

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 534/Mum/2020 (A.Y. 2012-13)

M/s. Pravin Basantlal Jain 202, Koteswar Deep James Beeche Road Bhandup-West Mumbai-400 078. PAN : ADWPJ4499H (Appellant)	Vs.	ITO-29(2)(5) Room No. 416 Kautilya Bhavan C-41 to C-43 G Block, BKC Bandra East Mumbai-400 051. (Respondent)
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Assessee by	None
Department by	Shri Santhil Kumaran
Date of Hearing	08.09.2022
Date of Pronouncement	13.09.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 26.9.2019 passed by learned CIT(A)-40, Mumbai and it relates to A.Y. 2012-13. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the reopening of the assessment under section 148 of the I.T. Act and also in confirming the addition of Rs. 1.30 crores made under section 68 of the Act.

2. None appeared on behalf of the assessee, even though the notice of hearing was sent by registered post on several occasions. We notice that some of the tapals have been returned by postal department. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. We noticed that the appeal is barred by limitation about 32 days. The assessee has filed a petition requesting the Bench to condone the delay. In the said petition it is stated that he was ill and hospitalized during that

period and the same has cause the delay. We have heard learned DR on this preliminary issue. Having regard to the submission made by the assessee in the petition, we are of the view that there was reasonable cause for the assessee in not filing the appeal within limitation period. Accordingly, we condone the delay and admit the appeal for hearing.

4. The facts relating to the case is stated in brief. The assessee is an individual and filed his return of income for the year under consideration on 31.8.2012 declaring total income of Rs. 2,79,353/-. The assessee has declared business income from a partnership firm M/s. Swarnasagar Jewellers. Subsequently it came to the notice of the Assessing Officer that the assessee has availed accommodation entry by way of loan from M/s. Fastline Multi Trade Pvt. Ltd. for a sum of Rs. 1,10,50,000/-. The said company belonging to Mangal Group, which was found to have engaged in providing accommodation entries by way of loan. Hence the AO re-opens the assessment by issuing notice u/s 148 of the Act. Before the Assessing Officer, the assessee submitted that he has taken interest free loan of Rs. 20 lakhs only on 16.11.2010 from M/s. Fastline Multi Trade Pvt. Limited. The assessee contended that it was a genuine loan. The Assessing Officer did not accept the contention of the assessee and accordingly assessed a sum of Rs. 1,30,50,000/- (Rs. 1,10,50,000/- reported by the Investigation Wing plus Rs. 20 lakhs reported by the assessee). The Learned CIT(A) also confirmed the same.

5. We noticed that the assessee has claimed before the tax authorities that he has taken loan of Rs. 20 lakhs only from M/s. Fastline Multi Trade Pvt. Ltd., that too on 16.11.2010 which falls in A.Y. 2011-12. In the statement of facts filed before the learned CIT(A), the assessee has specifically stated that he has not obtained loan of Rs. 1,10,50,000/- from M/s. Fastline Multi Trade Pvt. Limited. Thus according to the assessee, there was no scope of assessing Rs. 1,30,50,000/- during the year under consideration. We

noticed that both these factual aspects have not been addressed by the tax authorities.

6. Besides the above, we notice that the assessee has taken a legal ground with regard to obtaining of the approval under section 151 of the Act. This is a new legal ground taken before the Tribunal. In the absence of any material to support the above said legal contention, we are unable to address the same.

7. In any case the claim of the assessee that the impugned amount of Rs.1,30,50,000/- is not assessable during the year under consideration for the reason that

(a) he has not taken Rs. 1,10,50,000/- from the above said company and

(b) he has taken loan of Rs. 20 lakhs only on 16.11.2010 falling in A.Y. 2011-12

requires examination at the end of the Assessing Officer. Accordingly we set aside the order passed by learned CIT(A) and restore all the issues to the file of the Assessing Officer for examining them afresh. After affording adequate opportunity of being heard to the assessee, the Assessing Officer may take appropriate decision in accordance with law.

8. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 13.09.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 13/09/2022

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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