

आयकर अपीलिय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.1747/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

M/s. Ramesh Kothari
Kothari House, 696,
Station Road, Dondaicha,
Dist: Dhule-425408
PAN: AANFR6929E

.... अपीलार्थी/Appellant

Vs.

The Income Tax Officer,
Ward 3, Dhule

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Vinay V. Kawdia
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 10.10.2018	घोषणा की तारीख / Date of Pronouncement: 28.11.2018
---	---

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-1, Nashik, dated 11.05.2017 relating to assessment year 2013-14 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. Though the assessee has raised several grounds of appeal but has only pressed ground of appeal No.1 which reads as under:-

- 1) *In the facts and in the circumstances of the case, the learned C.I.T(A) has erred in confirming the addition to the extent of Rs.5,00,000/- made by the AO in respect of loan creditor Mr. R.D. Mali u/s 68 of the Act without fully appreciating the evidences on record.*

3. The rest of grounds of appeal No.2 and 3 are dismissed as not pressed.
4. The issue raised in ground of appeal No.1 is against addition of ₹ 5 lakhs under section 68 of the Act.
5. Briefly, in the facts of the case, the assessee during the year under consideration had received loan of ₹ 20 lakhs from Shri Ratilal Dhondu Mali. The assessee filed confirmation from the said person. However, in order to verify the identity, creditworthiness of financial capacity of the creditor and genuineness of the transaction, Summons under section 131 of the Act were issued by the Assessing Officer. The said person did appear before the Assessing Officer and his statement was recorded on oath. The creditor explained his capacity to finance the said amount and also pointed out that he was holding agricultural land, from which agricultural income was received. He also stated that the said loan had been repaid and only sum of ₹ 3 lakhs was outstanding. The creditor also explained the status of all the loans taken by him and also pointed out that all the loans were repaid except loan of ₹ 3 lakhs. The Assessing Officer was of the view that the said creditor did not have capacity to pay the said loan to assessee. It was also noted by him that there was unexplained amount of credit in his bank account and cash was deposited in his bank account before the issue of cheque for ₹ 20 lakhs to the assessee. The explanation of assessee vis-à-vis said cash was his savings over a period of time which was deposited in the bank account. This plea of creditor was not accepted and the Assessing Officer made addition of ₹ 20 lakhs.
6. The CIT(A) has elaborately considered explanation of assessee vis-à-vis creditworthiness of lender and has accepted creditworthiness to the extent of ₹ 15 lakhs and the balance sum of ₹ 5 lakhs has been held to be bogus loan.

The basis for the same was that out of ₹ 20 lakhs lying with the assessee, sum of ₹ 15 lakhs was transferred towards advance for purchase of property and the balance sum of ₹ 5 lakhs continued with the assessee as on 31.03.2016.

7. The assessee is in appeal against the order of CIT(A).

8. Shri Vinay V. Kawdia appeared on behalf of assessee and Shri M.K. Verma appeared on behalf of Revenue.

9. On perusal of record and after hearing both the learned Authorized Representatives, the issue which arises in the present appeal is against the addition of ₹ 5 lakhs under section 68 of the Act. The assessee has received loan of ₹ 20 lakhs from Shri Ratilal Dhondu Mali. The assessee had produced the said person before the Assessing Officer, who in turn, had given explanation about his creditworthiness and the capacity to pay the said sum of ₹ 20 lakhs. Since the person had appeared before the Assessing Officer, identify of the person stands established. The Assessing Officer however, did not accept the plea of the lender and held that the lender had no capacity to pay the said loan of ₹ 20 lakhs and made the addition. The CIT(A) on the other hand, has considered the explanation filed by lender and the assessee in this regard and has observed that he had capacity to advance sum of ₹ 5 lakhs to the assessee. With regard to balance sum of ₹ 5 lakhs, the CIT(A) notes that against the outstanding of ₹ 20 lakhs, the assessee had paid ₹ 15 lakhs on behalf of lender for purchase of property and the balance sum of ₹ 5 lakhs was still outstanding in 2016. Hence, he was of the view that the said loan was bogus loan. There is no merit in the findings of CIT(A) in this regard. The lender had appeared before the Assessing Officer and his identity stands

established. Further, he had also given explanation with regard to the source of amount advanced and the source to the extent of ₹ 15 lakhs has been accepted by the CIT(A), against which the Revenue is not in appeal.

10. Now, coming to the balance sum of ₹ 5 lakhs, the view of the CIT(A) was that the said amount was still outstanding and hence, was bogus. There is no merit in the stand of CIT(A) in this regard. The assessee has to establish his creditworthiness on the date of giving loan in order to prove the genuineness of transaction. Merely because the amount was still pending in 2016, stand of CIT(A) in this regard was not correct as the onus was upon lender to prove creditworthiness of loan advanced on the date of giving loan and in case he establishes the same and even if the amount has not been repaid till date would not result in making any addition in the hands of assessee under section 68 of the Act. In view thereof, there is no merit in the order of CIT(A) and the same is reversed. I accept the explanation of assessee vis-à-vis source of said sum of ₹ 5 lakhs and delete the addition of ₹ 5 lakhs made under section 68 of the Act. The grounds of appeal raised by the assessee are thus, partly allowed.

11. In the result, the appeal of assessee is partly allowed.

Order pronounced on this 28th day of November, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 28th November, 2018.
GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik;
4. The Pr.CIT-1, Nashik;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune