



ITA No.13/Mum/2017  
Dungaram M.Choudhary  
Assessment Year-2012-13

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

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

आयकर अपील सं./I.T.A. No.13/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Income Tax Officer-32(1)(4)</b> Room No.202, C-11, 2 <sup>nd</sup> Floor, Pratyakshkar Bhavan Bandra Kurla Complex Bandra(E), Mumbai-400 051	<b>बनाम/ Vs.</b>	<b>Dungaram M. Choudhary</b> Chaudhary Trading Co. Devipada Rama Chawl Main Road Borivali (E), Mumbai-400 066
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAFPC-5421-J</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Prakash Jhunjunwala, Ld. AR
<b>Revenue by</b>	:	Ram Tiwari, Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	19/07/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	12/09/2018

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-44 [CIT(A)], Mumbai, *Appeal No. CIT(A)-44/ITO 32(1)(4)/ITA.106/15-16* dated 27/10/2016 by raising the following grounds of appeal: -

1. “On the facts and circumstances of the case and in law, the Learned CIT(A) has erred in deleting the addition of Rs.75,00,000/- on account of unexplained



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*cash credit u/s.68 of the I.T. Act, 191, without appreciating the fact the alleged loans of Rs.75,00,000/- claimed by the assessee to have been received from M/s. Pannalal Manilal & Company and M/s. Vijaya Tea Trading Company are nothing but the assessee's own money introduced in the guise of loans, especially considering that these parties have denied having given any loan to the assessee."*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting addition of Rs.16,29,500/- on account of unaccounted purchases without appreciating the fact that the AR of the assessee vide letter dated 04.03.2015 has also confirmed the total purchases at Rs.41,50,000/- and has admitted that the purchases from M/s Chaudhary Enterprises was incorrectly taken at Rs.25,20,500/-."*
3. *"The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the AO be restored."*
4. *"The appellant craves leave to amend or alter any ground or add a new ground."*

The assessment for impugned AY was framed by *Ld. Income Tax Officer-32(1)(4), Mumbai [AO] u/s. 143(3) of the Income Tax Act, 1961* on 12/03/2015 wherein the income of the assessee has been assessed at Rs.107.88 Lacs after certain additions as against returned income of Rs.8.62 Lacs *e-filed* by the assessee on 28/08/2012. As evident from grounds of appeal, the addition of Rs.75 Lacs u/s 68 and another addition of Rs. 16.29 Lacs on account of unaccounted purchases as made by Ld. AO are the subject matter of this appeal.

2.1 The assessee being *resident individual* engaged in *trading of tea* under proprietorship concern namely *Chaudhary Trading Company* reflected turnover of Rs.402.43 Lacs. The financial statements of the assessee for impugned AY reflected certain unsecured loans as per the following details:-

<b>No.</b>	<b>Name of the Lender</b>	<b>Amount (Rs.)</b>
1.	<i>Pannalal Daga</i>	<i>Rs. 40 Lacs</i>
2.	<i>Anirudh Daga</i>	<i>Rs. 35 Lacs</i>

The assessee could not file any loan confirmations and in response to notice u/s 133(6), the aforesaid parties denied having made any loan to



the assessee. The assessee explained the nature of transactions vide its letter dated 21/01/2015 which has been extracted at *para 5.1* of the quantum assessment order. As per the submissions, the loans were created, by way of journal entries, by transfer from the account of *Sundry Creditors* in the wake of certain trade dispute of the assessee with the aforesaid two parties. However, not convinced, Ld. AO added the aggregate amount of Rs.75 Lacs in the hands of the assessee.

2.2 The second addition of Rs.16.29 Lacs pertain to difference in purchase figures. The assessee, in the purchase details submitted before Ld. AO, reflected purchases of Rs.25.20 Lacs stated to be made from an entity namely *Chaudhary Enterprises*. However, the said party, in response to notice u/s 133(6), reflected sale of Rs.41.50 Lacs to the assessee, giving rise to the difference of impugned amount of Rs.16.29 Lacs. The assessee submitted that there was no difference in the gross amount since the balance purchase was reflected under the list '*other purchases below Rs.1,00,000/-*'. However, disregarding the same, Ld. AO added the same to the income of the assessee as *unaccounted purchases*.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 27/10/2016 wherein Ld. CIT(A), after considering the assessee's explanation, concurred with the stand of the assessee and concluded the matter in assessee's favor by making following observations:-

*3.3 I have carefully gone through the assessment order and the submission of the appellant. I have also perused the details filed along with the written submission. From the facts of the case it appears that the only reason why addition was made u/s 68 was because of replies submitted by Shri Pannalal Daga and Shri Anirudda Daga in response to notice u/s 133(6). However, it is seen from the facts of the case*



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that what Shri Aniruddha Daga of Vijaya Tea Trading Co. Pvt. Ltd. is denying is the fact that he has not advanced any fund to the appellant. Yet the party is not denying that it has no transaction with the appellant. In fact, Shri Aniruddha Daga has confirmed in writing that they have sold tea to the appellant. Similar is the case with the transaction with M/s Pannalal Maniklal Trading Co. Pvt. Ltd. With reference to this party also similar information was received from the party. It is also seen from record that Shri Dungaram Choudhary i.e.. the appellant was engaged in litigation with both M/s Pannalal Maniklal Trading Co. Pvt. Ltd. and M/s GRP Trading Co. Pvt. Ltd. before the Hon'ble Bombay High Court. It is the contention of the appellant that in order to make their case strong the appellant restructured the outstanding creditor's balance payable to M/s Vijaya Trading Co. Pvt. Ltd. in the following manner:

a)	Outstanding balance payable to M/s Vijaya Tea Trading Co. Pvt Ltd as on 31/03/2012	Rs.57,00,197/-
	<u>Less:</u> Transferred to Anirudh Daga loan a/c	Rs.35,00,000/- -----
	Balance disclosed under creditors viz. M/s Vijaya Tea Trading Co. Pvt Ltd as on 31/03/2012	Rs. 22,00,197/- -----
b)	Outstanding balance payable to M/s Panalal Maniklal Trading Co. Pvt Ltd as on 31/03/2012	Rs.1,17,76,100/-
	<u>Less:</u> Transferred to Panalal Daga loan a/c	Rs.40,00,000/-
	Balance disclosed under creditors viz. M/s Panala Maniklal Trading Company Pvt Ltd as on 31/03/2012	Rs.77,76,100/- -----

The ledger account of the parties in the books of the appellant and the ledger account of the appellant in the books of the parties were submitted before the AO. It can be seen from a perusal of the ledger accounts that there was an outstanding balance of the appellant with M/s Vijaya Tea Trading Co. Pvt. Ltd. amounting to Rs.57,00,197/-. Both parties of the transaction are confirming these facts. Similarly, it can be seen from a perusal of the ledger accounts that there was an outstanding balance of the appellant with M/s Pannalal Manikalal Trading Co. Pvt. Ltd. amounting to Rs.1,17,76,100/-. Both parties of the transaction are also confirming these facts. The copy of plaint filed by M/s Vijaya Tea Trading Co. Pvt. Ltd. & Pannalal Maniklal Trading Co. Pvt. Ltd. Against the appellant was also submitted before the AO. Copy of bank book has also been filed before the AO from which it can be seen that the entire transaction with the parties have been made through banking channels. It is also seen that subsequent to filing of plaint by the parties the appellant had repaid the outstanding balance to M/s Vijaya Tea Trading Co. Pvt. Ltd. and to M/s Pannalal Maniklal Trading Co. Pvt. Ltd. After considering the totality of facts, I find merit in the arguments of the appellant that the amount which has been treated as unexplained loan by the AO are nothing but trading liabilities which have been shown as outstanding loan because of a journal entry passed by the appellant in his books. It seems that the AO has not correctly appreciated the system of accounting done by the appellant. If the AO had appraised the ledger accounts, bank books and details of court cases contested by the appellant as well as the details of subsequent payment made by the appellant it would have been



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*clear to him that no fresh loan has been accepted by the appellant from the above mentioned parties. Since the trading liability, has been restructured to show a part of the liability as loan it is held that the appellant has been able to establish the nature and source of credit in his books of accounts. In this situation, no addition is called for u/s 68. The addition of Rs.75 Lacs is accordingly deleted. Grounds of appeal nos. 1 & 2 are accordingly allowed.*

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*4.3 I have considered the rival submissions as above. During the course of assessment proceedings, the AO has asked the appellant to furnish party wise list of purchases. Upon receiving such list, the AO conducted enquiry by issuing notices u/s 133(6). In response to such notices one party namely M/s Choudhary Enterprises confirmed in writing that it has sold goods worth Rs.41,50,000/- to the appellant. However, as per the list submitted by the appellant it had shown the value of transaction with M/s Choudhary Enterprises at Rs.25,20,500/- only. On being asked about this discrepancy the appellant submitted that there is no discrepancy as it has purchased goods worth Rs.41,50,000/- only from M/s Choudhary Enterprises. It was further submitted that in the first list submitted before the AO the balance amount of RS.16,29,500/- was shown under the head other purchases below Rs. 1 lac. The appellant submitted revised list of party wise purchase wherein the purchases made from M/s Choudhary Enterprises is shown at Rs.41,50,000/- only. From the assessment order it can be seen that the AO has simply relied on the submission made by the party in response to notice u/s 133(6). The copy of account of the party in the books of the appellant and the copy of account of the appellant in the books of the party was available with the AO and an analysis of ledger account would have shown that the appellant has indeed made payments of Rs.41,50,000/- to M/s Choudhary Trading Co. for purchase of goods. All payments for purchase are through cheques. It is also worthwhile to consider as to what would the assessee gain by showing less amount of purchase. If the party had confirmed a balance which is less than what is claimed by the appellant, then it would have brought some adverse conclusion for the appellant. After considering the totality of facts, I have come to a conclusion that the AO has not correctly appreciated the evidence and details placed before him. On the other hand, there is merit in the argument of the appellant that there is no discrepancy in purchases rather it is just an inadvertent grouping error. Even such error was rectified during the course of assessment itself. On the basis of above discussion, I don't find any justification for addition of Rs.16,29,500/- and the same is deleted. Grounds of appeal no.3 & 3.1 are accordingly allowed.*

Aggrieved, the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR], *Shri Ram Tiwari*, contested the stand of Ld. first appellate authority and submitted that unsecured loans were reflected by the assessee in the Balance Sheet,



the existence of which could not be proved by the assessee. Similarly, it was submitted that the difference in purchase figures was nothing but unexplained investments made by the assessee and therefore, the same were rightly added to the income of the assessee. The same has been controverted by Ld. Authorized Representative for Assessee [AR], *Shri Prakash Jhunjunwala*, who on the strength of documents placed in the *paper-book*, supported the stand taken by first appellate authority.

5. We have carefully considered the rival contentions and perused relevant material on record. First we take up the issue of addition u/s 68. Upon perusal of ledger extract of *M/s Vijaya Tea Trading Company Pvt. Ltd.* as per assessee's book for impugned AY, we find that the assessee has made regular purchases aggregating to Rs.57,00,197/- from the said party during the year and transferred an amount of Rs.35 Lacs from the said account to unsecured loan account on 31/03/2012 by way of journal entry, leaving an outstanding balance of Rs.22,00,197/-. The amount of Rs.22,00,197/- was shown under the head *Sundry Creditors* whereas the amount of Rs.35 Lacs was shown as unsecured loans in the Balance Sheet. The said party, in response to notice u/s 133(6) has confirmed an outstanding of Rs.57,00,197/- against the assessee, which tallies with the aggregate purchases reflected by the assessee. The aforesaid fact reveal that there was no unsecured loan received by the assessee from the said party during the impugned AY but the same was created by way of journal entry in the account of *Sundry creditors* and were part of trading liability only for the assessee. The aforesaid transfer, as per the explanation of the assessee, was apparently made in the wake of certain ongoing trade dispute of the assessee with the aforesaid party. The said



contention is fortified by the copy of consent term agreed between the assessee and the aforesaid party as filed before Hon'ble Bombay High Court, the copy of which has been placed on record. Further, in terms of the consent terms, the assessee has made full payment of Rs.57,00,197/- to the aforesaid party through banking channels during financial year 2015-16. Similar is the position of the other entity i.e. *Panalal Manicklal Trading Co. Private Limited* wherein the assessee, in similar manner has transferred an amount of Rs.40 Lacs, by way of journal entry, to the unsecured loan account. The assessee, under similar circumstances, has cleared the gross outstanding against the said party which is evident from the *no dues certificate dated 19/11/2015* issued by the aforesaid party, as placed on record. The above factual matrix leads us to concur with the stand of Ld. first appellate authority and we see no reason to interfere with the same. The grounds raised, in this regard, stands dismissed.

6. So far as the addition on account of differential purchase is concerned, we find that the same has arisen only due to grouping error only, as rightly noted by Ld. CIT(A). The assessee had bifurcated the purchases made from *M/s Chaudhary Enterprises* in two separate purchase lists. However, there were no unaccounted purchases as wrongly inferred by Ld. AO. The assessee could not be penalized for inadvertent error. The stand of Ld. CIT(A), in this regard, stand confirmed. The grounds raised, in this regard, stand dismissed.

7. Resultantly, the appeal stands dismissed.

*Order pronounced in the open court on 12<sup>th</sup> September, 2018.*



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

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

मुंबई Mumbai; दिनांक Dated : 12.09.2018  
Sr.PS:-Thirumalesh

**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/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**