

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1817/MUM/2020
Assessment Year: 2011-12**

Novatech Projects (India) Pvt. Ltd.,
601, Plot No. A/278, Road. No. A/16
Balaji Infotech, Estate,
Thane (W),
400604.

**PAN No. AAACN 5828 J
Appellant**

Addl. CIT, Range-3,
Thane-400 604.

Vs.

Respondent

Assessee by : Mr. Viraj Mehta
Revenue by : Mr. Chetan M. Kacha, DR

Date of Hearing : 26/12/2022
Date of pronouncement : 29/12/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 04.08.2020 passed by Ld. Commissioner of Income-tax (Appeals)-2, Thane [in short 'the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds:

- 1. On the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income-Tax*



(Appeal) has erred in confirming addition of Rs. 53,50,000/- under section 68 of the IT Act. 1961.

The Appellant prays that the Hon'ble Commissioner of Income-Tax (Appeal) be directed to delete the addition made On account of unexplained money under 69A of the Act.

- 2. The Appellant craves leave to add, alter, amend and I or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.*

2. At the outset, the Ld. Counsel of the assessee prayed for admission of the additional evidence under Rules 29 of the ITAT Rules, 1963 in respect of additions sustained by the Ld. CIT(A) in terms of section 68 of the Act. The Ld. Counsel submitted out of 16 parties for whom the Ld. AO made addition, 5 parties were held by the Ld. CIT(A) as complied to 133(6) of the Act and accordingly addition in respect of 5 parties was deleted. Regarding the remaining, 11 parties, the assessee has collected all the information and filed an additional evidence and seeks to admit the same as additional evidence. The relevant finding of the Ld. CIT(A) on the issue-in-dispute is reproduced as under:

“6.2.1 On careful consideration of the remand report it is observed that during the course of remand proceedings the appellant had submitted details of unexplained unsecured loans out of which only the



following parties could submit the details as called for by the AO:

Sr. No.	Name of the Party	Amount of Loans	Reply received date
1.	Shri Jagdish Bhatija	₹1,00,000/-	02.12.2016
2.	Seth Capital	₹20,00,000/-	28.11.2016
3.	Shri Shyam G Jeswani	₹10,00,000/-	29.11.2016
4.	S B Talreja	₹ 6,05,000/-	21.12.2016
5.	Firoz Abdul Wahid Khan	₹2,50,000/-	17.12.2016
		₹39,55,000/-	

Therefore, the unsecured loans to the extent of Rs. 39,55,000/- only could be verified. Further, one of the party, namely M/s Khemchand Chawla (IUF), from whom the appellant claimed to have received unsecured loan of Rs. 5,00,000/-, vide its letter dated 06.12.2016 denied providing any loan to the appellant during the year under consideration.

6.2.2 On receipt of the remand report from the AO, a copy thereof was handed over to the appellants for comments. In the rejoinder the Ld. AR merely stated that the requisite details were provided to the AQ, thus the appellant has discharged the onus of identifying the loan providers. Further the appellant stated that in a situation of credit squeeze by the bank, the loans were arranged through a broker and relied upon various case laws to support its claim.

6.2.3 After considering the above facts and to ascertain the genuineness of these unsecured loans, the AR was required to furnish credible documents such as current confirmed copies of ledger accounts, for the relevant years i.e. year in which unsecured



loans borrowed and ill the years in which the same were repaid, highlighting the details of loans received, tax deducted, tax deposited in the government account, interest income declared by these creditors, loan repaid, source and mode of repayments of loans, purpose of loans borrowed and their deployments, bank statements of creditors and appellant, highlighting the relevant entries regarding loans advanced, loans received, interest paid / credited, loans repaid / received back, balance sheets, P&L A/Cs, audit reports of the appellant and creditors for years till these entries have been squared up and was also asked to produce creditors for verification. In compliance, in spite of giving several opportunities of being heard, the AK could not furnish the above details, in respect of unsecured loans of Rs. 53,50,000/- (Rs. 93,05,000 - Rs. 39,55,000) during appellate proceedings, in the required manner and also failed to produce these parties for verification, for the reasons best known to him.”

2.1 We note that the Ld. CIT(A) has duly recorded that the assessee could not furnish details in respect of unsecured loans of ₹53,50,000/-. Before us, the Ld. Counsel of the assessee has filed the details containing confirmation, bank statement, income-tax acknowledgement etc. other details and submitted that those evidence might be admitted and issue-in-dispute may be restored back to the file of the Assessing Officer for deciding afresh and the



assessee shall extend due cooperation including production of the parties if required so by the Assessing Officer.

3. The Ld. Departmental Representative (DR) did not object seriously to restore the matter back to the file of the Assessing Officer.

4. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. Regarding admission of additional evidence, the Rule 29 of the ITAT Rules, 1963 prescribe as under:

“Production of additional evidence before the Tribunal

Rule 29- *The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.”*



4.1 Further, Reliance in this regards is placed upon the decision of the Hon^obi Bombay High Court in the case of **Braganza Construction (P.) Ltd. v. ACIT (2020) 116 taxmann.com 11** where it was held that, ITAT does have the power to permit production of additional evidence if there exists sufficient reason to do so. The Tribunal is duty bound to consider the application seeking leave to produce additional evidence at the appellate stage. Since the same has not been done in the present case, the High Court remanded the matter back to the Tribunal to dispose-off the application of assessee for producing additional evidence before the Tribunal before passing any order.

4.2 Further, in this regard, reliance is placed in case of **CIT v. Text Hundred India Pt Ltd. - Delhi HC - ITA No. 2077.2061, 2065/2010** which had held that the reason which was given by the assessee in support of its plea for admission of additional evidence was that the assessee could not produce these records before the lower authorities due to non-retrievability of e-mail on the date because of technological difficulties. This reason was specifically mentioned in the application filed. No reply to this application was filed refuting this averment, though the departmental representative had opposed the admission of the additional evidence. The ground pleaded by the assessee was not confronted. In this backdrop, the Tribunal looked into the entire matter and arrived at a conclusion that the additional evidence was necessary for deciding the issue at hand. It is, thus, clear that the Tribunal found the requirement of the



said evidence for proper adjudication of the matter and in the interest of substantial cause. Rule 29 of the Income Tax (Appellate Tribunal) Rules categorically permits the Tribunal to allow such documents to be produced for any substantial cause.

4.3 Further Ahmedabad ITAT in case of **Vatsal Navnitlal Parikh v. ITO (ITA No. 182/Ahd/2019)** dt. 21.02.2022 concluded that *"We find that additional evidences are produced for the first time before the Tribunal. These documents were not filed before the lower authorities during assessment proceedings due to family disputes. Therefore, in the interest of justice, we deem it fit to remand the matter back to the file of the 10. The Id.AO shall look into the record, documents and other evidences produced by the assessee, and thereafter pass a fresh speaking order in accordance with law, after providing reasonable opportunity to the assessee. Needless to say, the assessee shall cooperate with the AO by providing the details required by the 10 for completion of de novo with this direction, we dispose of the appeal of the assessee"*

4.4 As the assessee could not file the basic document for discharging his onus u/s 68 of the Act due to non-cooperation of the relevant parties and now, the assessee is willing to cooperate and produce the parties if so required by the Assessing Officer. Therefore, in the interest of substantial justice, we admit these additional evidences filed by the assessee and restore the matter back to the Ld. Assessing Officer for deciding afresh in accordance



with law. It is needless to mention the assessee shall be afforded adequate opportunity of being heard. The grounds of appeal of the assessee are allowed for statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court/under Rule 34(4) of the ITAT Rules, 1963 on 29/12/2022.

**Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 29/12/2022
Rahul Sharma, Sr. P.S.

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,
(Sr. Private Secretary)
ITAT, Mumbai