

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.154/PUN/2019**
निर्धारण वर्ष / **Assessment Year : 2007-08**

Chetan Ashok Doshi,
567, E Ward, Shahupuri,
2nd Lane, Kolhapur-416001.

PAN : AFLPD4334E

.... अपीलार्थी/Appellant

Vs.

DCIT, Circle-2,
Kolhapur.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M. K. Kulkarni
प्रत्यर्थी की ओर से / Respondent by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 16.12.2019	घोषणा की तारीख / Date of Pronouncement: 16.12.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-1, Kolhapur dated 27.11.2018 for the Assessment Year 2007-08.

2. The grounds raised by the assessee are as under :-

“1) On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of Rs. 3,00,000/- received from Smt. Vaswani under S. 68 of the Act. The assessee is bound to explain the source of credit but not the source of source of that credit. The addition under S. 68 is unwarranted. It be deleted.

2) On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition made by the A. O. of Rs. 7,00,000/- received from Shri Vijay Shamlal Vaswani under S. 68 of the Act. The assessee is bound to explain the source of credit but not the source of source of that credit. The addition under S. 68 is unwarranted. It be deleted.

3) On the facts and circumstances of the case and in law the levy of interest u/s 234A, 234B and 234C is not justified.

4) The appellant craves to leave, add/amend or alter any of the above grounds of appeal.”

3. Before me, at the outset, ld. Counsel for the assessee submitted that this is a case where the Assessing Officer made addition of Rs.10 lakhs u/s 68 of the Act received from Smt. Vaswani and Shri Vijay Shamlal Vaswani. Without going to the merits, ld. Counsel filed a copy of the bank account of the assessee and submitted that the said loans were cleared by the assessee by way of repayment of the said loans amounting to Rs.10 lakhs (Rs.3 lakhs to Smt. Vaswani and Rs.7 lakhs to Shri Vijay Shamlal Vaswani). Relying on the decision of the Co-ordinate Bench of the Tribunal in the case of Shri Dilip Motilal Chordiya vs. ITO vide ITA No.761/PUN/2017 order dated 15.12.2017, ld.Counsel submitted that on similar issue i.e. when the loans are repaid, the matter has to be revisit to the file of the Assessing Officer for fresh adjudication in the matter. In this regard, he brought my attention to para 8 and 9 of the said order of the Tribunal (supra) and prayed for remanding the issue to the file of the Assessing Officer.

4. Considering the above, I understood the facts of the case and the claims of the assessee in matter of remanding the said issue. I find relevant to extract para 8 and 9 of the order of the Tribunal (supra) and the same are extracted as under :-

“8. We heard both the parties on this limited of request for remanding the issue to the file of the AO for considering the facts relating to the repayments of the loans. It is the case of the AO and the CIT(A) that the transactions of the cash credits were not properly evidenced by the assessee before them. The fact relating to the repayment of cash credits by the assessee to the creditors is a new angle to the issue which requires thorough investigation and examination. We are of the view that the AO is required to investigate as to the correctness of these repayments and the sustainability of the claim of the assessee. AO also has to examine the issues relating to identity, credit worthiness and the genuineness of transaction from the point of view of the provisions of section 68 of the Act when the repayments are duly made by the assessee to the said 31 creditors. Further, we have also examined the decision relied on by the Ld. Counsel for the assessee (page No.25 to 29 of the paper book) in the case of Rashmikant M. Shah Vs. ACIT reported in (2016) 67 (II) ITCL 402 (Mum-Trib.). The said decision is found to be relevant also for the legal proposition that the addition u/s.68 of the Act on account of unexplained cash credit in the hands of the assessee is not sustainable when

the creditors have received back the loans from the assessee. In the said case, the Tribunal allowed the appeal of the assessee on this issue on finding that the credits were already repaid and the credits are as old as a decade.

9. Therefore, we are of the opinion that the fact of repayment of the loans to the creditors is an important evidence which is required to be considered by AO when he decides to invoke the provisions of section 68 of the Act. When the repayments are made through banking channels, it implies the existence of the creditors qua the aspects of identify of the creditors and also the genuineness of the loan creditors etc. This being the issue of repayment, the issues of credit worthiness of the assessee does not apply to such repayment. That is relevant only on the creditors at the time of giving loan to the assessee. AO is required to examine these aspects in the remand proceeding and apply the above discussed points before passing a speaking order on the issue. AO shall grant reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Accordingly, all the grounds raised by the assessee are allowed for statistical purposes.”

5. Considering the above, I am of the opinion that the matter should revisit to the file of the Assessing Officer for fresh adjudication. The Assessing Officer is ordered accordingly. Thus, the grounds raised by the assessee are allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 16th day of December, 2019.

Sd/-

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 16th December, 2019.

Sujeet

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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