

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'ए', मुंबई।

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

Before Shri Saktijit Dey, Judicial Member and

Shri G. MANJUNATHA, Accountant Member,

**ITA No.4577/Mum/2017
Assessment Year: 2006-07**

M/s Atul Shirodkar & Associates 16/815, Khernagar, Vrindavan Hsg. Society, Bandra (East), Mumbai-400051	बनाम/ Vs.	ITO-23(1)(2), Piramal Chambers, Lalbaugh, Parel, Mumbai-400012
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No. AAHFA4794Q		

निर्धारिती की ओर से / Assessee by	None
राजस्व की ओर से / Revenue by	Smt. Jothi Laksmi Nayak

सुनवाई की तारीख / Date of Hearing :	18/06/2019
आदेश की तारीख / Date of Order:	28/06/2019

आदेश / O R D E R

Per G. Manjunatha, Accountant Member

This appeal filed by the assessee is directed against order of the Ld. CIT(A)-32, Mumbai, dated 14/03/2017 and it pertains to Assessment Year 2006-07.

2. The brief, facts in the case are that the assessee is partnership firm which is engaged in the business of technical consultancy in infrastructure projects, filed its return of income on 31/10/2006 declaring total income of Rs.7,27,030/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter 'the Act') on 25/03/2015, determining total income at Rs.61,83,020/- by making addition towards unexplained cash credit u/s 68 of the Act, for unsecured loans received from various parties on the ground that the assessee has failed to prove the identity, genuineness of the transactions and creditworthiness of the parties. The relevant findings of the Assessing Officer are as under:-

"4.8 If, any credit found in the books of accounts of the assessee, the same has to be explained by the assessee with supporting documents/evidences and the onus is wholly and exclusively on the assessee. Where the source and nature of a receipt cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source. The reliance is placed on the judgements of the Hon'ble Supreme Court in the case of Roshan Di Hatti v CIT[1977] 107 ITR 938 (SC) and Kale Khan Mohammad Hanif v CIT [1963] SO UR 1 (SC).

4.9 Further, it is pertinent to mention here that vide his letter dated 02.03.2015, the assessee has stated that they have repaid the loan to Shri Omprakash Khake. The part of letter is reproduced here as under:-

1. Though our client had availed of an unsecured loan from the said Mr. Khakhe, the same was repaid in due course, some time during the year 2007 and since then our client has had no business dealings or transactions with him. Due to closure of account by virtue of repayments, as evidenced by the documents already furnished to you, our client has had no connection since then with the said party."

4.10 In the above letter, the assessee has stated that the loan is repaid in due course, some time during the year 2007. It means

the assessee does not have any proof/evidence of repayment of loan to Mr Khake. It is also supported by the fact that during the proceedings the assessee has not submitted any proof such as bank statements to prove that the amount was repaid to the part/.

4.11 On the other hand, from very first day, the assessee has the information that the matter was in appeal, firstly before CIT (A) where, he himself filed appeal and decision came only on 10.08.2010 and before the Hon'ble ITAT, where the revenue had filed the appeal. So, if they knew the status of case or the matter involved where he has the onus to prove the genuineness and creditworthiness of the party from whom loan was taken, he must have requisite contact details of the assessee. Mere, issuance of letter (returned unserved), to the party and stated that the matter is very old, they put their best effort, are not acceptable.

4.12 In view of the above facts, judicial decisions and discussion on the issue, the undersigned is in the view that the assessee failed to prove the genuineness and creditworthiness of the loan received from Mr. Omprakash Khake. Therefore, the amount of Rs.52,97,385/- received from Shri Omprakash Khake, is hereby added to the total income of the assessee as unexplained cash credits u/s 68 of the IT Act. 1961.”

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee neither appeared nor filed any written submission to justify the additions made by the AO. Therefore, the Ld. CIT(A) disposed off the appeal filed by the assessee ex-parte on the basis of material available on record and held that the assessee has failed to produce any evidence before the AO in support of its claim, therefore, in absence of any evidence, the additions made by the AO towards unexplained cash credit u/s 68 of the Act, cannot be interfered. The relevant findings of the Ld. CIT(A) are as under:-

“4. I have carefully considered the matter and the material on record. The case was fixed for hearing vide notice dt, 02/05/2016 which was duly served on the appellant. In response to the same nobody was appeared; Again case was fixed for hearing on 26.10.2016 nobody attended nor any application of adjournment

was received even though notice was duly served upon the appellant. Thereafter, final opportunity was given by fixing hearing on 22/11/2016, which was also duly served by the postal authorities on the appellant, but this time also appellant did not respond. The appellant was given sufficient opportunities to attend appellate proceedings, but appellant did not attend a single hearing nor any correspondence made.

I found from the assessment order that the appellant remain failed to produce any evidence before the A.G. in support of his claim. Nothing was argued before me. Therefore, in absence of any evidence in support of the claimed of the appellant. On the above circumstance, I am of the opinion that the addition made by the A.Q. is upheld. Accordingly, the addition made by the AO is confirmed.”

4. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

None appeared on behalf of the assessee.

5. We have heard the Ld. DR and perused the material available on record. First of all, the appeal filed by the assessee is defective, which is evident from the fact that the assessee has not filed any grounds of appeal along with form No.36. Secondly, the assessee is non-cooperative, which is evident from the fact, even during the course of appellate proceedings, before the First Appellate Authority, the assessee is neither appeared nor filed any submissions to justify its case. Further, even before us, the assessee is non-cooperative which is evident from the fact that even though the notice of hearing was served on the assessee, the assessee is not appeared. From the above, it is very clear that the assessee is not serious about its appeal; therefore, we are of considered view that there is nothing to offer from the assessee to explain unexplained cash credit found in books of accounts to prove identity, genuineness of the transaction and creditworthiness of the parties. Hence, we are of the considered view that the AO as well as the Ld. CIT(A) were right in treating unsecured loan of Rs.52,97,385/- claimed to

have received from Shri Omprakash Khake as unexplained cash credit u/s 68 of the Act, and accordingly, we confirmed the additions made by the AO and dismissed the appeal filed by the assessee.

6. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 28/06/2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/06/2019

Shekhar, P.S./नि.स.

Sd/-

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**