

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI

**Before Shri Sanjay Garg, Judicial Member &
Shri Om Prakash Kant, Accountant Member**

I.T.A. No.7971/Mum/2019

Assessment Year: 2012-13

ACIT, CC-5(1), Mumbai..... Appellant

vs.

M/s Mansukh H Shah..... Respondent

3, Kasamkhan Compound,

Rani Sati Marg, Malad (E),

Mumbai-400097.

[PAN: ANBPS8109C]

Appearances by:

None appeared on behalf of the appellant.

Shri V. K. Chaturvedi appeared on behalf of the Respondent.

Date of concluding the hearing : May 12, 2022

Date of pronouncing the order : May 12, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 30.10.2019 of the Commissioner of Income Tax (Appeals)-53, Mumbai [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The appeal has been fixed for hearing several times in the past, but no one ever put in appearance on behalf of the assessee despite notice. Today also, no one has put in appearance on behalf of the assessee. Only an application on behalf of the assessee, has been placed on the file, stating therein that the assessee has requested to Assistant CIT, CC to provide him the copy of the grounds of appeal. The assessee has already been served with the copies of the grounds of appeal and other documents. Moreover, the case has been regularly fixed for hearing for the last one year and it was duty to the assessee and its representative to collect the copies of the grounds of appeal during the period. Today, without putting any appearance, a vague application has been filed by the assessee, that he has requested to the Assistant CIT, CC to give him the copy of the grounds of appeal whereas the assessee could very well collect the grounds of appeal from this Tribunal. Even a perusal of records reveals that since from the very beginning,

the assessee has been moving vague adjournment applications. Vide e-mail dated 21.07.2021, the assessee requested that the assessee has to receive a paper-book from the Assessing Officer, therefore, the matter should be adjourned. Further, vide letter dated 09.09.2021, the assessee requested for adjournment that he has to appoint an advocate to represent his case and further to that he has to collect grounds of appeal from the Assessing Officer. Identical applications have been moved time and again without putting any appearance. In view of this, we are not inclined to accept the application for adjournment, therefore, we proceed to decide the appeal after hearing the ld. DR.

3. The Revenue, in this appeal, has taken the following grounds of appeal:

"1. On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in disallowing addition made on account of cash deposit without supporting evidences of cash deposited".

2. On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in disallowing of addition made on account of proportionate interest expenses in absence of documentary evidence in support of interest income from parties"

3. On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in allowing addition of Rs. 1,34,50,000/ on account of bogus loans despite fact that no supporting evidences of the loans were produced before AO".

The appellant prays that the order of Commissioner of Income Tax(Appeal) on the above ground be set aside and that the AO be restored. The appellant craves, leave to amend or alter any grounds or add a new ground, which may be necessary. Last date for filing second appeal is 30.12.2019. However, the appeal should be filed immediately."

4. **Ground No.1** – Vide Ground No.1, the Department is aggrieved by the action of the ld. CIT(A) in deleting the addition made by the Assessing Officer on account of cash deposit in the bank account of the assessee.

Brief facts of the case are that an addition of Rs.11,35,000/- was made by the Assessing Officer on account of unexplained cash credits in the bank account of the assessee.

During the appellate proceedings, the assessee explained to the CIT(A) that the cash deposits were out of earlier withdrawals made by the assessee from his accounts. The assessee gave detailed note of the transactions. The ld. CIT(A) considering the above submission of the assessee restricted the addition to Rs.1,30,000/- out of total addition of Rs.1135000/- made by the Assessing Officer observing as under:

“4.5. I have considered the submissions carefully. It is noted that the appellant does not prepare balance sheet and does not maintain any cash book. Thus the returns of income filed for AY 2011-12 and AY 2012-13 did not have any balance sheet enclosed and therefore the claim of opening cash balance is not verifiable. There is however merit in claim that a subsequent cash deposit can be considered explained by a preceding cash withdrawal from bank. However, there is a caveat. There should be some reasonable time between the withdrawal and subsequent deposit and further there should not be any further cash deposits in between.

4.6. The deposit of Rs. 30,000 with Abhyudaya Bank on 30.5.2011 and Rs.50,000 with UBI on 12.5.2011 are both explained out of a single withdrawal of cash from UBI of Rs. 50,000 on 15.4.2011. This is not possible and therefore Rs 30000 of cash deposit on 30.5.2011 is treated as unexplained.

4.7. Cash deposits of Rs. 1,00,000 on 9.9.2011, Rs. 2,00,000 on 30.11.2011 and Rs. 10,000 on 1.12.2011 in UBI is explained as out of cash withdrawal of Rs. 5,00,000 from UBI on 16.5.2011. It is noted from the bank statement of UBI filed that there was a cash deposit of Rs 50,000/- on 19.5.2011 in UBI which has been missed out by the AO. Thus this deposit can be considered as explained by cash withdrawal of Rs. 5,00,000 from UBI on 16.5.2011. There is another cash withdrawal of Rs.1,00,000 on 29.9.2011 at UBI which has been claimed to explain cash deposit with Abhyudaya Bank on 24.12.2011. Thus these cash deposits are explained.

4.8. The cash deposit of Rs.1,00,000 on 26.3.2012 in Abhudaya Bank is explained as out of cash balance. Since no regular cash book is maintained, opening cash balance at the beginning of the year remains unverified, and that cash deposits during the year are explained as cash withdrawals on preceding date, the cash deposit of Rs. 1,00,000 on 26.3.2012 in Abhudaya Bank remains unexplained.

4.9. Hence cash deposits of Rs.1.30,000/- is considered as unexplained and the addition to this extent is upheld out of the addition of Rs.11,35,000/- made by the Assessing Officer. Ground of appeal no.1 is partly allowed.”

Before us, the ld. DR could not point out any distinguished fact on the file. The ld. CIT(A) has duly taken note of the earlier withdrawals from the assessee in the bank account out of which the amount in question was deposited in the bank account and gave the part relief to the assessee. After hearing the ld. DR, we do not find any reason to interfere with the order of the ld. CIT(A) in this issue. Ground No.1 of the Revenue is hereby dismissed.

5. **Ground No.2** – Vide Ground No.2, the Revenue is aggrieved by the action of the ld. CIT(A) in deleting the addition made by the Assessing Officer on account of proportionate interest expenses.

Brief facts of the case are that during the year, the assessee took some amount for business purposes on interest, whereas, the assessee also advanced some of the amount which also included the interest free advances of Rs.8.04 crores. The Id. Assessing Officer calculated the proportionate interest which the assessee might have earned on the aforesaid advances of Rs.8.04 crores and added the same to the income of the assessee.

Before the Id. CIT(A), the assessee explained that the assessee had incurred interest expenses of Rs.1,35,17,419/- and earned interest of Rs.29,46,073/- and further that the assessee had claimed interest expenses of only Rs.29,46,073/-. The assessee did not claim the remaining interest expenses. Moreover, it was also explained that the advances were made out of interest free funds available with the assessee. The Id. CIT(A) considering the aforesaid submissions of the assessee deleted the disallowance made by the Assessing Officer observing as under:

“5.4 I have considered the submissions carefully. The Assessing Officer has assumed that the interest free advances of Rs.8.04 crores are entirely out of interest bearing loans. The same has not been substantiated. The appellant has incurred interest expenses of Rs.1,35,17,419/- and earned interest of Rs.29,46,073/-. The appellant has only claimed interest expenses of Rs.29,46,073/- and not the entire interest expenses. Considering that entire interest expenses are not claimed and also that a large part of unsecured loans are interest free and such loans exceed the interest free advances given, the disallowance of interest expenses of Rs.29,46,073/- as made by Assessing Officer is not justified and is therefore deleted. Ground of appeal no.2 is allowed.”

After hearing the Id. DR, we do not find any reason to interfere with the above findings of the CIT(A). There is no merit in Ground No.2 and the same is accordingly dismissed.

6. **Ground No.3** – Vide Ground No.3, the Revenue has agitated the action of the Id. CIT(A) in deleting the addition of Rs.13450000/- on account of bogus loans.

Brief facts of the case are that the Assessing Officer during the assessment proceedings noticed that the assessee had shown a credit of loan amount of Rs.10,34,82,799/-. The Assessing Officer held that the assessee could not prove the genuineness of the transaction and creditworthiness of the creditors. He, therefore, added back the aforesaid

amount of Rs.103482799/- into the income of the assessee treating the same as unexplained credit.

Before the Id. CIT(A), the assessee furnished detailed evidences to prove the genuineness of the transaction and creditworthiness of the creditors, whereupon the Id. CIT(A) called upon a remand report from the Assessing Officer. The Id. Assessing Officer, after considering the evidences furnished by the assessee, accepted the loans of Rs.8,34,32,799/- as genuine loans. However, he reaffirmed the addition of Rs.20050000/- stating that the assessee could not furnish the relevant evidences to prove the genuineness of the loan transactions. Against the remand report of the Assessing Officer, the assessee furnished further details. The Id. CIT(A) considered those evidences and made a detailed chart mentioning the amount of loan, the reasons for which the Assessing Officer affirmed the addition, the documents furnished before the CIT(A) and the comments of the Id. CIT(A) accepting or rejecting the explanation of the assessee. The relevant part of the order of the CIT(A) for the sake of ready reference is reproduced as under:

“7.8. The assessing officer has commented on the deficiencies in the remand report. He has not made any direct enquiries from the lenders. He has also not mentioned whether the appellant was given any opportunity to meet the deficiencies that he had noticed. The remand report was forwarded to the appellant for rejoinder. The appellant furnished further details to meet the comments of the assessing officer in the remand report. After going through the remand report and the rejoinder, details were asked to be filed on 22.10.2019. The position that emerges after considering the submissions of the appellant are tabulated below.

<i>Lender details</i>					
<i>Sr. no</i>	<i>Name of the Lender</i>	<i>Amount (Rs.)</i>	<i>Details submitted and accepted by A.O</i>	<i>Submitted after remand report in rejoinder</i>	<i>Comments</i>
1	<i>Aniruddha Shanbhag</i>	<i>5,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
2	<i>Ranjana Agrawal</i>	<i>50,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
3	<i>Babulal P Shah</i>	<i>2,50,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
4	<i>Babulal P Shah</i>	<i>2,00,000</i>	<i>ITR, Loan Confirmation,</i>		<i>Accepted</i>

	<i>Huf</i>		<i>Bank statement verified. Accepted by A.O</i>		
5	<i>Haresh B Shah</i>	<i>2,50,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
6	<i>Haresh B Shah HUF</i>	<i>2,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		
7	<i>Jitendra B Shah (HUF)</i>	<i>1,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
8	<i>Leelavati H. Shah</i>	<i>7,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Not Accepted by A.O</i>	<i>Bank statement</i>	<i>Accepted</i>
9	<i>Nayana J Shah</i>	<i>8,50,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
10	<i>Nimala B Shah</i>	<i>9,50,000</i>	<i>ITR, Loan Confirmation verified. Balance sheet is not available. Not Accepted by A.O</i>	<i>Bank statement</i>	<i>Accepted</i>
11	<i>Shubhada R Joshi</i>	<i>2,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
12	<i>Pawan Vinay Shourie</i>	<i>20,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
13	<i>Vinaykumar Shourie (HUF)</i>	<i>15,00,000</i>	<i>Loan confirmation verified. But ITR, Balance sheet not available. Not accepted by A.O</i>	<i>Lender is deceased. Own bank statement for repayment</i>	<i>Lender is HUF. Details not filed. Not accepted.</i>
14	<i>Kamlesh Shah HUF</i>	<i>30,00,000</i>	<i>ITR, Loan Confirmation verified. Balance sheet is not available. Not Accepted by A.O</i>	<i>Bank statement</i>	<i>Accepted</i>
15	<i>Banvishi</i>	<i>10,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
16	<i>Kothari Group</i>	<i>15,50,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
17	<i>Modi group</i>	<i>70,00,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
18	<i>Bhavesh J. Doshi</i>	<i>6,85,000</i>	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>

19	Chandan N. Shah	5,00,000	Loan confirmation verified. But ITR, Balance sheet not available. Not accepted by A.O	Bank statement filed	Accepted
20	Chandrika Dilip Parekh	25,00,000	ITR, Loan Confirmation, Bank statement verified. Accepted by A.O		Accepted
21	Harasi Umarsi Ganger	7,00,000	ITR, Loan Confirmation verified. However ITR is not available. Not Accepted by A.O	Party untraceable. Bank statement not available.	Not accepted
22	Navinchandra Shah	5,00,000	Loan confirmation verified, ITR are verified. However, bank statement not available. Not accepted by A.O	Bank statement	Accepted
23	Shantilal Mahadev Doshi	2,00,000	Loan confirmation verified. But ITR, Balance sheet not available. Not accepted by A.O	Lender is deceased. Pan card/death certificate filed.	ITR and bank statement not filed. Not accepted.
24	S M Doshi Huf	6,25,000	Loan confirmation verified. But ITR, Balance sheet not available. Not accepted by A.O	Lender/karta deceased. Pan card/death certificate filed.	ITR and bank statement not filed. Not accepted.
25	Chandrakant Champaklal Mehta	4,00,000	ITR, Loan Confirmation, Bank statement verified. Accepted by A.O		Accepted
26	Kirtikumar Vora	1,65,000	ITR, Loan Confirmation, Bank statement verified. Accepted by A.O		Accepted
27	Ranjan K. Vora	60,000	ITR, Loan Confirmation, Bank statement verified. Accepted by A.O		Accepted
28	Dipali Dnyandep Patil	2,00,000	No information provided. Not accepted by A.O.	Lender not traceable. Confirmation/ITR /Bank statement not filed. Appellant's bank statement for repayment.	Onus not discharged. Not accepted.
29	M.B. Enterprises	13,00,000	No information provided. Not accepted by A.O	Confirmation/ITR /Bank statement.	Details are filed. Accepted.

30	<i>Vinay M. Agrawal Jt. Mrs. Sangeeta V. Agrawal</i>	20,00,000	<i>No information provided. Not accepted by A.O</i>	<i>Lender not traceable. Confirmation/ITR /Bank statement not filed. Appellant's bank statement for repayment.</i>	<i>Onus not discharged. Not accepted.</i>
31	<i>Prem Agrawal</i>	13,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
32	<i>Shyam Mohan Srivastava</i>	3,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
33	<i>Monaharlal Agrawal</i>	3,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
34	<i>P D Agrawal</i>	13,12,799	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
35	<i>Ram Agrawal</i>	44,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
36	<i>Manish Agrawal</i>	58,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
37	<i>Sarita Singal</i>	45,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
38	<i>Ajay K. Vadera</i>	12,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
39	<i>Rekha A Vadera</i>	8,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
40	<i>Sheetal B. Vadera Jt. Bharat K. Vadera</i>	20,00,000	<i>Loan confirmation verified, ITR are verified. However, bank statement not available. Not accepted by A.O</i>	<i>Bank statement</i>	<i>Accepted</i>
41	<i>Anand Bhupendra Gupta</i>	90,00,000	<i>ITR, Loan Confirmation, Bank statement verified. Accepted by A.O</i>		<i>Accepted</i>
42	<i>Chandrakant Shah</i>	5,00,000	<i>Loan confirmation verified. But ITR, Balance sheet not available. Not accepted by A.O</i>	<i>Lender not traceable. Confirmation/ITR /Bank statement not filed. Appellant's bank</i>	<i>Onus not discharged. Not accepted.</i>

				statement for repayment.	
43	Harsh Kaushal Developers	200,00,000	ITR, Loan Confirmation, Bank statement verified. Accepted by A.O		Accepted
44	Jigna Shami Nisar	1,95,000	Loan confirmation verified. But ITR, Balance sheet not available. Not accepted by A.O	Lender not traceable. Confirmation/ITR /Bank statement not filed. Appellant's bank statement for repayment.	Onus not discharged. Not accepted.
45	Jigna Fadia	15,00,000	ITR, Loan Confirmation, Bank statement verified. Accepted by A.O		Accepted
46	Kantilal Vadera E	1,10,000	ITR, Loan Confirmation, Bank statement verified. Accepted by A.O		Accepted
47	Ketan C. Shah	5,00,000	No information provided. Not accepted by A.O	Lender not traceable. Confirmation/ITR /Bank statement not filed. Appellant's bank statement for repayment.	Onus not discharged. Not accepted.
48	Pams Industries Export	100,00,000	ITR, Loan Confirmation, Bank statement verified. Accepted by A.O		Accepted
49	Pritiben S. Nisar/Shamjibhai Nisar	1,80,000	Loan confirmation verified. But ITR, Balance sheet not available. Not accepted by A.O	Lender not traceable. Confirmation/ITR /Bank statement not filed. Appellant's bank statement for repayment.	Onus not discharged. Not accepted.
50	Sangeeta P. Doshi	30,00,000	Loan confirmation and ITR are verified. But bank statement not available. Not accepted by A.O	Bank statement	Accepted
51	Sanjay Jaiswal	15,00,000	Loan confirmation and ITR are verified. But bank statement not available. Not accepted by A.O	Bank statement	Accepted
	<i>Total</i>	<i>Total added</i>		<i>Total</i>	<i>Accepted</i>

		10,34,82,79 9		accepted/not accepted	Rs.9,68,82 ,799. Not accepted Rs.66,00,0 00
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7.9 The appellant has not been able to discharge the onus to show identity, creditworthiness and genuineness of loan transactions for loans totaling to Rs.66,00,000/-. The addition u/s 68 to this extent is upheld. Ground of appeal no.4 is partly allowed.”

As noted above, the Id. CIT(A) after appreciating the evidences furnished by the assessee has upheld the addition of Rs.66 lacs and has deleted the additions of the remaining amount. After hearing the Id. DR, we do not find any reason to interfere in the above order of the Id. CIT(A).

In view of this, there is no merit in the appeal of the Revenue and the same is accordingly dismissed.

7. In the result, the appeal of the Revenue stands dismissed.

Mumbai, the 12th May, 2022.

Sd/-
[Om Prakash Kant]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 12.05.2022.

RS

Copy of the order forwarded to:

1. ACIT, CC-5(1), Mumbai
2. M/s Mansukh H Shah
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar,
Mumbai Benches

