

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI MANJUNATHA G. (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6328/MUM/2016
Assessment Year: 2012-13**

Amrish Mody, 502, Avanti, Haridas Nagar, Simpoli Road, Borivali (West), Mumbai - 400092 PAN: AACPM4024E	Vs.	The JCIT-32(1), Mumbai
(Appellant)		(Respondent)

Assessee by : Shri A.C. Jhaveri (AR)
Revenue by : Shri Satishchandra Rajore (DR)

Date of Hearing: 27/09/2018
Date of Pronouncement: 28/09/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 31.08.2016 passed by the Commissioner of Income Tax (Appeals)-44 (for short 'the CIT(A), Mumbai, for the assessment year 2012-13, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed by AO u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee an individual engaged in the business of trade in Chemicals and Solvent etc., filed its return of income for the assessment year under consideration declaring the total income of Rs. 2,49,78,746/-. Since, the case was selected for scrutiny, the AO issued notices u/s 143 (2) and 142 (1) of the Act. In response to the said notices, the Authorized Representative (AR) of the assessee appeared before the AO and submitted the details called for including Tax Audit Report, capital account, balance sheet, profit and loss account etc. Since, it was noticed that the

assessee had taken unsecured loan of Rs. 1,50,00,000/- from M/s Winall Winimay Pvt. Ltd. the AO asked the assessee to establish the identity and creditworthiness of the lending company and genuineness of the transaction. However, the assessee did not adduce any evidence to establish the genuineness of transaction. The AO also issued notice u/s 133(6) of the Act to the said company but the party did not submit the bank statement. The assessee was further asked to explain the source of loan but no reply was furnished by the assessee. Accordingly, the AO made addition of Rs. 1,50,00,000/- to the income of the assessee. It was further noticed that the assessee had obtained loan of Rs. 70,000/- from M/s Mudra Chemicals. Since, the assessee could not file any document to establish the genuineness of the transaction; AO added the said amount to the income of the assessee. Further the assessee had submitted the list of sundry creditors out of which the assessee had shown still payable amount of Rs. 2,23,573/- to Tax Pro Trading Pvt. Ltd. and Rs. 57,332/- to Tax Pro Enterprises Pvt. Ltd. Since, the assessee could not provide the confirmation from these parties, the AO made the addition of the said amounts to the income of the assessee and determined total income at Rs. 4,03,29,650/- (rounded off u/s 288A).

3. Aggrieved by the assessment order, the assessee challenged the same before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee dismissed the appeal of the assessee and confirmed the additions made by the AO.

4. The assessee is in appeal against the said order passed by the Ld. CIT (A) by raising the following grounds of appeal:-

1. *“Additional Evidence not considered:-*

The learned CIT (A)-44, has neither given proper opportunity of hearing nor considered written submission of the Appellant along with Additional Evidences before deciding the Appeal on merit.

The learned CIT (A)-44, not considered the facts show cause notice for addition was served on assessee on 25/03/2015 and assessment was completed on 27/03/15 (within a gap of single day). The learned

CIT (A)-44, is not justified in stating that there was sufficient opportunity for hearing was given to Appellant.

2 Addition of Rs. 1,50,00,000/- for the loan from M/s Winall Winimay Pvt. Ltd.

The learned ITO has issued summons u/s 133 to M/s Winall Winimay Pvt. Ltd.

M/s Winall Winimay Pvt. Ltd. submitted the reply and confirmed the loan transaction during the assessment proceedings. The learned ITO not considered written submission and made addition.

The learned CIT (A)-44, has clearly stated that “ During the course of appeal proceedings the appellant has filed written submission...” (Refer para no. 4.2 of the Appeal Order).

The learned CIT (A)-44, has again stated in the Appeal order that “... During the Appeal Proceedings, nothing has been filed and no arguments were advances by the Appellant which would go to establish the credit worthiness of the lender...” (Refer Para no. 4.3 of the Appeal Order).

Thus, it's a contradiction in saying of the learned CIT (A)-44, between Para no. 4.2 & 4.3. In para no. 4.2 the learned CIT (A)-44, confirms that the A.R. has submitted the written submission. In the said written submission the A.R. has strongly argued & submitted additional evidences. While in Para no. 4.3, the learned CIT (A)-44, denied the receipt of the written submission by saying that “the A.R. has not filed any evidences”.

The A.R. of the assessee has submitted additional evidences like Bank statements of the lender which proves its credit worthiness. It also proves, that repaid sum of the loan was again reinvested by the lender in it's regular course of business. Repayment of the loan has been made by the appellant.

The learned CIT (A)-44, not justified in not considering the additional evidence of the A.R. of the Appellant.

The learned Jt. CIT 3292)(1), as well as the learned CIT (A)-44 have neither issued any summons nor have done any independent enquiry to judge the credit worthiness of the lender and made addition under the head of Business Income.

It may be gross negligence by the department in deciding the appeal& dismissing ground no. 4 of the Appellant, which is unjustified and unwarranted.

1. *Addition of Rs. 70,000/- for the loan from M/s Mudra Chemicals:-*

The A.R. has submitted loan confirmation, bank statements of M/s Mudra Chemicals along with written submission during appeal proceedings (refer Para no. 4.2 of the Appeal order). Repayment of the loan has been made by the appellant. But the learned CIT (A)-44, has not considered the written submission & simply dismissed ground no. 5 of the assessee, which is unjustified and unwarranted.

2. *Addition of Rs. 2,80,905/- for the Creditors:-*

The A.R. of the assessee has submitted copies of bank statement showing the creditors worth of Rs. 2,80,905/- from two parties (Rs. 2,23,573/-+ Rs. 57,332/-) has been paid off in subsequent financial year. It means the addition on the ground that liability no more payable doesn't arise. The learned CIT (A)-44, not considered the facts and creditors has been paid off as well as not considered the additional evidences submitted during the appeal proceedings.

3. *We reserve our right to add, alter, amend anything stated herein above or stated hereinafter.*

Prayer

1. *The Appellant hereby prays that addition of loan from M/s Winall Winimay Pvt. Ltd. of Rs. 1,50,00,000/- may be deleted in full.*
2. *The Appellant hereby prays that the addition of loan from M/s Mudra Chemicals of Rs. 70,000/- may be deleted in full.*

3. *The Appellant hereby prays that the addition of creditors of M/s Taxpro Trading Pvt. Ltd. (Rs. 2,23,573/-) & M/s Taxpro Enterprises Pvt. Ltd. (Rs. 57,332/-) may be deleted in full.*

4. *The Appellant hereby prays that one more opportunity may be given & additional evidence may be considered on the principal of natural justice.”*

5. Before us, the Ld. counsel for the assessee submitted that the assessee could not submit the documentary evidence during the assessment proceedings due to the fact that sufficient opportunity was not given to the assessee to file the same. Hence, the documents were produced before the Ld. CIT(A) during appellate proceedings along with the application to admit the same as additional evidence under Rule 46A of the Income Tax Rules. The Ld. counsel invited our attention to paper book containing 42 pages, which were produced before the Ld. CIT (A), for admitting the same as additional evidence and deciding the appeal in the light of the said documents. However, the Ld. CIT (A) decided the appeal without considering the said documents and dismissed the same. The Ld. counsel further submitted that non-production of evidence before the AO was neither a negligent act nor was an inaction on the part of the assessee but the assessee could not submit the same as sufficient time was not given by the AO. The Ld. counsel further submitted that the documents produced before the Ld. CIT (A) are very vital for deciding the appeal; therefore, the same may be admitted as additional evidence and the assessee may be allowed to substantiate its claim in the interest of justice.

6. On the other hand, the Ld. Departmental Representative (DR) submitted that since the sufficient opportunity has been given to the assessee there is no substance in the contention of the assessee.

7. We have heard the rival submissions and also perused the material on record including documents produced by the assessee before the Ld. CIT (A). We notice that the Ld. CIT (A) has neither admitted the additional evidence

produced by the assessee nor rejected the same as there is no reference of the said documents in the order. On the other hand the Ld. counsel invited our attention to the application dated 25.08.2016 vide which the documents were submitted before the Ld. CIT(A). We further notice that the AO issued the last show cause to the assessee to explain the transaction and establish the genuineness of the transactions on 23.03.2015 and passed the assessment order on 27.03.2015, it appears that the AO has not provided sufficient opportunity to the assessee to adduce the evidence to substantiate its claim after issuing the last notice. On the other hand, the documents produced as additional evidence were not taken into consideration by the Ld. CIT (A) while deciding the appeal irrespective of the fact that the said documents are vital deciding the issues in this case. Under these circumstances, we are of the considered view that in the interest of justice the assessee should be given one more opportunity to present its case in the light of the additional evidence produced before the Ld. CIT (A). We, accordingly set aside the order passed by the Ld. CIT (A) without going into the merits of the case and send the appeal back to the AO with the direction to pass assessment order afresh in the light of the additional evidence produced before the Ld. CIT(A), after providing opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2012-2013 is allowed for statistical purposes.

Order pronounced in the open court on 28th September 2018.

Sd/-

(MANJUNATHA G.)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 28/09/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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