



Commissioner of Income-tax (Appeals)-1, Nashik on 25-08-2014 in relation to the assessment year 2010-11.

2. First we are taking up the appeal of Sh. Mohinder T. Kalani legal heir of Late Sh. Trilokchand T. Kalani in ITA No.1910/PUN/2014. The assessee is part of Kalani group of cases at Nashik, which was subjected to search and seizure action u/s.132(1) of the Income-tax Act, 1961 (hereinafter called 'the Act') on 02-02-2011. During the course of search, certain incriminating documents were found from the residential premises of the assessee, which were seized. One of such seized documents, numbered as page no. 147 to 150 of Annexure-A/1, was a Hand Loan Deposit Receipt dated 04-12-2009 made on a stamp paper of Rs.100/- between Mr. Trilokchand T. Kalani and Mr. Mohinder T. Kalani (the payers) and M/s. Karda Construction Pvt. Ltd. (M/s.KCPL) (the payee) through its Director Mr. Naresh J. Karda. The said Receipt acknowledged the receipt of hand loan of Rs.2.00 crore by Mr. Naresh J. Karda on behalf of M/s KCPL from Mr. Trilokchand T. Kalani and Mr. Mohinder T. Kalani for purchase of agricultural land at Survey No.41/1/1+2+3+4+5+6, total area admeasuring 3153.73 sq.mtrs, Aanandvali, Nashik. Towards the security of the said loan, the Receipt records that the payee gave

three cheques of Rs.40.00 lakh each totaling Rs.1.20 crore in the name of Mr. Trilokchand T. Kalani and two cheques of Rs.40.00 lakh each totaling Rs.80.00 in the name of Mr. Mohinder T. Kalani. The said Receipt was signed by Mr. Naresh J. Karda, Director of M/s. Karda Construction Pvt. Ltd. During the course of the assessment proceedings, the assessee was asked to explain as to whether such transaction was recorded in the books of account. In response, the assessee denied the transaction and submitted that no such loan was actually given and in fact, no such transaction took place. The Assessing Officer (AO) observed that the assessee vide his statement u/s.132(4) had admitted to be involved in business of money lending, giving hand loan finance, purchase and sale of land. He further admitted that he had given cash loan to various persons and against such loans he had taken the cheques as security. In this backdrop of facts, the AO refused to accept the contention of the assessee that no transaction actually took place for which Hand Loan Receipt was found at the premises of the assessee. He made an addition of Rs.1.20 crore on this count in the hands of the assessee and a further addition of Rs.80.00 lakh in the hands of Mr. Mohinder T. Kalani, the other assessee in this batch of appeals, being the amounts for which the cheques were issued

by M/s. KCPL. The Id. CIT(A) affirmed the action of the AO against which the assessee has approached the Tribunal.

3. We have heard both the sides and gone through the relevant material on record. The foundation of the addition is the Hand Loan Receipt dated 04-12-2009 found from the place of the assessee at the time of search, whose english translation has been placed on record. This is a receipt on non-judicial stamp paper of Rs.100/-. As per this Receipt signed by M/s. KCPL through Sh. Naresh Karda, being Loan receiver, there is a description of property, namely, land bearing Survey No. 41/1/1+2+3+4+5+6, admeasuring 3153.73 sq.mtrs situated at Aanandvali, Nashik, which was sought to be purchased by the M/s KCPL. Para 2 of the Hand Loan Receipt records that both the payer and the payee of the loan are familiar and well connected. Then there is clear cut mention of Karda Construction Pvt. Ltd. having received loan from Mr. Trilokchand T. Kalani and Mr. Mohinder T. Kalani, the relevant part in this regard reads as under :-

“2) ....We wanted to purchase the property mentioned in para 1, from its previous owners, in our name. We need financial assistance to purchase the said property, we made a request to you for hand loan to us and in view of our request, our business and on demanding a hand loan of Rs.2,00,00,000/- ( in words two crore only) from us, you accepted our request of hand loan considering our business, our financial situation and our needs and *you have already paid us an*

*amount of Rs.2,00,00,000/- ( in words two crore only) by cheque and in cash from time to time. We have received the said amount and we acknowledge to have received the same. We have no grievance or objection of the same and there will be no complaints after this.*

3) *You have given this amount without interest to us for use and we shall refund the said amount by the cheques written hereunder, the said amount is to be returned without any reason or complaint and we hereby give assurance to you by this HAND LOAN RECEIPT for the same.*

4) *You shall recover the said amount time to time by depositing the cheques as mentioned hereunder. If we fail to refund the said amount to you or refused to pay the said amount or if the said cheques are dishonoured and you will not received the cheque amount then you shall take necessary legal action for recover the said amount and we will be responsible for the expense incurred by such legal action.*

The cheque details of the refund amount is mentioned as under :

The *cheques* of the Business Co-op. Bank Ltd. Branch Nashik Road, as mentioned below, *have been issued in favor of* Mr. Trilokchand Tejandas Kalani :

Sr.No.	Cheque No.	Amount	Date
1	973769	40,00,000/-	01/05/12
2	973770	40,00,000/-	01/08/12
3	973771	40,00,000/-	01/11/12
	Total	1,20,00,000/-	

The cheques of the Business Co-op. Bank Ltd., Branch Nashik Road, as mentioned below, have been issued in favor of Mr. Mohindar Trilokchan Kalani.

Sr.No.	Cheque No.	Amount	Date
1	973772	40,00,000/-	01/02/13
2	973773	40,00,000/-	01/05/13
	Total	80,00,000/-	

*Thus we have issued the cheques against repayment of hand loan amount Rs.2,00,00,000/- (in words two crore only) which we have taken from you. You should present the said cheques on respective date and encash the cheque amount. To honor the said cheques no respective date shall be our responsibility.*

4. On going through the contents of the above Hand Loan Receipt, it is clear beyond any shadow of doubt that Sh. Karda received a sum of Rs.2.00 crore from both the assesseees under consideration and further such a receipt was in parts and the process of receipt of the amount by Sh. Karda on behalf of M/s KCPL got over on 4.12.2009, when he acknowledged to have received loan of Rs.2.00 crore from them. It is further evident that the loan was taken for a specific purpose, being, purchase of the agricultural land as described in the Hand Loan Receipt. Pursuant to the remand by the Id. CIT(A), the AO made further enquiries from M/s KCPL, which though denied to have received loan from the assessee, but accepted that the transaction of purchase of agricultural land as mentioned in the Receipt did take place and further it did not positively declare the source of receipt of money for the transaction. It is very clearly written in the Receipt that: *'you have already paid us an amount of Rs.2,00,00,000/- . We have received the said amount and we acknowledge to have received the same.* Para 3 of the Receipt categorically records *'You have given this amount'* and then there is undertaking that *'we shall refund the same amount of the cheques written hereunder.'* Not only that, there is an apparent mention of Name of the bank, cheque Nos.,

amount and date through which the loan was proposed to be repaid. There is a further mention that the cheques have been issued in favour of both the assesses. Three cheques of Rs.40.00 lakh each dated 01-05-2012, 01-08-2012 and 01-11-2012 were issued in favour of the assessee under consideration and two cheques of Rs.40.00 lakh each dated 01-02-2013 and 01-05-2013 were issued in favour of Sh. Mohinder T. Kalani, the other assessee in this batch of appeals. All these dates are post the receipt of Hand Loan. Once we examine the Hand Loan Receipt in entirety, it becomes manifest that the assessee under consideration had given loan of Rs.2.00 crore to M/s. KCPL. The fact that the entire transaction of Rs.2.00 crore has not been recorded in the regular books of account of both the assesses, is not disputed. The denial of transaction by M/s. KCPL in the subsequent proceedings is of no avail in view of unambiguous incriminating evidence found during the course of search from the residential premises of the assessee. The Id. AR contended that non-signing of such a document by the assessee proved that the same was not acted upon. We do not agree with this contention. Unlike an agreement, which is required to be signed by all the parties to it, a receipt for money is to be signed only by the person receiving it. There is no

requirement that the payer of the money should also sign the Receipt of money. Since the obligation to return the money is of the payee, it is he who has to sign the Receipt. We, therefore, hold that the authorities below were fully justified in not accepting the contention of the assessee that he had not given any such loan to Sh. Karda on behalf of M/s KCPL.

5. The assessee has raised the following additional ground, reading as under :

“1. Without prejudice to the other grounds, the Ld. Assessing Officer as well as CIT(A) erred in confirming addition without giving the benefit of telescoping against the income already offered/addition made in the hands of the Appellant/group concerns.”

6. Through the above additional ground, the assessee is seeking the benefit of telescoping against the income already offered/addition made in the hands of the assessee. The ld. DR did not raise any serious objection to the admission of the additional ground. We, therefore, admit the additional ground and take it up for disposal on merits.

7. The ld. AR contended that the assessee ought to have been given the benefit of telescoping of other undisclosed income *suo*

*motu* offered or the addition made in respect of such undisclosed income. The ld. DR objected to the same.

8. We have heard both the sides and gone through the relevant material on record. If some undisclosed income is earned by an assessee, which has been offered/taxed either by way of surrender or addition and such undisclosed income is found to be utilised elsewhere, then, obviously the spending of such an income will not again attract taxation. Undisclosed inflow of income taxed gets telescoped into the undisclosed outflow of income. Taxability/addition can be only to the extent of the higher of the undisclosed income/expenditure.

9. Adverting to the facts of the extant case, it is found that one of the seized documents found during the course of search, whose copy has been placed on record at page 62 of the paper book, contained details of loan given by the assessee to the tune of Rs.1,22,06,750/- in July, 2008. Thereafter, this document records interest from July, 2008 to August, 2009 at Rs.1,22,06,750/- per month. There is reference of further interest of Rs.1,54,472/- at the end of the calculation with remarks "9 Sept to March-10". Two things are discernible from the document. First is that the assessee

advanced a loan of Rs.1.22 crore from undisclosed sources in July, 2008, out of which a sum of Rs.1.00 crore was received back in August, 2009. Second is that on such a loan made out of undisclosed sources, the assessee earned interest income of Rs.15 lakh and odd. It is an admitted position that the assessee offered a sum of Rs.1.37 crore (Rs.1.22 crore towards principal amount of loan and interest of Rs.15 lakh) for taxation in his return for the A.Y. 2009-10. While finalizing the assessment of the assessee for A.Y. 2009-10, the AO noted discrepancy in calculation of interest on such principle of Rs.1.22 crore for the period July, 2008 to March, 2009 and made further addition of Rs.1,98,603/-. Apart from that, for the year under consideration, the assessee had *suo motu* offered interest on such loan as income amounting to Rs.6,51,657/-. Continuing with the same discrepancy, the AO made further addition of Rs.91,085/-. Thus, the position which emerges from the above discussion is that the assessee got taxed for a sum of Rs. 146.4 lakh and odd in his assessments for the A.Ys. 2009-10 and 2010-11. The ld. AR contended that surrender of income of Rs.1.37 crore for the A.Y. 2009-10 has not been assailed in further appeals and further the additions made by the AO for the A.Y. 2009-10 at Rs.1,98,603/- and for the A.Y. 2010-

11 at Rs.91,805/- have also not been challenged, thereby allowing the finality to happen. It is thus evident that the loan of Rs.22 lakh as advanced out of Rs.1.22 crore in July, 2008 continued up to the date of advancing of Hand loan of Rs.2.00 crore to M/s KCPL up to 4.12.2009. The crux of the matter is that out of the above surrendered/taxed undisclosed income, the assessee had availability of funds to the tune of Rs. 1,24,42,065/- (Rs.1.00 crore received back out of principle amount of Rs.1.22 crore + Interest income of Rs.15.00 lakh for the A.Y. 2009-10 and Rs.6,51,657/- offered for taxation for the A.Y. 2010-11 + addition of interest made by the AO at Rs.1,98,603/- for the A.Y. 2009-10 and Rs.91,805/- for the A.Y. 2010-11) for use. The loan in question was given up to 04-12-2009, meaning thereby that the amount of income earned by the assessee and subjected to tax for the A.Yrs. 2009-10 and 2010-11 comes to Rs.1,24,42,062/-, which was available with the assessee at the time of advancing loan to M/s. KCPL. The Department has not shown that such an amount was spent elsewhere. In that view of the matter, it will have to be presumed that such amount was utilized by the assessee in question in advancing loan of Rs.2.00 crore to M/s. KCPL. The advancing of total loan of Rs.2.00 crore by the assessee and his son

Sh. Mohinder T. Kalani to M/s KCPL is treated as explained to the extent of Rs.1.24 crore. Since addition of Rs.1.20 crore has been made in the hands of the assessee on this count, we allow the benefit of telescoping and order to delete the addition of Rs.1.20 crore. The balance amount of available funds to the extent of Rs.4,42,062/- will be considered for telescoping in the hands of Mr. Mohinder T. Kalani.

10. The ld. AR did not press Ground Nos. 3, 4, 5 and 6 in the appeal, which hereby stand dismissed.

11. Ground No.7 of the appeal is against levy of surcharge @10% on the amount of tax payable. The ld. AR contended that no surcharge was payable for the relevant year. The AO is directed to verify the contention of the assessee and then proceed as per law accordingly.

12. Now we espouse ITA No.1911/PUN/2014, being, the appeal filed by Sh. Mohinder Kalani for the A.Y. 2010-11.

13. The only issue raised in this appeal is against the confirmation of addition of Rs.80.00 lakh towards loan advanced to M/s KCPL through the Hand Loan Receipt dated 4.12.2009 as discussed above. Both the sides agreed that the facts and circumstances of

this appeal are similar to those of the appeal in the case of Sh. Mohinder Kalani legal heir of Sh. Trilokchand T. Kalani, father of the instant assessee. While disposing off the above appeal in ITA No.1910/PUN/2014, we have deleted the addition of Rs.1.20 crore by allowing the benefit of telescoping. The amount still available for the benefit is Rs.4,42,065/-. We, ergo, allow the benefit of telescoping to the instant assessee to the extent of Rs.4,42,065/- on the same *raison d'être* and sustain the remaining addition of Rs.75,57,935/- (Rs.80 lakh minus Rs.4,42,065/-).

14. In the result, both the appeals are partly allowed.

Order pronounced in the Open Court on 04<sup>th</sup> October, 2019.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 04<sup>th</sup> October, 2019  
सतीश

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Nashik
4. The CCIT, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“ए” / DR ‘A’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	01-10-2019	Sr.PS
2.	Draft placed before author	01-10-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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