IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1061/Mum./2017
(Assessment Year : 2011–12)

Santosh Dnyaneshwar Chavan
F–3/6, Sector–10, Vashi
Navi Mumbai 400 405
PAN – ACXPC6755D
……………. Appellant

v/s

Income Tax Officer
Ward–22(3)(4), Mumbai
……………. Respondent

Assessee by : Shri B.N. Rao
Revenue by : Shri Hoshang B. Irani

Date of Hearing – 07.03.2022	Date of Order – 18.05.2022

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 06/11/2016, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)–26, Mumbai ["*learned CIT(A)*"], for the assessment year 2011 – 12.

2. In this appeal, the assessee has raised following grounds:–

> *"Issue no.1 – Cash deposits of Rs.34,00,000, in saving account held with the Dattatray Maharaj Kalambe Jaoli Sahakari Bank Ltd. (Recorded in AIR) and Rs.15,00,000, current account held with Deccan Merchant Co–op Bank Ltd. (Not recorded in AIR) treated as unexplained cash credit by the learned A.O.*
>
> *Issue no.2 – Interest paid to Vijaya Bank and Claim under section 24(b) under income from let out property."*

3. The assessee is an individual and is engaged in the business of retail in books. For the year under consideration, assessee filed his return of income on 03/01/2012 declaring total income of Rs. 78,967. The assessee has shown business income, income from house property and income from other sources.

4. The first issue arising in present appeal is with regard to addition made by the Assessing Officer under section 68 of the Act in respect of cash deposits made by the assessee.

5. The brief facts of the case pertaining to this issue, as emanating from the record are: During the course of assessment proceedings, it was observed from the details on record that assessee has deposited cash of Rs. 34 lakhs in his Dattatray Maharaj Kalambe Sahkari Bank Account and cash of Rs. 15 lakhs in his Deccan Merchant Cooperative Bank Account. The assessee was asked to explain the source of the above cash deposited in his bank accounts. In response, assessee submitted that all the cash deposited in the saving accounts was withdrawn from business loan accounts held with the Deccan Merchant Cooperative Bank and Kulswam Cooperative Credit Society. The assessee further submitted that the

amounts deposited in his saving accounts are again invested as capital in his partnership business with M/s Syndicate Builder. The Assessing Officer vide order dated 24/02/2014 passed under section 143 (3) of the Act did not agree with the assessee's submissions. The Assessing Officer held that the assessee has failed to establish the nexus between withdrawal and cash deposited in his aforesaid two bank accounts. The Assessing Officer also held that the responsibility casted on the assessee to satisfactorily explain the source for cash deposits in the bank account has not been discharged at all. Accordingly, the Assessing Officer treated the cash deposited of Rs. 49 lakhs in assessee's two bank accounts as assessee's unexplained income from unexplainable sources and added the same under section 68 of the Act.

6. During the course of appellate proceedings before the learned CIT(A), the assessee filed various documents in respect of this issue. Accordingly, remand report was called by the learned CIT(A) from the Assessing Officer in respect of the documents filed by the assessee. After considering the submissions, documents filed by the assessee and remand report filed by the Assessing Officer, the learned CIT(A) vide impugned order dated 06/11/2016 held that the assessee has first converted the business loan into cash and then transferred the same to his capital account in his partnership business through his saving accounts, instead of directly transferring the loans to his capital account with the partnership firm. The learned CIT(A) observed that one and only advantage of engaging in

frequent withdrawals and deposits of cash appears to be accommodation of unaccounted cash. The learned CIT(A) further noted that from the bank statement of Kulswami Cooperative Credit Society it is seen that the cash was not withdrawn by the assessee himself but the same was withdrawn by one Shri Nandaram Chavan against bearer cheque. Accordingly, the learned CIT(A) noted that since the assessee has not made cash withdrawal by himself, as stated by him, the cash deposit cannot be said to be out of the said cash withdrawal. The learned CIT(A) further noted that there is no authentic evidence to prove that the cash withdrawal by Shri Nandaram Chavan has not been utilised by Shri Nandaram Chavan for his personal/business purposes. Further, in respect of other cash deposits also, learned CIT(A) did not agree with the submission of the assessee. In respect of the assessee's submission that each cash loans up to Rs. 20,000 were obtained from 85 farmers was also not accepted by the learned CIT(A). In this regard, the learned CIT(A) noted that these farmers have not given any loan to anybody except to the assessee and all these loan creditors have savings of only to the extent of loans given to the assessee, and no interest has been paid or demanded by these loan creditor farmers. As a result, the learned CIT(A) upheld the addition made under section 68 of the Act. Being aggrieved, the assessee is in appeal before us.

7. During the course of hearing, Shri B.N. Rao, learned Authorised Representative ("*learned AR*") submitted that the assessee has declared its income from business under section 44AD of the Act as per presumptive

taxation and accordingly, offered to taxation 8% of revenue of Rs. 15,45,000 i.e. Rs. 1,23,600 as income under section 44 AD of the Act. The learned AR further submitted that under presumptive taxation, as per section 44 AD of the Act, books of account are not required to maintain. Further, any addition under section 68 of the Act can only be made in respect of any sum credited to the books of account maintained by the assessee. However, in the present case, as the income from business was offered to taxation on presumptive basis under section 44 AD of the Act, the assessee was not required to maintain any books of account. Therefore, the learned AR submitted that the addition made by the Assessing Officer and upheld by the learned CIT(A) under section 68 is bad in law. In support of his submissions, learned AR placed reliance upon the decision of Co-ordinate Bench of the Tribunal in Mehul V Vyas v. ITO: [2017] 80 Taxmann.com 311 (Mum-Trib).

8. On the other hand, Shri Hoshang B. Irani, learned Departmental Representative ("*learned DR*") by vehemently relying upon the orders passed by the lower authorities submitted that irrespective of the fact that assessee has not maintained any books of account, the assessee is required to establish beyond doubt the source of cash deposited by it in its two bank accounts.

9. We have considered the rival submissions and perused the material available on record. As is evident from the facts available on record, in the present case, it is not in dispute that assessee had deposited cash of Rs. 34

lakhs in his Dattatray Maharaj Kalambe Sahkari Bank Account and cash of Rs. 15 lakhs in his Deccan Merchant Cooperative Bank Account. During the assessment proceedings, assessee submitted that all cash deposited in the saving accounts was withdrawn from business loan accounts held with the Deccan Merchant Cooperative Bank and Kulswam Cooperative Credit Society. The Assessing Officer noted that the assessee deposited cash in his bank accounts in the following manner:

Dattatray Maharaj Kalambe Sahkari Bank Account

Sr. No.	*Transaction date*	*Amount of cash deposit*
1.	*07/01/2011*	*11,00,000*
2.	*10/01/2011*	*4,00,000*
3.	*28/01/2011*	*9,00,000*
4.	*29/01/2011*	*8,00,000*
5.	*31/01/2011*	*2,00,000*
	Total	*34,00,000*

Deccan Merchant Cooperative Bank Account

Sr. No.	*Transaction date*	*Amount of cash deposit*
1	*31/03/2011*	*15,00,000*
	Total	*15,00,000*

10. Upon not being satisfied with the explanation furnished by the assessee of source for cash deposits, the Assessing Officer made the addition under section 68 of the Act. During the appellate proceedings before the learned CIT(A), in reply to documents filed by the assessee, the Assessing Officer filed detailed remand report. The Assessing Officer submitted that the cash was not withdrawn by the assessee himself but the same was withdrawn by one Shri Nandaram Chavan against bearer cheque on more than one occasions. The Assessing Officer, in the remand report,

further pointed out various other discrepancies in the statement of the assessee vis-à-vis the information obtained from the society/bank from where the assessee alleged to have withdrawn the cash. The Assessing Officer also submitted that arranging and submission of loan confirmations for each cash loans up to Rs. 20,000 from 85 farmers and preparation and submission of cash book summary is also a mere afterthought of the assessee. The Assessing Officer further noted that 5 loan creditors whose statement on oath was recorded under section 131 of the Act gave a common reply that they have not given any loan to anybody except to the assessee and that same was only loan given by them during the last 4 to 5 years. In reply to the remand report, the assessee submitted that Shri Nandaram Chavan was his relative and he helped the assessee by going to the banks/society for depositing cash or for withdrawing cash. The cash withdrawn by Shri Nandaram Chavan was not utilised by him and was returned back to the assessee. Shri Nandaram Chavan is just bearer and not the owner of the cash. The assessee further submitted that whenever the amount was withdrawn, withdrawal slip duly signed was given to Shri Nandaram Chavan to bring cash from the society/bank. The assessee further submitted that as per the bank statement of Shri Nandaram Chavan there was no deposit in his account from assessee’s withdrawals, hence the view taken by the Assessing Officer that Shri Nandaram Chavan has utilised the cash is not justified. The assessee submitted that at the time of cash deposit into the bank there was shortage of cash fund and hence

interest-free advances were taken from the relatives and friends and returned the same within the same financial year.

11. The learned CIT(A) vide impugned order, after considering the remand report filed by the Assessing Officer and reply of assessee there to, inter-alia, in the absence of authentic evidence to prove that cash withdrawn by the assessee through the bearer Shri Nandaram Chavan has not been utilised by the bearer upheld the contention of the Assessing Officer. Further, the learned CIT(A), inter-alia, did not admit the additional evidence filed by the assessee under Rule 46A of the Income Tax Rules, 1962 in respect of confirmation from 85 persons from whom unsecured temporary interest-free advances were taken on the basis that assessee has failed to establish as to how he was prevented by sufficient cause from producing these evidences during the course of assessment proceedings. Learned CIT(A) also upheld the submission of the Assessing Officer in respect of other cash withdrawals. As a result, the learned CIT(A) upheld the addition made by the Assessing Officer under section 68 of the Act.

12. It is for the first time, during the hearing before us, contention was raised on behalf of the assessee that as the income from business was declared under the provisions of presumptive taxation under section 44AD of the Act and thus, there was no requirement to maintain the books of account, therefore, no addition can be made under section 68 of the Act. In support of his submission, learned AR placed reliance upon the decision of Co-ordinate Bench of the Tribunal in Mehul V Vyas (supra). In the aforesaid

decision, the Co-ordinate Bench of the Tribunal, while deleting the addition made under section 68 of the Act in respect of cash deposits in the bank account, observed as under:

> *"8. We have heard the ld. Authorized representatives of both the parties, perused the orders of the lower authorities as well as the material produced before us. We will first deal with the objection raised by the ld. A.R as regards the addition of Rs.10,53,000/- which was made by the A.O under Section 68 of the 'Act', in respect of the cash deposit in the bank account of the assessee. We find substantial force in the contention of the ld. A.R that an addition under Section 68 can only be made where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee either offers no explanation about the nature and source as regards the same, or the explanation offered by him in the opinion of the Assessing Officer is not found to be satisfactory. That before adverting further, we herein reproduce the relevant extract of the aforesaid statutory provision, viz. Section 68, which reads as under: -*
>
> > *"Cash Credits.*
> >
> > *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year……………… "*
>
> *That a bare perusal of the aforesaid deeming section therein reveals that an addition under the said statutory provision can only be made where any sum is found credited in the books of an assessee maintained for any previous year. Thus, the very sine qua non for making of an addition under Section 68 presupposes a credit of the aforesaid amount in the 'books of an assessee' maintained for the previous year. We not being oblivious of the settled position of law that a statutory provision has to be strictly construed and interpreted as per its plain literal interpretation, and no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision in the garb of giving effect to the underlying intent of the legislature, thus confining ourselves within the realm of our jurisdiction, therein construe the scope and gamut of the aforesaid statutory provision by according a plain meaning to the language used in Sec. 68. We are of the considered view that a credit in the 'bank account' of an assessee cannot be construed as a credit in the 'books of the assessee', for the very reason that the bank account cannot be held to be the 'books' of the assessee. Though it remains as a matter of fact that the 'bank account' of an assessee is the account of the assessee with the bank, or in other words the account of the assessee in the books of the bank, but the same in no way can be held to be the 'books' of the assessee. We have given a thoughtful consideration to the scope and gamut of the aforesaid statutory provision, viz. Sec. 68, and are of the considered view that an addition made in respect of a cash deposit in the 'bank account' of an assessee, in the absence of the same found credited in the 'books of the assessee' maintained for the previous year, cannot be brought to tax by invoking the*

provisions of Section 68. That our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Bhaichand N. Gandhi (surpa) wherein the Hon'ble High Court has held as under: —

> *"As the Tribunal has pointed out, it is fairly well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book supplied by the bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived."*

We find that the aforesaid view of the Hon'ble jurisdictional High Court had thereafter been followed by a 'SMC' of the ITAT Mumbai bench in the case of Smt. Manasi Mahendra Pitkar v. ITO [2016] 73 taxmann.com 68/160 ITD 605 wherein it was held as under: —

> *"I have carefully considered the rival submissions. In the present case the addition has been made by the income tax authorities by treating the cash deposits in the bank account as an unexplained cash credit within the meaning of section 68 of the Act. The legal point raised by the assessee is to the effect that the bank Pass book is not an account book maintained by the assessee so as to fall within the ambit of section 68 of the Act. Under section 68 of the Act, it is only when an amount is found credited in the account books of the assessee for any previous year that the deeming provisions of section 68 of the Act would apply in the circumstances mentioned therein. Notably, section 68 of the Act would come into play only in a situation "Where any sum is found credited in the books of an assessee…………… ". The Hon'ble Bombay High Court in the case of Shri Bhaichand Gandhi (supra) has approved the proposition that a bank Pass Book maintained by the bank cannot be regarded as a book of the assessee for the purposes of section 68 of the Act. Factually speaking, in the present case, assessee is not maintaining any books of account and section 68 of the Act has been invoked by the Assessing Officer only on the basis of the bank Pass Book. The invoking of section 68 of the Act has to fail because as per the judgment of the Hon'ble Bombay High Court in the case of Shri Bhaichand N. Gandhi (supra), the bank Pass Book or bank statement cannot be construed to be a book maintained by the assessee for any previous year as understood for the purposes of section 68 of the Act. Therefore, on this account itself the impugned addition deserves to be deleted. I hold so."*

We further find that a similar view had also been arrived at in a 'third member' decision of the Tribunal in the case of Smt. Madhu Raitani v. Asstt. CIT [2011] 10 taxmann.com 206/45 SOT 231 (Gau.) (TM), as well as by a coordinate bench of the Tribunal in the case of ITO v. Kamal Kumar Mishra [2013] 33 taxmann.com 610/143 ITD 686 (Luck. - Trib.). Thus in the backdrop of the aforesaid facts of the case read in light of the settled position of law, we are of the considered view that the addition made by the A.O in respect of the cash deposit of Rs.10,53,000/-(supra) in the bank account of the assessee by invoking Section 68 has to fail for the very reason that as per the judgment of the Hon'ble Bombay High Court in the

case of Bhaichand N. Gandhi (supra), a bank pass book or bank statement cannot be considered to be a 'book' maintained by the assessee for any previous year, as understood for the purpose of Section 68 of the Act. Therefore, on this count itself the impugned addition Rs.10,53,000/- deserves to be deleted.

9. Even otherwise, we find that the explanation rendered by the assessee in respect of the nature and source of the cash deposit of Rs.10,53,000/- (supra) in her bank account has been disbelieved by the lower authorities without establishing any credible infirmity or fallacy in the substantial material which was made available on record by the assessee. We are of the considered view that the assessee had not only put forth an explanation in respect of the nature and source of the cash deposit of Rs.10,53,000/- (supra) in her bank account, but rather it remains as a matter of fact that substantial material was placed on record by the assessee to fortify the genuineness and veracity of his aforesaid explanation. We find that the explanation of the assessee had been dislodged by the A.O merely on the basis of doubts, surmises and conjectures, which we are afraid cannot form a basis for making an addition in the hands of the assessee. Be that as it may, since we have already held that the addition is unsustainable following the ratio of the judgment of the Hon'ble Jurisdictional High Court in the case of Bhaichand N. Gandhi (supra), therefore we do not deal with instant aspect any further. That as a result of our aforesaid observations, the order of the CIT(A) is set aside and the A.O is directed to delete the addition of Rs.10,53,000/- made under Section 68 in the hands of the assessee.

13. We find that subsequent to the aforesaid decision in Mehul V Vyas (supra), which was rendered by Co-ordinate Bench of the Tribunal on 07/04/2017, the Hon'ble jurisdictional High Court in Arunkumar J. Muchhala v. CIT: [2017] 399 ITR 256 (Bombay), vide judgment dated 24/08/2017, after considering the ratio laid down in the earlier decision in CIT v. Bhaichand N. Gandhi [1983] 141 ITR 67 (Bombay), observed as under:

"11. The facts as emerged before the Assessing Officer appears to be not in dispute. The Appellant has not denied that he has received the said loan amount / cash deposits from those persons whose list has been given in the order of Assessing Officer. He has revealed those names from the Bank account of the Appellant. ***Now, Appellant intends to say that he has not maintained books of accounts and therefore, those amounts can not be considered. When Appellant is doing business, then it was incumbent on him to maintain proper books and/ or books of account. It may be in any form. Therefore, if he had not maintained***

> ***it, then he can not be allowed to take advantage of his own wrong. Burden lies on him to show from where he has received the amount and what is its nature. Unless this fact is explained he can not claim or have deduction of the said amount from the income tax. Sec. 68 of I. T. Act provides that where the assessee offers no explanation about the nature and source of the credits in the books of account, all the amounts so credited or where the explanation offered by the assessee is not satisfactory in relation to the same then such credits may be charged to tax as income of the assessee for that particular previous year. It is to be noted here in this case that huge amounts have been credited in the account of the Appellant and he has not explained the nature of the same. The source of the said amount has been discovered by the Assessing Officer from Bank Pass Book.*** *It is to be noted that when the source and nature has been held to have been explained, the said amount has been deleted by the appellate forums. Now the dispute has remained in respect of amount of Rs.9,00,000/- from M/s. Pooja Corporation, Rs.7,00,000/- from M/s. Pooja Enterprises, Rs.24,00,000/- from Shri. Ashok Mehta, Rs.18,00,000/- from Mr. Ajay Shah. No document was produced in respect of these transactions nor the amounts have been confirmed from those persons, who are shown to have lent them. The authorities below have therefore, rightly held that nature of the transaction has not been properly shown by the Appellant."*
> (emphasis supplied)

14. The decision rendered in Arunkumar J. Muchhala (supra) is not only subsequent to the decision rendered by Co-ordinate Bench of the Tribunal in Mehul V Vyas (supra), the said decision is even rendered by the Hon'ble jurisdictional High Court and thus, the same is binding on us. At this stage, it is also pertinent to note the provisions of Explanation (f) to section 139(9) of the Act, which reads as under:

> *"(f) where regular books of account are not maintained by the assessee, the return is accompanied by a statement indicating the amounts of turnover or, as the case may be, gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amounts have been computed, and also disclosing the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year:"*

15. Thus, even if the income is taxed on presumptive basis and the taxpayer has not maintained the books of account, the same does not completely absolve the taxpayer from maintaining data / books, inter-alia,

having the information as is required under the aforesaid provision. Therefore, respectfully following the decision of Hon'ble jurisdictional High Court in Arunkumar J. Muchhala (supra), the plea raised for the first time, by the learned AR, before us in the present appeal is rejected.

16. Further, we find that, in the present case, certain aspects were neither properly examined by the Assessing Officer during assessment as well as remand proceedings nor were considered by the learned CIT(A), which making / upholding the addition under section 68 of the Act. We find that the Assessing Officer as well as learned CIT(A) on merits merely rejected the contention of the assessee in respect of cash withdrawn by Shri Nandaram Chavan without calling him for examination and recording his statement in this regard. We further, on the basis of record, find that even the assessee has neither produced Shri Nandaram Chavan nor requested for same during proceedings before lower authorities, and merely furnished the bank statement of Shri Nandaram Chavan in support of his submission that the amount withdrawn was not utilised by the bearer. We further find that though the learned CIT(A) has recorded the submission of the Assessing Officer on the additional evidence produced by the assessee in respect of interest free loans taken from 85 farmers, however, did not admit the additional evidence so produced by the assessee under Rule 46A. In view of the above, we deem it appropriate to remand this issue to the Assessing Officer for *de novo* adjudication after appropriate examination of Shri Nandaram Chavan and after consideration

of all the documents as may be filed by the assessee, including the additional evidence filed before the learned CIT(A). The Assessing Officer shall have the liberty to call any person/document for examination, as may be required for complete verification of all facts and adjudication of this issue. Accordingly, issue No. 1 raised in assessee's appeal is partly allowed for statistical purpose.

17. The next issue arising in assessee's appeal is with regard to disallowance of interest of Rs. 5,51,376 claimed under section 24 of the Act.

18. The brief facts of the case pertaining to this issue, as emanating from the record are: The assessee owns premises being shop No. 1, 2, 3, 4 and 5 in the building known as Akshar HCS Ltd. situated at plot No. 64, sector 21, Khargar, Navi Mumbai. The assessee took loan from Vijaya Bank towards improving the asset and thereby gave the property to Aditya Birla Retail Limited on rentals and earned rental income of Rs. 7,87,680. The interest paid on such loan at Rs. 6,87,909 was claimed to the extent of income available under head "Income from House Property" after standard deduction under section 24 of the Act i.e. of Rs. 5,51,376. During the course of assessment proceedings, the assessee was asked to furnish certificate of interest payment of Rs. 5,51,376, which was duly complied by the assessee. The Assessing Officer vide order dated 24/02/2014 passed under section 143 (3) of the Act held that the utilisation of loan money was not proved to be used for acquisition of property as per the provisions of

section 24 of the Act and therefore the claim of deduction of Rs. 5,51,376 under section 24(b) of the Act was disallowed.

19. During the appellate proceedings before the learned CIT(A), the assessee again submitted rent agreement/leave and license agreement entered into with Aditya Birla Retail Limited. Vide remand report filed before the learned CIT(A), the Assessing Officer submitted that as per the rent agreement dated 11/02/2008 the rent receivable by the assessee was Rs. 12,46,340 per year, but the assessee has declared the rent received at Rs. 7,87,680 only. The Assessing Officer submitted that the assessee has not explained the reason for not declaring the rent as per the agreement. The Assessing Officer, vide remand report, also doubted that when the cost of the shop was only Rs. 20,51,010 why the assessee has availed loan of Rs. 52 lakhs and claimed total interest thereof at Rs. 6,87,909 (restricted to Rs. 5,51,376) against the rent of only Rs. 7,87,780. After considering the submissions, documents filed by the assessee and remand report filed by the Assessing Officer, the learned CIT(A) vide impugned order dated 06/11/2016 held that the assessee has nowhere substantiated his claim of major repairs with documentary evidence either before the Assessing Officer during remand proceedings or during the appellate proceedings. Accordingly, the learned CIT(A) upheld the disallowance made by the Assessing Officer.

20. During the course of hearing, learned AR, by referring to the certificate dated 06/01/2015 issued by Vijaya Bank, submitted that the

loan was availed by the assessee for the purpose of developing and renovating the property which was given on lease to Aditya Birla Retail Limited. The learned AR further submitted that the assessee has taken loan to improve the condition of 5 shops, merge them into single structure to accommodate a corporate entity to have their setup. Thus, the amount incurred is towards the improvement of the premises, which fetched the rent of Rs. 7,87,680.

21. On the other hand, learned DR vehemently relied upon the orders passed by the lower authorities.

22. We have considered the rival submissions and perused the material available on record. In the present case, the assessee availed loan of Rs. 52 lakhs from Vijaya Bank. As per the certificate dated 06/01/2015 by Vijaya Bank, the assessee had given a declaration that the said loan will be utilised by him for the purpose of developing and renovating the property to be leased out. In the present case, it is not in dispute that the assessee has given 5 shops on rent to Aditya Birla Retail Limited and earned rental income. It is also not in dispute that on the said loan the assessee has paid interest of Rs. 6,87,909. The learned CIT(A) upheld the disallowance of deduction under section 24(b) of the Act claimed by the assessee in the absence of any documentary evidence to substantiate the claim of major repairs in the aforesaid 5 shops before giving the same on rent.

23. Section 24 of the Act deals with deductions from income from house property. Further, as per section 24(b) of the Act, where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital is allowable as deduction from income from house property. In the present case, though the assessee has claimed that the loan was availed for the purpose of renovation of the aforesaid 5 shops, however, no documentary evidence was furnished to substantiate the fact of renovation of the aforesaid 5 shops. The learned AR only referred to the certificate issued by Vijaya Bank in support of its submission. As is evident, the purpose of the said certificate is only to certify the interest charged by the bank on the loan provided to the assessee. Though, the certificate also records the declaration of the assessee that the loan will be utilised for the purpose of developing and renovating the property to be leased out, no documentary evidence was furnished by the assessee to substantiate the said claim. We find from the material available on record that such information was also not directed to be produced by the Revenue. The claim of deduction was disallowed by the Assessing Officer only on the basis that the loan money was not utilised for the purpose of acquisition of property. Even in its remand report filed before the learned CIT(A), the Assessing Officer only submitted about the difference in amount of rent payable and doubted the *bona fide* of availing the loan of Rs. 52 lakhs. As under section 24(b) of the Act, deduction is available on payment of interest on loan availed, inter-alia, for the purpose of repair/reconstruction of the property, we deem it

appropriate to remand this issue to the Assessing Officer for *de novo* adjudication. The assessee is directed to furnish all the evidences in order to justify the claim of repair/reconstruction of the aforesaid 5 shops. As a result, issue No. 2 raised in assessee's appeal is allowed for statistical purpose.

24. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 18.05.22

Sd/- **PRASHANT MAHARISHI** **ACCOUNTANT MEMBER**	**Sd/-** **SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 18.05.2022

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai