

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

I.T.A. No. 3689/Mum/2019  
(Assessment Year 2009-10)

Kiran Jayesh Jain Flat No.304, 3 <sup>rd</sup> Floor Dreams-II building C-Wing,L.B.S.marg Bhandup(W) Mumbai-400 708  PAN : ADRPN2435L (Appellant)	Vs.	ITO,Ward-29(2)(1) Room No.201, 2 <sup>nd</sup> Floor C-10, Pratyakshkar Bhavan BKC, Bandra(E) Mumbai-400 051  (Respondent)
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Assessee by	Shri Modan Dedhia
Department by	Shri Anil Gupta
Date of Hearing	18.11.2021
Date of Pronouncement	19 .01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-40, dated 15.02.2019 and pertains to assessment year 2009-10.

2. Grounds of appeal read as under:-

**Addition as income from disclosed source Rs. 5,10,142/-**

The only issue raised in this appeal is that learned Commissioner of Income-tax (Appeals) -40 erred in confirming addition at Rs. 5,09,872/- out of addition made by AO of Rs. 5,10,142/- as income from undisclosed source without considering written submission filed by dismissing grounds of appeal.

3. Brief facts of the case are that this is the second round of appeal before ITAT. In the earlier round the matter had been remitted by the ITAT to the file of AO to examine the issue afresh. Brief facts on the issue on addition sustained by the AO as emanating out of the order of the AO are as under:-

The assessee is deriving income from business of running photo studio and communication STD/PCO centre. During the year under consideration, the assessee had earned Income under the heads "House Property", The details in respect of sources of such funds have been obtained, perused and duly placed on record.

During the year under consideration, the assessee had purchased a flat jointly with other family members. The Assessing Officer completed the assessment ex-parte u/s. 144 treating Rs. 8,00,412/- as income from undisclosed sources. The CIT(A) on the basis of remand report of the Assessing Officer partly allowed the appeal granting relief of Rs. 2,00,000/- to the assessee and sustained addition of Rs. 6,00,412/-. The assessee aggrieved by the action of CIT(A) preferred appeal before

To verify the genuineness of the above claim, assessee was asked to furnish the details vide this office letter dated 13.12.2016. The assessee's A.R vide letter dated 23.12.2016 submitted the explanation in detail which is placed on record. The assessee's submission is not accepted. The assessee has stated that she has received loans/gifts from the following persons : . .

1. Jayesh Jain, HUF : Rs. 1,75,000/-
2. A.Prajapati Rs. 50,000/-
3. Chandrakanta Jain Rs. 2,00,000/-
4. MukeshHJain Rs. 21,000/-(Cash Gift)
5. Kamal Jain Rs. 21,000/- (Cash Gift)
6. RajnishJain Rs, 26,000/-(Cash Loan)

6.1 Shri Jayesh Jain, Karta of HUF during the course of statement recorded u/s. 131 has stated that he, in the capacity of Karta of HUF advanced loans to the assessee a sum of rs. 1,75,000/- during the year, tie has further stated that 60% of the purchases made by him are in cash and balance in cheque. However, he has not furnished copies of purchase bills to substantiate his claim. Further in the deposition of Shri Jayesh Jain in the capacity as Karta of HUF that he does not have any purchase bills or sale bills of the business carried out and the profit is on an estimate basis. Therefore, the same is not accepted.

6.2 Shri A Prajapati who is said to have given a loan of Rs. 50000/- was not produced before the A.O. Therefore, the same is rejected.

6.3 Smt Chandrakala Jain who has advanced a loan of Rs. 2,00,000/- to the has produced all the bank statements and details. Therefore, the same is accepted.

6.4 Shri Mukesh Jain and Kamal Jain have filed a joint confirmation that have given cash gift of Rs. 21,000/- each to their sister on the occasion of Raksha Bandhan and daughter's birthday and have also furnished their PAN. The same is accepted.

6.5 Shri Rfajnish Jain has stated that he has advanced loans to the assessee of Rs. 26,000/- Therefore, the same is accepted.

6.6 Shri Mahesh Kumar Madala has stated that he had advanced loan of Rs. 24,000/- in cash on 24.2.2008. The same is accepted.

6.7 Past savings of Rs. 1,50,000/- : Shri Kiran Jain is stated engaged in the business of photo studio communication/STD/PCO. No purchase bills or vouchers are maintained due to small business. However, the assessee has not substantiated cash savings of Rs. 1,50,000/-. Further, return of income has been filed for the first time in A.Y. 2008-09. The A.R of the assessee has filed a copy of the capital account showing Rs. 2, 14,561 /- as her tuition income alongwith business profit of Rs. 1,49,846/- for A.Y. 2007-08. This takes her gross income to Rs. 3,46,407/- and no return of income has been filed. For subsequent years no tuition income is shown and the returned income is approx. Rs. 1,50,000/- The Proprietors capital carried forward as on 31.3.2007 is Rs. 4,69,304/- whereas on 1.4.2007 the brought forward figure is shown as Rs. 4,30, 188/-. The inconsistencies appears to be an after thought and is rejected.

6.8 In respect of Kitty savings of Rs. 76.178/- The assessee has submitted a copy of note book for 10 months from July to April (Year not mentioned) wherein the assessee is stated to have invested Rs. 30 to Rs. 700 per month. No details of Chanda of Rs. 4000/- is mentioned in the said note book. Therefore, it is difficult to understand which investment is giving a return of Rs. 76.178/-. In view of the above, the same is rejected.

6.9 Also, Rs. 58,694/- as her daughter's savings is rejected as not proof is submitted in this regard.

6.10 The AR of the assessee has stated that the taxable income of the assessee is shown only on an estimate basis. The assessee failed to furnish details of business, copies of purchase bills, details of savings with daily cash book, onus of cash deposited in bank etc.

4. Accordingly, AO made addition of income from undisclosed source of Rs. 5,10,142/-. Upon assessee's appeal Ld.CIT(A) despite noting that assessee had submitted that Rs. 4,75,000/- out of the above addition pertains to amounts, which have been received in the earlier financial year ignored the same and proceeded to confirm the order of AO by giving only meager relief of Rs. 270 to the assessee.

5. Against the above order assessee is in appeal before ITAT. I have heard both the parties and perused the record. Ld. Counsel of the assessee has submitted that Rs.

4,75,000/- has been received in earlier financial year. For this, he also referred to the assessee's bank statement. He further submitted that assessee's other claims are genuine and deserve to be accepted. He gave a written explanation in this regard.

6. Upon careful consideration, the order of Ld.CIT(A) may be gainfully referred as under, wherein Ld.CIT(A) has duly noted the assessee's submission that certain amounts were received in the previous financial year.

The AR of the appellant in his explanation stated that "all the loans and gifts from relatives were received in the preceding A.Y. 2008-09 and not in the A.Y.2009-10. The appellant claimed to have taken loan/ advance at Rs.4,75,000/- from 5 persons as under :-

S.N	Date	Name of the party	Amount
1	18.3.2008	J.H.S.J (HUF)	1,75,000
2	27.3.2008	Amritlal Prajapati	50,000
3	11.3.2008	Rajnish V Jain	26,000
4	15.3.2008	Mahesh kumar Madala	24,000
5	8.4.2008	Chandrakanta j ain	2,00,000

Out of the total loan amount of Rs. 4,75,000/-, the AO has accepted Rs. 2,15,000/- and balance loan amount of Rs. 2,25,000/- has been rejected. Out of the balance loan amount of Rs. 2,25,000/- taken from JHSJ (HUF) at Rs. 1,75,000 and loan amount of Amritlal Prajapati at Rs. 50,000/- has been rejected by the AO. The AR of the appellant in his submissions stated the Shri JHSJ in the capacity of karta, of JHSJ (HUF) has confirmed to have advanced loan of Rs. 1,75,000/- to the appellant by cheque and also produced the bank pass book. The AO has rejected the claim of appellant that he made purchases and gave to the appellant but could not produce purchase bills. He does not have any purchase bills or sale bills of the business carried out. After considering the explanation, the AO has rejected the genuineness of Rs. 1,75,000/- having given to the appellant. After considering the explanation given by the appellant, I found that there is force in reasoning by the AO in his assessment order in rejecting the submissions made by JHSJ (HUF). Hence the loan amount of Rs. 1,75,000/- added, is a part of the addition made of Rs.5,10,142/- is confirmed. Similarly, Shri A, Prajapati, who is said to have given a loan of Rs. 50,000/- was not

produced before the AO. Hence, the same addition made is also confirmed. The balance amounts in the table given above has been accepted by the AO.

However, the AO made an addition of Rs.1,50,000/- received from Shri Kiran Jain. The AO while examining this issue, has found lot of inconsistencies and after thought submissions and hence the addition made by the AO rejecting the explanation filed by the AR of the appellant at Rs. 1,50,000/-, is also confirmed.

In respect of petty saving of Rs.76,178/-, the AR of the appellant filed a copy of note book for 10 months from July to April, without any year mentioned. No details have been filed in the note book which prove the investment and a return of Rs. 76,178/-. Hence the addition made by the AO is confirmed.

Similarly, an amount of Rs. 58,694/- out of the assessee's daughter's savings, is also rejected as no proof has been filed by the assessee before the AO nor before the undersigned. Therefore, the addition made by the AO at Rs.5,09,872/- out of the addition made at Rs. 5,10,142/- has been confirmed, dismissing the grounds of appeal in this regard.

7. We note that the assessee has clearly submitted before the authorities that a substantial part of loans/amounts were received in the earlier financial year and the revenue authorities are not disputing the same. Hence, the same cannot be added in the present assessment year. Hence, the assessee's plea in this regard is accepted. As regards, the other loan/amount received on the account of daughter's birthday and the small amount generated by the assessee in her small business cannot be brushed aside. On the facts and circumstances of the case, I accept the submissions of the assessee in this regard. Hence, the orders of the authorities below is set aside and the issue is decided in favour of assessee.

8. In the result, assessee's appeal stands allowed.

Pronounced in the open court on 19.01.2022

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 19 .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