

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 7750/मुं/2019 (नि.व 2013-14)  
ITA NO.7750/MUM/2019(A.Y 2013-14)

Kirti M. Shah,  
A/703, Sheetal Dham, Sudha Park,  
Garodia Nagar, Ghatkopar West,  
Mumbai 400 077.  
PAN; AAGPS-5048-E

..... अपीलार्थी /Appellant

बनाम Vs.

ITO 4(3)(2),  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Mehul Shah

प्रतिवादी द्वारा/Respondent by : Shri T. Shankar

सुनवाई की तिथि/ Date of hearing : 10/12/2021

घोषणा की तिथि/ Date of pronouncement : 04/03/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-9, Mumbai [ in short ' the CIT(A)'] dated 26/11/2019 for the Assessment Year 2013-14.

2. The assessee in appeal has assailed the order of CIT(A) by raising following (modified) grounds:

*" 1. On the facts, and in circumstances of the case, and in Law, learned Commissioner of Income-tax (Appeal) erred in upholding action on the Assessing Officer in making addition of RS.650,0000 alleging unexplained cash credit under*

*section 68 of the Income-tax Act 1961 without appreciating the evidences submitted as to creditworthiness of the lender.*

*2. On the facts, and in circumstances of the case, and in Law, learned Commissioner of Income-tax (Appeal) erred in upholding action on the Assessing Officer in disallowing interest paid on loans amounting to RS. 2,657,015 without appreciating that interest paid had direct nexus with interest earned, and was allowable in terms of section 57(iii) of the Income-tax Act 1961”*

3. Shri Mehul Shah appearing on behalf of the assessee, in respect of ground No.1 submitted that the assessee had taken unsecured loan from various persons. The Assessing Officer accepted the loan transactions from all parties except loans from Sahilesh D. Patel (HUF) –Rs.2,00,000/- and from Shri Samir Vallabhji Gosar Rs.4,45,000/-. The Id. Authorized Representative of the assessee submitted that assessee in order to substantiate genuineness of the aforesaid loans, identity and creditworthiness of the above said lenders furnished confirmation, copies of the return of income for the assessment year 2013-14 and copy of bank passbook. The Id. Authorized Representative of the assessee referred to the aforesaid documents at page 55 to 64 of the Paper Book. The Id. Authorized Representative of the assessee pointed that all these documents were furnished before the Assessing Officer and the CIT(A), however, they failed to take note of the same. The lenders have received the amounts in their respective bank accounts through banking channels. A perusal of the bank passbook would show that there were no cash deposits. The assessee has discharged his onus in proving genuineness and creditworthiness of the lenders and the transaction. The assessee was not required to show source of source. In support of his arguments he placed reliance on the following decisions:

(i) CIT vs. P. Mohanakala, 291 ITR 278(SC)

(ii) CIT vs. Dwarakadhish Investments Pvt. Ltd., 330 ITR 298 (Del)

3.1. In respect of ground No.2 of appeal, the Id. Authorized Representative for the assessee submitted that the Assessing Officer has erred in making disallowance in respect of interest expenditure. The assessee had received interest @15% on loans and advances and has paid interest on borrowings @ 12% to 15%. The assessee has offered net interest income to tax. The Id. Authorized Representative for the

assessee referred to the computation of interest income at page 23 of the paper book. The Id. Authorized Representative for the assessee further submitted that assessee has been consistently offering interest income by computing the same in similar manner in the past and the same was accepted by the Revenue. The Id. Authorized Representative for the assessee pointed that in assessment year 2009-10 the assessment was made u/s. 143(3) of the Income Tax Act, 1961 [in short 'the Act'], wherein interest income computed in the similar manner was offered to tax and the same was accepted by the Revenue. Thereafter, in assessment years 2010-11, 2011-12 and 2012-13 the Assessing Officer accepted the interest income computed in similar manner in the proceedings u/s. 143(1) of the Act. The Id. Authorized Representative for the assessee prayed for deleting the addition and maintain consistency in approach. In support of his submissions the Id. AR placed reliance on the case of Roshan Sethiya vs. ACIT in ITA No.5860/Mum/2012 for assessment year 2009-10 decided on 10/05/2015.

4. On the other hand, Shri T. Shankar representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. Departmental Representative controverting the submissions made on behalf of the assessee submitted that a perusal of the bank passbook would show that the amounts were credited to the bank account before lending loan to the assessee. This clearly shows that the lenders were not having their own means for advancing the loan.

5. Rebutting the arguments made by Id. Departmental Representatives the Id. Authorized Representative of the assessee submitted that assessee had taken loan from various parties, the list of assessee's creditors are at page 49 to 51 of the Paper Book. The Assessing Officer before disallowing the loan transactions with Sahilesh D. Patel (HUF) and Samir Vallabhji Gosar has not made any enquiries either from the

said persons or any other lenders. The assessee has discharged its onus in proving genuineness of the loan transactions, hence, the addition made should be deleted.

6. Both sides heard, orders of authorities below examined and the decisions on which reliance has been placed considered. In ground No.1 of appeal, the assessee has assailed addition of Rs.6,50,000/- made under section 68 of the Act. A perusal of the assessment order reveals that the addition has been made in respect of unsecured loans taken by the assessee from Sahilesh D. Patel (HUF) Rs.2,00,000/- and Samir Vallabhji Gosar Rs.4,50,000/-, as the assessee failed to discharge his onus in proving identity and creditworthiness of the lenders and genuineness of the transaction. The CIT (A) has confirmed the addition on the ground that the lenders were not having financial capacity to lend the amounts to the assessee.

7. The assessee in order to discharge his onus to prove identity, creditworthiness and genuineness of the transaction has furnished confirmations from the lenders, acknowledgement of the return of income for assessment year 2013-14 along with computation of income and copy of bank statements of both the aforementioned lenders. These documents were available before the authorities below. The Assessing Officer has not taken note of the documents furnished by the assessee. In first appellate proceedings, the CIT(A) has examined these documents and has accepted the confirmations, however, the CIT(A) raised reservation over the financial capacity of the lenders. A bank statement of Sahilesh D. Patel (HUF) is at page 68 of the Paper Book. A perusal of the same reveals that on 25/05/2012 an amount of Rs.2,00,000/- has been debited from the account of said lender and has been transferred to Kirti M. Shah i.e. the assessee. The entries in the pass book reveals that the lender had sufficient balance to advance loan. There are several entries of deposits and withdrawals in the bank account. There is no entry of cash deposits which could be linked to the loan advanced to the assessee.

7.1 A copy of the bank pass book of other lender - Samir Vallabhji Gosar is at page 65 of the paper book. A perusal of the same shows that on 17/05/2012 an amount

of Rs.4,45,000/- has been deposited in his bank account by way of bank transfer. There is no cash deposit before the loan was extended to the assessee on 18/05/2012. It is not the case of Revenue that assessee's unaccounted money has travelled back to the assessee by way of unsecured loan. The assessee has been able to show that on the date of extending unsecured loan, the lender had funds. It is not denying the fact that under section 68 of the Act, the primary onus is on the assessee to substantiate creditworthiness and identity of the lender and genuineness of the transaction. Once the assessee has furnished necessary documents to discharge his primary onus, the duty is cast on the Assessing Officer to make further enquiry, if he has doubt about source of source. The statute has conferred powers on the Assessing Officer to make enquiries from the lenders. The assessee is not required to prove source of source. In the instant case, the assessing officer has failed to exercise his powers to make further enquiries from the lenders.

7.2 As is evident from documents on record initial onus cast on the assessee stood discharged, I find merit in ground no.1 of the appeal, hence, the same is allowed.

8. In ground No.2 of appeal assessee has assailed disallowance of interest Rs.26,57,015/- paid on loan, u/s 57 of the Act. The contention of the assessee is that the assessee has earned total interest income of Rs.36,68,318/- on loans advanced and bank deposits. The assessee has advanced substantial amount to Sneha Medicare Pvt. Ltd. and has received interest of Rs.36,37,688/- from Sneha Medicare Pvt. Ltd. The assessee is a Director in the said company. The assessee has charged interest @15% per annum from the said company. The assessee has taken loans to the tune of Rs.1,71,12,500/- from various individuals on which interest have been paid ranging between 12% to 15%. The Assessing Officer and the CIT(A) has rejected assessee's claim on the ground

that the assessee has failed to establish nexus between unsecured loans taken and the loans advanced to Sneha Medicare Pvt. Limited.

8.1 On the contrary, the contention of assessee is that during assessment proceedings the assessee had furnished complete details of the loans taken, interest paid and the details of loan given and interest received. Ostensibly, the assessee had also furnished chart to establish nexus between loans taken and advanced to Sneha Medicare Private Ltd. The assessee has placed reliance on the decision rendered in the case of CIT vs. Rajendra Prasad Moody (supra) to contend that once the expenditure laid out by the assessee for the investment which was capable of earning income, the condition u/s. 57(iii) of the Act is fulfilled. There is no dispute about the law laid down by the Hon'ble Apex Court in the aforesaid judgment, however, in the present case the issue is different.

9. The assessee has furnished list of lenders of unsecured loan at pages 49 to 51 of the paper book. The assessee has also furnished its ledger account in the Books of Sneha Medicare Pvt. Ltd. at page 52 of the paper book. However, there is no document to establish one to one correlation of the unsecured loans taken and advanced to Sneha Medicare Pvt. Ltd. The requirement of section 57(iii) of the Act is that the expenditure is deductible if the expenditure is for 'wholly and exclusively for the purpose of making or earning such income'. The case of the assessee is that substantial loans taken have been advanced to Sneha Medicare Pvt. Ltd. Thus, the assessee is required to discharge his onus in proving live link between the borrowings and the amount advanced to Sneha Medicare Pvt. Ltd. In Index of the paper book at Serial No.7 it is mention: 'Correlation of loans taken and advanced to Sneha Medicare' Page 52. As mentioned above on page 52 of paper book is the copy of account

of assessee in the books of Sneha Medicare Pvt. Ltd. and there is no statement of correlation. Taking into consideration entire facts of the case, it is deemed appropriate to grant one opportunity to the assessee to substantiate correlation between the loans taken and advanced to Sneha Medicare Pvt. Ltd. For this limited purpose this issue is restored to the file of Assessing Officer. To the extent, the assessee is able to show live link between the loans taken and advanced to Sneha Medicare Pvt. Ltd., the Assessing Officer shall allow interest claim of the assessee. With the above observations, ground no.2 of the appeal is allowed for statistical purpose.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on Friday the 04<sup>th</sup> day of March, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 04/03/2022

Vm, Sr. PS (O/S)

**प्रतिलिपि अग्रेषित**Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai