

आयकर अपीलिय अधिकरण
मुंबई पीठ “ एस एम सी ”
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.6694/मुं/2018 (नि.व. 2007-08)
ITA NO.6694/MUM/2018(A.Y.2007-08)

Bhagwanji Narsi Patel
Flat No.1203/1204, Pumpas, Vasant Lawn,
Nr. Jupiter Hospital, Majiwada,
Thane (West) – 421 301
PAN: AAWPP-3727-H

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer, Ward 1(1)
Mohan Plaza, Near Poddar School,
Vaile Nagar, Khadakpada Circle,
Kalyan (W)- 421 301

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Written Submission

प्रतिवादी द्वारा/Respondent by : Shri T. Shankar

सुनवाई की तिथि/ Date of hearing : 03/02/2022

घोषणा की तिथि/ Date of pronouncement : 02/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Pune (in short ‘ the CIT(A)’) dated 05/09/2018 for the assessment year 2007-08.

2. The assessee in appeal has assailed the order of CIT(A) on two counts:

(i) Confirmation of addition of Rs.7,88,600/- as unproved cash credit u/s. 68 of the Income Tax Act, 1961 [in short 'the Act'].

(ii) Confirming addition of Rs.1,00,489/- on account of exchange fluctuation loss.

3. The brief facts of the case are : The assessee is engaged in manufacturing and trading of cloth. During the period relevant to the assessment year under appeal, the assessee has taken unsecured loans from various persons. The Assessing Officer identified eight loan creditors, where the assessee had failed to prove genuineness of the loan transactions. Thus, the Assessing Officer made addition of Rs.13,46,600/- u/s. 68 of the Act. Further, the Assessing Officer partly accepted the assessee's claim of exchange fluctuation loss. As against claim of Rs.1,11,738/-, the Assessing Officer accepted fluctuation loss to the extent of Rs.11,249/- and disallowed the remaining amount of Rs.1,00,489/-. The assessee carried the issue in appeal before the CIT(A). In first appellate proceedings, the CIT(A) sought remand report from the Assessing Officer with respect to the addition made u/s. 68 of the Act. Out of eight loan creditors, the Assessing Officer in remand proceedings accepted genuineness of the loan transaction from four parties. As regards the remaining four no comments were made by the Assessing Officer in the remand report. The CIT(A) deleted the addition in respect of the loan creditors which were accepted by the Assessing Officer in remand report and made addition in respect of the remaining four parties. Thus, the CIT(A) restricted the addition under section. 68 of the Act to Rs.7,88,600/-. As regards loss on foreign exchange fluctuation the CIT(A) upheld the findings of Assessing Officer in toto.

4. None appeared to represent the assessee. However, Shri Madan P. Makhija, Advocate has filed written submission under instructions from assessee / appellant.

5. Shri T. Shankar representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

6. We have heard the submissions of Id.Departmental Representative and have perused written submissions filed on behalf of the assessee. The assessee in ground No.1 & 2 of appeal has assailed the addition made u/s 68 of the Act in respect of unproved unsecured loan. The Assessing Officer during assessment proceedings made disallowance u/s 68 of the Act in respect of unsecured loans from eight parties. During First Appellate proceedings the CIT(A) sought remand report from Assessing Officer . In remand proceedings the Assessing Officer accepted loan transactions from four out of eight parties i.e.:

(i) Shri Narshi Nanji Patel	- Rs. 18,000/-
(ii) Smt.M.M.Mantri	- Rs. 3,00,000/-
(iii)M/s. Meet Textiles	- Rs. 2,00,000/-
(iv) Smt. Manjula B. Patel	<u>- Rs. 40,000/-</u>
Total :	<u>- Rs. 5,58,000/-</u>

The Assessing Officer accepted the loan from the aforesaid persons on the basis of information received from the concerned Assessing Officers. In so far as the other four loan creditors i.e.:

(i) Shri Vimalkumar N. Sharma	- Rs. 3,00,000/-
(ii) Shri Vrindavan V. Patel	- Rs. 3,60,000/-

(iii) Viral O. Patel	- Rs. 18,000/-
(iv) Bhagwanji N. Patel (HUF)	- <u>Rs. 50,000/-</u>
Total	- Rs. 7,88,600/-

The Assessing Officer in the remand report has not mentioned as to whether enquiries were made or not. No reasons has been given in the remand report as to why information from the Assessing Officers of the remaining four loan creditors not sought. If sought what were the remarks of the concerned Assessing Officers. The only reason for making addition is that the assessee has failed to produce loan creditors for verification during assessment. We find during assessment proceedings the assessee in order to discharge his onus to prove creditworthiness and identity of loan creditors had furnished confirmation letters containing complete name, address and PAN of the creditors. The assessee had also furnished bank pass book of the loan creditors. Therefore, the Assessing Officer neither issued any notice u/s 133(6) of the Act to the loan creditors nor any information was sought by the Assessing Officer during remand proceedings from the concerned Assessing Officers of the remaining four creditors. In absence of any contrary material we do not see any reason to confirm the addition under section. 68 of the Act. Consequently, ground No.1 and 2 raised in the appeal are allowed.

7. In ground No.3 of appeal the assessee has assailed addition of Rs.1,00,489/- on account of exchange fluctuation loss. The assessee had claimed fluctuation loss of Rs,1,11,738/-. The Assessing Officer accepted the fluctuation loss of Rs.11,249/- and disallowed the remaining. The Assessing Officer recorded that the Id. Authorized Representative for the assessee accepted the addition. The fact of admission is disputed by the assessee

before CIT(A) as well as before us. The CIT(A) has confirmed the addition by merely reiterating the findings of Assessing Officer. The assessee in support of his claim has furnished copy of invoice, bank remittances and bank statements at page 39 to 50 of the paper book. The contention of the assessee is that in invoices the amounts are mentioned in US \$ and the conversion rate as on date of the transaction was \$44.300, thus total value of transaction in Indian Currency after applying the exchange rate was Rs.40,28,203.87. As against the said amount the assessee received Rs.38,73,026/-. The Assessing Officer while computing fluctuation loss has applied wrong conversion rate. After having examined invoices, shipping bills for export, foreign inward remittance advice and bank statement, we find merit in the submissions of the assessee. Hence, ground No.3 of appeal is allowed.

8. Ground No.4 & 5 of the appeal are general in nature, hence, require no adjudication.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 02nd day of May, 2022.

Sd/-

(GAGAN GOYAL)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 02/05/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy 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