

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 7624/Del/2017
Assessment Year: 2014-15**

**Modern Overseas Pvt. Ltd.,
11027-A, Motia Khan,
New Delhi**

vs.

**Income-tax Officer,
Ward 17(1), New Delhi.**

**PAN : AAACM8982G
(Appellant)**

(Respondent)

Appellant by : Sh. M.P. Rastogi, Adv.
Respondent by: Sh. Ramesh Kumar, Sr. DR

Date of hearing: 05/07/2021

Date of order : 23 /07/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 16/10/2017 passed by the learned Commissioner of Income Tax (Appeals)-6, New Delhi ("Ld. CIT(A)") for the assessment year 2014-15, Modern Overseas Pvt. Ltd. ("the assessee") filed this appeal.

2. Brief facts of the case necessary for disposal of this appeal are that the assessee company is engaged in trading of animal husbandry, producing livestock, meat, hide and skin. For the assessment year 2014-15, it has filed its return of income on 29.11.2014 declaring income of Rs.14,53,310/-. During the assessment proceedings, Id. Assessing Officer

noticed from the balance sheet that the assessee company had taken unsecured loans from its directors to the tune of Rs.7,06,82,500/-. When called upon, the assessee explained that all the directors are directors in group companies, namely, M/s. Modern Overseas Pvt. Ltd. (assessee), M/s. Modsal Frozen Foods Pvt. Ltd. and M/s. Modern Enterprises, all of them having an inter-banking account with these three concerns. From time to time, they were depositing and withdrawing the amounts from these entities depending upon their business expediency; the amounts were flown from one concern to another through one director or the other; and there is no unaccounted or tainted money in these transactions. As such, the identity of the depositors, their capacity to advance such amounts and the genuineness of the transactions are beyond doubt.

3. Assessing Officer, however, did not agree with the submissions of the assessee and recoded that in so far as Mohd. Sayed is concerned, his total income is only Rs.9,64,940/- and the material placed by the assessee establishes that a sum of Rs.2,42,40,000/- was flown from assessee to Modsal Frozen Foods Pvt. Ltd. and from there to one Abdul Wahid from whom this Mohd Sayed borrowed the same to deposit a sum of Rs.2.46 crores with the assessee. Likewise, in case of Mohd. Naeem, the amounts were flown through different entities in the group of family concerns. Mohd. Naeem deposited a sum of Rs.1,65,20,750/- whereas his income is only Rs.9,69,420/-. In respect of Mohd. Saleem, Assessing Officer observed that his income was only Rs.9,09,008/- whereas the deposit was to the tune of Rs.5.55 lacs and since the bank statement of

Mohd. Saleem reflects some cash deposits prior to loan given to the assessee, an amount of Rs.1,48,400/- was disallowed.

4. Aggrieved by such an action of the Assessing Officer, assessee preferred appeal before the CIT(A). On a perusal of material available on record, CIT(A) also returned a finding that though the assessee filed the material like confirmations in respect of source of deposits by the Directors, bank statements, statements of the Directors with the assessee M/s. Modsal Frozen Foods Pvt. Ltd. and M/s. Modern Enterprises, the fact remains that such directors who advanced the loan, were not at all men of means for advancing such huge amounts of loan to the assessee and therefore, material is sufficient to show that unaccounted money of the assessee routed back in the form of unsecured loans. On this premise, Id. CIT(A) dismissed the appeal.

5. Assessee is, therefore, before us in this appeal, submitting that all the three persons who advanced the amounts to the assessee are directors of the assessee, they have been the tax payers, filing their returns of income quite for a long time, they are the directors in other family concerns like M/s. Modsal Frozen Foods Pvt. Ltd. and Modern Enterprises etc. and the fund flown among all the entities clearly establishes that only the accounted money that had flown to and fro amongst these entities and no amount was ever deposited or received from any third person and therefore, at any point of time, the sum total of the amount in the hands of these three entities and the directors was the same. It is submitted on behalf of the assessee that since the unsecured creditors who are the directors have been filing the returns of income quite for a long time and their particulars relating to ITRs and

banks are available with the department, it cannot be said that their identity is in doubt. Cash flow explanation by the assessee establishes their creditworthiness beyond doubt and mere income cannot be a criterion to determine the creditworthiness of the lender. Mere deposit of cash prior to the issuance of cheque cannot be a ground on its own to suspect the transaction because the businessmen are not expected to keep the cash in pocket and it is only as and when they re-structure their loans and investments, they withdraw the amounts from one concern, it would be deposited in bank and then they would be issuing the cheques which are quite normal and natural in business practice. Lastly, it is submitted that unless and until Revenue contends that any unaccounted or tainted money is involved in this flow of funds, it cannot be said that section 68 of the Income-tax Act, 1961 ("the Act") is attracted.

6. Learned DR vehemently places reliance on the orders of the authorities below and submitted that there is no reason for the assessee to route the amounts through Modsal Frozen Foods Pvt. Ltd., Abdul Wahid and Mohd. Sayed to deposit the very same amount with the assessee. Similar suspicious circumstances are surrounding the transactions in respect of Mohd. Naeem. In so far as Mohd. Saleem is concerned, there are cash deposits prior to issuance of cheques to the assessee. He, therefore, submitted that these suspicious circumstances have to be considered in the light of the decisions of the Apex Court in the case of Sumati Dayal vs Commissioner Of Income-Tax, 214 ITR 801(SC) and Commissioner of Income Tax v. Durga Prasad More, (1971) 82 ITR 540 (SC) and the appeal has to be dismissed.

7. We have gone through the material on record in the light of submissions made on either side. It is not disputed that the three unsecured creditors are the directors of the assessee company. Further, there is no denial of the fact that assessee as well as other family concerns, namely Modern Overseas Pvt. Ltd. (assessee), M/s. Modsal Frozen Foods Pvt. Ltd. and M/s. Modern Enterprises and also the directors who happened to be the unsecured creditors have been filing their returns of income and are being assessed by the department. There is also no dispute that no discrepancy was pointed out in respect to the accounts of assessee for the earlier two years and in respect of the other entities and individuals at any point of time.

8. Basing on these admitted facts, when we look at the material available on record, in so far as Mohd Sayed is concerned, there was a deposit of Rs.2,65,00,750/- and the serious dispute is in respect of Rs.2.46 crores; in respect of Mohd. Naeem, there is deposit of Rs.1,65,25,750/- and in respect of Mohd. Saleem, the addition is to the tune of Rs.1,48,650/-.

9. Case of the assessee is that in the books of assessee there is a credit entry in respect of M/s. Modsal Frozen Foods Pvt. Ltd. in its inter-banking account. It was so in respect of assessment years 2013-14 and 2014-15 also. The facts are demonstrated by ledger account at page No. 46 and 47 of the paper book. In discharge of this obligation towards M/s. Modsal Frozen Foods Pvt. Ltd., assessee paid a sum of Rs.2,42,40,000/- which M/s. Modsal Frozen Foods Pvt. Ltd. in turn paid to Abdul Wahid. Abdul Wahid gave such amount in loan to Mohd. Sayed who in turn deposited a sum of Rs.2,65,00,750/- with the assessee. All the relevant

record is available with the Assessing Officer. No adverse remark was passed as to the assessee owing sums to M/s. Modsal Frozen Foods Pvt. Ltd., in discharge of which amount was paid to M/s. Modsal Frozen Foods Pvt. Ltd. Subsequently, such an amount is found to be deposited with the assessee through Mohd. Sayed. It makes the things clear that the assessee discharged a sum to its creditor and the assessee also received a loan from one of its directors. At both the ends, the amount is accounted. Why the assessee discharged its obligation to M/s. Modsal Frozen Foods Pvt. Ltd. and why the assessee accepted loan from one of its directors need not be enquired by the Assessing Officer. Suffice it to record that the amount is neither tainted nor unaccounted. It is only the accounted money of the assessee that is used for the purpose of discharge of obligation. Therefore, it cannot be said that the amount paid to M/s. Modsal Frozen Foods Pvt. Ltd. is unaccounted money and on the same analogy amounts in the hands of Mohd. Sayed which was given as loan to the assessee cannot be unaccounted money.

10. In the same way, in so far as Mohd. Naeem is concerned, he is also having inter-banking account with the assessee, M/s. Modsal Frozen Foods Pvt. Ltd. and Modern Enterprises, as is demonstrated before us by way of page 52 to 55, 173 to 174, 160 and 177 of the paper book. There is no adverse comment on these accounts of any of these entities. It is not the case of Revenue that whatever the amounts that have been credited in the bank accounts of assessee were raised from any third person other than the group concerns. Further by filing the statement of account of Mohd. Naeem with the bank of Baroda and also with M/s. Modsal Frozen Foods Pvt. Ltd. as well as Modern Overseas Pvt. Ltd., it

was established that all the money that is circulated inter se the group concerns is that accounted money well reflected in the books and no any funds other than the withdrawals from the group concerns is found to have been deposited by Mohd. Naeem. In these circumstances, it is difficult to say that the money accounted in the books of these concerns and circulated from one concern to other is unaccounted money or tainted one.

11. Lastly, coming to Mohd. Saleem, there is no dispute that for the assessment year 2013-14, he declared an income of Rs.9,09,008/- and for the current assessment year, it was Rs.9,83,643/-. This declared sum is much more than the deposit of Rs.5.55 lacs and even according to the Assessing Officer, there were deposits in cash only to the extent of Rs.1,48,400/-. In these circumstances, it cannot be said that the unaccounted money of the assessee to the tune of Rs.1,48,400/- travelled back to the assessee through Mohd. Saleem.

12. As rightly contended by the Id. AR, the deposit need not always have any reference to the income earned during the year and creditworthiness is something more than the income during the year. It would include the assets of the person or investments so on and so forth. It is the capacity of the person to make the relevant deposits and it may be sourced in either investments or in loans or any borrowings etc. So far as this case is concerned, the flow of funds inter se the group concerns properly explains the creditworthiness of the creditors and there is no reason to suspect the business transactions which are recorded in the books. Hence, we are of the considered opinion that the identity of the creditors, their creditworthiness and genuineness of transactions are not

in doubt and are properly explained. We, therefore, do not find any merit in the stand taken by the Revenue and the authorities below. We accordingly direct the Assessing Officer to delete the additions.

13. In the result, appeal of assessee is allowed.

Order pronounced in the open court on this 23rd day of July, 2021.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 23 /07/2021
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