

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3979/Mum/2015
(Assessment Year :2003-04)**

Shri Nizar Nooruddin Lalani C/o. K.M. Kapadia & Associates 49, 1 st Floor, Ashoka Shopping Centre L.T. Marg Mumbai- 400 001	Vs.	Dy. Commissioner of Income Tax-8(1) Mumbai
PAN/GIR No.AACPL8386J		
(Appellant)	..	(Respondent)

Assessee by	Shri Kamlesh Kapadia
Revenue by	Shri Hoshang B Irani
Date of Hearing	22/02/2022
Date of Pronouncement	23/05/2022

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.3979/Mum/2015 for A.Y.2003-04 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-16, Mumbai in appeal No.CIT(A)-16/DCIT-8(1)/IT-230/2013-14 dated 30/03/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/01/2014 by the Id. Dy. Commissioner of Income Tax-8(1), Mumbai (hereinafter referred to as Id. AO).

2. The ground No.1 raised by the assessee is challenging the addition made in the sum of Rs.2,50,000 u/s.69 of the Act in respect of capital introduced by the assessee in the proprietary concern.

3. We have heard rival submissions and perused the materials available on record. The assessee is an individual deriving income from salaries and income from commission in the capacity of commission agent during the year under consideration. The assessee is a proprietor of M/s. N.P. Enterprises. During the year, the assessee had introduced capital in cash in the said proprietary concern amounting to Rs.2,50,000/-. The correct date of said introduction is 28/03/2003, though the lower authorities had considered the said date as 28/03/2002. If the date is considered as 28/03/2002, then the transaction pertains to A.Y.2002-03 and in any case no addition could be made in the hands of the assessee for the same in A.Y.2003-04. The Id. AR before us stated that the correct date is only 28/03/2003 and in support of the same he also placed on record the capital account of assessee as appearing in the books of N.P. Enterprises for the period 01/04/2002 – 31/03/2003. Hence, we hold that the correct date of capital introduced into the proprietary concern by the assessee in cash as 28/03/2003. In the opinion of the lower authorities, the assessee did not have sufficient cash sources to explain the said capital introduced. Hence, the addition u/s.69 of the Act was made for the same.

3.1. We find that assessee had withdrawn cash from the same proprietary concern on 15/03/2003 amounting to Rs.2,00,000/- which cash was indeed available with the assessee to partially explain the cash deposit of Rs.2,50,000/-. Apart from that, there is a cash withdrawal made by the

assessee from the very same proprietary concern on 22/06/2022 amounting to Rs.3,00,000/-. But out of the said sum, the assessee had redeposited in the proprietary concern only to the extent of Rs.2.5 lakhs thereby leaving the surplus cash of Rs.50,000/- in the hands of the assessee. This surplus cash of Rs.50,000/- plus cash drawn from the proprietary concern on 15/03/2003 amounting to Rs.2,00,000/- are available with the assessee, which sum was introduced as 'capital' in M/s. N.P. Enterprises by the assessee. Hence, the capital introduced in cash to the extent of Rs.2,50,000/- stands fully explained by the assessee. Accordingly, no addition could be made in the hands of the assessee u/s.69 of the Act on account of unexplained investments. Accordingly, we direct the Id. AO to delete the addition made u/s.69 of the Act. Accordingly, the ground No.1 raised by the assessee is allowed.

4. The ground No.2 raised by the assessee is challenging the addition made u/s.68 of the Act in respect of loans received from 36 parties in the total sum of Rs.51,00,000/-.

4.1. We have heard rival submissions and perused the materials available on record. The assessee had received loans from 36 different parties totaling to Rs.51,00,000/-, the details of which are reflected in pages 8 & 9 of the order of the Id. CIT(A). The Id. AO observed that assessee could not furnish the relevant evidences by proving the creditworthiness of the lenders in view of the fact that there were certain cash deposits in the accounts of the certain lenders before the loan amounts were issued by account payee cheques to the assessee. The Id. AO also observed that assessee had not produced those parties i.e. the loan creditors for personal examination before the Id. AO. This matter had travelled up to this Tribunal in the first round of proceedings and this Tribunal had

remanded this issue back to the file of the Id. AO for verifying the various documentary evidences submitted by the assessee before the Id. AO and also directed the assessee to prove the genuineness of the transactions and the creditworthiness of the lenders. The assessee accordingly, had furnished the ledger accounts of the parties, copies of acknowledgement of returns of income of the loan creditors apart from the regular documents to prove the genuineness of the transactions and the creditworthiness of the loan creditors. The assessee also furnished copies of 7/12 extracts in respect of some agriculture lands owned and possessed by some of the loan creditors to substantiate their creditworthiness. These loan creditors were also sought to be examined by the ADIT (Investigation), Aurangabad by seeking commission u/s.131(1)(d) of the Act. These parties were asked to attend the office on 25th to 27th April for their personal examination. None of the parties attended in response to the summons issued. However, some parties had furnished written submissions in response to the summons. Again the Id. AO issued summons to 36 parties insisting on their personal attendance. Out of which only nine parties attended the office. However, all the summons were duly served on the parties in the addresses furnished by the assessee. Statements were recorded from nine parties u/s.131 of the Act who attended office in person. The Id. AO observed that these parties exist. The transactions had also happened through the regular banking channels and hence, the transactions are genuine. However, the Id. AO observed that most of the loan creditors are only petty farmers and accordingly, they could not have advanced Rs.1.5 lakhs loan each to the assessee and accordingly, the creditworthiness of the lenders were not proved in the opinion of the Id. AO. The nine parties who appeared before the Id. AO duly confirmed the loan transaction with the assessee. They also brought their income statement wherein they had sufficient

agricultural income to advance loan to the assessee. However, the Id. AO concluded that the agricultural income reflected in the income statement are inflated by the farmers and accordingly, he did not take cognizance of the same. The assessee vide letter of the authorised representative dated 12/01/2014 had produced copies of 7/12 extracts of 32 creditors out of 36 creditors in respect of agricultural lands owned by them to prove their creditworthiness. In the said letter, it had been stated that the farmers grew cash rich crops and hence, they cannot be termed as petty farmers. It was also pointed out that out of 36 loan creditors, 22 of them had advanced loans to the assessee even in earlier years which were even much higher than those given to the assessee during the year under consideration. Those loans were accepted as genuine in earlier years and no addition has been made. It was also specifically brought to the attention of the Id. AO that all the such creditors had been filing their returns of income from A.Yrs 1998-1999 onwards on regular basis. All the copies of the returns of income were duly furnished to the Id. AO. All the loan creditors had directly filed their reply through Speed Post to the Id. AO and assessee had even obtained affidavits from 33 loan creditors wherein they had duly confirmed to have given loans to the assessee, It was also specifically pointed out to the Id. AO that the assessee had even repaid the loan creditors the entire loans in A.Y.2004-05. The Id. AO however, did not heed to any of the aforesaid contentions and proceeded to make an addition of Rs.51 lakhs as unexplained cash credit u/s.69 of the Act doubting the creditworthiness of the loan creditors. This action of the Id. AO was upheld by the Id. CIT(A).

4.2. Admittedly, we find that the assessee had furnished the following documents to prove the loans as genuine:-

- i) Name and address of the loan creditors.
- ii) Copies of 7/12 extracts in respect of agricultural lands owned and possessed by the loan creditors.
- iii) Copy of acknowledgement of returns of income of the loan creditors.
- iv) Ledger accounts of the loan creditors.
- v) Confirmation from all the loan creditors.
- vi) Affidavits together with photograph of the loan creditors duly confirming the transactions of loan with the assessee.
- vii) Copies of bank statements of the assessee wherein the loans were taken by the assessee by account payee cheques and repaid by the assessee by account payee cheques.

4.3. Apart from that, the assessee had also given the details of land holding of the farmers as under:-

Sr.No.	Land Holding (in Acres)	No.of Farmers
1	1 Acres to 2 Acres	4 Farmers
2	2 Acres to 3 Acres	4 Farmers
3	3 Acres to 4 Acres	4 Farmers
4	4 Acres to 5 Acres	6 Farmers
5	5 Acres to 6 Acres	7 Farmers

6	More than 6 Acres	7 Farmers
---	-------------------	-----------

4.4. In view if the aforesaid documents and more importantly in view of the undisputed fact that assessee had duly repaid the loans of the loan creditors in A.Y.2004-05, the evidence of which are enclosed in pages 209-219 of the paper book containing the bank statements of the assessee evidencing repayment of loans by account payee cheques, we are inclined to accept the loan transaction carried out by the assessee from 36 parties amounting to Rs. 51,00,000/- as genuine and accordingly, we direct the Id. AO to delete the addition made u/s.68 of the Act.

5. The ground No.3 raised by the assessee is challenging the addition made in the sum of Rs.51,00,000/- on account of unexplained investment u/s.69 of the Act.

5.1. We have heard rival submissions and perused the materials available on record. We find that the Id. AO vide para 9-9.6 of the original assessment order observed that assessee had credited a sum of Rs.51,00,000/- in the books of accounts of M/s. N.P. Enterprises (proprietary concern of the assessee) by way of journal entry. The Id. AO also observed that assessee had repaid the loan to M/s. National Sales Corporation during the year for which satisfactory sources were not explained. Accordingly, the Id. AO proceeded to make addition u/s.69 on account of unexplained investments. This action of the Id. AO was upheld by the Id. CIT(A).

5.2. We find that undisputed facts are assessee is a sole proprietor of M/s. N.P. Enterprises. The assessee's father is a sole proprietor of M/s.

National Sales Corporation. We find that M/s N.P. Enterprises took loan of Rs.51,00,000/- from M/s National Sales Corporation. The assessee took loan from 36 parties amounting to Rs.51,00,000/- in his personal name and repaid the loan of Rs.51,00,000/- taken by proprietary concern from M/s National Sales Corporation. Accordingly, the following journal entries were passed in the respective books:-

In the Books of Accounts of M/s. N.P. Enterprises

1) National Sales Agencies A/c.	Dr.51,00,000	
To Mr. Nizar Lalani's Capital A/c		Cr.51,00,000/-

In the Books of Accounts of Mr. Nizar Lalani

1) M/s. N.P. Enterprises A/c.	Dr.51,00,000	
To National Sales Agencies		Cr.51,00,000/-

5.3. We have seen the capital account of the assessee in the books of M/s N.P. Enterprises as on 31/03/2003 wherein this sum of Rs.5,00,000/- is credited by the proprietary concern in the name of the assessee as assessee had discharged the loan liability of M/s National Sales Corporation. The aforesaid journal entry would clearly prove the transactions made by the assessee. We have also gone through the bank statements of assessee's personal savings bank account of Development Credit Bank (DCB) enclosed in page 183 of the paper book wherein the assessee had made repayment of loan to M/s National Sales Corporation by account payee cheques on behalf of M/s N.P. Enterprises. In fact even the source of the assessee for making this repayment of Rs.51,00,000/- is

out of loans received by the assessee from 36 parties for the very same amount which have already been adjudicated in ground No.2 hereinabove. Hence, in any case, in our considered opinion, there cannot be any addition towards unexplained investment u/s.69 of the Act in view of the aforesaid facts. We further hold that the assessee had duly made out a case for the deletion of addition u/s 69 of the Act towards unexplained investment. Accordingly, the ground No.3 raised by the assessee is allowed.

6. The ground No.4 raised by the assessee was stated to be not pressed at the time of hearing by the Id. AR. The same is reckoned as a statement made from Bar and hence, the ground No.4 raised by the assessee is dismissed as not pressed.

7. The ground No.5 raised by the assessee is challenging the addition of Rs.3,79,880/- by estimating profit of the assessee.

7.1. We have heard rival submissions and perused the materials available on record. We find that the Id. AO in para 10-10.6 of the original assessment order had observed that assessee had shown sales as well as purchases at the same figure of Rs.220,12,499/- and disclosed commission income of Rs.2,20,120/- thereon. The Id. AO on seeing the same figure for both purchases and sales concluded that the said figures cannot be same and hence, the system of accounting followed by the assessee is erroneous. Accordingly, the Id. AO proceeded to make adhoc addition of Rs.5,00,000/- towards profit estimation. This action of the Id. AO was upheld by the Id. CIT(A) in the first round. This Tribunal in the first round of proceedings directed the Id. AO to consider the plea of the assessee for giving credit of commission income disclosed thereon in the

sum of Rs.2,20,120/- and accordingly, remanded the matter to the file of the Id. AO. The Id. AO in the remand proceedings gave credit of Rs.1,20,120/- towards commission income and estimated the profit at Rs.3,79,880 (Rs.5,50,000/- - 1,20,120/-) and made an addition in the second round of proceedings. In the entire proceedings, we find that both the Id. AO as well as the Id. CIT(A) did not even bother to bring on record what is the nature of business carried on by the assessee which could have given the assessee estimated profit of Rs.3,79,880/-. We find that assessee is a commission agent of one oil mill. Only for the purpose of exercising control over the purchase value and sales value in order to determine the commission amount thereon, the assessee had disclosed both purchase and sales at the same figure. The assessee is entitled for 1% commission on the transactions executed through him. Accordingly, the assessee is entitled for commission income of Rs.2,20,120/- which had been duly admitted by him in the return of income. The proprietary concern of the assessee M/s. N.P. Enterprises does only commission agency business. We also find that even assuming the Id. AO is correct, the Id. AO ought to have given credit of Rs.2,20,120/- from the estimated profit of Rs.5,00,000/- as against Rs.1,20,120/- given by him. But, however, we find that this Tribunal in the first round of proceedings had indeed remanded the issue to the Id. AO only to the limited extent of consideration of giving credit of commission income of Rs.2,20,120/- against the estimated profit of Rs.5,00,000/-. Hence, the assessee before us cannot contest the very basis of estimation of profit by the lower authorities. Moreover, no evidence has been brought on record by the Id. AR before us as to whether any further appeal has been preferred against the order of the Tribunal before the Hon'ble High Court as far as this issue is concerned. Hence, we uphold the estimation of profit of Rs.5,00,000/- by the lower authorities. From this figure of Rs.5,00,000/-

commission income of Rs.2,20,120/- already offered by the assessee needs to be reduced and the remaining sum of Rs.2,79,880/- alone should be taxed in the hands of the assessee as against Rs.3,79,880/-. The ground No.5 raised by the assessee is partly allowed.

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

Order pronounced on 23/05/2022 by way of proper mentioning in the notice board.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER**

Mumbai; Dated 23/05/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai