



IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT, AND

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.4423/Mum./2017
(Assessment Year : 2012-13)

Shri Sunil Tukaram Bharadkar
PH-4, Oberoi Garden-II
Near Western Express Highway
Thakur Village, Kandivali East
Mumbai 400 101
PAN - AABPB3894J

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-30(3), Mumbai

..... Respondent

Assessee by : Shri Madhur Aggarwal
Revenue by : Shri V. Vinod Kumar

Date of Hearing - 09.09.2019

Date of Order - 05.12.2019

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal has been filed by the assessee challenging the order dated 14th March 2017, passed by the learned Commissioner of Income Tax (Appeals)-41, Mumbai, for the assessment year 2012-13.

2. The dispute in the present appeal is confined to the addition of ₹ 26.75 lakh as unexplained cash credit under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee is an individual. As stated by the Assessing Officer, the assessee is carrying on business of cable network in the name and style of "Mouli Cable Network". For the assessment year under dispute, the assessee filed his return of income on 28th September 2012, declaring total income of ₹ 27,99,933. During the assessment proceedings, the Assessing Officer on verifying the return of income and other material on record found that the assessee during the year under consideration has shown following unsecured loans in the Balance Sheet: –

<i>Shri Hemant Bharadkar</i>	<i>₹ 1.45 lakh</i>
<i>Smt. Sulochana Bharadkar</i>	<i>₹ 13.50 lakh</i>
<i>Smt. Tanuja Bharadkar</i>	<i>₹ 17 lakh</i>
<i>Shri Pawan Exim Pvt. Ltd.</i>	<i>₹ 10 lakh</i>
<i>Total:-</i>	<i>₹ 41.95 lakh</i>

4. Noticing the above, the Assessing Officer called upon the assessee to prove the genuineness of the loan transactions by furnishing confirmation letters, bank account and supporting evidence to prove the creditworthiness of the lenders. In response, as observed by the Assessing Officer, the assessee filed confirmation letters, bank statement and copies of the income tax returns of Smt. Sulochana Bharadkar, the mother of the assessee and Smt. Tanuja Bharadkar, the wife of the assessee. However, no such confirmation / evidence in

respect of Shri Hemant Bharadkar and Shri Pawan Exim Pvt. Ltd., were furnished by the assessee. On examining the bank statements of Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar, the Assessing Officer found that immediately prior to the issuance of cheques to the assessee towards unsecured loans, cash deposits were made in the bank accounts. Further, he observed, in the return of income filed by Smt. Sulochana Bharadkar, meager income from agricultural activities was shown. Similarly, Smt. Tanuja Bharadkar had also shown a meager income in the return of income filed by her and the nature and source of such income was not explained. To further verify the genuineness of loan transactions, the Assessing Officer issued summons under section 131 of the Income Tax Act, 1961 (for short "*the Act*") to Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar. However, instead of appearing in person before the Assessing Officer, they filed written submissions. Thus, on the basis of material on record, the Assessing Officer concluded that the concerned lenders neither could explain the source of cash deposit in their bank accounts. Accordingly, he treated the loan transactions with these two persons to the extent of the cash deposits in their respective bank accounts as unexplained cash credit of the assessee and added back ₹.8,90,000 and ₹.6,40,000 being the cash deposits in the bank accounts of Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar respectively. Insofar

as the loan transactions with Shri Hemant Bharadkar and Shri Pawan Exim Pvt. Ltd. are concerned, the Assessing Officer observed, though, summons were issued to both the parties, however, they did not appear. In respect of Shri Hemant Bharadkar, it was submitted that he has expired, hence, neither he can appear nor any confirmation can be obtained from him. As regards Shri Pawan Exim Pvt. Ltd., the Assessing Officer observed that no supporting evidence could be furnished by the assessee to establish the creditworthiness and genuineness of the loan transaction. Thus, ultimately, he concluded that the entire unsecured loan of ₹ 26.75 lakh is nothing but unexplained cash credit as per section 68 of the Act and added back to the income of the assessee.

5. The learned Authorised Representative submitted, Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar are closely related to the assessee and the assessee has not only filed their confirmations accepting the loan transactions, but all other supporting evidence including the return of income filed by them. He submitted, Smt. Sulochana Bharadkar, the mother of the assessee is carrying on agricultural activities and the deposits made in her bank account are receipts from such activities. He submitted, assessee's wife Smt. Tanuja Bharadkar is receiving rental income which is deposited in her bank account and the loan given to the assessee was out of that.

Thus, he submitted, all evidences relating to the loan transactions with Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar were submitted by the assessee establishing not only creditworthiness but also the genuineness of the transaction. Hence, addition made under section 68 of the Act is unjustified. As regards the loan availed from Shri Hemant Bharadkar, the learned Authorised Representative submitted, since the concerned lender has died, he could not be produced before the Assessing Officer. However, before learned Commissioner (Appeals), the assessee had furnished confirmation from his legal heir. He submitted, considering that the loan availed from the concerned person is of a small amount of ₹ 1.45 lakh, it should not have been treated as unexplained cash credit. As regards loan availed from Shri Pawan Exim Pvt. Ltd., the learned Authorised Representative submitted, in course of proceedings before learned Commissioner (Appeals), the assessee had furnished Balance Sheet of the company from which it is established that the lender is having sufficient creditworthiness to advance the loan to the assessee. The learned Authorised Representative submitted, though, in response to the summons issued by the Assessing Officer none of the lenders appeared in person, however, sufficient compliance was made to the summons issued by the Assessing Officer. Thus, he submitted, that the addition made should be deleted.

6. The learned Departmental Representative, strongly relying upon the observations of the Assessing Officer and learned Commissioner (Appeals) submitted, apart from furnishing insufficient evidences in respect of Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar, the assessee did not furnish any corroborative evidence before the Assessing Officer to establish the genuineness of the loan transaction and the creditworthiness of the lenders. He submitted, the Assessing Officer was also prevented from verifying the genuineness of loan transactions and creditworthiness of the lenders as the lenders did not appear in person in response to the summons issued by him. Further, he submitted, to avoid further enquiry, the assessee instead of appearing before the Assessing Officer furnished the submissions / compliance in the tapal. Thus, he submitted, the assessee having failed to prove the loan transactions, the addition made under section 68 of the Act is justified.

7. We have considered rival submissions and perused the material on record. As could be seen, the assessee has availed loans from three close relatives and loan of ₹ 10 lakh from a company Shri Pawan Exim Pvt. Ltd. When called upon by the Assessing Officer to prove the loan transactions, the assessee could furnish confirmation letters, bank statement and income tax return copies of two of the lenders viz. Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar representing loan

amount of ₹ 13.50 lakh and ₹ 17 lakh respectively. However, no evidence in respect of loans availed of ₹ 1.45 lakh from Shri Hemant Bharadkar and ₹ 10 lakh from Shri Pawan Exim Pvt. Ltd., could be furnished by the assessee. From the Bank statements of Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar, the Assessing Officer found that immediately prior to issuance of cheques to the assessee, there were cash deposits. Further, the Assessing Officer has also raised some doubt regarding the creditworthiness of these two lenders and has also stated that his effort to verify the genuineness of loan transactions as well as creditworthiness of the lenders, did not fructify as none of the lenders appeared in person before him in response to the summons issued under section 131 of the Act, though, written submissions were filed in response to such summons by Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar. However, out of the total unsecured loans availed from Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar, the Assessing Officer has ultimately treated the amounts to the extent of cash deposits in the bank account of these two lenders as unexplained cash credit, meaning thereby, he accepted almost half of the loan transactions to be genuine. In our view, the Assessing Officer completely misdirected himself while rejecting a part of the loan transaction with these two lenders. If he had any doubt with regard to the genuineness of the loans and the

capacity of the lenders, he should not have accepted a part of the loan transaction to be genuine. By doubting the source of cash deposits in the bank account of lenders, the Assessing Officer cannot make addition at the hands of the assessee. If he had any doubt regarding the source of cash deposits, the Assessing Officer should have taken up the issue with the concerned lenders as the lenders are also income tax assesses and in case of failure on their part to explain the cash deposits adverse view could have been taken against them. More so, when the Assessing Officer has not entirely disbelieved the claim of the two ladies that they are having independent source of income, though he might have raised doubt with regard to the quantum of such income. Therefore, we are of the view that part of the loans availed from Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar cannot be treated as unexplained cash credit at the hands of the assessee. Accordingly, Assessing Officer is directed to delete the additions of ₹ **8,90,000 and ₹ 6,50,000.**

8. Insofar as the loan transaction with Shri Hemant Bharadkar, it appears from the facts on record, the concerned lender had died, hence, he could not respond to the summons issued under section 131 of the Act nor could any confirmation from him be filed before the Assessing Officer. However, before learned Commissioner (Appeals), the assessee had filed a confirmation from his legal heir accepting the

loan transaction. As it appears, learned Commissioner (Appeals) has doubted the veracity of such confirmation letter while upholding the addition made by the Assessing Officer. In our view, learned Commissioner (Appeals) is not correct in sustaining the addition without making any enquiry to find out the correctness of the confirmation letter obtained from the legal heir. Considering the quantum of loan amount, in our considered opinion, the addition should not have been sustained without making proper enquiry. In respect of loan of ₹ 10 lakh from Shri Pawan Exim Pvt. Ltd., though, in the course of assessment proceedings the assessee was unable to furnish any evidence to prove the loan transaction and the summons issued under section 131 of the Act to the concerned party was not responded to, however, before the first appellate authority the assessee not only furnished confirmation from the concerned party, but also furnished the financial statements of the lender. It is noticed, though, the lender has shown a turnover of ₹ 4.26 crore in the Profit & Loss account, however, learned Commissioner (Appeals) has upheld the decision of the Assessing Officer in treating the unsecured loan availed from the lender at ₹ 10 lakh, only on the reasoning that no fixed asset has been shown in the Balance Sheet, which according to learned Commissioner (Appeals) indicates that the company is only a paper company and not doing any real business. In our view, without

making a proper enquiry relating to the activities of this lender, it cannot be presumed that it is a paper company and not doing any real business. Once the assessee filed some evidence before learned Commissioner (Appeals) to prove the loan transaction, it would have been proper on his part to examine them himself or get the matter examined by the Assessing Officer and thereafter decide the issue. Therefore, in our considered opinion, the loan transaction with Shri Pawan Exim Pvt. Ltd., requires further verification. In view of the aforesaid, while deleting the partial additions of unsecured loan availed from Smt. Sulochana Bharadkar and Smt. Tanuja Bharadkar, the issues relating to the additions made in respect of unsecured loan availed from Shri Pawan Exim Pvt. Ltd. and Shri Hemant Bharadkar are restored back to the file of the Assessing Officer for fresh adjudication after due opportunity of being heard to the assessee. Grounds are partly allowed.

9. In the result, appeal stands partly allowed.

Order pronounced in the open Court on 05.12.2019

Sd/-
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 05.12.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai