

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.124/Pat/2017
Assessment Year: 2013-14**

Maruti Nandan Food Products Pvt. Ltd. C/o Arjun Singh, Near Singh Petrol Pump, Behind Dalit Vikash Samiti, Rukanpura, Bailey Road, Patna-800 014. (PAN: AAFCM3766M)	Vs.	Income Tax Officer, Ward-2(1), Patna.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Dinesh Kumar, CA
Respondent by : Smt. Rinku Singh, CIT, DR

Date of Hearing : 13.12.2022
Date of Pronouncement : 28.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-1, Patna vide Appeal No. 134/CIT(A)-1/2015-16 dated 03.05.2017 passed against the assessment order by the ITO, Ward-2(1), Patna u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act", dated 22.03. 2016.

2. Assessee has raised the following grounds of appeal:

"1. For that the learned CIT(A) has erred both in law and on facts.

2. For that during the course of hearing before the Ld. CIT(A), the appellant furnished declaration of unsecured loans giving the complete postal address, duly

signed by the lenders and authenticated by the Notary Public, before the learned CIT(A).

3. For that the learned CIT(A) has not considered the declaration of the lenders on the ground that the appellant failed to prove the identity of the creditor, genuineness of the transaction and capacity of the lenders to advance the money.

4. for that the learned CIT(A) has erred in confirming the addition of Rs.4,18,47,000/- made u/s. 68 of the I. T. Act, 1961.

3. Brief facts of the case are that assessee is engaged in running a flour mill and filed its return on 31.10.2013 reporting total income at nil. Case was selected for scrutiny under CASS for which statutory notices were issued and served on the assessee. In the course of assessment proceedings, Ld. AO noted from the perusal of the Balance Sheet that assessee had taken unsecured loans of Rs.4,18,67,000/- for which details and explanations were sought from the assessee. Despite several follow up by the Ld. AO by issuing notices u/s. 142(1), assessee did not comply. Owing to this non-compliance, Ld. AO imposed penalty u/s. 271(1)(b) of the Act of Rs.10,000/-.

3.1. Ld. AO noted that at the fag end of the assessment proceedings on 10.03.2016, ld. AR of the assessee and Shri Abhimanuy Kumar Singh, director of the assessee, appeared and submitted the list of lenders from whom the assessee had taken unsecured loans. However, no documents in support of their identity and capacity as well as to prove the genuineness of the transactions were furnished. Ld. AO noted that subsequently assessee had submitted a list of lenders on 15.03.2016 containing confirmations from nine lenders out of total eighteen lenders without their PAN, ITR, Balance Sheet and proof of transactions. Ld. AO further noted that in the confirmation by the nine lenders, they had only stated that interest free unsecured loan was given by them to the assessee during the year under consideration from which their identity, capacity and genuineness of the transaction could not be established. Based on these observations, Ld. AO held that assessee has not discharged its onus to prove the identity and capacity of the creditors as

well as the genuineness of the transactions in terms of section 68 of the Act and thus, added the amount of unsecured loan of Rs.4,18,47,000/- as income of the assessee.

3.2. Aggrieved, assessee went in appeal before the ld. CIT(A). Before the Ld. CIT(A) also, assessee reiterated the submissions made before the ld. AO. Since assessee did not furnish any particulars to fulfil the vital requirements of the provisions of section 68 of the Act in respect of loan transactions, the appeal of the assessee was dismissed. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Shri Dinesh Kumar, CA represented the assessee and Smt. Rinku Singh, CIT, DR represented the revenue.

5. Ld. Counsel for the assessee has placed on record a written submission along with three annexures containing copy of sale deed, bank statement of the assessee and bank account statement of Abhijit Enterprises (proprietary concern of Shri Abhimanyu Kumar Singh). Along with written submission, Ld. Counsel also placed on record copies of letters for request made by the assessee before the AO for obtaining copy of affidavits from the lenders which were submitted in the course of assessment proceedings. Ld. Counsel contended that assessee had produced cash book, bank book, purchase ledger, details of unsecured loans as noted by the Ld. AO in the assessment order itself. He further stated that out of eighteen loan creditors, major portion of the loan amount has been obtained from the family members of the promoters of the assessee company for which their affidavits were filed in the course of assessment. He thus, contended that since major portion of the loan were from the family members who are all promoters/directors of the assessee company, Ld. AO has wrongly made the addition without considering this vital fact.

5.1. Ld. Counsel also submitted that Shri Abhimanyu Kumar Singh, director of the assessee company had disposed of his agricultural land to financially support the operations of the assessee company by extending unsecured loan. In this respect, ld. Counsel referred to the copy of sale deed furnished as annexure 1 to the written submission. Ld. Counsel also referred to the bank statement of the assessee company as well as of Abjijit Enterprises, proprietary concern of Shir Abhimanyu Kumar Singh, director of the assessee .

6. Per contra, ld. CIT, DR strongly objected on the documents placed on record and referred by the Ld. Counsel which were never furnished in the course of assessment proceedings before the AO or before the Ld. CIT(A) at the first appellate stage. Ld. CIT, DR also contended that assessee has failed in discharging its onus casted u/s. 68 of the Act to establish the identity and creditworthiness of the loan creditors as well as the genuineness of the impugned loan transactions. According to her, by merely stating that major portion of the unsecured loans are from the family members of the promoter directors of the assessee does not fulfil the requirements of the provisions of section 68 of the Act. She further stated that even in the affidavits/confirmations submitted by nine lenders out of the total eighteen lenders, no details in respect of their PAN, ITR, Balance Sheet were furnished so as to enable the Ld. AO to carry out appropriate verification and examination of the loan transactions. She further submitted that Ld. CIT(A) has rightly observed that reply filed by the assessee did not include their income tax details nor proof of transaction including mode thereof. According to her, both the Ld. AO and Ld. CIT(A) have rightfully concluded that assessee has failed to establish the identity and creditworthiness of the loan creditors and the genuineness of transaction as required u/s. 68 of the Act.

7. We have heard the rival contentions and perused the material available on record. The list of the loan creditors as contained in the assessment order is reproduced as under:

S. No.	Particulars	Amount (Rs.)
1.	Arjun Singh	1,75,00,000/-
2.	Bimla Singh	1,75,00,000/-
3.	Abhay Pratap Singh	10,000/-
4.	Uday Pratap Singh	2,00,000/-
5.	Kalindi Devi	50,000/-
6.	Anita Devi	1,50,000/-
7.	Premshila Kunwar	1,50,000/-
8.	Manish Ji	5,50,000/-
9.	Anamika Singh	2,50,000/-
10.	Uma Singh	50,000/-
11.	Bindesh Singh	1,00,000/-
12.	Shankar Pd. Singh	3,00,000/-
13.	Archana Singh	1,50,000/-
14.	Vidya Bhushan Singh	1,50,000/-
15.	Anand Mohan	2,00,000/-
16.	Sarita Singh	2,00,000/-
17.	Pushpanjali Singh	5,00,000/-
18.	Abhimanyu Singh	38,37,000/-
	Total	4,18,47,000/-

7.1. Out of the above table, reply of nine lenders were furnished who confirmed that interest free unsecured loan to the assessee was given during the year under consideration as claimed by the assessee. The list of nine such lenders as contained in the assessment order is reproduced below:

S. No.	Name & Address	Amount (Rs.)
1.	Anita Devi, Sindhi khurd, Ara, Bhojpur.	1,50,000/-
2.	Premshila Kunwar, Sindhi khurd, Ara, Bhojpur.	1,50,000/-
3.	Uma Singh, Rupas Mahnar, Bakhtiyarpur.	50,000/-
4.	Bindesh Singh, Rupas Mahnar, Bakhtiyarpur	1,00,000/-
5.	Archana Singh, Sultanpur, Mahnar	1,50,000/-
6.	Vidya Bhushan, Sultanpur, mahnar	1,50,000/-
7.	Anand Mohan, Sultanpur, mahnar	2,00,000/-
8.	Abhay Pratap Singh, Sindhi Khurd, Ara, Bhojpur	10,000/-
9.	Uday Pratap Singh, Sindhi Khurd, Ara, Bhojpur	2,00,000/-

7.2. From the perusal of the records placed before us, we could not lay our hands on the affidavits which are claimed to have been filed in the course of assessment proceedings by the assessee. In this respect, ld. Counsel has referred to two letters dated 23.11.2022 and 01.12.2022 addressed to the Income Tax Officer, Ward-2(1), Patna, requesting for obtaining the copy of affidavits submitted by the assessee in the course of assessment proceeding. We also note that Ld. Counsel has referred to the three sets of documents placed as annexure 1, 2 and 3 along with the written submission containing copy of sale deed, bank account statement of the assessee and bank statement of Abhijit Enterprise. This submission appears to have been made for the first time in the present appellate proceedings to substantiate the claim made by the assessee. From this submission, we note that they are not in the form of paper book with proper certification and verification, as required under Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963 (hereinafter referred to as the "ITAT Rules"). Also, we note that these submissions are not in accordance with the provisions contained under Rule 29 of the ITAT Rules. We also taken note from the written submission furnished by the assessee before us, wherein it has been stated that "*Further we are unable to submit any documents due to some unavoidable reasons as stated above and Income Tax Department is unable to give copy of documents and any other related document.*"

7.3. From the submissions made by the Ld. Counsel for the assessee and the material placed on record before us, we are inclined to give another chance to the assessee to justify its claim in accordance with the provisions of section 68 of the Act to establish the identity and creditworthiness of the loan creditors as well as the genuineness of the transactions. For this, in the interest of justice and fair play, we find it proper to remit the matter back to the file of Ld. CIT(A) for de novo adjudication by considering the material placed on record by the

assessee before us as well as that which is claimed to have been furnished in the course of assessment proceeding and the first appellate proceeding. Assessee is given liberty to make any further submission before the Ld. CIT(A) to substantiate its claim for which reasonable opportunity of being heard be given.

7.4. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the revenue nor will it cause any prejudice to the defence/explanation of the assessee. Accordingly, we set aside the impugned order of Ld. CIT(A) and restore the matter back to the file of the Ld. CIT(A) to decide afresh after affording reasonable opportunity of being heard to the assessee and the assessee is directed to be diligent in the appellate proceedings. The Ld. CIT(A) is also directed to adjudicate upon the matter by exercising the powers vested u/s. 251 of the Act and following the procedure prescribed u/s. 250 of the Act, by passing a speaking order for the same.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28th February, 2023.

Sd/-
(Sonjoy Sarma)
Judicial Member

sd/-
(Girish Agrawal)
Accountant Member

Dated: 28th February, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A)-1, Patna.
 4. CIT, Patna
 5. DR, ITAT, Patna Bench, Patna
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata