

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER  
AND SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**  
I.T.A. No.7692/M/2014 (Assessment Year: **2010-2011**)

ACIT, Circle-3, R.No.02, 6 <sup>th</sup> Floor, Ashar IT Park, B-Wing, Wagle Indl. Estate, Thane (W)-400604.	बनाम/ Vs.	M/s. Shah Family Trust, 4, Deepak Coop Housing Society, Dr. Moose Road, Near Talao Pali, Thane (W)- 400602.
स्थायी लेखा सं./PAN : AAAAS0987P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Rajesh Kumar, CIT-DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Subodh Rathnaparkhi

सुनवाई की तारीख / Date of Hearing : 02.03.2017

घोषणा की तारीख /Date of Pronouncement : 17.03.2017

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the Revenue on 26.12.2014 is against the order of the CIT (A)-1, Mumbai dated 5.9.2014 for the assessment year 2010-11. In this appeal, Revenue raised the following the grounds which read as under:-

- "1. Whether on the facts and circumstances of the case and in law, Ld CIT (A) erred in deleting the addition of Rs. 1,47,23,294/- towards unsecured loans treated as income from other sources.
2. Whether on the facts and circumstances in law, the Ld CIT (A) erred in appreciating the facts that in some instances the unsecured loans were merely carried forward from year to year since FY 2002-03 and 2003-04 without any commercial expediency.
3. whether on the facts and circumstances of the case and in law, Ld CIT (A) erred in deleting the addition towards interest of Rs. 16,83,933/- on unsecured loans.
4. Whether on the facts and circumstances of the case and in law, the Ld CIT (A) failed to appreciate the facts that out of total 68 loan creditors, 46 creditors did not have income chargeable to tax, inspite of the fact that loan advanced was ranging from Rs. 1.5 lakh to Rs. 3 lakhs.
5. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in deleting the addition of Rs. 31,64,640/- on account of house property treated as business income by the AO.
6. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in appreciating the fact that the entire income has been earned by the assessee through rent receipts which was the sole activity of the

*assessee. This act of the assessee constitutes to exploiting the property for its commercial business activity."*

2. At the outset, Id Counsel for the assessee brought our attention to the above grounds and demonstrated that there are couple of issues for adjudication of which the first one relates to the addition on unsecured loan and disallowance on interest payment claims. Second issue relates to the proper head of income for taxing the rent received from the house property.

3. Referring to the first issue, Ld Counsel for the assessee submitted that the AO made addition of Rs. 1,47,23,294/- on account of 'unsecured loans' under the head 'income from other sources' ignoring the fact that all the loans exceeding Rs. 25 lakhs constitute old loans, which must not be brought to tax in the year under consideration. After considering the same ie the old loans, CIT (A) granted relief to the assessee. In our view, the order of the CIT (A) on this issue is fair and reasonable. Regarding the balance of Rs. 25 lakhs, it is an undisputed fact that the assessee filed confirmation letters and demonstrated with evidence that the creditors are genuine and they are tax payers with creditworthiness to lend the loans to the assessee. On appreciating the same, CIT (A) granted relief to the assessee as per the discussion given in para 10 to 12 of his order. On perusal of the said paras 10-12 of the CIT (A)'s order, we find the decision of the CIT (A) is fair and reasonable on this issue too. So far as the claim of interest expenditure is concerned, CIT (A) granted relief considering the fact that the loans are genuine and no addition can be made in the year under consideration. As evident from the para 15 of the CIT (A)'s order, the AO in his order reasoned that Form No.15G was not furnished. On this issue, it is the finding of the CIT (A) that the said Form No.15G was filed before the CIT (A)-Thane on 7.4.2010. This fact was not refuted by the Revenue. Therefore, we are of the opinion, the disallowance of interest on this grounds does not survive. Therefore, the order of the CIT (A) is fair and reasonable on this also. Accordingly, this issue is allowed in favour of the assessee and the relevant ground raised by the Revenue is dismissed.

4. The second issue relates to the proper head of income for taxing the rental income earned from the commercial shops acquired by the assessee. In the year under consideration, assessee earned rental income amounting to Rs. 88,62,645/- out of the commercial shops and the same was not accepted by the AO. AO treated

the same under the head 'profits and gains from business or profession'. In this regard, as mentioned in para 17 of the CIT (A)'s order, AO reasoned that the entire income earned by the assessee through renting of the shops and the same constitutes 'business income'. But in the process, assessee explained that the object of the Trust is in tune with the above investment in shops and earning of rental income and therefore, the same cannot be treated as 'business income'. The said explanation was rejected by the AO. Matter travelled to the first appellate authority. In the first appellate proceedings, CIT (A) relied on various decisions including the judgment of the Apex Court in the case of Shambhu Investment (P) Ltd vs. CIT (263 ITR 143 (SC) and held that the claim of the assessee is reasonable considering the objects and the activities of the Trust. CIT (A) also held that the activity of earning the above income does not involve any systematic business activity clubbed with any additional service. It is mainly renting the premises to the tenants with no other services rendered to them. As per the discussion given in para 20 of the impugned order, CIT (A) granted relief in favour of the assessee. Aggrieved, Revenue is in appeal before the Tribunal. During the proceedings before us, Ld Representatives of both the parties relied on respective arguments to advance their points of view.

After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the relevant material placed before us, we find, this is a case where the assessee invested funds in the shops rented out to the commercial establishments in view of the rent received from the said tenants. Revenue has not made out any case regarding any systematic business activities undertaken by the assessee in this regard. Considering the same and the cited judgment of the Apex Court in the case of Shambhu Investment (P) Ltd (supra), we are of the considered opinion that the conclusions drawn by the CIT (A) in para 20 of his order are fair and reasonable and it does not call for any interference. Accordingly, relevant ground raised by the Revenue is dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 17<sup>th</sup> March, 2017.

Sd/-

**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 17.03.2017

Sd/-

**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

व.नि.स./ OKK, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**