

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

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.4275/M/2013  
Assessment Year: 1998-99**

Shri Indra Kumar Patodia, Residing at B/1206, Abrol Vastu Park, Evershine Nagar, Malad (West), Mumbai – 400 064 <b>PAN: AACPP 1552E</b>	Vs.	Income Tax Officer 24(2)(4), Marine Lines, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Bharat Gandhi, A.R.  
Revenue by : Shri B.C.S. Naik, D.R.

Date of Hearing : 07.12.2015  
Date of Pronouncement : 03 .02.2016

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 06.03.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 1998-99.

2. The assessee has agitated the rejection of additional evidences sought to be produced by the assessee in relation to the loan confirmations filed by certain parties other than the 15 parties in relation to which the additional evidences have been admitted by the Assessing Officer (hereinafter referred to as the AO) as per directions of the ITAT given vide order dated 13.05.08.

3. The brief facts of the case are that the original assessment was completed in this case u/s.143(3) on 28.3.2001 determining the total income of assessee at Rs.83,58,250/-. The major addition made by the AO was on

account of new loans amounting to Rs.77,53,501/-. Aggrieved by the addition so made, the assessee filed an appeal before the Ld. CIT(A). Vide order dated 5.2.2004, the Ld. CIT(A) dismissed the appeal. The assessee preferred further appeal before the ITAT. The ITAT vide its order dated 13.5.2008 passed in ITANo.465/MUM/2004 admitted the additional evidence sought to be produced by the assessee in relation to 15 parties as discussed in para 9 of the said order and accordingly remitted the issue back to the AO for fresh adjudication in relation to 15 parties only and confirmed the addition in respect of other parties. The relevant observations of the tribunal are reproduced as under:

"9. We have considered the rival submissions and perused the record of the case. At the outset, we may point out that that the assessee has not disputed the findings of the learned C/T(A) in respect of the lenders except those in respect of whom the assessee has adduced additional evidences as noted earlier. The aggregate amount of these loans is mentioned in para (6) &(7) above. 117 the affidavit, the assessee has specifically given date of summary suit which are after the date of passing the learned CIT(A) order. The confirmation in respect of six parties has been obtained on 18.3.2008. Thus, these documents were not available before the lower authorities and therefore in order to impart substantial justice, we admit these additional evidences and restore the matter back to the file of the Assessing Officer who will examine these evidences afresh, We may also clarify that since the matter is very old, the onus will be entirely on the assessee to substantiate its claim in regard to all the three ingredients of section 68 of the Act. We are in agreement with the plea of the learned D.R. that 9 parties covered by summary suit out of 15 parties, only identity of the parties stands established but the credit worthiness and genuineness of the transaction is still to be established by the assessee. The Assessing Officer is directed to re-adjudicate the issue in respect of above mentioned 15 parties in terms of the aforementioned observations after affording reasonable opportunity of hearing to the assessee.

10. In the result, we confirm the action of the Id. CIT(A) in respect of loan creditors other than 15 loan creditors noted in para 6 & 7 of this order. Accordingly, the assessee's appeal is partly allowed for statistical purposes in terms of observations made in para 9 of this order qua 15 loan creditors."

4. Thus a specific direction was given to the AO to re-adjudicate the claim of loan only in respect of 15 parties for which additional evidences were filed before it. In para 10, a clear finding was given by the ITAT in

confirming the action of the Ld. CIT(A) dismissing the claim of the assessee in respect of loan creditors other than the 15 loan creditors mentioned above.

5. In the set-aside proceedings, the AO, as per the specific direction of the ITAT, considered the evidences filed in respect of 15 parties. The assessee, however, wanted to file loan confirmations in respect of the other/remaining parties also, but the AO rejected the same as there was no direction of the ITAT in that respect and further that the additions made by the AO in respect of such other parties have been confirmed by the ITAT.

6. After the assessment was completed by the AO in the set aside proceedings in terms of the order dated 13.5.2008 of the ITAT, a Miscellaneous Application was filed by the assessee before the ITAT on 18.1.2010 against the order dated 13.5.2008 of the ITAT whereby the assessee sought the extension of the direction of filing additional evidences in respect of other parties also. The ITAT, however, vide its order dated 13.8.2010 passed in M.A.No.111 of 2010 dismissed the Miscellaneous Application filed by the assessee. The relevant part of the findings of the ITAT is reproduced as under:-

"The assessee has relied on the decision of the Hon'ble Bombay High Court in the case of SushilaShantilalJhaveri vs. Union of India and Another, 286 ITR 426(Bom.) and the decision of the Hon'ble Supreme Court reported in 2007 S. C. C. for the proposition that evidence of subsequent event nature which goes to the root of the matter should be allowed. Rule 29 of 1TAT Rules, is primarily based on the principles laid down in these decisions only but in 254(2) proceedings, the Tribunal cannot review its earlier order, which in effect, Ld. Counsel wants it to do. We, therefore, dismiss the miscellaneous application.

In the result, M.A. filed by the assessee is dismissed,"

7. Against the above order of the Tribunal, the assessee filed a Writ Petition before the Hon'ble Bombay High Court vide Writ Petition No.2364 of 2010. In the Writ Petition, the assessee agitated that the AO had erroneously declined to consider the additional evidence filed and hence the Petitioner had no option but to move the ITAT by M.A and the M.A. should have been

allowed by the ITAT. The Hon'ble High Court has given its finding in para 6 & 7 of its order dated 01.02.2011 which is reproduced as under:-

“6. In our opinion, the challenge to the assessment order dated 29.12.2009 cannot be entertained as the assessee has an alternate remedy of filing an appeal and agitate the issue as to whether the Assessing Officer was bound to consider the additional evidence other than those permitted by the ITAT, by filing an appeal.

7. As regards the challenge to the order of the Tribunal in rejecting the Miscellaneous Application is concerned, in our opinion, no fault can be found with the order of the Tribunal because the Tribunal has no power to review. Once the Tribunal has disposed off the appeal on merits, the ITAT cannot review its order. Civil Courts have been expressly granted power of review in the Code of Civil Procedure. No such powers are conferred upon the ITAT under the Income Tax Act. Hence, no fault can be found with the order of the Tribunal in rejecting the Miscellaneous Application filed by the Petitioner.

8. Strong reliance was placed by the counsel for the petitioner on the decisions of the Apex Court in the case of Board of Control for Cricket, India v/s. Netaji Cricket Club reported in A.I.R. 2005 Supreme Court, 592 and Inderchand Jain (Dead) Through LR's V/s. Motilal (Dead) through LR's reported in (2009) 14 Supreme Court Cases, 663. In our opinion, both the aforesaid decisions have no relevance to the facts of the present case, because, those decisions relate to the review power of the Civil Courts under the provisions of the Civil Procedure Code. No such provisions are there in the Income Tax Act. Hence, both the aforesaid decisions have no relevance to the facts of the present case.

9. Similarly, reliance placed on the decisions of this Court in the case of Smt. Prabhavati S. Shah V/s. Commissioner of Income Tax reported in (1998) 231 ITR 1 and Sushila Shantilal Jhaveri V/s. Union of India & Anr. reported in [2006] 286 ITR 428 (Bom) are also misplaced, because, in both the aforesaid cases, the issue was regarding allowability of the additional evidence before the disposal of the appeal by the ITAT and not after the disposal of the appeal by the ITAT. Therefore, these two decisions also do not support the case of the petitioner.”

8. After the disposal of the writ petition, the assessee preferred appeal before the Ld. CIT(A) against the order of the AO dated 29.12.09 passed by the AO in compliance of the order dated 13.05.08 of the ITAT. The Ld. CIT(A), however, dismissed the appeal of the assessee firstly on the ground of limitation and secondly holding that the AO had no jurisdiction or authority to admit additional evidences in relation to other parties also except those 15 parties in relation to which the ITAT vide order dated 13.05.08 had set aside the matter to the file of the AO. Being aggrieved by the order of the Ld.

CIT(A), the assessee has come in appeal before us.

9. We have heard the rival contentions and have also gone through the records. Our attention was invited by the Ld. D.R. towards para 9 of the order dated 13.05.08 of the Tribunal passed in assessee's appeal bearing ITA No.4652/M/04. The Tribunal has recorded a specific observation that the assessee has not disputed the finding of the Ld. CIT(A) in respect of the lenders except those in respect of whom the assessee has adduced additional evidences. The Tribunal has directed the AO to re-adjudicate the issue in respect of 15 parties as mentioned in para 9 of the order. However, the Tribunal has confirmed the additions in respect of loan creditors other than 15 loan creditors. The assessee did not prefer any appeal against the said order of the Tribunal dated 13.05.08 to the Hon'ble High Court. Hence, the findings of the Tribunal dated 13.05.08 attained finality. The AO was supposed to give effect to the directions of the Tribunal in letter and spirit. The AO was specifically directed by the Tribunal to admit additional evidences in respect of 15 parties only as detailed in the relevant paras of the order and the additions made by the AO in respect of other parties were upheld/confirmed by the Tribunal. The assessee was, thus, precluded from agitating the additions in respect of other parties as the additions in respect of other parties in the set aside proceedings before the AO, have already been upheld/confirmed by the Tribunal and there being no appeal filed by the assessee against the order of the Tribunal, the said confirmations/decision of the Tribunal have become final. Though the assessee filed a miscellaneous application before the Tribunal vide which the assessee sought to amend the order of the Tribunal seeking similar directions of additional evidence in respect of other loan creditors also, but the said application of the assessee, as discussed above, was dismissed by the Tribunal. The assessee filed writ petition against the said dismissal of miscellaneous application but that too has been dismissed by the Hon'ble Bombay High Court as discussed above. We find that the Hon'ble

Bombay High Court has also discussed the point and the decisions relied upon by the assessee and has held that the decisions relied on by the assessee had no relevance to the facts of the case as the issue in those cases was regarding the allowability of the additional evidence before the disposal of the appeal by the ITAT and not after the disposal of the appeal by the ITAT. Now the contention of the Ld. A.R. of the assessee is that the Hon'ble Bombay High Court in para 6 of its order has observed that the challenge to assessment order dated 29.12.09 cannot be entertained as the assessee has an alternate remedy of filing an appeal before Ld. CIT(A) and agitate as to whether the AO was bound to consider the additional evidence other than those permitted by the ITAT.

10. In our view, the above observations of the Hon'ble Bombay High Court do not contain any direction or proposition of law that the assessee will be having any right to file additional evidences in relation to other loan creditors in respect of which the additions have already been confirmed by the ITAT and the order has attained finality. In para 6 of the order, the Hon'ble Bombay High Court has just made an observation that the assessee could have a right to file an appeal before the Ld. CIT(A). However, there is no finding given by the Hon'ble Bombay High Court that the assessee would have such a right to produce additional evidences before the AO in respect of a matter/issue, the additions relating to which have already been confirmed at the level of ITAT and have attained finality. We further find that the Hon'ble Bombay High Court has specifically discussed that there was a difference between the issue relating to allowability of additional evidence before the disposal of appeal by the ITAT and after the disposal of the appeal by the ITAT. Under such circumstances, we are of the view that the assessee had no right to agitate the additions/confirmations/additional evidences in relation to the issues/parties/additions which have been confirmed by the ITAT and the order has already attained finality. The AO had no jurisdiction to bypass the order of the ITAT or to open up the entire assessment proceedings especially when the

ITAT had restored the matter for the limited issue of admission of additional evidence in respect of 15 parties only.

11. The facts clearly reveal that the AO was right in not admitting the additional evidences in relation to other parties and restricted himself to the directions given by the ITAT. We do not find any infirmity in the order of the Ld. CIT(A) and the same is accordingly upheld.

12. In the result, the appeal of the assessee is hereby dismissed.

**Order pronounced in the open court on 03.02.2016.**

**Sd/-**  
**(Ashwani Taneja)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Sanjay Garg)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 03.02.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.