

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.	AY.	Appellant	Respondent
5760/Mum/17	2009-10	The Income Tax Officer-27(2)(3), MUMBAI	Shri Murugan K. Naikar, Flat No.601, A-Wing, Vanamanli Building, Opp: Dukes Factory, WT Patil Marg, Chembur, MUMBAI [PAN : ACAPN8520C]
5761/Mum/17	2010-11		
C.O.No.	AY.	Appellant	Respondent
274/Mum/2017 (Arising out of ITA No.5761/M/17)	2010-11	Shri Murugan K. Naikar, Flat No.601, A-Wing, Vanamanli Building, Opp: Dukes Factory, WT Patil Marg, Chembur, MUMBAI [PAN : ACAPN8520C]	The Income Tax Officer-27(2)(3), MUMBAI

Revenue by : Shri Vikas KR.Agarwal &
Shri Amit Pratap Singh

Assessee by : Shri Vijay Mehta &
Shri Govind Jhaveri

Date of Hearing : 13-09-2019	Date of Pronouncement : 17-09-2019
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ORDER

PER RAJESH KUMAR, A.M:

These appeals filed by the Revenue are directed against the order(s) of the Commissioner of Income Tax(Appeals)-25,

Mumbai for the AYs.2009-10 and 2010-11. Assessee filed Cross-Objection against the appeal of Revenue for the AY. 2010-11.

2. The main issue in these appeals of Revenue is that the action of the Ld.CIT(A) in deleting the addition is bad in law, on account of bogus un-secured loan and on account of interest paid on said loans, when it is established that M/s.Meridian Gems, which is the loan giving entity, is a dummy concern, as admitted by Shri Bhanarlal Jain in his sworn statement.

3. Brief facts of the case in AY.2009-10 are that, assessee, an individual, earning income under the head 'house property', 'business income' and 'income from other sources'. For the year under consideration, the assessee filed his return of income on 31-03-2011 declaring income of Rs.1,48,490/-. On the basis of the information received from DIT(Inv.)-II, Mumbai the AO came to the conclusion that the assessee is beneficiary of accommodation entry of Rs.68,50,000/- taken from Meridian Gems, one of the bogus concerns of Banwarlal Jain Group on which a search was conducted u/s 132 of the Act. Thereafter the case was re-opened by issuing notice u/s.148 of the Act dt.14-03-2016 and finally the re-assessment u/s.143(3) r.w.s.147 of the Act was completed on 15-12-2016 determining the total income at Rs.73,00,280/-.

3.1. Aggrieved with the said order of assessment, assessee preferred an appeal before the CIT(A).

3.2. Before the CIT(A), assessee raised various Grounds of Appeal. Ld.CIT(A) after taking into account the submissions of the assessee partly allowed the appeal by deleting the addition of Rs. 68,50,000/- on account of unsecured loans and interest of Rs. 3,01,791/- thereon while the re-opening of assessment was affirmed.

3.3. Aggrieved with the order of Ld.CIT(A), now the Revenue is in appeal before us.

4. After hearing both the parties and perusing the material on record, we observe that the identical issue has been decided by the Co-ordinate Bench of the Tribunal against the Revenue and in favour of assessee in assessee father case in ITA No.1709/Mum/2017 AY.2009-10 vide order dt. 26-12-2018. We observe that in the said case also the party who gave the loan was same. The operative portion of the said order is reproduced hereunder, for ready reference:

“After having gone through the facts of the present case as well as orders passed by the revenue authorities, we find from the records that assessment in the present case was made by the AO on the basis of statements of Shri Bhanwarlal Jain and others by holding that purchases made from M/s Meridian Gems are just accommodation entries in the name of bogus unsecured loans. The Ld. CIT(A) after appreciating the fact of the present case had rightly pointed out that no enquiry was carried out/conducted by the AO which would bring in evidences against the identity and creditworthiness of the loan creditors and genuineness of the loan transactions. Ld.CIT(A) also appreciated and considered the documents placed on record to establish the genuineness of loan i.e a) A Copy of loan confirmation from M/s Meridian Gems for the year ended 31.03.2009, 31.03.2010, 31.03,2011, and 31.03.2012, b.) Return of Income for the year ended 31.03.2009, 31.03.2010, 31.03.2011, and 31.03.2012, c.) Their Bank statement confirming the transaction, d.) Their affidavit confirming the transaction is enclosed, e.) The Bank statement of the Appellant for the relevant period and f)

The Retraction statement dated 15.05.2014 of Mr. Bhawarlal M. Jain.

It was also appreciated by Ld. CIT(A) that the loans which were repaid in subsequent years and the assessee had also placed on record the copy of order of Ld. CIT(A) for AY 2008-09 wherein identical additions were deleted by Ld. CIT(A) and the said appeal was also challenged by the revenue before ITAT, but the appeal of the revenue was dismissed by ITAT.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, we see no reasons to interfere into or deviate from the findings recorded by the Ld. CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the revenue stands dismissed.

Ground No. 2 & 3

7. These grounds raised by the revenue are general in nature, thus requires no specific adjudication.

Now we take up C.O. No. 206/Mum/2018 filed by assessee.

8. Since we have already decided the appeal filed by revenue in ITA No. 1709/Mum/2017 on merits and upheld the deletion of additions. Therefore in view of our findings, in ITA No. 1709/Mum/2017, the present C.O. filed by the assessee becomes infructuous”.

4.1. Since the facts before us are similar to one as decided by the Co-ordinate Bench of the Tribunal supra, we, therefore, respectfully following the same dismiss this ground, raised by Revenue.

4.2. Ground Nos.2 & 3 raised by Revenue are general in nature, hence, needs no adjudication.

5. In the result, the appeal of Revenue for the AY.2009-10 is dismissed.

AY.2010-11:

6. Since the facts of the present case are identical to one as decided by us for the AY.2009-10 (supra) and therefore our findings in the said appeal, *mutatis mutandis*, would apply to this appeal as well. Hence, this appeal of Revenue is dismissed.

7. As far as the Cross-Objection raised by assessee is concerned, since the Ld.Counsel for the assessee has not pressed the same before the Bench, the same is dismissed, as not pressed.

Order pronounced in the open court on 17th September, 2019

Sd/-
(RAM LAL NEGI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 17-09-2019

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), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
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 (Dy./Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai