

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 699/Ind/2018
A.Y. 2014-15

Smt. Jaya Sarda, Indore
PAN – AAKPL 1108 L :: Appellant

Vs

DCIT, Cir. 2(1), Indore :: Respondent

Assessee by	None
Respondent by	Smt. Vineeta Dube, Sr. DR
Date of hearing	26.09.2019
Date of pronouncement	29.10.2019

O R D E R

This appeal is filed by the assessee against the order of Id. CIT(A)-I, Indore, dated 18.5.2018. The assessee has raised nine grounds. However, the sum & substance of the grounds of appeals is that the order passed by the Id. CIT(A) is erroneous on the facts and law in confirming the additions at Rs.10 lacs on account of unsecured loans added as unexplained cash credits u/s 68 of the I.T. Act, 1961 & Rs.72,660/- on account of disallowance of the genuine interest paid, respectively, without considering the written submission filed, explanation offered and documents submitted to prove the identity, credit worthiness and genuineness of the transactions in spite of the fact that the assessee was not provided opportunity of cross-examination at any level

during the course of assessment proceeding as well as appellate proceedings especially when all the statements and proceedings were recorded/held behind the back of the assessee in absence of any confrontation.

2. Facts, in brief, are that the assessee filed her return of income declaring income at Rs.3,70,000/-. The Assessing Officer framed the assessment at Rs.14,44,660/- by making additions of Rs.10 lacs on account of unsecured loans added as unexplained cash credits u/s 68 of the I.T. Act, 1961 & Rs.72,660/- on account of disallowance of the genuine interest paid, respectively, alleging that the assessee failed to prove credit worthiness & genuineness of the transactions of obtaining unsecured loan from M/s. Jay Jyoti India P. Ltd. Aggrieved with the action of the Assessing Officer, the assessee approached Id. CIT(A), who also confirmed the action of the Assessing Officer. Therefore, the assessee is before this Tribunal.

3. No one appeared on behalf of the assessee, however, written synopsis has been filed wherein it is contended that the assessee is an individual lady engaged in the business of trading in futures & commodities. The return of income was filed by the assessee declaring income at Rs.3,70,000/-. The assessee is the regular assessee of income tax since long and regular books of accounts are being maintained as well as duly audited u/s 44AB of the I.T. Act, 1961. The Assessing Officer made additions at Rs.10 lacs on account of unsecured loans added as unexplained cash credits u/s 68 of the I.T. Act, 1961 & at Rs.72,660/- on account of disallowance of the genuine interest paid, respectively, on the ground that the assessee failed to prove credit

worthiness & genuineness of unsecured loan obtained from M/s. Jay Jyoti India P. Ltd. However, the Revenue Authorities were not justified as the assessee filed relevant documentary evidences like, copies of ITR, PAN, confirmations of accounts from the loan creditor co., bank statements showing that payment was made to the assessee through RTGS/Account payee cheque, therefore, the assessee had discharged her primary onus of proving identity, credit worthiness and genuineness of transaction and the Revenue had not at all discharged its onus to prove otherwise and acted only upon surmises, conjectures and guess work to make additions. Further, it is submitted that the only basis of addition is some sort of inquiry, that too, conducted by another Assessing Officer in respect of another assessee and for some other assessment year and the Assessing Officer did not take any pain to issue summons to the co. in question or to carry out any sort of enquiry otherwise rather to rely on the enquiry made in some other case. Even no opportunity to cross-examine the person, upon whose statement, reliance was placed under assessment proceedings especially when such statement had been taken behind the back of the assessee and there was no confrontation at all. Therefore, it is submitted that the Revenue Authorities were not justified in making/sustaining the additions. In support of the plea, reliance is also placed on the following case-laws:

1. *CIT vs. Lovely Exports P. Ltd.*, (2008) 216 CTR 195 (SC);
2. *CIT vs. Metachem Industries*, 245 ITR 160 (MP);
3. *STL Extrusion P. Ltd.*, T.O. dated 10.5.2010 in IT(SS)A No.259/Ind/2008 (Indore Tribunal);
4. *PCIT vs. Himachal Fibers Ltd.* (2018) 98 taxmann.com 173 (SC);

5. *PCIT vs. Hi-Tech Residency P. Ltd. (2018) 96 taxmann.com 403 (SC);*
6. *CIT vs. Peoples General Hospital (2013) 35 taxmann.com 444 (MP)*
7. *Ajit & Ajay Estate and Resorts P. Ltd. (2018) 33 ITJ 449 (Indore Tribunal);*
8. *PCIT vs. Chain House International P. Ltd. (2018) 98 taxmann.com 47 (MP);*
9. *CIT vs. Vaibhav Cotton P. Ltd. (2013) 36 taxmann.com 429 (MP);*
10. *CIT vs. Haresh D. Mehta (2017) 86 taxmann.com 22 (Bom);*
11. *CIT vs. Kamdhenu Steel & Alloys Ltd. (2012) 19 taxmann.com 26 (Del);*
12. *CIT vs. Ranchodjivabhi Nakhava, 21 taxmann.com 159 (Guj);*
13. *ACIT vs. Nobel Friends Foundation (2010) 14 ITJ 196 (Indore Tribunal);*
14. *ACIT vs. Pramod Kr. Sethi, ITA No.382/Ind/2014 T.O dt. 06.11.2018;*
15. *Mahendra Kumar Agrawal vs. ACIT, ITA No.742/ind/2015 T.O. dt. 05.7.2016;*
16. *Rajendra Pd. Agrawal vs. ACIT, ITA No.327/Ind/2015; and*
17. *ACIT vs. Rirish Kumar Sharda, ITA No.30 to 33/Ind/2012.*

On the other hand, Id. Sr. DR relied on the order of the Id. Revenue Authorities but could not controvert the submission of the assessee that aforesaid cross-examination was not allowed.

3. I have heard both the parties and perused the orders of lower authorities. Before me, the assessee has agitated that the only basis of addition is some sort of inquiry, that too, conducted by another Assessing Officer in respect of another assessee and for some other assessment year and the Assessing Officer did not take any pain to issue summons to the co. in question or to carry out any sort of enquiry otherwise rather to rely on the enquiry made in some other case. Even no opportunity to cross-examine the person, upon whose statement, reliance was placed under assessment proceedings especially when such statement had been taken behind the back of the assessee and there was no confrontation at all. The assessee has also

filed paper book/written submission/case laws. Considering the facts and circumstances of the case, I am of the view that in order to provide natural justice, the requisite inquiry should have been done by the Assessing Officer and the cross-examination should have also been allowed by the Assessing Officer, therefore, the matter requires reconsideration at the level of the Assessing Officer. Accordingly, the orders of Revenue Authorities are set aside and the matter is restored back to the file of the Assessing Officer. The Assessing Officer would decide the grounds of appeal afresh in terms as indicated hereinabove after affording due opportunity of being heard to the assessee as per law and the assessee is also directed to cooperate/appear before Assessing Officer in this regard by furnishing evidence, if any.

4. In result, the appeal filed by the assessee is allowed for statistical purposes only.

Order was pronounced in the open court on 29.10.2019.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

Dated : 29.10.2019

!vyas!

Copy to:

Appellant/Respondent/Pr.CIT(A)/Pr.CIT/DR, Indore