

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ‘ B ‘ Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member  
AND  
Shri Laliet Kumar, Judicial Member**

ITA No.299/Hyd/2022		
Assessment Year: 2018-19		
Assistant Commissioner of Income Tax, Central Circle – 2(1), Hyderabad.	Vs.	Syed Akhtar, Tolichowki, Hyderabad.  PAN No.ARTPS8131N.
(Appellant)		(Respondent)
Assessee by:		Shri K.C. Devdas, CA
Revenue by:		Shri Kumar Adithya.
Date of hearing:		19.12.2022
Date of pronouncement:		19.12.2022

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the Revenue for A.Y. 2018-19 arises from the order of Commissioner of Income Tax (Appeals) – 12, Hyderabad dt.29.04.2022 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

*“1. The Id CIT(Appeals) erred both in law and on facts of the case in granting rebel to the assessee.*

*2. The Id CIT(Appeals) erred in admitting additional evidences filed by the assessee as the assessee did not provide any sufficient cause for non-submission of the said evidences before AO as per Rule 46(A)(b).*

*3. The Id CIT(Appeals) has erred in deleting the addition made towards unexplained credits when the assessee expressed his inability to furnish bank account copies and ITR copies of the lenders which were specifically called for during the remand proceedings for verifying the creditworthiness of the lenders and genuineness of the transactions*

*4. The Id CIT(Appeals) erred in considering the additional evidences submitted by the assessee in the form of bank account copies of the lenders when the same was not furnished before the AO during the course of assessment proceedings as well as remand proceedings.”*

3. Facts of the case, in brief, are that assessee is a partner in M/s. S A Builders and Developers and derives income from running a function hall. The assessee filed his return of income declaring the business income of Rs.15,46,500/ and interest and miscellaneous income of Rs.70,289/- besides admitting agriculture income of Rs.3,00,000/- and short term capital loss of Rs.32,12,200/-. A search and seizure operation u/s.132 of the Act was conducted in the assessee's case on 25/10/2017, as a part of the search operation in M/s. S.A Builders and Developers group. Accordingly, notices u/s.143(2) and 142(1) were issued and served by the Assessing Officer for want of confirmation letters along with bank statement and IT return of the parties to prove their identity and creditworthiness. After examining the material on record and the information furnished, Assessing Officer found that confirmation letters in respect of Mumtaz Begum who advanced Rs.1,00,00,000/- and Humra Qureshi who advanced Rs.25,00,000/- were not filed. Based on the material available, Assessing Officer had completed the assessment u/s. 143(3) of

the Income Tax ACT, 1961, making an addition of Rs.1,25,00,000/- towards unexplained credits u/s 68 of the Act.

4. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before Id.CIT(A), who allowed the appeal in favour of the assessee.

5. Feeling aggrieved with the order of Id.CIT(A), Revenue is now in appeal before us. However, Id.CIT(A) had granted relief to the assessee and the reasoning given by Id.CIT(A) mentioned at Paras 5.5 to 5.7 read as under :

*“5.5 I have carefully considered the submissions of the appellant, the order of the Assessing Officer, as well as the comments of the Assessing Officer thereon. Briefly, the facts are, consequent to the search and seizure operation conducted in the case of M/s. S A Builders, in which the appellant is a partner, the appellant’s case was selected for compulsory scrutiny during the current year. On perusal of the appellant’s Canara bank book, it was observed by the AO that the appellant has taken loans from various parties totaling to Rs.3,13,00,000/-. During the assessment proceedings, the appellant was asked to submit confirmation letters along with the bank statement and IT returns of the parties from whom the loans were taken to prove the identity and creditworthiness of the parties. However, the appellant could not submit confirmation letters in the cases of Mumtaz Begum and Humra Qureshi from whom the appellant has taken loans of Rs.1 crore and Rs.25 lakhs respectively. In absence of evidences in support of genuineness of the loans, the AO made addition of Rs.1,25,00,000/- as unexplained credits u/s 68 of the IT Act, 1961. The appellant is aggrieved and is in appeal.*

*5.6. During the appellate proceedings, the AR of the appellant submitted the confirmations letters from the parties i.e. Mumtaz Begum and Umra Qureshi and bank account statements duly highlighting the receipt and payment of the loans. The AR further stated that the amount of Rs.1,25,00,000/- was received through banking channel / RTGS, was credited in the books of accounts of the appellant and was also repaid during the year. Therefore, the AR has requested to delete the addition of*

*Rs.1.25 crores made u/s 68 of the Act as all the available evidences to prove the genuineness of the transaction are submitted.*

5.7. *I have considered the submissions of the AR and the remand report of the AO. It is seen that the appellant has taken loans of Rs. 1 crore and Rs.25 lakhs from Mumtaz Begum and Umra Qureshi respectively during the year and also repaid the loans during the same year. The AR has submitted the confirmation letters from the parties, PAN details, Aadhar details, ledger extracts in the books of the appellant and bank account statements duly highlighting the receipts and payments of the loan amounts to prove the genuineness of the transaction. Since all the payments were made by way of RTGS/ cheques and duly reflected in the books of the appellant and the identity of the creditors was proved by the appellant, the primary onus to prove the genuineness of the transaction has been discharged by the appellant. The appellant has also filed the lender's bank account, the ledger accounts, confirmation and PAN & Aadhar details of the lenders. The loans were repaid and squared off during the year itself. Since the genuineness of the transactions has been established by the appellant, the AO is directed to delete the addition of Rs.1.25 crores made on account of unexplained credits u/s 68 of the Act. Accordingly, the appeal of the appellant is ALLOWED."*

6. Before us, ld. DR submitted that ld.CIT(A) had erred in admitting additional evidences filed by the assessee as the assessee did not provide any sufficient cause for non- submission of the said evidences before AO as per Rule 46(A)(b), also erred in deleting the addition made towards unexplained credits when the assessee expressed his inability to furnish bank account copies and ITR copies of the lenders which were specifically called for during the remand proceedings for verifying the creditworthiness of the lenders and genuineness of the transactions. He had further submitted that the ld.CIT(A) has not examined the complete bank details of the creditors and had only examined the details commencing from 01.07.2017. He had also submitted that even the ld.CIT(A) has not examined whether the creditors Umra

Qureshi was a non-resident during the relevant period or not. The ld.DR had also submitted that the assessee besides submitting bank account statements, had not furnished any proof of the source / creditworthiness of the creditors.

7. Per contra, ld. AR for the assessee had submitted that sufficient details like confirmations letters, PAN card, Aadhar Card, ledger extracts, copies of bank accounts were duly furnished to the Assessing Officer during the course of remand proceedings. However, nothing adverse was brought on record by the Assessing Officer in the remand report. He relied upon the order of the ld.CIT(A).

8. We have heard the rival submissions of the parties and also perused the material on record. In the present case, ld.CIT(A), after accepting the additional documents / evidence filed by the assessee has called for a remand report from the Assessing Officer. The Assessing Officer had furnished a remand report in respect of the lenders in question which is placed at Page 59 of the paper book. In the said report, it was categorically mentioned by the Assessing Officer that

*“On verification of bank statements and ledger account copies submitted in additional evidence by the assessee, loan amounts at Rs.1,00,00,000/- and 25,00,000/- respectively, as claimed to have been credited in the assessee bank account was found to be correct, whereas the bank account statements and I.T. Returns of the parties as asked by the Assessing Officer during the course of assessment, requires to be verified for the genuineness of their creditworthiness.”*

9. We have reproduced hereinabove the order of ld.CIT(A) allowing the appeal of assessee after taking additional evidence filed by the assessee. However, the order passed by the ld.CIT(A) is cryptic, non-speaking and lacking the necessary adjudication on the point of determination and the reasons for granting the relief to the assessee. Admittedly, the assessee has not provided the complete bank details of both the alleged creditors for the period commencing from 01.04.2017 onwards and had only provided part information. In our view, for the purpose of determining the creditworthiness and genuineness of the subject transactions more in depth, analysis was required to be done by the ld.CIT(A) by calling further documents before granting relief to the assessee. Needful was not done by the ld.CIT(A), therefore, we are left with no other option but to remand back the matter to the file of ld.CIT(A) for afresh adjudication.

10. In light of the above, we remand the matter back to the file of ld.CIT(A) with a direction to record denovo finding about the genuineness and creditworthiness of both the lenders after affording sufficient opportunity of hearing to the assessee in accordance with law. Needless to say the assessee may file any documents / evidence in support of his claim to prove the genuineness and creditworthiness of the subject transactions. The above said exercise may be completed preferably within a period of two months from the date of receipt of this order. Thus, this ground of Revenue is allowed for statistical purposes.

11. In the result, the appeal of Revenue is partly allowed for statistical purposes.

Order pronounced in the Open Court on 19<sup>th</sup> December, 2022.

<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 19<sup>th</sup> December, 2022.

*TYNN/sps*

Copy to:

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1	Sri Syed Akhtar, H.No.9-4-76/19, Nizam Colony, Tolichowki, Hyderabad.
2	ACIT, Central Circle - 2(1), Hyderabad.
3	Commissioner of Income Tax (Appeals) - 12, Hyderabad.
4	Pr.CIT (Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*