

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BENGALURU**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1266/Bang/2018
(Assessment year: 2012-13)

Shri Bharat Kumar G Jain,
G-15, Heera Panna Market,
Nagarathpet,
Bengaluru-560002. ... Appellant
PAN:ABDPB 4172 C

Vs.

Income-tax Officer,
Ward 5(2)(3),
Bengaluru. ... Respondent

Appellant by : Shri Mallah Rao, Advocate.
Respondent by : Shri Vimal Anand, Addl.CIT(DR)

Date of hearing: 02/05/2019
Date of pronouncement: 14/06/2019

O R D E R

Per PAVAN KUMAR GADALE, JM :

The assessee has filed appeal against the order of the CIT(A), Bengaluru passed u/s 143(3) and 250 of the Income-tax Act,1961 ['the Act' for short].

2. The assessee raised the following grounds of appeal:

1. *“The learned CIT (Appeals) erred in passing the order in the manner he did.*
2. *On the facts and in the circumstances of the case, the learned CIT (Appeals) failed to appreciate that written*

Page 2 of 8

submissions were filed along with annexures wherein it was clearly brought to the notice of the CIT (Appeals) that the Appellant has received money from Sri Prakash Chand Mehta and the same was returned to him by the Appellant and therefore the CIT (Appeals) ought to have appreciated that the entire transaction was genuine and refrained from upholding the assessment order.

- 3. On the facts and in the circumstances of the case, the learned CIT (Appeals) ought to have appreciated that the Appellant received money through bank and the repayment of the same was also made through bank and therefore the learned CIT (Appeals) held that books of account of Sri Prakash Chand Mehta was unable to be produced by the Appellant is not correct and only relying on the books of account of Sri Prakash Chand Mehta and disallowed the claim of the Appellant is against the principles of natural justice and therefore the order of the CIT (Appeals) is liable to be set aside.*
- 4. On the facts and in the circumstances, the learned CIT (Appeals) ought to have accepted the explanation of the Appellant and held that the loan obtained from Sri Prakash Chand Mehta was genuine and the provisions of Section 68 of the Act were inapplicable in the case of the Appellant and consequently he ought to have refrained from making the impugned addition which is required to be deleted.*
- 5. The learned CIT (Appeals) erred in confirming the impugned addition by applying the provisions of Section 68 of the Act on mere surmises and such addition accordingly is unsustainable.*
- 6. The learned CIT (Appeals) having found that the creditor has confirmed the loan to the Appellant and also had reflected the same in his accounts and further the creditor was also an income-tax assessee and accordingly the Appellant had discharged the onus of proving the genuineness of the loan and consequently the impugned addition in the hands of the Appellant was unwarranted.*
- 7. On the facts, the learned CIT (Appeals) ought to have appreciated that in case of disbelief of the statement of the creditor, no addition was required to be made in the*

hands of the Appellant and in any case the CIT (Appeals) ought to have held that the Appellant should have been given a reasonable opportunity to rebut the presumptions of the assessing officer in the interest of natural justice and having failed to do so, the impugned addition as confirmed by him is opposed to law and to the principles of natural justice, and accordingly the impugned addition is liable to be deleted.

8. *Without prejudice, the addition as confirmed by the learned CIT (Appeals) is arbitrary, excessive and ought to be deleted in toto.*
9. *The learned CIT (Appeals) erred in confirming the levy of interest under Sections 234A, 234B & 234C of the Act.*
10. *For these and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed.”*

3. Brief facts of the case are that the assessee is engaged in the business of garments and also derives income from goldsmith services and filed the Return of income for the assessment year 2012-13 on 25/3/2013 with total income of Rs.9,78,370/-. Subsequently, the case was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) were issued. In response to notices, the learned AR appeared from time to time and furnished details. In the course of assessment proceedings AO found that the assessee has disclosed unsecured loan of Rs.1,32,44,595/- from Prakash Chand Mehta and Id.AO called for information of unsecured loan. In response, the assessee filed letter dated 23/12/2014 with details of bank account, statement of loan creditors,

ledger account etc. Whereas the AO, on verification of bank statement found that the loan creditor had deposited cash prior to issuing cheque to the assessee and also cash component is equal to the cheque value and also lender's income is marginal as per income-tax return and the source of huge cash deposit in the bank account is not justified. Whereas on 4/3/2015 letter was furnished with the AO by Prakash Chand Mehta mentioning that he is into money lending business and has cash on hand. But the AO was not satisfied with the financial statements and the computation of income and the loan confirmation and observed that Prakash Chand Mehta has not shown any income from money lending business in the computation of income filed with the income-tax authorities. Finally, AO made addition of Rs.1,20,00,000/- to the return of income as assessee fails to prove the genuineness and passed the order u/s 143(3) dated 27/3/2015 with assessed income of Rs.1,29,78,370/-.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A) whereas the CIT(A) considering the grounds of appeal, finding of the AO and the submissions of the assessee, dealt on the disputed issue at para 5 of his order but finally concluded that the assessee is not able to prove the capacity of the lender referred at para 5.4 of the

order and confirmed the addition made by the AO and dismissed the assessee's appeal.

5. Aggrieved by the order, the assessee has filed appeal with the Tribunal. The learned AR argued that the CIT(A) has erred in confirming the addition made by the AO without verification of the facts and the information filed in the course of hearing proceedings. The contention of the learned AR that source of source need not be explained and the amendment to section 68 of the Act effective from 1/4/2013 i.e. assessment year 2013-14. The learned AR further emphasised that the CIT(A) has not provided reasonable opportunity to rebut the presumptions of the AO and supported his stand with the paper book 2 with details on submissions before the CIT(A), copy of income-tax return, confirmation letter, lender's bank statement and ledger account of the assessee in the books of lender and bank statement of the assessee reflecting payments received and submitted that since the assessee has satisfied the requirements of provisions of section 68 of the Act, of genuineness, credit worthiness and identity prayed for allowing the appeal.

6. Contra, learned DR supported the orders of the CIT(A) and vehemently objected to the submissions and the material

filed in the course of hearing proceedings and prayed for dismissal of the appeal.

7. We heard the rival submissions and perused the material on record. Prima facie, the disputed issue is with respect to unsecured loan obtained by the assessee from Prakash Chand Mehta Rs.120 lakhs. In the assessment proceedings, the assessee has filed information supporting the loan with confirmation and financial statements of lender and also the assessee is paying interest on loan which is disclosed in the income-tax return of the lender referred at pages 22 to 28 of the paper book 2. Further, Id.AR submitted that loan was repaid to the lender in the subsequent year along with interest. The Id.AR referred to the bank statement of the lender at pages 1 to 12 of the paper book 2 which discloses that on various occasions cash was deposited into loan account and cheques were issued in favour of the assessee. We find the assessee has filed confirmation letter before the AO which is referred at para 10 of the assessment order where lender was involved in money lending business and has obtained loans from relatives and has lend to others including the assessee.

8. On perusal of computation of income of Prakash Chand Mehta and confirmation letter dated 4/3/2015 we find that the lender has disclosed income from business but no income from

finance business was disclosed. When a question was raised to the Id. AR on this pertinent issue, the explanations are vague and unsatisfactory. Whereas the learned AR has been harping on that source of source need not be explained and relied on judicial decisions. But in the present case, the AO required the assessee to substantiate the loan amount and comply with the provisions of section 68 of the Act. The observations of the AO are very vital to the present case as the assessee has filed incometax returns of the lender Shri Prakash Chand Metha but there is no disclosure of any income from money lending business. We are of the opinion that the CIT(A) having considered the information has not given a clear picture on the evidences filed to substantiate the claim of the assessee. We also found the assessee has obtained loan for business purpose which is not disputed. But the duty cast upon the assessee to prove and substantiate the genuineness of the transaction and credit worthiness. These facts play a vital role in determining the commercial expediency between the assessee and the lender. We are of the substantive opinion that the CIT(A) should have called for remand report from the AO on this disputed issue. Whereas the assessee has filed details in the appellate proceedings which the AO was deprived to verify the evidence and make enquiries on the genuineness of the

transaction. Accordingly, to meet the ends of justice, we provide an opportunity to the assessee to substantiate its claim and set aside the order of the CIT(A) and restore the entire disputed issue to the file of the CIT(A) to adjudicate afresh and call for remand report on the evidences filed and pass a speaking and reasoned order. It is nevertheless to mention that assessee should be provided with adequate opportunity of hearing and shall co-operate in submitting information for early disposal of the appeal and the grounds of appeal of the assessee are allowed for statistical purposes.

9. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 14th June, 2019.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 14/06/2019
srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore