

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No.7191/Mum/2019 (Assessment Year 2007-08)

Mrs. Usha Mayur Thakkar 21, Kshitij, 99 Hill Road, Bandra(W) Mumbai-400 050 PAN : ADLPT0750C (Appellant)	Vs.	DCIT,CC-3(2) Air India Building Nariman Point Mumbai-400 021 (Respondent)
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Assessee by	None
Department by	Shri S.N.Kabra
Date of Hearing	31.01.2022
Date of Pronouncement	22.02.2022

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of the Ld. Commissioner of Income Tax(Appeals)-39, dated 24.06.2011 and pertains to the assessment year (A.Y.) 2007-08. The issue raised is that Id.CIT(A) erred in upholding the addition of Rs. 3,96,400/- made by the AO without considering the submissions made before him afresh.

2. Brief facts of the case are that this is the second ground of appeal before the ITAT. In the earlier order, the ITAT has remanded the matter holding as under:-

“ We have perused the records and considered the matter carefully. The dispute is regarding addition of Rs.13,21,332/- as cash credit under section 68 of the Act being the outstanding amount in the name of "M/s. Usha Exports" . The AO had added the same as unexplained cash credit under section 68 as necessary details and addresses had not been filed. The assessee however filed additional evidence vide letter dated

27.10.10 enclosing therewith copy of balance sheet as on 31.3.06 and other details showing that there was closing balance of Rs.11,21,332/- as on 31.3.2006. The assessee explained that her husband who was looking after tax matters had expired in April 2006 and she being not acquainted with accounts and tax matters could not file necessary details before the AO. The assessee therefore requested for admission of additional evidence and fresh adjudication based on the same. CIT(A) in para-3 of the said order has mentioned that the additional evidence filed vide letter dated 27.10.10 appeared to be genuine and he had also forwarded the same to AO. However, he has not passed any order on admission of additional evidence nor the AO has given any report after examination of additional evidence which had been forwarded to him. In our view admission of additional evidence is necessary in the interest of justice for arriving at a true and fair conclusion in the matter. CIT(A) has not rejected the additional evidence. We therefore, set aside the order of CIT(A) and restore the issue back to him for passing a fresh order after necessary examination of additional evidence if necessary after remanding the matter back to the AO and after allowing opportunity of hearing to the assessee.”

3. In the second round, Id.CIT(A) remanded the additional evidences to AO. He noted the AO's remand report as under:-

' Addition of Rs 13.21.332/- in the hands of the assessee on account of credit balance in her capital account: On perusal of the assessment order, it is observed that the AO has discussed the issue on page 6 of the assessment order while discussing unsecured loans The AO has stated that the assessee vide letter dated 27 11 2009 has claimed that the credit balance of Rs.13,21,332/' appearing under M/s,Usha Exports represents a partnership firm of which the assessee is a partner. The assessee has further stated that:

'Withdrawal From Usha Exports of Rs. 13.21.332/- This /s a partnership firm in which Mrs. Usha Thakkar is one of the partners The opening credit in this account is Rs.13,21.332/-. During the year she has received Rs 2 lacs which made the closing balance to Rs 13.21.332/-. This is in fact a drawn amount from the partnership firm which was to be reflected in her capital account Instead, it /s wrongly accounted as unsecured loan ' Further showcause notices were issued by the AO on 8 12 2009 in response to which the assessee filed letter dated 16.122009 wherein none of the

above issues are discussed nor any of the aforesaid transactions has been discussed nor any documentary evidence was furnished as is recorded in the assessment order

It is also pertinent to note that another reply was furnished by the assessee's AR Shri N.R.Rao vide letter dated 22 12 2009 In para 6 of the said letter, the AR has stated that the account head should have been Mrs. Usha Thakkar individual names will not bear prefix. Hence, we could make out that there might be some clerical error Upon going through the previous year dosing balance of Mrs. Usha Thakkar's balance sheet, it is seen that there is a credit balance of Rs. 11,21,332/-. It is her individual set of accounts apart from the business set of accounts We are enclosing herewith the balance sheet as at 31.03 2006 which /s showing the opening balance of Rs 11,21,332/- It is nothing but her own capital account"

From the above, it is observed that the AR and assessee are confused as to what the amount pertains to At one point it is stated that the amount is part of her capital with M/s Usha Exports and then it is stated that it is her individual set of accounts apart from the business set of accounts and is nothing but her own capital account unrelated to any business Copy of the balance sheet for the year ended 31.03.2007 is attached which shows an Rs.13,21,332/" as unsecured loans (liability) from M/s Usha Exports. The ledger extract of M/s. Usha Exports also shows the same amount as closing balance.

In view of the above, the explanation furnished by the assessee is not acceptable and the addition made by the AO is justifiable.”

3. Assessee rejoinder noted by the Id.CIT(A) reads as under:-

'In the Balance Sheet as 91 31,3,2006 it is shown as the amount standing to the credit of Mrs Usha Thakkar. Mrs Usha Thakkar was proprietor of M/s Usha Exports, During the financial year 2006-01 Levant to Assessment Year 2007-08 husband of the appellant Mr Mayur Thakkar demised who was handling the accounts and aft financial transactions In his absence, while framing the accounts, the auditors sought information from the appellant who was not aware of the facts and informed the auditors That it was a partnership firm of Usha Exports. This lead to a confusion is making the submissions during the assessment proceedings which your Honours will please appreciate.

It may please be appreciated that there WAS an opening balance of Rs. 11,21,332/- and during the year relevant to Assessment Year 2007-08 the appellant received a sum of Rs. 2,00,000/- Since it is her proprietary Concern only, we have made oar submission during the course of original hearing which was not accepted by the Assessing Officer.

Without prejudice to our submission, if at all addition is required to be made under section 68 of the Act. it should be limited to the extent of the credit received during the year and not beyond. In view of this, if at all our submission as to it belongs to the appellant herself is not accepted, there cannot be addition to the extent of Rs

11.21.332 which is appearing as opening balance as accepted by the Assessing Officer and only Rs. 2 lacs suffers addition which please appreciate and pass order suitably."

4. However, Id.CIT(A) was not satisfied, he concluded as under:-

“In the 1st round of proceedings before the Appellate Authorities and also the present proceedings, the assessee had contended that the opening balance was of Rs 11,21,332/- and during the year only an amount of Rs. 2,00,000/- was received and therefore, if at all, an addition is to be made, the same cannot exceed Rs; 2,00,000/-. In support of this contention, the assessee submitted extract of the bank statement of M/s. Usha Exports for the period 01.04.2006 to 29.03,2007 highlighting two entries dated 09.06.2006 and 15.06.2006 of amounts Rs. 50,000/- and Rs 1,50,000/- respectively. From the said 2 highlighted entries in the bank statement, it is noted that in the narration about particulars 'SB 19718' has been mentioned which apparently is the Savings Bank A/c. of the assessee. It is noted that in this bank statement of M/s Usha Exports, there is also another entry of payment of Rs 30,000/-to 'SB 19718' dated 02.09.2006, Thus, even the contention of the assessee that during the relevant year the receipts are only of Rs 2,00,000/-, is found to be incorrect.

In view of the aforesaid elaborate discussion, no infirmity is found in the action of the AO in making the said addition u/s. 68 of Rs. 13,21,332/- which was upheld by the FAA in the 1st round of proceedings.”

5. Against the above order, assessee is in appeal before us.

6. We have heard the Id. DR and perused the records. We find that ITAT has remanded the matter to Id.CIT(A) to consider the additional evidences. The Id.CIT(A) has remanded the matter to AO and obtained remand report from AO. In the remand report of AO, there is no whisper of the examination of additional evidences remanded by ITAT. The AO is referring to submission made prior to the remand by the ITAT. Furthermore, Id.CIT(A) has also rejected the without prejudice submission of the assessee, that opening balance in the account cannot be added during the year. Without giving any reason as to how the opening balance of that loan account can be added u/s. 68. Ld.CIT(A) has erred in rejecting the same. It is settled law that it is

only credit entry, which are unexplained and received during the year that can be added by u/s. 68 of the Act.

7. Hence, we modify the order of Id. CIT(A) and direct that opening balance in the account of loan as claimed by assessee and also noted by ITAT in its earlier order should be reduced from the credit balance being added u/s. 68.

8. In the result, assessee's appeal is partly allowed.

Pronounced in the open court on 22.02.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/02/2022
Thirumalesh, Sr.PS

Copy of the Order forwarded to :

The Appellant

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai