

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**
I.T.A. No.6590/M/2011 (Assessment Year: **2007-2008**)

ACIT, CC-35, Mumbai.	बनाम/ Vs.	Shri Suresh K. Nagre, 9/50, shere Punja society, Andheri East, Mumbai-93.
स्थायी लेखा सं./PAN : ADNPN1212H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri K. Krishna Murthy, CIT-DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Naveen Kumar Mishra

सुनवाई की तारीख /Date of Hearing : 09.03.2017

घोषणा की तारीख /Date of Pronouncement : 17.03.2017

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue on 30.9.2011 is against the order of the CIT (A)-41, Mumbai dated 20.7.2011 for the assessment year 2007-2008.

2. In this appeal, Revenue raised four grounds in toto. In the grounds, Revenue raised the issues relating to (i) applicability of the CBDT Circular No.1916 dated 11.5.1994; (ii) the relief granted with regard to the addition of Rs. 21.90 lakhs, Rs. 9 lakhs of loan from Smt. S.K. Nagre and finally the addition of loan of Rs. 50 lakhs from Shri Pyarali H Maredia.

3. During the proceedings before us, in connection with ground no.1, Ld DR for the Revenue submitted that this is a case of search assessment made u/s 143(3) r.w.s 153A of the Act. In the search action, Revenue assessed jewellery less than 500 gms. AO made addition of Rs. 2 lakhs out of the total jewellery of Rs. 2,98,824/-. AO rejected the assessee's statement that revolves around the applicability of the said CBDT Circular (supra), which prohibits the Revenue from making seizure of any jewellery not exceeding 500 gms per person. On appeal, CIT (A) considered the applicability and held that that the jewellery belongs to the

assessee's mother and in that case, the said Board's Circular (supra) applies in favour of the assessee.

4. After hearing both the parties and on perusal of the orders of the Revenue Authorities in general and para 2.4 of the CIT (A)'s in particular, we find, the said Circular (supra) allows the jewellery up to 500 gms per married lady. Considering the same, we are of the opinion, the decision taken by the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, issue no.1 raised by the Revenue is decided in favour of the assessee and the relevant ground is dismissed.

5. The second issue raised in this appeal relates to the seized documents named Annexure-3. This document contains the details of receipt of cash by the assessee during the period 27.4.2006 to 9.1.2007. The total of the entries on the paper works out to Rs. 21.9 lakhs. During the search action, assessee offered sum of Rs. 18 lakhs and the balance of Rs. 3.9 lakhs was explained by the cash withdrawals from the bank. There was a finding of cash on the day of search amounting to Rs. 13,77,500/-. During the assessment proceedings, assessee explained the said discrepancies *qua* the said cash seizure of Rs. 13,77,500/- and requested for avoiding double addition on this account. Rejecting the same, AO proceeded to make the addition of Rs. 21.9 lakhs. In the process, AO made not only the above addition but also addition of Rs. 18 lakhs.

6. During the proceedings before the first appellate authority, as per the discussion given in para 4.3 of the CIT (A)'s order, assessee submitted that it is a case of making double additions and narrow interpretations. Assessee also submitted that the cash found during the search action was added separately along with the entries appeared in the Annexure-3. The requirement of giving set off was requested. Assessee also relied on various decisions in this regard. After considering the submissions of the assessee, CIT (A) held that the order of the AO is not fair. At the end of the proceedings, the following decision is given by the CIT (A) on this issue.

"4.3.....In my view, the seized paper proves that the assessee has received Rs. 21,90,000/- during the year under consideration and the cash found of Rs. 13,77,500/-

was the amount out of the cash received during the year. Therefore, it cannot be separated from the cash received during the year because no documentary evidence was found and seized to prove that the cash received during the year was incurred by the assessee in other business or function. Thus, the argument of the AO that it is a separate cash than the cash received is not maintainable. Secondly, the appellant has declared Rs. 18,00,000/- for the AY 2007-08 which is ignored by the AO and credit has to be given of Rs. 18,00,000/-. Thus, the difference of Rs. 3,90,000/- which is remained unexplained is confirmed and the balance amount of Rs. 18,00,000/- is deleted. The ground of appeal is partly allowed."

7. Considering the above, we find, the order of the CIT (A) is fair and reasonable. The reasoning given by the AO is unsustainable in law. It is not proper to make addition (i) based on documents seized and (ii) based on the seized cash ignoring the fact based explanation of the assessee. Accordingly, the relevant ground raised by the Revenue is dismissed.

8. Ground no.3 relates to the loan received from Smt. S.K. Nagre amounting to Rs. 9 lakhs. In this regard, it is the prayer of the assessee that the same is not actually a loan and it constitutes the sale proceeds of shares. The fact of erroneous entries showing the said amount as 'loan' was brought to the notice of the CIT (A) during the first appellate proceedings. To this extent, assessee filed a letter which was remanded to the AO. Subsequently, AO submitted the remand report dated 21.4.2011 which is reproduced in para 5.3 of the CIT (A)'s order. AO ignored the assessee's claim of erroneous entries in the books of account as mentioned in the report. However, CIT (A) examined the facts afresh and considered the said remand report and gave finding that the said Rs. 9 lakhs actually is not a loan taken from the mother but the sale proceeds of the shares of the assessee. CIT (A) also gone through the contract notes, sale of shares of M/s. Bamco Tech (P) Ltd and other related documents and held the said amount of Rs. 9 lakhs constitutes genuinely accounted transactions and deleted the addition fully.

9. During the proceedings before us, Ld DR for the Revenue relied on the order of the AO.

10. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the relevant material placed before us, we find, the contents of paras 5.1, 5.2 and 5.3 of the CIT (A)'s order are relevant. On perusal of the said paras of the CIT (A)'s order, we find, the sale transactions of the said shares are

undisputed. The payments are received through account payee cheques and no cash transactions are involved. It is a case of sale of proceeds of shares of M/s. Bamco Tech (P) Ltd. These transactions are fully reflected in the bank account of the concerned persons. For the sake of completeness, we extract the relevant lines from the sai paras and the same reads as under:-

".....From the perusal of the documents filed by the appellant during the course of appellate proceedings and remanded back to the AO, it is clear that all the transactions were made through DD or A/c Payee cheque and there is no cash transaction in the sale proceed of shares. All the transactions are duly reflected in the bank account of concerned persons. The mistake committed by the appellant seems to be apparent from the record. Since all the documents were filed during the appellate proceedings and due opportunity was given to the assessing officer, therefore, the appellant cannot be punished for an apparent mistake. Keeping in view the facts and circumstances and the evidence filed on record, it is held that the amount of Rs. 9 lakhs is genuine transaction and the addition made by the AO is not sustainable. Hence, it is deleted. The ground of appeal is allowed."

11. From the above, it is obvious the order of the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, relevant ground raised by the Revenue is dismissed.

12. Ground no.4 relates to the loan receipt of Rs. 50 lakhs from Shri. Pyarali Maredia. Relevant facts are that the assessee reflected 8 loan transactions and the loan from Shri. Pyarali Maredia is one of such transaction. Stating that assessee failed to produce bank account details and the other evidences, AO made addition of the said loan of Rs. 50 lakhs. In the process, AO ignored the confirmation letter and other relevant details furnished by the assessee in support of the claim. Matter travelled to the first appellate authority.

13. During the proceedings before the first appellate authority, assessee submitted (para 6.2 of the CIT (A) is relevant in this regard) that the said loan was taken vide Demand Draft No. 261906 (sic) dated 22.3.2007 of ICICI Bank Ltd. Assessee also furnished bank extracts, income tax particulars of Shri Pyarali Maredia, which were remanded to the file of the AO for comments. Vide the remand report dated 21.4.2011, AO insisted that the assessee failed to explain and establish the genuineness / creditworthiness of the loan creditor. On supply of the said remand report to the assessee and calling for the comments, CIT (A) noticed that Shri. Pyarali Maredia appeared before the AO in the remand proceedings u/s

131 of the Act and confirmed the fact of giving the said loan to the assessee. CIT (A) also noted that the bank particulars and account copies of income tax particulars for various years were also furnished to the Assessing Officer. CIT (A) recorded that there is a bank balance of Rs. 52 lakhs in his account, which is the source of said loan of Rs. 50 lakhs. Further, CIT (A) mentioned that assessee is a regular tax payer and the income for the AY 2007-08 amounts to around Rs. 11.5 lakhs. Considering all these evidences, CIT (A) held that the AO is not fair in giving adverse finding in the remand report. Accordingly, CIT (A) granted relief to the assessee and held that Shri Pyarali Maredia is a creditworthy and the transaction is genuine.

14. On hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the relevant material placed before us, we find, the crucial finding of the CIT (A) should be extracted (on page 15 of the CIT (A)'s order) and the same reads as under:-

".....On the present case, Shri Pyarali H. Maredia was present in the office of the AO during the remand proceeding and given his statement and confirmed that he has given a loan of Rs. 50 lakhs to the assessee through account payee cheque. Secondly, Shri Pyarali H. Maredia has produced his bank account, in which an amount of Rs. 52 lakhs was shown as balance out of which the loan of Rs. 50 lakhs was given. Thirdly, Shri Pyarali H. Maredia is an income tax assessee and submitted his return and has shown an income of Rs. 11,51,821/- for the AY 2007-08. In view of these facts, it is clear that the identity of the creditor is proved. Secondly, the creditworthiness is also proved because there was a balance of Rs. 52 lacs in his bank account and thirdly, the genuineness of the transaction was also proved because credit has issued a cheque of Rs. 50 lacs to the assessee. However, if the AO has still any doubt regarding the creditworthiness of Shri Pyarali H Maredia, he should have written a letter to the concerned Assessing Officer who can examine the bank account of Shri Pyarali H. Mardia. The decisions relied upon by the appellant supra also goes in its favour that the identity, creditworthiness and genuineness of the transaction has been proved. Therefore, the AO cannot treat it as undisclosed income u/s 68 of the Act. In totality of facts and circumstances, it is held that the assessee has proved the conditions of section 68 with all documentary evidence and by producing the creditor before the AO. Therefore, no adverse inference can be drawn. Thus, the addition made by the AO is deleted and ground of appeal is allowed."

15. From the above, it is evident that the Revenue never disturbed the claims of the Shri Pyarali H Maredia made in his return of income furnished with the Department. There is no reason to disturb the finding of the CIT (A) with regard to the transaction of loan of Rs. 50 lakhs. Accordingly, in our considered opinion, the decision taken by the CIT (A) by granting relief to the assessee is fair and reasonable

and it does not call for any interference. Accordingly, the relevant ground raised by the Revenue is dismissed.

16. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 17th March, 2017.

Sd/-

(SANDEEP GOSAIN)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 17.03.2017

व.नि.स./ OKK, Sr. PS

Sd/-

(D. KARUNAKARA RAO)

ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**