

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

I.T.A. No. 4212/Mum/2019  
(Assessment Year 2011-12)

Mr. Jayesh Basantilal Jain 202, Koteshwar Deep James Beeche Road Bhandup(W) Mumbai-400 078  PAN : ADWPJ4505E (Appellant)	Vs.	ITO-29(1)(5) Room No.107, C-10, BKC, Bandra-400 051  (Respondent)
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Assessee by	None
Department by	Shri Abhirama Karthikeyan
Date of Hearing	14.12.2021
Date of Pronouncement	01.03.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-40 dated 25.02.2019 and pertain to assessment year 2011-12.

2. Grounds of appeal read as under:-

**1. Reopening under section 147/148 is bad in law**

The Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the "Ld. CIT(A)"] erred in confirming the action of the Ld. A.O. in reopening the assessment of the Appellant by issuance of the notice under section 148 of the Act without recording valid and proper reasons to show that any income chargeable to tax has escaped assessment. Hence, the notice under section 148 and subsequent assessment order passed under section 143 r.w.s. 147 is bad in law and the same may be quashed and set aside,

**2. Ground No. 2: Approval u/s 151**

Ld. CIT(A) has erred in confirming action of Ld. AO in passing reassessment order without complying mandatory requirement u/s 151 of the Act and without recording valid approval. Such reassessment is bad in law and liable to be quashed.

**3. Addition u/s 68 of Rs. 20.00.00/-**

3.1. Ld. CIT(A) has erred in confirming the action of Ld. Assessing Officer by confirming unsecured loan received of Rs. 20,00,000/- as unexplained cash credit and adding the same u/s 68 of the Income Tax Act, 1961. Such action of treating unsecured loan as unexplained cash credit is bad in law and erroneous in facts and the same be directed to be deleted.

3.2. Ld. CIT(A) has erred in confirming the action of Ld. Assessing Officer by confirming unsecured loan received of Rs. 20,00,000/- as cash credit without providing the opportunity to cross examine the parties. Such action of treating unsecured loan as unexplained cash credit is bad in law and erroneous in facts and the same be directed to be deleted.

3.3. Ld. CIT(A) has erred in confirming the action of Ld. Assessing Officer by confirming unsecured loan received of Rs. 20,00,000/- as unexplained cash credit without providing proper opportunity to the appellant to produce the parties. Such action of treating unsecured loan as unexplained cash credit is bad in law and erroneous in facts and the same be directed to be deleted.

4. Ld. CIT(A) has erred in confirming the action of Ld. Assessing Officer by confirming charging interest of Rs. 3,24,900/- u/s 234B of Income Tax Act, 1961. Such action of charging interest is bad in law and erroneous in facts and the same be directed to be deleted.

3. Brief facts of the case are that the AO made an addition of Rs. 20 lacs to the income of the assessee based on the information received from the DDIT(INV), Unit -3(2), Mumbai through the DIT(INV)-II, Mumbai. In the said information, during the course of search action in the case of Praveen Kumar Jain and some of his associates were also covered. Meghraj Jain is one such associates and operates various concerns in his group named as Mangal Group. M/s. Fastlane Multi trade Pvt Ltd is one of the concerns of Mangal group. During the course of search, statement of one of the directors of M/s. Fastlane Multi trade Pvt Ltd, Shri Pranjal Beena was recorded on oath u/s. 132(4) of the I.T. Act. He admitted that M/s. Fastlane Multi Trade Pvt Ltd is not carrying out any genuine business activity and is indulged in only in providing accommodation entries. The statement recorded has been reproduced in the

assessment order from which AO opined that the party from whom the assessee has shown unsecured loan is engaged in the business of providing accommodation entry.

Hence, AO held that the alleged transaction i.e. unsecured loan to the tune of Rs.20 lacs is hereby disallowed and added as cash credit to the income of the assessee u/s. 68 of the I.T. Act.

4. Upon assessee's appeal, Id.CIT(A) confirmed the AO's order by holding as under:-

“The AO has clearly mentioned in his assessment order that the primary onus is on the assessee to establish genuineness of the purchases / transactions carried by the assessee. Since the appellant has failed to produce the parties for verification and also to provide correct address to prove the genuineness, creditworthiness of the transaction. It is fact that payment by account payee cheque is not sacrosanct and is not sufficient to establish the genuineness of the purchases of the transactions. The AR of the appellant, could not prove the genuineness and creditworthiness of the alleged transactions. The addition made by the AO at Rs. 20 lacs is confirmed, dismissing this ground of appeal.”

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

6. I have heard the Id. DR and perused the record. I note that this is a case of bogus unsecured loan obtained from Praveen Kumar Jain group. AO has made due enquiry. In this regard, AO's order as under may be referred.

“4.7 Independent enquires have been carried out by issue of notice u/s. 133(6) of the I.T.Act to the above mentioned party to ascertain the genuineness and creditworthiness of the alleged transactions. The notice has been returned back by the postal department with “Left and Not known” remarks. Thereafter, the assessee was asked to produce the parties along with complete books of accounts, sale bills, purchase bills, bank statements for the period relevant to AY 2011-12, but the assessee has failed to do so inspite of giving ample opportunities. Further, the assessee has not been able to controvert the statement given by the above persons to the department. In these statement recorded the above persons have accepted before

the authorities of investigation wing of Income-tax department about their modus operandi of providing accommodation entry.”

7. From the above, it is clear that assessee has failed to discharge the onus. He did not produce the complete details, book of account and address of the party. Hence on merits, there is no infirmity in order of authorities below.

8. As regards, ground No.1. The said ground was before Id.CIT(A). However, he did not adjudicate the same. Hence, the issue is remitted to the file of Id.CIT(A).

9. In the result, appeal by the assessee stands partly allowed for statistical purpose.

Pronounced in the open court on 01.03.2022

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01.03.2022

*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