

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं./ I.T.A. No.4910/Mum/2019
 (निर्धारण वर्ष / Assessment Year: 2010-11)

FSK Builders & Developers Pvt. Ltd. 12, Naik Nagar, LBS Marg, Sion (W), Mumbai-400 022	बनाम/ Vs.	ITO – 6(2)(3), Mumbai – 400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACF-5821-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

2. आयकर अपील सं./ I.T.A. No.4317/Mum/2019
 (निर्धारण वर्ष / Assessment Year: 2010-11)

ITO – 6(2)(3), 5 th floor, Aaykar Bhavan M. K. Road, Mumbai-20	बनाम/ Vs.	FSK Builders & Developers Pvt. Ltd. 12, Naik Nagar, LBS Marg Sion (W), Mumbai-400 022
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACF-5821-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Mandar Vaidya, Ld. AR
Revenue by	:	Shri S. N. Kabra, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	25/10/2021
घोषणा की तारीख / Date of Pronouncement	:	01/11/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid cross appeals for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income-Tax (Appeals)-12, Mumbai [CIT(A)] dated 27/03/2019 in the matter of assessment framed

by Ld. Assessing Officer (AO) u/s 144 on 26/03/2013. The grounds urged by the revenue read as under: -

1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in restricting the addition u/s.68 of Rs.1,58,47,780/- out of unsecured loans in the assessment order passed u/s.144 dated 26/03/2013 to Rs.27,00,000/- as source of loan remained unsubstantiated therefore creditworthiness remained unproved?
2. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition u/s.69 of Rs.1,31,95,563/- in respect of advances, though the bank statements reflected the entries of the advances received but ignoring the fact that assessee could not furnish the confirmations from the parties and other documents in support and thereby, genuineness of the transactions remained unproved?
3. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition u/s.69B of Rs.1,95,00,000/- in respect of information on land purchase transactions?"
4. On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the addition made u/s.69B ignoring that the information on this account is received from the external agency.

As evident the revenue is aggrieved by deletion of certain additions as made by Ld. AO u/s 68, 69 & 69B. The only grievance of the assessee is confirmation of addition of Rs.27 Lacs as made by Ld. AO u/s 68.

2. Having gone through material on record and after considering rival submissions, our adjudication would be as under.

3. The material facts are that the assessee being resident corporate assessee stated to be engaged in construction activities was assessed on best judgment basis u/s 144 in view of the fact that it failed to furnish any details / information to Ld. AO. Consequently, following additions were made while framing the assessment: -

No.	Nature of Addition	Amt. (Rs.)
1.	Unsecured Loans u/s 68	Rs.158.47 Lacs
2.	Advances u/s 69	Rs.131.95 Lacs
3.	Sundry Creditors	Rs.68.50 Lacs
4.	Estimated stock in process	Rs.6.74 acs
5.	Amount paid for land u/s 69B	Rs.195 Lacs

4. During appellate proceedings, the assessee submitted additional evidences which were subjected to remand proceedings. After considering assessee's submissions and in the light of remand report, Ld. CIT(A) deleted all the additions except addition of Rs.27 Lacs as made by Ld. AO u/s 68. The said adjudication has given rise to cross appeals before us. The revenue has challenged the deletion of addition made u/s 68, 69 & 69B whereas the assessee is aggrieved by part confirmation of addition u/s 68.

5. The issue-wise factual matrix as well as our adjudication would be as given in succeeding paragraphs.

6. Unsecured Loans u/s 68

6.1 The assessee obtained unsecured loans aggregating to Rs.158.47 Lacs from certain parties including directors and group concerns as detailed in para 5.5 of the impugned order.

6.2 The loan of Rs.27 Lacs was obtained from 11 parties. In support of these loans, the assessee filed confirmations. However, other documents like ITR, financial statements, bank statements were not filed and therefore, the addition to that extent was confirmed.

6.3 The remaining loans of Rs.131.47 Lacs were received from 7 parties. Majority of the lenders were directors as well as group entities of the assessee. The assessee filed their respective confirmations, income Tax Returns, PAN and other details in support of the loans. It was noted by Ld. CIT(A) that all these persons / group entities were regular tax payers and their financials were available on record. Therefore, finding that the primary onus to prove the identity of the investors, their creditworthiness and genuineness was duly proved by the assessee, the additions were to be deleted, inter-alia, in terms of the decision of

Hon'ble Bombay High Court in the case of **CIT V/s Gagandeep Infrastructure Pvt. Ltd. [80 Taxmann.com 272]**.

6.4 Aggrieved, the assessee as well as revenue is in further appeal before us.

6.5 We find that the loans of Rs.131.47 Lacs were from directors and group entities and the assessee had filed requisite documents to substantiate these transactions during remand proceedings. It has been noted by Ld. CIT(A) that the Ld. AO has also accepted these transactions in the remand proceedings. It is fact that the assessee has discharged the primary onus as required u/s 68. Therefore, the additions have rightly been deleted by Ld. CIT(A) and no interference is required to that extent.

6.6 So far as the remaining additions of Rs.27 Lacs are concerned, we find that the assessee has merely filed confirmations and no other documents have been filed by the assessee in support of the transactions. The Ld. AR has submitted that these loans were procured from the market as per the requirement. However, the onus to prove the genuineness of the same is on the assessee. Therefore, with respect to these 11 parties, we remit the matter back to the file of Ld. CIT(A) with a direction to the assessee to file requisite documentary evidences to establish the genuineness of the same.

6.7 The grounds raised by the assessee stand allowed for statistical purposes whereas the grounds raised by the revenue stand dismissed.

7. Advances u/s 69

7.1 The assessee made advances of Rs.131.95 Lacs towards purchase of land to various parties which were added by Ld. AO as unexplained investments u/s 69. It was noted by Ld. CIT(A) that the

transactions were through banking channels and reflected in assessee's regular books of accounts. Therefore, the provisions of Sec.69 were not applicable. These provisions would apply only in case the investments were unexplained investments and not recorded in regular books of account. Therefore, the additions were deleted against which the revenue is in further appeal before us.

7.2 The factual matrix, as noted by Ld. CIT(A), remain undisputed before us. The investments made by the assessee are part of regular books of accounts and therefore, the same could not be held to be unexplained investment u/s 69. The ground raised by the revenue stand dismissed.

8. Amount paid for land

8.1 The assessee made payment of Rs.50 Lacs to one Shri Sanjay Sonawane for purchase of land which was through banking channels and reflected in the regular books of accounts. However, during survey action on Shri Sanjay Sonawane, certain loose papers were found which indicated that the assessee made payment of Rs.195 Lacs in cash towards purchase of land and therefore, the amount of Rs.195 Lacs was added u/s 69B. The assessee denied having paid any cash and assailed the additions made by Ld. AO merely on the basis of loose paper found from a third party. The assessee submitted that no addition could be made without cross-examination and no addition could be made merely on the basis of loose paper as held by Hon'ble Apex Court in **V.C.Shukla AIR 1998 SCC 410.**

8.2 The Ld. CIT(A) concurred that the person making the allegations had to prove the same. The onus was on AO to supply to impounded documents to the assessee along with an opportunity to cross-examine

Shri Sanjay Sonawane. In fact, no statement was recorded from Shri Sanjay Sonawane and therefore the additions were unsustainable in terms of the decision of Hon'ble Supreme Court in the case of **M/s Andaman Timber Industries V/s CCE (CA No.4228 of 2006 dated 02/09/2015)**. In the absence of any corroborative evidence and without affording opportunity of cross-examination, the addition could not be made. Finally, the additions were deleted against which the revenue is in further appeal before us.

8.3 Going by the factual matrix as enumerated above, we find that the issue has been clinched very correctly by Ld. CIT(A). The allegation of Ld. AO as well as consequent addition made in the hands of the assessee has no legs to stand. The additions are based on surmises and presumptions without there being any corroborative evidence on record. The adverse material has never been confronted to the assessee and the allegations of cash payment are bereft of any concrete evidence on record. Hence, the adjudication do not call for any interference on our part. The ground raised by the revenue stand dismissed.

Conclusion

9. The revenue's appeal stand dismissed whereas the assessee's appeal stand allowed for statistical purposes.

Order pronounced on 01st November 2021

Sd/–
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/–
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/11/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.

Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached	Directly Typed on Computer / Laptop		Sr.PS/PS
2	Draft dictated on	Not Applicable/		Sr.PS/PS
3	Draft Placed before author	Not Applicable		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS	02.11.2021		Sr.PS/PS
7	Order pronouncement on	01.11.2021		Sr.PS/PS
8	File sent to the Bench Clerk	02.11.2021		Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			