

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1389/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Chetan Prithiviraj Bora,
Navkar Bungalow,
Near Gurukripa Housing Society,
Datta Mandir Road,
Nashik Road, Nashik – 422101

PAN : AGKPB9503B

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 3, Malegaon, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 20-03-2019

घोषणा की तारीख / Date of Pronouncement : 03-06-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Nashik dated 11-08-2015 for the assessment year 2011-12.

2. The assessee in appeal has raised 7 grounds covering two issues. The ground Nos. 1 and 2 of the appeal is against disallowance u/s. 40A(3)

of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The ground Nos. 3 to 6 of appeal are directed against the addition of Rs.70,33,600/- u/s. 68 of the Act.

3. Shri Sanket Joshi appearing on behalf of the assessee submitted at the outset that he is not pressing ground Nos. 1 and 2 against disallowance made u/s. 40A(3) of the Act.

3.1 In respect of ground Nos. 3 to 6 the ld. AR submitted that the assessee is engaged in the business of waste management under the name and style 'M/s. Water Grace Products'. The assessee was allotted tenders for waste management/disposal by Nashik Municipal Corporation. In the period relevant to the assessment year under appeal, the assessee received unsecured advance of Rs.70,33,600/- from M/s. Vishwanath Infrastructure Pvt. Ltd. (in short 'VIPL'). Initially VIPL had planned to invest in the business of bio-medical waste disposal that was carried out by the assessee. In this direction preliminary agreement dated 03-04-2010 for Assignment of Business was entered between the assessee and Amit V. Nilawar, Director of VIPL and M/s. SMS Infrastructure Ltd. As per the terms of agreement, it was mutually decided that Amit V. Nilawar shall pay an amount of Rs.70,33,000/- for utilizing business sites of the assessee. The ld. AR furnished copy of the said agreement. The entire amount as agreed between the parties was received through banking channel. However, the said business proposal did not fructify due to practical and legal complexities and some misunderstanding between the assessee and Shri Amit V. Nilawar. The advance of Rs.70,33,000/- was reflected in the Balance sheet of the assessee as amount payable. In order to prove identity, creditworthiness and genuineness of the transaction, the assessee furnished following documentary evidences before the Assessing Officer :

Sr. No.	Particulars
1	Income Tax Return filed by VIPL for A.Y. 2011-12.
2	Audited Balance Sheet of VIPL reflecting advance given to assessee along with the audit report for A.Y. 2011-12.
3	Confirmation issued by VIPL along with relevant ledger extracts in its books of accounts reflecting amount advanced to assessee.
4	Copy of bank statements of assessee reflecting advances received from VIPL.
5	Copy of bank statements of VIPL reflecting amounts advanced to the assessee.
6	Copy of acknowledgment of return along with audit report and balance sheet of M/s. Nilawar Agro Agencies for A.Y. 2011-12. [i.e. sister concern of VIPL, who had advanced substantial amount to VIPL, which was in turn advanced by VIPL to the assessee].
7	Copy of Tripartite Agreement entered between the assessee, Shri Amit V. Nilawar (Director in VIPL) and M/s. SMS Infrastructure Ltd. in relation to which the amount was advanced by Shri Amit Nilawar through VIPL, wherein he was a director.

3.2 However, the Assessing Officer rejected the contentions of the assessee and brushed aside the documentary evidence filed. The ld. AR further contended that in First Appellate proceedings, the assessee reiterated his contentions that were made before the Assessing Officer. However, the same were not considered by the Commissioner of Income Tax (Appeals). The First Appellate Authority dismissed the ground of appeal of assessee in respect of addition made u/s. 68 of the Act.

3.3 The ld. AR pointed that the assessee has now refunded the entire amount received from VIPL as advance through banking channel. The relevant documentary evidence in the form of bank statements was filed by the assessee as additional evidences. The ld. AR also filed affidavit of assessee along with the additional evidences in support of repayment.

4. On the other hand Shri Pankaj Garg representing the Department vehemently defended the impugned order. The ld. DR submitted that the

assessee before authorities below has failed to substantiate the genuineness of transaction and creditworthiness of VIPL. Hence, the addition made by the Assessing Officer u/s. 68 was upheld by the Commissioner of Income Tax (Appeals).

5. Both sides heard. Orders of the authorities below perused. The ld. AR of the assessee has stated at the Bar that he is not pressing ground Nos. 1 and 2 of the appeal. Accordingly, the aforesaid grounds are dismissed as not pressed.

6. The ground Nos. 3 to 6 of the appeal are in respect of single issue i.e. addition of Rs.70,33,600/- u/s. 68 of the Act on account of unsecured loans from M/s. VIPL. The ld. AR of assessee submitted that now the assessee has repaid the entire amount to VIPL through banking channel. The amount has been repaid after the date of passing of impugned order. Hence, the bank statements filed by the assessee as additional evidence in support of his contentions were not available before the authorities below. The assessee has filed an affidavit in support of his contentions and the additional evidences filed. After taking into consideration entirety of facts we are of considered view that the additional evidences filed by the assessee in the form of bank statements indicating repayment of unsecured advances/loans from VIPL is an event subsequent to the passing of impugned order, therefore, the authorities below had no occasion to examine the same. Since, additional evidences filed by the assessee will have bearing on outcome of the final decision in respect of addition made u/s. 68, the additional evidences are admitted and are taken on record. Since, these additional evidences filed by the assessee require verification, we deem it appropriate to restore this issue back to the file of Assessing Officer for verification of documents and to decide the

issue de-novo after affording reasonable opportunity of hearing to the assessee, in accordance with law. Consequently, the ground Nos. 3 to 6 raised in the appeal by assessee are allowed for statistical purpose in the terms aforesaid.

7. The ground No. 7 of the appeal is general in nature, hence, requires no adjudication.

8. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced on Monday, the 03rd day of June, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd June, 2019
RK

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)-1, Nashik
 4. The Pr. Commissioner of Income Tax-1, Nashik
 5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
 6. गार्ड फ़ाइल / Guard File.
- //सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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