

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya (AM)

I.T.A. No. 4299/Mum/2018 (Assessment Year 2014-15)

Jagruti Deepak Shah 603-F, Pushpa Heritage Mahavir Nagar Dahanukar Wadi Kandivali West Mumbai-400 067.  PAN : ALPPS0668G (Appellant)	Vs.	ITO-33(2)(1) Pratyakshakar Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	None
Department by	Shri Chaitanya Anjaria
Date of Hearing	10.7.2019
Date of Pronouncement	1.10.2019

ORDER

This appeal by the assessee is directed against order of learned CIT(A) dated 12.2.2018 and pertains to assessment year 2014-15.

2. The grounds of appeal read as under :

1. On the facts and circumstances of the case and in Law, the Ld CIT (A) erred in:
  - a. Ignoring the facts and merit of the case that loans and advances taken have been fully explained and supporting documents including I Tax Acknowledgements, loan confirmations and copy of Bank pass book duly reflecting the said transactions have been submitted during the course of hearing of assessment proceeding and appeal proceeding as well.
  - b. Allowing part of the loan taken from the same lenders as genuine but confirmed the addition to the extent of Rs.7,00,000/= though the Ld CIT (A) has agreed and mention in Para 1, page 5 of the Order that "Lenders are identifiable, transactions are genuine but creditworthiness is only partly proven".
  - c. Ignoring the submission made by the appellant during the course of hearing of appeal.

- d. By contradicting his on acceptance that Lenders are identifiable, transactions are genuine by confirming the addition to the extent of Rs.7,00,000/=
2. The appellant craves leave to add, to amend and/or to alter any of the grounds of appeal, if need be.
3. The appellant, therefore, prays and requests your honour that the addition of Rs. 700000/= partly confirmed by the order of the CIT(A)-45, Mumbai, may kindly be deleted and the said appeal may be allowed.
3. Brief facts of the case are as under :-

The Assessing Officer noticed from the AIR that the appellant and her husband purchased a property for Rs.2,32,00,000 in Kandivali (W), Mumbai. He called for details of payments for the property along with loans if any. It was notice form the details that assessee paid Rs.1,16,00,000-being 50% of the cost of property. Appellant and her husband took home loan of Rs.1,25,00,000 from Kotak Mahindra Bank, of which appellant share is Rs.62,50,000/-. Assessee obtained certain unsecured loans which were examined by the AO to notice that, before giving loan to the assessee, there were cash deposits in the bank accounts of the following lenders.

Name	Total loan taken	Cash Deposited	Relation
D.N. Shah HUF	9,40,000	2,00,000	Husband
N.I. Shah HUF	14,70,000	3,00,000	Father in law HUF
Kunal D. Shah	6,50,000	2,00,000	Son
	30,60,000	7,00,000	

AO analyzed the income returned by the above lenders and held that the creditors were not capable of giving such loans and the assessee did not discharge the onus in spite of giving opportunity. He concluded that the appellant could not prove the credit worthiness of lenders and genuineness of loan transactions to the satisfaction of the AO and added the amount of unsecured loans of Rs.30,60,000 from the above 3 parties.

4. Against the above order assessee appeal before the learned CIT(A). The learned CIT(A) noted the following submissions of the assessee :-

“Appellant during the appellate proceedings filed submissions arguing that he case was under limited scrutiny to verify the purchase of immovable property. Appellant submitted balance sheet, P&L A/c, Form 26AS, Bank Passbooks, purchase deed and loan sanction letter. All the details of loans taken and loans repaid were also furnished. AO asked the assessee to prove creditworthiness of lenders and the appellant filed the details of all the three loan creditors D.N. Shah (HUF), N.I. Shah (HUF) and Kunal D. Shah giving the capital available, gross income for the year, exempt income, net income. AO noticed that loan form the said 3 parties (relatives) were taken by depositing the cash in the account. Appellant explained that the lenders have deposited surplus cash earned from time to time in the bank. The AR of the appellant explained that there were balances already in the accounts of the lenders, but some amount of cash was deposited before giving the loans. He explained only part of the cash deposited was used for advancing the loan as under.

S.No.	Name	Loan taken	Cash deposited	Used bank clearing	Cash used	% of cash
1	D. N. Shah (HUF)	9,40,000	2,00,000	8,12,000	1,28,000	14%
2	N.I. Shah (HUF)	14,70,000	3,00,000	11,70,000	3,00,000	20%
3	Kunal D. Shah	6,50,000	2,00,000	5,00,000	1,50,000	23%
		30,60,000	7,00,000		5,78,000	

AR argued that part of the cash deposited as per col.6 had gone for advancing the loans, the balance was available as credit by bank clearing. Based on these facts, it is argued that the loans cannot be considered as bogus and loan creditors do not have credit worthiness.

5. Learned CIT(A) deleted Rs. 23,60,000/- addition and sustained Rs. 7,00,000/-.

6. Against this order assessee is in appeal before the ITAT. I have heard learned Departmental Representative and perused the records. I find that assessee has submitted all the necessary documents to establish the identity, genuineness and creditworthiness of the lenders. There is no presumption that persons having small income cannot make small savings. The assessee has also duly repaid the amount of loan taken. On the facts and circumstances of

the case the inference drawn by the authorities below is based upon surmise and conjectures. I find that assessee in this case has duly discharged the onus cast upon by submitting credentials establishing the identity genuineness and creditworthiness of the transaction. Accordingly, I set aside the orders of the authorities below and delete the disallowance of Rs. 7,00,000/-.

7. In the result, assessee's appeal stands allowed.

Order has been pronounced in the Court on 1.10.2019.

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 1/10/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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