

IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 7839/Mum/2019  
(Assessment Year 2013-14)

Patanwala Trading Agency Gala No.23 Pesh Industrial Estate Telco Road, Bhosari Pune-411 026  PAN : AALFP3243K (Appellant)	Vs.	ITO, Ward-18(2)(5) 3 <sup>rd</sup> Floor, Earnest House Nariman Point Mumbai-400 021  (Respondent)
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Assessee by	Dinkle Hariya
Department by	Ashish Pophare
Date of Hearing	17.11.2021
Date of Pronouncement	06 .01.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-53 dated 20.09.2019 and pertains to assessment year 2013-14.

2. Grounds of appeal read as under:-

**1. NATURAL JUSTICE**

1.1 The Learned Commissioner of Income - tax (Appeals) - 53, Mumbai ["Ld. CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.

1.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

- (i) The same is framed in breach of the principles of natural justice,
- (ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant; and
- (iii) The same is passed without considering the Remand Report sent by the

assessing officer.

**WITHOUT PREJUDICE TO THE ABOVE**

2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in disallowing depreciation claimed on printer amounting to Rs. 5,200/- made during the year.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.

**WITHOUT FURTHER PREJUDICE TO THE ABOVE**

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs. 11,43,7507-, being the amount received from Nafisa Patanwala, u/s. 68 of the Act, on the ground of alleged unexplained cash credit:

3.2 While doing so, the Ld. CIT (A) erred in:

- (i) Basing his action only on surmises, suspicion and conjecture;
- (ii) Taking into account irrelevant and extraneous considerations; and
- (iii) Ignoring relevant material and considerations as submitted by the Appellant.

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3. Brief facts leading to the addition in this case are as under:-

On perusal of Schedule 2 of fixed assets to the Balance Sheet as on 31-03-2013, the AO observed that the following assets have been added to the fixed assets during the year:

Particulars	Before 30-09-2012	After 30-09-2012	Depreciation claimed (Rs.)
Air conditioner	-	1,04,000	7,800
Printer	5,200	-	780
Computer	27,800	-	16,680
Furniture	1,87,600	-	18,760

Vide order sheet noting dated 27-02-2016, the AO called for the copies of bills in respect of the addition to fixed assets. Copies of bills in respect of air conditioner amounting to Rs.1,04,000/- was filed but no copies of purchase bills in respect of other assets were filed. Accordingly, the assessee was asked to show cause as to why the depreciation should not be denied. Failure of the assessee to give reply led to the disallowance of Rs.36,220/-.

Further in the Balance Sheet, the AO observed that it had shown fresh loans as follows :

<b>Name</b>	<b>Amount (Rs.)</b>
<b>Maharashtra Bhavan</b>	<b>5,00,000</b>
<b>Nafisa Patanwala</b>	<b>11,43,750</b>

Vide order sheet noting dated 22-02-2016, the assessee was asked to furnish the loan confirmation along with copies of return of income, balance sheet and bank statements of the persons from whom loans were taken during the year. Since the details were not filed and PAN was also not provided, vide order sheet dated 18.03.2016, the AO proposed to make an

addition u/s. 68 in respect of these loans. Since no further reply was filed an addition u/s. 68 of Rs. 16,43,750/- was made in the assessment order.

4. Upon assessee's appeal, Ld.CIT(A) noted that assessee has submitted additional evidences, which were forwarded to the AO on which no response was received. The Ld. CIT(A) deleted the addition qua claim of depreciation (except on printer). However with respect to the addition u/s. 68 of Rs. 16,42,750/-, he upheld the AO's order. The Ld.CIT(A) has held as under:-

As regards the addition u/s 68 of Rs. 16,43,750/- a notarized affidavit of Mrs Nafisa Patanwala dated 7.6.2019 is filed along with a confirmation of ledger account and copy of bank pass book showing payment of Rs 1200000. It is noted that Mrs Nafisa Patanwala is not filing her tax returns. Further, the copy of bank passbook of Dena Bank filed shows the name of account holder typewritten as Shaikh Sabiya Abdul Gani which has been crossed out by hand and name Nafisa Patanwala written by hand. This renders the pass book suspect. Copy of cheque issued is not available. Credit worthiness is not at all established. Similarly, a notarized affidavit of Mrs Aziza Mohammed Patanwala dated 7.6.2019 is filed along with a confirmation of ledger account and copy of bank pass book showing payment of Rs 500000, Copy of her tax return is filed and the computation of income shows Maharashtra Bhavan as her property that is rented out. This credit is accepted as explained. Thus the addition u/s 68 is upheld at Rs 11,43,750/- and relief of Rs 500000 is allowed. Ground of appeal no 3 is partly allowed as above.

5. Against above order assessee is in appeal before ITAT.

6. I have heard both the parties and perused the records. Ld. Counsel of the assessee submitted that assessee has submitted all the necessary evidences in the paper book. She further claimed that assessee has duly filed a clarification before the Ld.CIT(A) dated 13/11/2019, which clarified the following :-

Your Honour has upheld the addition of Rs. 11,43,750/- on the ground that 'the copy of bank passbook of Dena Bank filed shows the name of the account holder typewritten as Shaikh Sabiya Abdul Gani which has been crossed out by hand and name Nasifa Patanwala written by hand. This renders the passbook suspect. Copy of cheque issued is not available.'

The Appellant respectfully submits that this issue with respect to the passbook suspicion was never brought to the notice of the Appellant during the appellate proceedings. Infact, the Assessing Officer, during the remand proceedings also, had not raised any objection in this regard. The Appellant came to know about this objection only upon receipt of the order. In addition to the bank passbook, the Appellant had also filed notarized affidavit of Nasifa Patanwala and ledger confirmation.

Immediately on receipt of the order passed by Your Honour, a clarification was obtained from Dena Bank, wherein the Bank has confirmed that Ms. Nafisa Patanwala only is the holder of the said account. Infact, Dena Bank has also given a fresh statement which clearly shows that the Appellant had received Rs. 12,00,000/- from Ms. Nasifa Patanwala on 25.12.2012 vide cheque no, 336127. In the circumstances, we most humbly request Your Honour to recall the order dated 20.09.2019 and allow us a fair and reasonable opportunity to present our case before Your Honour on merits or the order be modified to the extent of the above or Your Honour may pass such order or direction as may be deemed fit.

7. From the perusal of records and the details submitted, I note that Ld.CIT(A) has decided the issue without letting the assessee make the necessary explanation. Since assessee has not made any submission before AO and Ld.CIT(A) has not considered the assessee's explanation as above, I deem it appropriate to remit the issue to the file of AO. The AO shall consider this issue afresh, after considering the aforesaid and giving the assessee proper opportunity of being heard.

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

Pronounced in the open court on 06 .01.2022

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 06 /01/2022

*Thirumalesh, Sr.PS*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai