproduced as under:

"...3. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the additions made by the AO in a case where no incriminating material was found during the course of search conducted on 26.09.2012."....

4. The brief facts of the case are that the assessee is the Managing Director of M/s.SBQ Steels Ltd., & M/s.RKKR Steels Ltd., and both companies are engaged in manufacture and sale of iron & steel bars. A search operation u/s.132 of the Income Tax Act, 1961 (in short "the Act") was conducted in the group cases on 26.09.2012, and as a part of search operation, the assessee's residence was also covered. Consequent to search. a notice u/s.153A of the Act, was issued on 15.07.2013, and accordingly, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee has received unsecured loans from various persons, and thus, called upon the assessee to file necessary details, including identity and genuineness of transactions. Since, the assessee could not furnish any evidences to establish the genuineness of the loans, the AO has made additions towards unsecured loans, and consequent interest paid on said loans. The assessee carried

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the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate order dated 01.08.2022, partly allowed the appeal filed by the assessee by observing that when the additions made towards loans and advances, includes interest paid/credited on said loans, then separate additions towards interest is not required. Thus, directed the AO to delete separate addition of Rs.2,94,904/- towards interest and sustained addition made towards unsecured loans. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld.Counsel for the assessee referring to the petition filed for admission of additional grounds submits that additional grounds taken by the assessee challenging the addition made towards unsecured loans in absence of incriminating material, is purely a legal issue which can be taken at any stage of proceedings, including proceedings pending before the Tribunal. Therefore, submits that additional grounds of appeal filed by the assessee may be admitted and decided in accordance with law. The Ld.Counsel for the assessee further submits that additions made by the AO towards unsecured loans is not backed by any incriminating material found as a result of search, and thus, in absence of any incriminating material, no addition can be made in the assessment framed u/s.143(3) r.w.s.153A of the Act, if such assessment is unabated/concluded as on the date of search. Since, the assessment for the impugned assessment years is unabated as on the date of search, no addition can be made, and thus,

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additions made by the AO should be deleted. The Ld.Counsel for the assessee further submits that in so far as AY 2011-12 is concerned, the assessee could not file necessary evidences to justify unsecured loans, and thus, the matter may be set aside to the file of the AO to give one more opportunity of hearing to the assessee.

6. The Ld.CIT-DR, Shri R. Mohan Reddy, supporting the order of the Ld.CIT(A), submits that the assessee is a part of group companies which are involved in taking bogus accommodation entries in the form of share capitals and loans from Kolkata Companies, and there is a direct link between entries obtained from Kolkata Companies in the case of group companies and loans taken by the assessee. Further, although, there is no direct reference to any incriminating material, the fact remains that the assessee was rotating funds from alleged entry providers in the form of loans which constitutes incriminating material, and thus, there is no merit in additional grounds filed by the assessee and same should be rejected. He further submits that the assessee could not file any evidences in support of various unsecured loans claims to have been received from certain parties, and thus, the AO & the Ld.CIT(A) has rightly made addition and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. After considering the petition filed by the assessee for admission of additional grounds, we find that grounds taken by the assessee is purely a legal ground which can

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be taken at any time of proceedings, including pending proceedings before the Tribunal, because, to adjudicate such grounds, there is no need to examine fresh facts. Therefore, we admit the additional grounds filed by the assessee for adjudication.

8. In so far as addition towards unsecured loans, it is a well settled principle of law by the decision of the Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell (P) Ltd., reported in [2023] 454 ITR 212 (SC) that in respect of completed assessment/unabated assessment, no addition can be made by the AO in absence of any incriminating material found during the course of search u/s.132 of the Act, or requisition made u/s.132A of the Act. The main arguments of the Ld.Counsel for the assessee in the additional grounds filed during the course of hearing is that additions made towards unsecured loans is not supported by incriminating material found during the course of search. We find that although, the AO has made additions towards unsecured loans for AY 2010-11, but there is no reference to incriminating material found during the course of search, which suggest undisclosed income in the form of unsecured loans taken from various persons. However, the AO has referred to *modus operandi* employed by the assessee and its group in taking bogus entries of unsecured loans and share capital from Kolkata Companies and same has been referred to in the order of the Ld.CIT(A). But, fact remains that in order to make any addition in the assessment framed u/s.143(3) r.w.s.153A of the Act, incriminating material for each assessment year is

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must if such assessment is unabated/completed on the date of search. In this case, there is no dispute with regard to fact that the assessment for AY 2010-11 is unabated/concluded on the date of search, because, the due date for issue of notice u/s.143(2) of the Act, was expired on 30.11.2011, which is much before the date of search on 26.09.2012. Therefore, we are of the considered view that in absence of incriminating material as a result of search, no addition can be made in the assessment framed u/s.143(3) r.w.s.153A of the Act, if such assessments are unabated on the date of search. However, fact remains that the Ld.CIT(A) has brought out clear fact to the effect that the assessee is a part of group companies which are involved in taking accommodation entries from alleged entry providers in the form of unsecured loans and share capital. Therefore, we are of the considered view that facts need to be verified to ascertain unsecured loans claimed to have been received by the assessee is having any nexus with bogus unsecured loans/share capital entries obtained by the assessee from Kolkata Companies. Hence, we set aside the issue of addition made towards unsecured loans for AY 2010-11 to the file of the AO and direct the AO to re-examine the claim of the assessee in light of the decision of the Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell (P) Ltd., and decide the issue in accordance with law.

9. In so far as AY 2011-12 is concerned, it was the arguments of the Ld.Counsel for the assessee that the assessee could not file necessary evidences to justify the loans taken from various persons, and thus, one

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more opportunity of hearing may be given to the assessee to justify its case. We find that since, the addition made towards unsecured loans for AY 2010-11 has been set aside to the file of the AO, a similar issue of addition made towards unsecured loans for AY 2011-12 also needs to be verified by the AO in light of evidences, if any, filed by the assessee to justify the loans. Thus, we set aside the issue of addition made towards unsecured loans for AY 2011-12 to the file of the AO and the AO is directed to re-examine the claim of the assessee in accordance with law.

10. In the result, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on the 19th day of July, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 19th July, 2023.

TLN

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

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT

4. विभागीय प्रतिनिधि/DR

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

5. गार्ड फाईल/GF