

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2931/Chny/2019
निर्धारण वर्ष /Assessment Year: 2013-14

Mr.Balaji Janakiraman,
Plot No.3, Door No.5,
Thilagar Street,
Kamakoti Nagar,
Annex, Kamakshi Nagar Main Road,
Valasaravakkam, Chennai-600 087.

v. The Asst. Commissioner-
of Income Tax (OSD),
Corporate Range-2, Chennai.

[PAN: AEPPJ 7090 A]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr.R.S.Balaji, Adv.
: Mr. AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 07.12.2022

घोषणा की तारीख /Date of Pronouncement

: 21.12.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-6, Chennai, dated 23.08.2019, and pertains to assessment year 2013-14.

2. The brief facts of the case are that the assessee is an individual and filed his return of income for the AY 2013-14 on 27.07.2013 declaring total income of Rs.17,83,470/-. During the course of assessment proceedings,

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the AO noticed that the assessee has received unsecured loans from '8' persons as stated by the AO in Para No.4.5 of his assessment order amounting to Rs.1,17,90,000/-. The assessee was called upon to file necessary evidences including confirmations from loan creditors. In response, the assessee has filed details of loans taken from various parties and also furnished their name and address. The AO issued summons u/s.131 of the Act, to all persons and in response, they appeared with necessary evidences and statements were recorded u/s.131 of the Act. The AO after considering relevant submissions of the assessee and also taken note of statements recorded from various loan creditors observed that the assessee is not able to prove loans taken from certain persons and thus, out of unsecured loans amounting to Rs.1,17,90,000/-, he has made additions of Rs.79,90,000/-. The relevant findings of the AO are as under:

In view of the above facts and circumstance of the case, it is proved that the assessee has not been able establish fully the creditworthiness and genuineness of the transactions. The following facts have been established :

(a) As regards loan obtained by the Shri M Selvam and Mrs T Nadhiya, it is seen that they have obtained gold loan and details of jewellery pledged has found to be not matching with the details given by the bank. It has also been found that at the same the assessee has also obtained gold loan from the bank of Rs.490000 each along with these two persons. Hence, this transaction is nothing but an arranged one so as to facilitate the assessee to get the funds to invest in his company in which he is director. Further as already mentioned, obtaining of loan by a person who is also an employer from employee with meager source of income question marks genuineness of transaction.

(b) As regards funds obtained from the family members of Late N Subramanian, the assessee has also admitted that he has not been able to furnish any evidences related to late Shri N Subramanian. The family members could have helped the assessee in giving this information as they had done by providing loan to him. This is not acceptable. Even if Shri N Subramanian died in 2012, the retirement benefit papers etc are always with the family members and if not they could have easily got it from the bank from where he voluntarily retired in 2006. Moreover, claim that he got 55,00,000 lac in 2006 also do not commensurate with the post held at the time of retirement. However, it cannot be held that the family members did not get anything from Late Subramanian and out of their own savings and hence reasonable amount in respect of each member considering the facts of the each person has been taken into account while holding the amount of loan as explained and balance as unexplained as mentioned above.

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4.5. From the above facts and circumstances of the case and information gathered during the course of assessment proceedings, statements of above persons recorded, it is clear that the assessee has not been able to fully establish creditworthiness and genuineness of the loan creditors fully. Hence loan amounts obtained from the following persons is treated as unexplained and added back to total income the assessee under the head Income from other sources.

S.No.	Name of the person	Amount	Loan amount held as unproved
1	Mrs.NS Lakshmi	Rs.20,00,000	Rs.14,00,000
2	Mrs.S.Pongodi	Rs.25,00,000	Rs.18,00,000
3	Mrs.S.Thenmozhi	Rs.20,00,000	Rs.14,00,000
4	Mrs.T. Nadhiya	Rs.4,95,000	Rs.4,95,000
5	Shri N.S.Rajasekar	Rs.25,00,000	Rs.12,00,000
6	Shri M.Selvam	Rs.2,95,000	Rs.2,95,000
7	Smt.NS.Hamsa	Rs.20,00,000	Rs.14,00,000
Total		Rs.1,17,90,000	Rs.79,90,000

Since the assessee has concealed his particulars of income, penalty proceedings u/s.271(1)(c) is initiated.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee submitted various details including confirmations from the parties and argued that the assessee has filed all evidences including bank statements of loan creditors to prove that loans have taken through proper banking channel and further, the creditors have enough source of income to explain source for the loans. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of certain judicial precedents, rejected arguments of the assessee and sustained additions made towards unsecured loans taken from various parties on the ground that although, the legal heirs of late Mr.N.Subramanian, claims that his late father has made fixed deposits in bank out of VRs amounts received in the year 2006, is not proved, because, the source available for the legal heirs of Mr.N.Subramanian, out of his retirement benefits is only Rs.55 lakhs, whereas, the creditors' claims to have extended loans of Rs.1.10 Crs. Therefore, rejected the arguments of

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the assessee and sustained the additions made towards unsecured loans and consequential interest paid on said loans. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in appreciating the fact that all loans have been taken through proper banking channel and further, the creditors have appeared before the AO in response to summons issued u/s.131 of the Act, and admitted to have paid loans to the assessee. The Ld.Counsel for the assessee referring to bank statements of various creditors and other documents, submitted that they have availed loan against FDR and extended loan to the assessee. Some creditors have availed jewel loans and the same has been credited to their respective bank account. The parties have filed confirmation letters. The AO has accepted the fact that parties have appeared and confirmed the transactions with the assessee. The AO had also accepted part of loan received from creditors, but made additions towards balance amount without assigning any reasons. The Ld.CIT(A) without considering the relevant facts simply confirmed additions made by the AO. Therefore, requested to delete the additions made towards unsecured loans.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee could not explain source for loans taken from various parties, although, all loans were taken through proper banking channel. It is a well settled principle of law that mere acceptance of loans by cheque is not enough, but what is required to be seen is whether the

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loan creditors are having sufficient source of income to extend the loans. In this case, the assessee could not explain the loans with necessary evidences. Therefore, the AO has made additions and their orders should be upheld.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee has taken loans from '8' persons as stated by the AO in Para No.4.5 of his assessment order. The AO has accepted loan taken from Mr.N.Subramanian amounting to Rs.15 lakhs on the basis of evidences filed by the assessee including confirmations from the parties. In so far as remaining '7' persons, out of Rs.1,17,90,000/- loans, the AO has accepted Rs.38 lakhs as genuine and balance amount of Rs.79,90,000/- has been treated as unexplained cash credit. The AO has discussed the explanation furnished by the assessee and his conclusions in respect of all '7' parties and according to the AO, the assessee could not explain creditworthiness and genuineness of the transactions. It was the explanation of the assessee that he had furnished all evidences including bank statements of loan creditors and their source of income to explain loans. The AO has accepted loans taken by the assessee in part, but made additions towards remaining amount without assigning proper reasons.

7. We have gone through reasons given by the AO to make additions towards unsecured loans in light of various arguments advanced by the assessee and we ourselves do not subscribe to the reasons given by the AO

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for the simple reasons that in the case of Smt.NS.Lakshmi, the assessee had taken a sum of Rs.20 lakhs through bank, and out of Rs.20 lakhs, the AO has accepted a sum of Rs.6 lakhs as genuine, and the remaining amount of Rs.14 lakhs has been added as unexplained credit. The assessee filed bank pass book of Smt.NS.Lakshmi. From the above, it is noticed that the creditor has availed FDR loan of Rs.14,38,000/- and the same has been credited to her bank account on 28.02.2013 and on 02.03.2013, she had transferred a sum of Rs.20 lakhs to the assessee's bank account. From the above, it is very clear that the creditor have sufficient source of income to explain loans. As regards loan from Mr.NS.Poongodi, the assessee had taken a sum of Rs.25 lakhs through cheque. The AO has accepted a sum of Rs.7 lakhs and balance amount of Rs.18 lakhs has been treated as unexplained credit. The assessee has furnished bank statement of Mr.NS.Poongodi, and from the above, we find that the creditor has availed FDR loan from Bank of Baroda, amounting to Rs.23,72,000/- on 28.02.2013 and the same has been credited to his bank account on 02.03.2013. He had transferred a sum of Rs.25 lakhs to assessee's account. From the above, it is very clear that the creditor has sufficient source of income to give loan to the assessee. Similarly, the assessee has taken a sum of Rs.25 lakhs loan from Mr.NS.Rajasekaran out of FDR loan availed from Karur Vysya Bank, amounting to Rs.24 lakhs. The loan proceeds credited to his bank account on 27.07.2013 and on 01.03.2013, he had transferred a sum of Rs.25 lakhs to the assessee's bank account.

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From the above, there is no dispute about source of credit and genuineness of transaction. The assessee has taken a sum of Rs.20 lakhs loan from Mr.NS.Thenmozhi. Mr.NS.Thenmozhi availed FDR loan of Rs.15,46,000/- on 28.02.2013 and out of loan proceeds, he has transferred a sum of Rs.20 lakhs on 02.03.2013 through cheque. All evidences are placed on paper book. Similarly, the assessee had taken a sum of Rs.20 lakhs from Mrs.NS.Hamsa. The AO has accepted a sum of Rs.6 lakhs, but made addition for balance amount of Rs.14 lakhs. The assessee explained that Mrs.NS.Hamsa availed FDR from Bank of Baroda amounting to Rs.18,70,000/-, and out of said amount, she had transferred a sum of Rs.20 lakhs on 02.03.2013 to the assessee's account. All these evidences are part of paper book. In so far as loan taken from Mr.M.Selvam amounting to Rs.2,95,000/- the assessee claimed that the creditor has availed jewel loan from Indian Overseas Bank amounting to Rs.2,96,000/- and the same has been credited to his bank account. The assessee had also taken a sum of Rs.4,95,000/- from Mrs.T.Nadhiya and Mrs.T.Nadhiya has explained source for loan out of jewel loan from Indian Overseas Bank. The assessee has furnished evidences of loan creditors, including their bank statements and explained source for loans given to the assessee. From the above, it is very clear that the assessee has satisfactorily explained the identity, genuineness of transaction and creditworthiness of loan creditors. The AO without appreciating the fact simply made additions to part of loan taken from creditors, even though, he has accepted the fact that the assessee

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has filed all evidences to prove identity of the creditors. It is a well settled principle of law by the decision of various courts, including the decision of the Hon'ble Supreme Court in the case of CIT v. Lovely Exports Pvt. Ltd., reported in [2008] 216 CTR 195 (SC) that once name and address of creditors are furnished to the AO, then, it for the AO to proceed in accordance with law to re-open the assessment of creditors, but sum received from creditors cannot be regarded as unexplained credit/ income of the assessee. In this case, the assessee has furnished all evidences to prove the identity of creditors and also satisfactorily explained the genuineness of transactions and creditworthiness of creditors. Therefore, we are of the considered view that the AO is erred in making additions towards unsecured loans from '7' parties amounting to Rs.79,90,000/- and thus, we direct the AO to delete the additions made towards loans.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 21st day of December, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 21st December, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF