

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

SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 987/MUM/2019
(ASSESSMENT YEAR: 2014-15)

ITO-33(3)(3), Mumbai,
Room NO. 603, 6th Floor,
C-12, Pratyakshakar Bhavan,
BKC, Mumbai - 400051

..... Appellant
Vs

M/s Urvi Realtors,
Shop No. 2, Ramji Lallu Compound,
M.G. Road, Kandivali (W),
Mumbai - 400067
[PAN: AACFU4799G]

..... Respondent

Appearances

For the Respondent/Department : Vranda U Matkarni
For the Appellant/Assessee : Gautam Purohit

Date of conclusion of hearing : 30.06.2022
Date of pronouncement of order : 29.08.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 12.11.2018 passed by the Ld. Commissioner of Income Tax (Appeals)-45, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the CIT(A) had allowed the appeal filed by the Appellant/Assessee against the Assessment Order dated 29.12.2016 passed under Section 143(3) of the Act [hereinafter referred to as 'the Act'].

2. Revenue has raised following grounds of appeal:

"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of the Act without appreciating the fact that no reply was received from*

the parties except M/s Rajat Diamond against the notice issued u/s 133(6) of the Act.

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(a) erred in deleting the addition u/s 68 of the Act without appreciating the fact that identity, genuineness and creditworthiness of the transactions were not established during the course of assessment proceedings.*
 3. *The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*
 4. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*
3. The relevant facts as emanating from the record are that the Assessee, a firm working under the name and style of M/s Urvi Realtors and engaged in the business of building/developing real estate, filed return of income on 29.11.2014 declaring 'Nil' Income. The case was selected for scrutiny. During the assessment proceedings, the Assessing Officer noted that the Assessee had taken unsecured loans from five parties during the relevant previous year. The details of which are as under:-

Sl No	Name of the Creditor	Loan Amount taken during the year in Rs.	Interest Amount Paid Or Credited during the year in Rs.	Total in Rs.
1	M/s Frontline Diamond Pvt. Ltd.	40,00,000	19,504	40,19,504
2	M/s Nikhil Gems Pvt. Ltd.	0	36,000	36,000
3	M/s Rajat Diamond Exim Pvt. Ltd.	15,50,000	6,21,937	21,71,937
4	M/s Gourav Gems Pvt. Ltd.	55,00,000	34,879	55,34,879

5	<i>M/s Mangalmurti Diamond Pvt. Ltd.</i>	<i>63,00,000</i>	<i>40,807</i>	<i>63,40,807</i>
6	<i>Palak Gems</i>	<i>15,00,000</i>	<i>0</i>	<i>15,00,000</i>
<i>Total</i>		<i>1,88,50,000</i>	<i>7,18,248</i>	<i>1,95,68,248</i>

4. The Assessing Officer issued notice under Section 133(6) of the Act to the above lenders. However, reply was received only from M/s Rajat Diamonds Exim Pvt. Ltd. The Assessee was asked to show cause as to why the unsecured loans should not be treated as unsecured cash credits in terms of Section 68 of the Act. In response, the Assessee filed reply letter, dated 27.12.2016, along with loan confirmations from the lenders. Since, Assessing Officer was not satisfied with the explanation/documents furnished by the Assessee, the Assessing Officer concluded that the Assessee has failed to satisfy the three requisite parameters being identity and creditworthiness of the lenders as well as the genuineness of the transactions in terms of Section 68 of the Act, and therefore, the Assessing Officer proceed to make additions of INR 1,95,68,248/-, being unsecured loan taken during the years 188,50,000 and the interest thereon amounting to INR 7,18,248/-, vide Assessment Order, dated 29.12.2016 passed under Section 143(3) of the Act.
5. Being aggrieved, the Assessee carried the issue in appeal before CIT(A) who was pleased to allowed the appeal of the Assessee and deleted the addition of INR 1,95,68,248/- made by the Assessing Officer under Section 68 of the Act, vide order dated 12.11.2018.
6. Being aggrieved by the order of CIT(A), the Revenue has preferred the present appeal. Since all the grounds are connected, the same are being taken up together.

7. We have heard the rival submission and perused the material on record including the written submission, dated 08.08.2022 filed by the Learned Departmental Representative, and the order of CIT(A) as well as the documents placed in the paper-book of the Assessee referred to and relied upon the Learned Authorised Representative for the Assessee. We note that the CIT(A) has deleted the addition made by the Assessing Officer under Section 68 of the Act without appreciating facts of the case. The CIT(A) has completely misdirected himself in believing that assessment order, dated 29.12.2016, was passed in reassessment proceedings under Section 143(3) read with Section 147 of the Act. In paragraph 4.2 of the order impugned that CIT(A) has incorrectly recorded that the Assessee had argued that the case of the Assessee was reopened based upon information from the DGIT(Inv). As rightly pointed out by the Learned Departmental Representative the case of the Assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and assessment under Section 143(3) of the Act was framed on the Assessee vide Assessment Order, dated 29.12.2016. A Perusal of the Assessment Order shows that in response to notice issued by the Assessing Officer under Section 133(6) of the Act, no reply was received except from M/s. Rajat Diamond Exim Pvt. Ltd. The Assessing Officer had examined the bank statement of M/s. Rajat Diamond Exim Pvt. Ltd furnished along with the aforesaid reply, and thereafter, in paragraph 4.3 of the Assessment Order, expressed his dissatisfaction. The Assessee had only furnished balance confirmations from other lenders. Therefore, it is clear that the CIT(A) had moved on an incorrect premise that all documents pertaining to the 5 lenders from which unsecured loans were taken during the year were furnished during assessment proceedings. Further, while the CIT(A) has returned a finding that

the unsecured loans were repaid, the balance confirmations and Schedule 'B' Unsecured Loans' forming part of the financial accounts relevant for Assessment Year 2014-15 show that unsecured loan were outstanding from all the 5 lenders as on 31.03.2014. The order of CIT(A) is silent as to the details of repayment of unsecured loans. Thus, the conclusion drawn by the CIT(A) that the Assessee has discharged initial onus cast upon the Assessee in terms of Section 68 of the Act to establish identity & creditworthiness of the lender as well as genuineness of the transaction is unsustainable as it is based upon incorrect facts. However, we also note that the Learned Departmental Representative has placed on record along with the submission a copy of statement of Sh. Ravin S. Salva, partner of the Assessee-firm wherein he has stated he would produce the statement and other documents to prove loans taken and subsequent repayment. As per Paper-Book 1 filed before CIT(A) on 27.03.2019 (placed at Pg. 1 to 76 of paper-book filed by the Assessee before us), the bank statements of the 5 lenders were filed before the CIT(A). Since these were in the nature of additional evidence, the CIT(A) was required to, at least, call for a remand report from the Assessing Officer before taking the same into consideration. The submission of Learned Departmental Representative is no such remand report was sought before admitting and relying upon these documents/bank statements and therefore, the matter should be remanded back to the CIT(A).

8. In view of the above, we are inclined to accept the above contention of the Learned Departmental Representative. Accordingly, we set aside the order passed by the CIT(A) and remand the issue to the file of CIT(A) to decide the issues afresh considering the documents filed by the Assessee before the CIT(A)

after calling for remand-report from the Assessing Officer and after giving the Assessee a reasonable opportunity of being heard.

9. In result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 29.08.2022.

Sd/-

(B.R. Baskaran)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.08.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai