

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.4281/Mum/2015
(Assessment Year :2011-12)**

ACIT-33(3), Room No.409, 4 th Floor Bldg. No.C-13, Pratyakshakar Bhavan Bandra Kurla Complex Bandra (E) Mumbai – 400 051	Vs.	Mr. Vinodkumar Shyamsingh Yadav A-302, Thakur Complex Videocon Tower Poisar Gokul Hospital Kandivali – (E)- 400 101
PAN/GIR No. AAFPY0445G		
(Appellant)	..	(Respondent)

**CO No.92/Mum/2017
(Arising out of ITA No.4281/Mum/2015)
(Assessment Year :2011-12)**

Mr. Vinodkumar Shyamsingh Yadav A-302, Thakur Complex Videocon Tower Poisar Gokul Hospital Kandivali – (E)- 400 101	Vs.	ACIT-33(3), Room No.409, 4 th Floor Bldg. No.C-13, Pratyakshakar Bhavan Bandra Kurla Complex Bandra (E) Mumbai – 400 051
PAN/GIR No. AAFPY0445G		
(Appellant)	..	(Respondent)

Revenue by	Shri Rajeev Gubgotra
Assessee by	Shri Vishnu Agarwal / Shri Ankush Agarwal
Date of Hearing	23/07/2019
Date of Pronouncement	18/09/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.4281/Mum/2015 and Cross Objection No.92/Mum/2015 for A.Y.2011-12 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-45, Mumbai in appeal No.CIT(A)-45/JCIT-33(3)/ITA-10/14-15 dated 30/04/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/02/2014 by the Id. Joint Commissioner of Income Tax, Range- 25(3), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal of the revenue is as to whether the Id CITA was justified in deleting the addition of Rs 1,18,00,000/- towards unsecured loan in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is an individual and had filed his return of income for the Asst Year 2011-12 on 20.5.2011 declaring total income of Rs 2,21,20,900/- comprising of income from house property business & profession and other sources. The Id AO observed that the assessee had shown unsecured loan of Rs 1,18,00,000/- from four parties as under:-

Arabian Sea Food	- Rs 78,00,000/-
Shatrunjaya Estate Pvt Ltd	- Rs 20,00,000/-
Nikita M Gogar	- Rs 10,00,000/-
Usha J Chauhan	- Rs 10,00,000/-

	Rs 1,18,00,000/-

The assessee was asked to establish the identity, creditworthiness and genuineness of unsecured loans. The assessee furnished a copy of acknowledgement of return of income and confirmation of said parties.

3.1. With regard to Arabian Sea Food, the Id AO observed that on verification of copy of acknowledgement of return, the said entity had returned a loss of Rs 9,75,086/- and accordingly concluded that it did not have creditworthiness to advance monies to the assessee. The assessee also undertook to produce the party before the Id AO for examination but failed to do so. In these circumstances, the Id AO concluded that the assessee had not proved the three main ingredients of section 68 of the Act viz, identity of the creditor, creditworthiness of the creditor and genuineness of transactions with regard to loan received from Arabian Sea Food and added the sum of Rs 78,00,000/- as unexplained cash credit in the assessment.

3.2. With regard to Shantrunjaya Estate Pvt Ltd , the Id AO reiterated his version as was made for Arabian Sea Food above and added the sum of Rs 20,00,000/- as unexplained cash credit in the assessment.

3.3. With regard to Smt Nikita Mahesh Sagar, the Id AO observed that on verification of copy of acknowledgement of return, the said person had returned an income of Rs 2,01,438/- and from verification of her bank statement, an amount of Rs 10,00,000/- was deposited by clearing on 10.11.2010 and the said sum on clearing was used to advance loan to the assessee. The Id AO observed that there were no major transactions for the next three months in the said bank statement of the lender. The lender filed an affidavit before the Id AO stating that her source of income is from tailoring. The Id AO observed that the said affidavit of the assessee was examined and it lacks verification. Accordingly he concluded that the assessee had failed to prove the genuineness of the affidavit and hence rejected the same as not having any evidentiary

value. Considering all these circumstances and human probabilities, the Id AO added the sum of Rs 10,00,000/- as unexplained cash credit in the assessment with regard to loan received from Smt Nikita Mahesh Sagar.

3.4. With regard to Smt Usha Chauhan, the Id AO observed that on verification of copy of acknowledgement of return, the said person had returned an income of Rs 1,95,712/- and from verification of her bank statement, an amount of Rs 10,00,000/- was deposited by clearing on 9.11.2010 and the said sum on clearing was used to advance loan to the assessee. The Id AO observed that there were no major transactions for the next three months in the said bank statement of the lender. The lender filed an affidavit before the Id AO stating that her source of income is from business of embroidery works. The Id AO observed that the said affidavit of the assessee was examined and it lacks verification. Accordingly he concluded that the assessee had failed to prove the genuineness of the affidavit and hence rejected the same as not having any evidentiary value. Considering all these circumstances and human probabilities, the Id AO added the sum of Rs 10,00,000/- as unexplained cash credit in the assessment with regard to loan received from Smt Usha Chauhan.

3.5. Accordingly, the loans received from aforesaid parties in the total sum of Rs 1,18,00,000/- was added as unexplained cash credit u/s 68 of the Act in the assessment.

4. The assessee pleaded that the following documents were submitted before the Id AO :-

- a) Name and address of the lenders together with their PAN.
- b) Copy of loan confirmation duly signed by the assessee as well as the concerned lender from whom the loan has been taken.
- c) Copy of return of income of the parties from whom loan has been taken.
- d) Bank pass book of two parties highlighting the relevant loan transactions.
- e) PAN card copy of lenders.
- f) Affidavits from Smt Nikita Mahesh Sagar and Smt Usha Chauhan wherein they had affirmed that they were carrying on business of tailoring and embroidery works for the past 15 and 30 years respectively. The said affidavit also contained their income tax assessment particulars and also their respective source for advancing loans to the assessee herein.

It was further pleaded before the Id AO that all the loan transactions were carried out through regular banking channels by account payee cheques and that the said loans were also duly repaid by the assessee in subsequent years.

5. The Id CITA deleted the addition made u/s 68 of the Act in respect of loans received from aforesaid 4 parties by observing as under:-

“5.7 I have considered the submissions of the representative and the stand taken by the A.O. and decision relied upon by both the AO and the appellant. In the case of Arabian Foods , it is the main contention of the AO that the lender has a loss return and that the party was not

produced for examination. The appellant on the other hand has submitted that the PAN was provided, along with return and the copy of loan confirmation duly filed and also the Bank passbook. In light of these facts, I am in agreement with the submission of the appellant that his onus stands discharged. It is also an important fact that the entire loan has been repaid in the subsequent year. In the case of Shatrunjaya Estate, it is the AOs contention that the return filed by the donor was of only Rs. 409/-. The AO however has no specific reason to doubt the genuineness of the loan, considering that the assessee had filed a confirmed copy of the loan transaction and the PAN. Also the loan has been returned in the subsequent year. In the case of Nikita Sagar, the assessee has submitted the bank passbook copy. The only observation that the AO has made is that there is a deposit on 10.11.2010 of Rs. 10 lacs and that there is withdrawal on 12.11.2010. I am in agreement with the appellant that this alone cannot be reason to doubt the genuineness of the loan in light of the confirmation given including the return and the PAN and the bank passbook. Similar is the fact in the loan from Usha Chauhan. It is further observed that all the loan transactions are through account payee cheques. In this regard the number of judicial decisions cited by the appellant are found to have a direct bearing on the facts of the appellant where all the loans have been received by account payee cheques. Therefore, in light of all the above observations I am of the considered view that the addition on account of unexplained cash credit requires to be deleted.”

6. Aggrieved, the revenue is in appeal before us.

7. We have heard the rival submissions and perused the materials available on record. At the outset, we find that the assessee had furnished the complete details of the loan creditors in the instant case before the Id AO as detailed hereinabove. With regard to Arabian Sea Food and Shatrunjaya Estates Pvt Ltd , the assessee had not produced the bank statement of the loan creditors as the same was not in the control of the assessee and this fact was also informed to the Id AO at the time of assessment proceedings. The main grievance of the Id DR was that the assessee had not submitted the bank statements of these two loan creditors before the Id AO and hence creditworthiness of those parties were not proved by the assessee. We find that the Id AO having

known that the assessee was not having control over the bank statements of lending entities, could have issued notice u/s 133(6) of the Act or summons u/s 131 of the Act to those parties seeking for their bank statements. In the instant case, the Id AO had failed to do so. All the primary documents that are in possession of the assessee as a borrower were duly placed on record before the Id AO and thereafter the onus shifts to the Id AO, which was not discharged by the Id AO in the instant case. This would be more so, when the assessee had submitted his bank statements even for the subsequent year to prove that the said loans were duly repaid by him to the concerned lenders. It is not in dispute that these loan creditors are duly assessed to income tax and their income tax assessment particulars together with their addresses were on record. The Id AO without making even the basic verification with the lenders by using the statutory powers vested in him u/s 133(6) or u/s 131 of the Act , cannot simply make an addition towards the unsecured loans as unexplained cash credit merely on surmise and conjecture. Hence we direct the Id AO to delete the addition made in respect of loans received from Arabian Sea Food and Shatrunjaya Estate Pvt Ltd in the sums of Rs 78 lacs and Rs 20 lacs respectively.

7.1. With regard to loans received from Smt Nikita Mahesh Sagar and Smt Usha Chauhan, we find that apart from primary documents , the assessee had also furnished the bank statements of the lenders and an affidavit from them confirming the entire loan transactions with the assessee. We find that the Id AO had merely disregarded this affidavit by stating that the same lacks verification. Even in this case, no verification was carried out by the Id AO either u/s 133(6) or u/s 131 of the Act to clear the doubts that were in mind of the Id AO with regard to the veracity of the loan creditors. It is not in dispute that these loan creditors are duly

assessed to income tax and their income tax assessment particulars together with their addresses were on record. We find that both these parties had duly affirmed in their affidavit that they were engaged in respective businesses for the past 15 and 30 years respectively. Hence the availability of source in their hands stands proved beyond doubt. Hence by mere surmise and conjecture, the Id AO had resorted to disbelieve the loan transactions with these two parties , which in our considered opinion, deserves to be deleted.

7.2. We hold that the Id CITA had rightly deleted the addition made towards unsecured loan in the sum of Rs 1,18,00,000/- which do not require any interference. Accordingly, the grounds raised by the revenue are dismissed.

Assessee Cross Objection No. 92/Mum/2017

8. At the outset, we find that there is a delay of 52 days in preferring this cross objection by the assessee before us. In this regard, we find that the assessee had filed an affidavit stating that he was dependent on his chartered accountant as he he was not conversant with income tax laws and that his chartered accountant had not advised him at that point in time to prefer cross objections before this tribunal. This was further supplemented by a separate affidavit from the concerned chartered accountant. Hence in these circumstances, in the interest of substantial justice , we are inclined to condone the delay of 52 days in preferring the cross objection before us by the assessee and admit the same for adjudication.

9. The grounds raised in the cross objections are as under:-

1. On the facts and circumstances and in law, the learned ACIT 33(3), Mumbai (ACIT) erred in assessing Business Income as Income from Other Sources.

2. Without prejudice to the above, the learned ACIT erred in assessing Business Income of Rs 2,20,20,125/- (i.e Net) as Income from Other Sources at Rs 2,57,79,500/- (ie Gross amount) without giving any finding.

3. On the facts and circumstances and in law, it is apparent that the learned ACIT erred in simply disallowing the direct expenditure claimed vis-à-vis business income and assessing gross business income as Income from Other Sources without any finding.

4. On the facts and circumstances, the Respondent prays that the Business Income offered in the Return of Income at Rs 2,20,20,125/- (i.e Net amount) may be assessed as Business Income instead of Income from Other Sources & oblige.

10. We have heard the rival submissions. We find that the Id AO at the first page of his assessment order had categorically accepted the fact that the assessee had also derived income from business and profession , among others. From the perusal of the return of income for the year under consideration, which is part of the paper book before us, we find that the assessee had offered a sum of Rs 2,20,20,125/- (net income) under the head 'Income from Business' . This is comprising of gross receipts of Rs 2,57,79,500/- minus direct expenditure of Rs 37,59,375/- . The incurrance of these direct expenditure to the tune of Rs 37,59,375/- is not in dispute. However, the crucial point to be addressed is that the net income of Rs 2,20,20,125/- was sought to be assessed as income from other sources by the Id AO on the ground that the assessee had not proved the list of parties from whom the said sums were received. But we find that the Id AO had already accepted the fact that assessee has been engaged in doing business and deriving business income. Having observed so, the Id AO cannot take a divergent stand by assessing the

said receipts as income from other sources. Moreover, we find that the Id AR stated before us that assessee is a Slum Rehabilitation Project Consultant and the major expenditure claimed is only towards Depreciation on assets to the tune of Rs 20,48,125/- . He also stated that the depreciation on assets was allowed by the Id CITA in Asst Year 2013-14 in assessee's own case against which the revenue had not preferred any appeal before this tribunal. We find from the paper book that assessee had duly offered income from business as under:-

Asst Year 2010-11	- Rs	51,25,750/-	E- Return filed on 30.8.2010
Asst Year 2012-13	- Rs	2,33,43,493/-	E- Return filed on 29.3.2013

We find that the Id CITA in Asst Year 2013-14 in Appeal No. CIT(A)-45/ACIT-33(3)/ITA-160/2016-17 dated 23.7.2018 had accepted the fact that the assessee was engaged in the actual business of consultancy to SRA projects of Kamla Mills group, wherein he has to negotiate with the slum dwellers / squatters and get them agree/vacated with compensation/ incentive or an alternate accommodation in the constructed SRA tower. For this he used to get the money from the builders which he used to deposit in the bank account. The Id CITA in that order categorically observed that assessee was doing similar business in earlier years and nature of business was mentioned as 'service sector' in the audit report. Hence it is proved beyond doubt that assessee was deriving business income during the year under consideration. Hence we direct the Id AO to treat the net income of Rs 2,20,20,125/- as income from business i.e gross business receipts of Rs 2,57,79,500/- minus business expenditure of Rs 37,59,375/-. Accordingly, the grounds raised by the assessee in his cross objections are allowed.

11. In the result, the appeal of the revenue is dismissed and cross objection of the assessee is allowed.

Order pronounced in the open court on this 18/09/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 18/09/2019
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai