

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'I(2) + SMC-1' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 2288/DEL/2019 ( A.Y 2013-14)**

Lovnish Bhatia BT-14 Block, Shalimar Bagh, New Delhi, PIN: 110088 AQXPB7672C  <b>(APPELLANT)</b>	Vs	ITO Ward-47(1) New Delhi  <b>(RESPONDENT)</b>
---	----	---

<b>Appellant by</b>	<b>None</b>
<b>Respondent by</b>	<b>Sh. Pradeep Singh Gautam, Sr. DR</b>

<b>Date of Hearing</b>	<b>05.03.2020</b>
<b>Date of Pronouncement</b>	<b>12.05.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 14/01/2019 passed by CIT(A)-16, New Delhi for Assessment Year 2017-18.

2. The grounds of appeal are as under:-

1. *“On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs.12,00,000/- made by the Ld. AO without considering that the payment has been made through banking channel, TDS was deducted on said payments , ledger*

*confirmation has also been filed along with bills of commission agents.*

*3. That having regards to the facts and circumstances of the case Ld. CIT(A) erred in partly disallowing of Rs. 5,71,697/- on account of cessation of trading liability U/s 41(1) of the Act.*

*4. That having regards to the facts and circumstances of the case Ld. CIT(A) erred in partly disallowing of Rs. 16,20,000/- on account of cessation of trading liability u/s 41(1) of the Act.”*

3. The assessee is engaged in the business of trading of dry fruits, Kirana Items etc. Return of income was filed on 30/09/2013 declaring an income of Rs. 9,66,700/-. During the course of assessment proceedings, the Assessing Officer made an addition of Rs.9,49,856/- being loss treated as cessation of liability u/s 41(1) of the Income Tax Act. The Assessing Officer recorded a finding that there was a misappropriate increase in commission and in the absence of documentary evidence to substantiate the claim of the assessee that commission had been genuinely paid. The Assessing Officer disallowed Rs. 12,00,00/- of the commission. The Assessing Officer also examined the fresh loans of Rs. 17,40,000/- reflected in the books of assessee and concluded that the assessee had not discharged his onus regarding the identity, genuineness and creditworthiness of lender and added the same to the income of the assessee by invoking Section 68 of the Act. The Assessing Officer also made a disallowance on account of miscellaneous expenses.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. None appeared on behalf of the assessee and there is no adjournment application on behalf of the assessee. The notice has been duly served to the assessee. Therefore, we are taking the submissions of the assessee before the

CIT(A) as well as before the Assessing Officer as contentions/arguments before us.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR further submitted that as regards Ground No. 1, the CIT(A) has given a categorical finding that the loan amount was outstanding for more than 2 years and no interest was paid on the said loans. The said loan was also within the family and thus there is a clear lack of intention to pay back these loans. Therefore, the Assessing Officer rightly treated these two loans as cessation of liability. As regards Ground No.2, the Ld. DR submitted that the Assessing Officer has given a remand report to the CIT(A) and admitted the additional evidence. Therefore, the Assessing Officer as well as these CIT(A) rightly hold that the assessee fail to discharge its onus as regards identity, genuineness and credibility of the parties. As regards Ground No. 3, the Ld. DR submitted that the CIT(A) rightly held that since no evidence whatsoever to prove the genuineness of the loan amount was given by the assessee and the creditworthiness of the lender was also not prove, therefore, the addition of Rs. 17,40,000/- was rightly made by the Assessing Officer .

7. We have heard the Ld. DR and perused the material available on record. As regards ground No.1, the CIT(A) has given a detailed finding and there is no prima facie evidence that these loans amounts will be paid in future. Therefore, the Assessing Officer rightly treated it as cessation of liability. Ground No. 1 is dismissed.

8. As regards Ground No.2, the CIT(A) has given a categorical finding that the commission expenses were not at all proved by the assessee from the evidence submitted before it. But there is a confirmation of ledger accounts which was before the CIT(A) upon which the Assessing Officer has also not commented in the remand report. Therefore, it will be appropriate to remand

back this issue to the file of the CIT(A) for proper adjudication. Ground No. 2 is partly allowed for statistical purpose.

9. As regards Ground No.3, though the CIT(A) has taken a cognizance of the evidence at the same time, the comment upon the evidence is lacking. Therefore, it will be appropriate to remand back this issue to the file of the CIT(A) for proper adjudication. Ground No. 3 is partly allowed for statistical purpose.

10. In result, the appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced on this 12th Day of May, 2020.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 12/05/2020  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

ate of dictation	12.03.2020
Date on which the typed draft is placed before the dictating Member	13.03.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	13.5.2020
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	