

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE
BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 1123/PUN/2019 : A.Y. 2014-15

Jt. C.I.T. (OSD) Panvel Circle, Panvel

Appellant

Vs.

M/s. Ganga Associates,
C-6, 04, Near Abhyudaya Bank,
Sector 18, New Panvel,
Dist. Raigad – 410 206
PAN: AAKEG 4858 L

Respondent

Appellant by : Shri Rajesh Shah
Respondent by : Shri Ramnath P. Murkunde

Date of Hearing : 24-11-2022
Date of Pronouncement : 25-11-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

This appeal preferred by the Revenue emanates from order of the Id. Commissioner of Income Tax (Appeals)-2, Pune dated 02-04-2019 for A.Y. 2014-15 as per the grounds of appeal on record.

2. Parties heard and the case is adjudicated on merits.

3. The relevant facts are that the assessee is a partnership firm engaged in the business as builders and developers. During the year under consideration, the assessee constructed a project called as "Ganga Regency". The return of income declaring income of Rs.1,43,50,470/- was filed by the assessee on 30-09-2014. The assessee had earned profit at Rs. 1,43,50,470/- against closing stock at Rs. 7,50,64,715. The case was selected for scrutiny through CASS. During the assessment proceedings, it was observed that the assessee had raised unsecured loans amounting to Rs. 2,13,62,500/- and interest paid on the said loans at Rs. 8,41,376/- as under:

Sr.No.	Name of the party	Loan amount (including interest)	Interest paid
1.	M/s. Frontline Diamond Pvt. Ltd.	15,00,000	1,24,274
2.	M/s. Krishnaraj Diamond Pvt. Ltd.	45,00,000	1,29,534
3.	M.s, Yashoda Gems Pvt. Ltd.	35,00,000	1,07,199
4.	M/s. Rajat Diamond Exim Pvt. Ltd.	22,00,000	1,32,164
5.	M/s. Siddeshwar Infra Pvt.Ltd.	30,00,000	2,06,137
6.	M/s. Rohit Diagem Pvt. Ltd.	20,00,000	43,397
7.	Ganga Homes (loan a/c)	16,58,000	-
8.	M/s. Kamdhenu Dimantarie & Jewellers	10,00,000	56,548
9.	Tararam Choudhary (Loan a/c)	10,00,000	10,000
10.	Tejaram V. Choudhary HUF	10,04,500	32,123

4. During the assessment proceedings, the Id. A.O issued notices u/s 133(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") calling for confirmations along with supporting evidences to the said unsecured lenders. Though the confirmations were received from local parties (Sr. No. 7 to 10), but the notices sent to the lenders from Surat at Sr. No. 1 to 6 were returned unserved. The Id. A.O then issued Commission to the ADIT (Inv.) Surat to examine the identity, credit worthiness and genuineness of these lenders. In response to this Commission the ADIT (Inv.) Surat replied that notices issued were unserved as the Offices were either closed or addressed were false. Hence the assessment u/s 143(3) of the Act was completed on 26-12-2016 assessing total income at Rs. 3,17,93,175/- by making an addition of Rs. 1,67,00,000/- on account of unexplained cash credits from the parties at Sr. No. 1 to 6 above by disallowing interest paid thereon.

5. When the matter travelled upto the Id. CIT(A), a Remand Report was called for from the Id. A.O. dated 13-02-2019 which forms part of the Id. CIT(A)'s order. During these remand proceedings, the Id. A.R of the assessee submitted various documents such as PAN, address proof, copies of bank statements and copy of return of income along with P & L a/c and balance sheet in order to prove the identity, genuineness and creditworthiness of the

loan creditors. The Id. CIT(A) based on the said Remand Report allowed the appeal of the assessee.

6. We have heard the parties, considered the facts and circumstances in this case and perused the relevant materials on record. That, from the order of the Id. A.O., it is clearly evident that notices issued u/s 133(6) of the Act were issued calling for confirmations along with supporting evidences to the loan creditors. It is also evident that the lenders from Surat i.e. Sr. No. 1 to 6 in the list mentioned in the preceding para of this order were returned unserved. Thereafter, the A.O had issued Commission to the ADIT (Inv.) Surat to examine the identity, credit worthiness and genuineness of these loan creditors. There is a categorical finding given by the ADIT (Inv.) Surat saying that notices issued remained unserved on these loan creditors as the Offices were either closed or addresses were false. The Id. CIT(A) has not dealt with these facts in his order. He has simply relied on the remand report where some documents were submitted such as PAN, address proof, copies of assessment orders, etc.,but the fact remains with regard to the loan creditors at Sr. No. 1 to 6 appearing in the above mentioned list, whatever addresses were provided, those addresses were reported to be false addresses and the identity of these loan creditors has not been ascertained by the Id. CIT(A) before giving relief to the assessee. We have perused the findings of the Id. CIT(A) and he has not given a finding on an independent application of mind, his power being co-terminus with that of the Id. A.O., the Id. CIT(A) has failed to carry on an independent examination of facts and verification of the said loan creditors regarding whose whereabouts were not found even by the ADIT (Inv.) Surat. We are of the considered view that the Id. CIT(A) has given a mechanical finding which is not appropriate in administration of justice. Even the Id. A.R could not establish the identity, creditworthiness and genuineness of these loan creditors through any evidences or materials at the time of hearing before this Bench. We therefore,

set aside the order of the Id. CIT(A) and remand the matter back to his file for detailed factual verification as to those loan creditors appearing at Sr. No. 1 to 6 of the list from Surat and other factual matters and then decide the issue as per law complying with principles of natural justice. The grounds of appeal raised by the Revenue are allowed for statistical purposes.

7. In the result, **appeal of the Revenue is allowed for statistical purposes.**

Order pronounced in the open Court on this 25th day of November, 2022

Sd/-

sd/-

(INTURI RAM RAO)
ACCOUNTANT MEMBER

(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 25th November 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT 2 Pune
4. The CIT(A)-2 Pune
5. D.R. ITAT 'A' Bench
5. Guard File

BY ORDER,
Sr. Private Secretary

ITAT, Pune.

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1	Draft dictated on	24-11-2022	Sr.PS/PS
2	Draft placed before author	24-11-2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		