

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-C” BENCH : BANGALORE**

BEFORE SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.3051/Bang/2018
Assessment Year : 2009-10

Shri. Vikas Baburao Jadhav, No.616, Thulasi Gardens Street, Channapatna, Ramanagar – 562 160. PAN : AJOPJ 2076 Q	Vs.	The Income-Tax Officer, Ward – 1, Ramanagar.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. Ganesh R. G., Advocate, Standing Counsel for Revenue

Date of hearing	:	20.08.2019
Date of Pronouncement	:	04.09.2019

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of CIT(A)-3, Bangalore, dated 17.10.2018, for Assessment Year 2009-10.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee is in the business of pawn – broking; operating in the name and style as Prop: of R. B. Bankers, Channapatna, Ramanagara. A survey under section 133A of the Income Tax Act, 1961 (in short ‘the Act’) was conducted at the assessee’s business premises on 11.02.2010. The assessee then filed his

return of income for Assessment Year 2009-10 on 31.03.2010 declaring income of Rs.4,59,759/-. The case was selected for scrutiny and assessment was concluded ex-parte under section 144 of the Act vide order dated 23.12.2011 wherein the assessee' income was determined at Rs.40,88,230/- in view of the following additions / disallowances:-

(i) Agricultural income	-	Rs. 1,02,000/-
(ii) Disallowance of Interest due and salary payable	-	Rs. 3,87,880/-
(iii) Difference in opening balance of capital	-	Rs. 7,18,715/-
(iv) Unsecured Loans	-	Rs.23,18,590/-
(v) Drawings	-	Rs. 1,01,286/-

2.2 Aggrieved by the ex-parte order of assessment dated 23.12.2011 for Assessment Year 2009-10, the assessee preferred an appeal before the CIT(A), Mysore. The CIT(A), vide order 04.01.2013, allowed the assessee partial relief by deleting all the additions / disallowances at Sl. Nos. (i) to (iv) (listed above at para 2.1 of this order) and only upheld the addition made in respect of Drawings to the extent of Rs.50,000/-.

2.3 Revenue, being aggrieved by the order of CIT(A), Mysore, dated 04.01.2013 for Assessment Year 2009-10, filed an appeal before the Tribunal and the Tribunal in its order in ITA No.125/Bang/2013 dated 08.10.2015 upheld the findings of the CIT(A) on all issues except on the issue of unsecured loans / creditors; which was remitted to the file of the AO with the following directions at para 14 thereof:-

14. *We have perused the order and heard the rival contentions. Assessee in his reply to a question raised during the course of his examination had stated that he was not having any confirmation from the loan creditors. The CIT(A) had given relief to the assessee with a finding that the Pan Nos. of the creditors were available and they were assessed by the very same AO. May be this is true. However, there cannot be any dispute that it required a verification by the AO. Just because the creditors were assessed by the same AO, would not be a reason to say that assessee had no duty to furnish a confirmation letter from the creditors. Confirmation letters can also throw light on the nature of the underlying transactions. We are of the opinion, that the issue requires a fresh look by the AO. We therefore, set aside the orders of the lower authorities in this regard and remit the issue regarding the addition of unsecured loans back to the file of the AO for consideration afresh in accordance with law. Ground no. 3 of the revenue is allowed for statistical purposes."*

2.4 Pursuant to the aforesaid order of the Co-ordinate Bench of this Tribunal in ITA No.1275/Bang/2013 dated 08.10.2015 for Assessment Year 2009-10, the Assessing Officer (AO) called for certain details and explanations from the assessee. In response thereto, the assessee filed before the AO confirmation letters from the unsecured loan creditors i.e., Smt. Smitha Jadhav, Smt. Shakuntala Jadhav, Smt. Sheela Jadhav and Shri. Ramdas Jadhav; who are all relatives of the assessee, apart from other details / documents in support of the loans taken by the assessee from the said unsecured loan creditors. The AO, after examining the aforesaid details / documents filed by the assessee, concluded that the assessee was not able to prove the creditworthiness and sources of the creditors to advance such amounts to the assessee as no returns of income were filed by the loan creditors for any of the earlier years. In that view of the matter, the AO concluded the order of assessment under section 143(3) r.w.s. 254 of the Act dated 20.03.2017 by confirming the addition on account of unsecured loans made in the original order of assessment, to the extent of Rs.23,18,590/-.

2.5 Aggrieved by the order of assessment dated 20.03.2017 for Assessment Year 2009-10, the assessee filed an appeal before the CIT(A) – 3, Bangalore,

which was dismissed vide the impugned order dated 17.10.2018 by holding as under at para 4.3 thereof:-

4.3 The submissions of the appellant have duly been considered. A perusal of the assessment order and the records shows that the appellant has failed to prove the creditworthiness of the lenders as well as the genuineness of the transaction in respect of the unsecured loans of Rs 23,18,590/-. During appellant proceedings the appellant has just reiterated the submissions made before the AO. however he has failed to controvert the findings of the AO as discussed supra. Nothing has been brought on record to show that the transactions were genuine and the lenders were credit worthy. Considering above the ground of appeal 2 of the appellant is dismissed.

3. The assessee, being aggrieved by the order of the CIT(A) – 3, Bangalore, dated 17.10.2018 for Assessment Year 2009-10, has preferred this appeal before the Tribunal, wherein he has raised the following grounds:-

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in upholding the addition of Rs.23,18,590/- made as unexplained liability without appreciating that the appellant has proved the genuineness of the sundry creditors by filing their income tax returns and other particulars under the facts and in the circumstances of the appellant's case.*
3. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s 234-A, 234-B, 234-C and 234-D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*
4. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be*

awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

4. **Ground Nos.1 and 4 (supra)**, being general in nature and not urged before us, do not call for any adjudication thereon.

5. **Ground No.3 – Charging of Interest under section 234A, 234B, 234C and 234D of the Act**

5.1 In this ground (supra), the assessee denies himself liable to be charged interest u/s 234A, 234B, 234C and 234D of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H. Ghaswala (252 ITR 1) (SC) and I, therefore, uphold the action of the AO in charging the assessee the aforesaid interest u/s 234A, 234B, 234C and 234D of the Act. The AO is, however, directed to re-compute the interest chargeable u/s 234A, 234B, 234C and 234D of the Act, if any, while giving effect of this order.

6. **Ground No.2 – Unsecured loan creditors**

6.1 In this ground (supra), the assessee assails the order of the CIT(A) in sustaining the addition of Rs.23,18,590/- made by the AO on account of unexplained loan creditors as not being in accordance with the directions of the Tribunal's order dated 08.10.2015 for Assessment Year 2009-10. In support of the grounds raised, the learned AR for the assessee has filed two paper books (one containing pages 1 to 30 and a second paper book containing pages 31 to 62). The learned AR contends that, as per the directions in Tribunal's order dated 08.10.2015 in the case on hand, the assessee has filed confirmation letters from the unsecured loan creditors, i.e., Smt. Smitha Jadhav, Smt. Sheela Jadhav, Smt. Shakuntala Jadhav and Shri Ramdas Jadhav for having lent money to the assessee. According to the learned AR, the averments of the AO, that no return

of incomes were filed by the unsecured loan creditors for the earlier Assessment Years, was factually erroneous. In this context, the learned AR drew my attention to pages 36 to 62 of the second paper book, wherein copies of the returns of income filed by the aforesaid loan creditors filed for earlier Assessment Years had been placed. The learned AR contends that the assessee, having filed confirmations from all the concerned unsecured loan creditors before the AO, has discharged the primary onus cast upon him. It was submitted that, after this, if the AO had any doubt about the genuineness of the said unsecured loan credits, he ought to have examined / verified / summoned the loan creditors; as they are assessed by him; which he failed to do. The AR further submitted that the unsecured loan creditors have filed Affidavits dated 20.07.2016 confirming that they had lent the said amounts to the assessee; which details has been noted by the AO at para 10 on page 9 of the impugned order of assessment. In this regard, the learned AR placed reliance on the decision of the Hon'ble Apex Court in the case of Mehta Parikh & Co., Vs. CIT (1956) 30 ITR 181 (SC) for the proposition that once an Affidavit is filed, the same cannot be brushed aside or discarded and has to be duly considered as a valid piece of evidence. It was prayed that the addition of Rs.23,18,590/- on account of unsecured loan creditors be deleted in the light of the fact that the assessee has discharged the onus by filing the loan confirmation of all the unsecured loan creditors and evidence to the effect that these persons had also filed returns of income for earlier Assessment Years thereby disproving the AO's allegation that no returns had been filed.

6.2 Per contra, the learned DR supported the orders of the authorities below on this issue. According to the learned DR, even though loan confirmations and returns of income for earlier Assessment Years have been filed by the unsecured loan creditors, the assessee was unable to prove the genuineness of the transactions and the credit worthiness of these persons to advance the unsecured loans to the assessee. In this regard, the learned DR placed reliance on the

decision of the Hon'ble Gujarat High Court in the case of Umesh Krishnani Vs. ITO in ITA No.800 of 2012 dated 15.04.2013.

6.3 In rejoinder, the learned AR of the assessee submitted the judgment of the Hon'ble Gujarat High Court (supra) relied upon by the learned DR is distinguishable on facts. It is submitted that in the cited case, an enquiry was conducted by the AO by summoning the parties and after examination proved that the amounts deposited in the bank account was of the assessee itself, whereas in the case on hand the AO has neither examined the unsecured loan creditors nor has he proved that the loaned monies received by the assessee were of the assessee itself. The learned AR submits that in the light of the facts, as laid out above, the judicial pronouncement cited by Revenue, would not come to its rescue as it is not applicable to the facts of the case on hand.

6.4.1 I have considered the rival contentions and perused the material on record. A perusal of the earlier order of the Co-ordinate Bench of this Tribunal dated 08.10.2015 indicates that the Tribunal had set aside the matter of unsecured loan creditors for re-examination to the file of the AO and filing of confirmation letters and such other details required. It is seen that in the fresh proceedings pursuant to the Tribunal's order, the assessee has filed confirmations, quoting respective PANs, from the unsecured loan creditors (page 31 to 35 of paper book) along with Affidavits from the loan creditors, as mentioned in para 10 on page 9 of the impugned order of assessment, confirming the amounts lent by them to the assessee. It is also seen that the assessee has filed copies of returns of income filed by the loan creditors for earlier Assessment Years (copies placed at page 36 to 62 of paper book). A perusal of the acknowledgement for filing returns of income for earlier years indicate that these returns have been filed before the date of passing the order of assessment. Therefore, it is evident that the AO's observation; that no returns of income were filed by the loan creditors for earlier

Assessment Years; is factually incorrect. In these factual circumstances, as narrated above, it is evident that the assessee has discharged the initial onus cast upon him by filing loan confirmations from the loan creditors, Affidavits confirming that loans were given to the assessee and copies of creditors for earlier Assessment Years. It is also seen that the AO has merely brushed aside the Affidavits filed by the loan creditors without controverting its contents. Once the assessee had discharged the initial onus cast upon him, it was incumbent for the AO to have conducted necessary inquiries and examined the unsecured loan creditors and the supporting details / documents filed by the assessee. But it is seen that such steps have not been taken by the AO, as can be observed from the impugned order of assessment. In these factual circumstances, the action of the authorities below in making and upholding the addition of Rs.23,18,590/- on account of unsecured loan credits is neither factually tenable nor sustainable and is liable to be deleted. In coming to this factual finding, support is drawn from the observations / findings of the Hon'ble Apex Court in the case of CIT Vs. Daulat Ram (87 ITR 349). Consequently, ground No.2 of the assessee's appeal is allowed.

7. In the result, the assessee's appeal for Assessment Year 2009-10 is allowed.

Pronounced in the open court on 4th September, 2019.

Sd/-
(JASON P. BOAZ)
Accountant Member

Bangalore.

Dated: 4th September, 2019.

/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.