

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)  
AND  
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.3748/Mum/2019  
(Assessment year 2013-14)

Shri Rajeev S Sonkar Prop of M/s Dynamic Realty Ventures, Unit No.9/10, Srishti Plaza Saki Vihar Road, Powai, Mumbai-400 076 PAN : AFMPS2688M	vs	ACIT 26(2), Mumbai
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	Shri Naresh Jain, AR
Respondent by	Shri Bharat Andhle, DR

Date of hearing	02-09-2021
Date of pronouncement	27-09-2021

**ORDER**

**Per Saktijit Dey (JM)**

This is an appeal by the assessee against order dated 11-12-2018 of learned Commissioner of Income-tax (Appeals)-38, Mumbai for the assessment year 2013-14.

2. The dispute in the present appeal is confined to addition made of Rs.1,40,00,000/- as unexplained investment under section 68 of the Act.

3. Briefly the facts are, the assessee is a resident individual and stated to be engaged in the business of builders and developers. For the assessment year under dispute assessee filed his return of income on 29-09-2013 declaring total income of Rs.55,33,950/-. In course of assessment proceedings, the assessing officer, while verifying the return of income and other documents available on record, noticed that the assessee has shown unsecured loans from a number of parties. He, therefore, called upon the assessee to furnish loan confirmations and income-tax return copies of lenders. As observed by the assessing officer, the assessee furnished confirmations from some of the lenders and expressed his inability to furnish their income-tax return copies. Further, the assessee requested the assessing officer to call for the income-tax return copy and confirmation in respect of lenders in whose case such documents are unavailable. The assessing officer, accordingly, sent notices to the concerned loan creditors. As mentioned by the assessing officer, some loan creditors viz. Shri Rajneesh Dhawan and Smt. Yamini Bhat did not furnish the required documents. The assessing officer observed, through initial departmental enquiry it was found that the concerned individuals have not filed their income-tax returns. Thus, ultimately, the assessing officer treated loan received of Rs.1 crore from Shri Rajneesh Dhawan and Rs. 40 lakhs from Smt. Yamini Bhat as unexplained cash credit under section 68 of the Income-tax Act, 1961 and added to the income of the assessee. Though, the assessee contested the aforesaid additions before learned Commissioner (Appeals); however, the additions were sustained.

4. Learned counsel for the assessee submitted, the assessee is an erstwhile employee of Air India and the concerned lenders are closely known to him. He submitted, since the assessee required funds for his own business activity, he

availed the loans from the concerned parties. Disputing the allegations of the assessing officer and learned Commissioner (Appeals), learned counsel submitted, the assessee has not only furnished the confirmations but has also furnished various other documentary evidences before the assessing officer and learned Commissioner (Appeals). He submitted, before the first appellate authority the assessee furnished confirmations of the lenders, proof of loan transaction through banking channel, bank statement, etc. for proving the genuineness of the loan transaction. He submitted, without properly verifying the additional evidences, learned Commissioner (Appeals) rejected them on technical grounds. Further, the learned counsel submitted, after disposal of the appeal the assessee on his own efforts has gathered more evidences to establish the genuineness of loan transaction, which he wants to furnish by way of additional evidence. In this context, he drew our attention to letter dated 23-08-2021 requesting for admission of additional evidence alongwith the evidences sought to be furnished. Drawing our attention to the various documents furnished in the paper book, learned counsel submitted, not only the identity of the creditors has been established, but their creditworthiness has also been proved. He submitted, since the entire loan transaction was conducted through banking channel, the genuineness cannot also be doubted. Proceeding further, he submitted, Shri Rajneesh Dhawan was an ex employee of Air India and known to the assessee. He submitted, not only he has confirmed the loan transaction, but has also been able to obtain bank statement of the lender demonstrating availability of funds. He submitted, the assessee has availed the loan from Rajneesh Dhawan at a monthly interest rate of 0.75%. He submitted, the assessee has not only paid the interest to the lender, but has also deducted tax at source. As far as Smt. Yamini Bhat is

concerned, learned counsel submitted, she is a resident of UAE and the loan amount has been received through banking channel by way of inward remittance. He further submitted, the said lender has also confirmed the loan transaction with the assessee. Thus, he submitted, there is no reason to treat the loan availed as unexplained cash credit.

5. The learned departmental representative, strongly relying upon the observations of the assessing officer and learned Commissioner (Appeals) submitted, before the departmental authorities the assessee had failed to furnish supporting evidence to establish the creditworthiness of the lenders and genuineness of the transaction. However, he submitted, since the assessee has furnished additional evidences before learned Commissioner (Appeals) and the Tribunal, which have never been examined, the issue may be restored to the assessing officer for verifying the documentary evidences and deciding the issue after enquiry.

6. In rejoinder, learned counsel for the assessee submitted, since the additional evidences were not admitted by learned Commissioner (Appeals), the issue may be restored back to his file for verifying them and deciding the issue on merit.

7. We have considered rival submissions and perused materials on record. Undisputedly, the assessee has availed loan of Rs.1 crore from Rajneesh Dhawan and Rs.40 lakhs from Yamini Bhat. It is the case of the assessee that Rajneesh Dhawan is an old acquaintance as both of them worked in Air India. The assessee has also submitted that Yamini Bhat is also closely known to him. There is no dispute that the loan amounts have been received by the assessee through banking channel. It is also a fact on record that the assessee has furnished

documentary evidences to establish the identity of the creditors. Even, loan confirmations from the concerned creditors have been furnished before the first appellate authority. However, learned Commissioner (Appeals) has refused to take cognizance of the same as they were not produced before the assessing officer. Before us also the assessee has furnished fresh documentary evidences by way of additional evidence.

8. On perusal of the bank statement of Rajneesh Dhawan it is observed that he was having sufficient fund available in the bank account by way of encashment of fixed deposits to advance loan to the assessee. It is also observed that the assessee has availed the loan of Rs.1 crore from Rajneesh Dhawan on interest chargeable @0.75% p.m and the assessee, while paying such interest has also deducted tax at source. Further, it is observed, Yamini Bhat has filed her return of income for assessment year 2016-17 on 23-01-2017. However, it is a fact on record that the bank statement of Rajneesh Dhawan and the tax credit certificate in Form 26AS as well as the income-tax return copy of Smt. Yamini Bhat are being filed for the first time before this Tribunal as additional evidence.

9. Though, prima facie, it appears that both the loan creditors are having creditworthiness and are capable of advancing the loans to the assessee; however, the additional evidences require factual verification. Considering the fact that the additional evidences sought to be furnished before us will have a crucial bearing on deciding the disputed issue, we are inclined to admit them. However, since the departmental authorities did not have an opportunity to verify them, adhering to the rules of natural justice, the departmental authorities have to be given an opportunity to verify them. It is also a fact on record that certain additional evidences furnished before learned Commissioner (Appeals)

were not accepted purely on technical ground. In view of the aforesaid, we are inclined to restore the issue to the file of learned Commissioner (Appeals) for not only considering the additional evidences filed before him but also before us, as well. We further direct learned Commissioner (Appeals) to conduct adequate enquiry based on the additional evidences, either by himself, or get it done through the assessing officer by way of remand proceedings. Based on such enquiry, learned Commissioner (Appeals) must decide the issue through a speaking order after due opportunity of being heard to the assessee. Grounds are allowed for statistical purpose.

8. In the result, appeal is allowed, for statistical purpose.

Order pronounced on 27/09/2021.

Sd/-

sd/-

<b>(RAJESH KUMAR)</b>	<b>(SAKTIJIT DEY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dt : 27/09/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai