

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCHES : “A”, BENGALURU**

**BEFORE SHRI PRADIP KUMAR KEDIA, AM
&
SMT.BEENA PILLAI, JM**

**ITA No.1019(Bang)/2019
(Assessment year : 2012-13)**

Shri Ramesh Kumar (HUF)
Adinath Worldwide India
No.25/6, Yelachanahalli, Kanakapura Main Road,
6th Cross, JP Nagar Post,
Bangalore-560 078
Pan No.AAJHR4949A

Appellant

Vs.

The Asst. Commissioner of Income tax,
Circle-4(3)(1), ,
Bangalore

Respondent

**Appellant by : Smt. Sheetal Borkar, Advocate
Revenue by : Shri B.R.Ramesh, JCIT**

**Date of hearing : 26-02-2020
Date of pronouncement : 03-03-2020**

ORDER

PER PRADIP KUMAR KEDIA: AM

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-7, Bengaluru dated 04-03-2019 arising in the order passed by the Assessing Officer u/s 143(3) of the IT Act, 1961 (*'The Act'*) relating to assessment year 2012-13.

2. As per the grounds of appeal, the assessee seeks to impugn the order of the CIT(A) in sustaining the additions of Rs.1,03,000.00/- towards addition, made u/s 68 of the IT Act.

3. When the matter was called for hearing, the learned AR for the assessee submitted that the assessee in the previous year relevant to assessment year 2012-13 has availed loans from five parties for which relevant confirmations from the lenders are placed on record. The revenue authorities have disputed the bonafide of the loan on the basis of alleged lack of credit worthiness of the lenders. To support the bonafide of the loans, the learned AR for the assessee referred to the confirmation letters, ledger accounts, as well as bank statement and submitted that the assessee had duly paid interest on the loans obtained. The TDS has been deducted on interest paid. It was further submitted that this apart, the loans have been ultimately repaid in the subsequent financial years and therefore, the assessee is not benefitted in any manner. It was further pointed out that except for putting the entire onus on the assessee, the revenue has not made any enquiry from the lenders under s.133(6) or under s.131(1) of the Act at all. It was submitted that it must be recognised that the assessee ,at times, would not be privy to the credit worthiness of the lenders. The AO ought to have made some enquiries himself, to appreciate the facts in perspective. The learned AR accordingly, urged that the order of the CIT(A) be set aside and the AO be directed to delete the additions.

4. The ld. DR on the other hand, relied upon the order of the CIT(A) and submitted that the primary onus for proving credit worthiness of the lenders falls on the assessee which was not discharged at all. Under the circumstances, action of the CIT(A) should not be disturbed.

5. We have carefully considered the rival submissions. The controversy involved in the captioned appeal is towards the addition of Rs.1,03,00.00/- under s.68 of the Act. As pointed out on behalf of the assessee, the requisite details regarding the lenders such as Permanent Account Number, confirmation letters, address of the lenders are available on record and the interest has also been paid to the lenders which has been subjected to TDS as obligated in law.

6. This apart and significantly, the loans are stated to have been re-paid in the subsequent financial year. An attempt was made to explain the factum of repayment before us with reference to the bank statements etc. However, in the same vain, we note that the facts of the repayment was not brought to the notice of the lower authorities and therefore, remained un-examined. In our considered view, the re-payment of loans transcends into all other consideration and in the circumstances where interest has been incurred on loans received and loans have been ultimately repaid through banking channels, the mitigation circumstances exists. The borrowals made by the assessee ought to have been accepted as bonafide and the nature and source of such loans is ought to have been considered satisfactory by using statutory discretion vested with the AO in favour of the assessee in such circumstances. We thus, find merit in the plea of the assessee.

7. However, the appeal is required to be restored to the file of the AO in the larger interest of justice with a view to enable the assessee to place facts of repayment of loans before the AO. The AO is directed to delete the additions made under s.68 of the Act to the extent, he finds bonafide in the plea of the assessee towards re-payment of loans availed.

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

Order pronounced in the open court on 03-03-2020.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER
Place: Bengaluru
Dated: 03-03-2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

*am

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
- 6.Guard File

By Order

Asst.Registrar

