

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 2887/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

The Income Tax Officer, Ward 23(1)(2), Room No. 108, Matru Mandir Tardeo Road, Grant Road, Mumbai 0400 007	Vs.	Ikhalaq Abdul Gaffar Dabbawalla 2, Mansuri Mansion, 37 th Road Bandra (W), Mumbai-400 050
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAEPD1485C		

अपीलार्थी की ओर से / Appellant by	:	Shri K. gopal, Ms. Neha Paranjpe, ARs
प्रत्यर्थी की ओर से / Respondent by	:	Shri Abi Rama Kartikayen, DR

सुनवाई की तारीख / Date of hearing:	09-05-2019
घोषणा की तारीख / Date of pronouncement :	21-05-2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal filed by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-32, Mumbai [in short CIT(A)], Appeal No. CIT(A)-32/IT-302/23(1)(2)/15-16 vide order dated 18.01.2017. The Assessment was framed by the Income Tax Officer, Ward-23(1)(2),



Mumbai (in short 'ITO/ AO') for the A.Y. 2012-13 vide order dated 30.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO by holding that there is no loan introduced during the year rather these are brought forward from earlier years. For this Revenue has raised the following ground: -

"1. (a) On the facts and circumstances of the case and in law, the Ld. CIT (A) has ignored the fact that no loan of Rs.2,79,30,090/- found as brought forward for earlier years on perusal of the ROI for AY 2011-12 & AY 2012-13 & the Balance Sheet and P & L Account submitted during the assessment proceedings does not support the ROI filed online.

(b) On the facts and circumstances of the case and in law, the Ld. CIT (A) has ignored the fact that the assessee failed to prove the creditworthiness of the persons from whom loans were taken as on perusal of the bank statements of the persons, submitted during the assessment proceedings, it was found that identical amount of cash deposits were made either on the same day or within two or three days.

(c) On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in holding that the mistake was technical as repeated acts of the assessee cannot be treated as mistakes done by

the assessee. The assessee has not shown details of loan taken in ROI filed with the department for AY 2011-12 & 2012-13 and at the time of assessment proceedings for AY 2012-13. the assessee has taken plea of over sightedness.”

3. Briefly stated facts are that the AO made addition of unsecured loans of Rs. 3,33,71,090/- by observing that these loans parties are not having credit worthiness and the transactions are not genuine. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) deleted the addition by observing that these loans are appearing in the balance sheet for FY 2010-11 i.e. year ending 31.03.2011 for the AY 2011-12. According to him, in view of the assessee's balance sheet, these amounts cannot be added in this relevant AY 2012-13.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee stated that these loans are very much reflected in the balance sheet as on 31.03.2011 for AY 2011-12. He drew our attention to assessee's paper book at page 71, wherein this unsecured loan of Rs. 2,89,30,090/- is disclosed under the head unsecured loan. The learned Counsel for the assessee then drew our attention to page 72 of assessee's paper book wherein unsecured loan i.e. group summary is given as on 31.03.2011 is Rs. 2,89,30,090/- which is Rs. 2,79,30,090/- pertains to earlier year and the relevant group summary read as under: -

<i>Particulars</i>	<i>Credit</i>
<i>Aftab Ahmed</i>	<i>5,00,000</i>
<i>Ashraf Sultan Selia</i>	<i>11,00,000</i>
<i>Ashtavinayak Steel Pvt. Ltd</i>	<i>35,00,000</i>
<i>Azim Shaikh</i>	<i>4,50,000</i>
<i>Bhushan K. Shirsat</i>	<i>22,50,000</i>



<i>Chand babu</i>	<i>3,00,000</i>
<i>City Construction</i>	<i>9,00,000</i>
<i>Classic construction</i>	<i>20,00,000</i>
<i>Classic Traders</i>	<i>2,50,000</i>
<i>Consco</i>	<i>26,00,000</i>
<i>Exotic World Fish Aqurium & Pets</i>	<i>7,50,000</i>
<i>Fauzia Ikhlq Dabawalla</i>	<i>2,50,000</i>
<i>G.G. Enterprises</i>	<i>35,00,000</i>
<i>Jai Jyotawali Steel Pvt. Ltd.</i>	<i>30,00,000</i>
<i>Laxmi Marble</i>	<i>20,00,000</i>
<i>Mohammed PT</i>	<i>3,00,000</i>
<i>Shaikh Ali Mohammed</i>	<i>30,090</i>
<i>Shaikh Farida Mohammed</i>	<i>2,50,000</i>
<i>Shenila Abdul Gaffar</i>	<i>5,00,000</i>
<i>Super Construction</i>	<i>10,00,000</i>
<i>Zaheer Shaikh</i>	<i>4,50,000</i>
<i>Zameer Pawaskar</i>	<i>20,50,000</i>
	<i>2,79,30,090</i>

5. When these paper book consisting balance sheet of profit and loss account and schedule of unsecured loan for AY 2011-12 for the year ending 31.03.2011 was confronted to the learned Sr. DR, he could not controvert the above evidences. We noted that even the assessee has filed the submissions before AO dated 26.03.2015, wherein it was clarified that these unsecured loans pertain to year ending 31.03.2011 amounting to Rs. 2,79,30,090/-. We noted that these evidences are available before AO during the assessment proceedings and CIT(A) also on the very same basis has deleted the addition. Hence, we find no infirmity in the order of CIT(A) where he deleted the addition and we confirm the order of CIT(A). This issue of Revenue's appeal is dismissed.

6. The second issue in this appeal of Revenue is against the order of CIT(A) holding that the cash deposit of Rs. 18,62,600/- in HDFC Bank were proceeds out of the business and are included in the turnover of its business of used car sales. The second inter-connected issue on this



very issue is that CIT(A) were not holding that cash deposit of Rs. 8 lacs in Saraswat bank is withdrawal made from HDFC Bank. For this Revenue has raised the following ground: -

“2. (a) On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in holding that the cash deposits of Rs 18,62,600/- in HDFC bank were part of his turnover from business of used car sales and ignored the fact that the cars were not actually transferred in the name of the assessee and the assessee has only worked as broker between sellers and purchasers and received service charges for his services rendered.

(b) On the facts and circumstances of the case and in law, the Ld CIT (A) has ignored the fact that the assessee has not disclosed HDFC bank account details before the department.

(c) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the cash deposits of Rs.8,00,000/- in Saraswat bank was from withdrawal of HDFC Bank and ignored the fact that assessee failed to submit any cash flow statement during the assessment proceedings.”

7. We have heard the rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that the AO during the course of assessment proceedings made addition in respect to cash deposit in Saraswat bank and HDFC bank amounting to Rs. 8 lacs and Rs. 18,62,600/- on the basis of AIR details as



unexplained. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) deleted the addition by observing in Para 5.3 as under: -

“5.3 Ground No. 3: This ground of appeal is against the cash deposited on the basis of ITS details, The AO made addition on the basis of ITS details, the AO held that appellant had deposited in cash Rs. 18,62,600 in UDEC Rank in lucky Motors Account and Rs. 8,00,000/- deposited in Saraswat Bank in Lucky Reality account during the F.Y. 2011-12. The appellant submitted that he is engaged in the business of sale and purchase in used cars, and all the transactions in respect of this business are in the name of MIs. Lucky Motors with HDFC Bank. Cash deposits in the HDFC Account is part of business turnover i.e. sale of used car in. cash and a sum of Rs. 8 Lacs was withdrawn from HDFC and re-deposited in Saraswat Bank, the assessee received full amount of sale proceeds in the HDFC Bank Account and payment for purchase of car is made from the said bank and in this type of business service charge is received on transactions. The cars are not transferred in the name of business concerns. Therefore appellant is concerned with only service charge/commission being difference of sales and purchase. The difference was received as service charges/commission, the same has been shown in the profit and loss account of the appellant. Commission was received after deduction of TDS only, which is reflected in the HDFC Bank Account and shown in Profit and Loss Account. The



appellant explained the same to the AO but the AO had not considered the explanation. In view of this I consider this against fact and delete the addition made on account of deposited cash in Bank accounts. This ground of appeal is allowed."

Aggrieved, Revenue came in appeal before Tribunal.

8. We have heard the rival contentions and gone through the facts and circumstances of the case. We have noted that the assessee is engaged in the business of purchase and sale of used car in the name of M/s lucky Motors, the assessee has filed copy of bank account of HDFC Khar West branch, wherein cash deposits were made by the assessee out of the business of sale & purchase of used cars. The AO noticed the details that the assessee has deposited 18,62,600/- in HDFC Bank account which remain unexplained. The assessee before AO as well as before CIT(A) and even now before us, filed the details i.e. balance sheet as well as the profit and loss account, wherein the assessee has received commission on sale of used old car amounting to Rs. 2,06,062/- also received service charges to the tune of Rs. 5,45,820/-. It was contended that the complete details of entries in HDFC Bank with narration were filed before AO and cash deposit in the HDFC account is part of business turnover. Similarly, it was explained that these 8 lacs were withdrawn from HDFC Bank account and deposited as cash on various dates in the Saraswat bank account amounting to Rs. 8 lacs. The assessee has filed the bank account of HDFC as well as Saraswat bank account to prove the co-relating transactions. We have noted from both bank accounts and the entries reflected therein and matching entry with the profit and loss account and balance sheet of the assessee for the year ending



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31.03.2012, wherein all the entries are explained. In view of the above, we find no infirmity in the order of CIT(A) and this issue of Revenue's appeal is accordingly dismissed.

9. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 21-05-2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 21-05-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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