

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.234/SRT/2022 (AY 2016-17)

(Hearing in physical Court)

Shri Shamjibhai M Sheladiya 11, Chandanbaug Society, Opp. Dharam Nagar, A.K. Road, Surat-395006 PAN No: AFXPS 3164 B	Vs	Assistant Commissioner of Income-tax, Circle-3(2), Aayakar Bhawan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	28.12.2022
उद्घोषणा की तारीख/Date of pronouncement	03.03.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld.CIT(A)”] dated 27.05.2022 for assessment year 2016-17, which in turn arises out assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 06.12.2018. The assessee has raised the following grounds of appeal:-

“1. On the facts of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in making addition of Rs.15,00,000/- as unexplained cash credit u/s 68 of the I.T. Act,1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of assessing officer in invoking provisions of section 115BBE of the Act and in thereby taxing entire cash credit of Rs.15,00,000/- at 30 percentage.

3. On the facts and circumstances of the case as well as law on the subject, learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in disallowing the deduction of payment of LIC premium of Rs.1,50,000/- claimed u/s 80C of the I.T. Act, 1961.

4. The appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Brief facts of the case are that during the relevant financial year the assessee was a partner in M/s S.M. Sheladiya and earned interest income on capital contributed in the partnership firm and share from partnership firm. The assessee while filing his return of income for assessment year 2016-17 declared income of Rs.21,27,050/-. The case was selected for scrutiny. During assessment, Assessing Officer noted that he has obtained unsecured loan from various parties as recorded in para-4 of the assessment order. The assessee was asked to furnish confirmation, PAN and copy of income tax return of lenders along with pass book to prove the identity, creditworthiness and genuineness of such transactions. The Assessing Officer recorded that assessee furnished required relevant details of

lenders from whom, the assessee obtained unsecured loan. On perusal of such details, the Assessing Officer was not satisfied with the genuineness and creditworthiness of such transactions from two lenders, namely, Shri Ashokbhai J Dhanani of Rs.7 lakh and Smt. Bhavnaben J Thummar of Rs.8 lakhs respectively. The Assessing Officer made addition of Rs.15.00 lakh on account of unsecured cash credits under section 68 of the Act. The Assessing Officer further noted that assessee has claimed deduction under Chapter-VIA of Rs.1.50 lakh. The assessee was asked to furnish necessary documentary evidence for above such deduction. In response to show cause notice, the assessee filed copy of LIC receipt of Rs.1,77,369/-. On verification of such receipt, the Assessing Officer recorded that LIC premium was paid in cash. The Assessing Officer further recorded that on verification of capital account, he noted that assessee has made cash withdrawal of Rs.1,20,621/- during entire year. The assessee may have expended such withdrawal from his day-to-day household expenses. Accordingly, the LIC premium was treated as income of assessee and disallowed deduction of Rs.1.50 lakh.

3. Aggrieved by the addition / disallowance, the assessee filed appeal before Ld. CIT(A). the case of assessee migrated before NFAC/Ld. CIT(A). Before NFAC/Ld. CIT(A), the assessee filed detailed statement of fact as well as case laws on the disallowance / addition under section 68 of the Act for unsecured loan. The assessee stated that he has availed loan from these two persons and furnished their respective confirmation, ITR, computation, profit and loss account along with their balance-sheet and bank statements, particularly for unsecured loan of Rs.7.00 lakh from Ashokbhai J Dhanani, the assessee stated that during the assessment, he submitted all details as recorded above and discharged his onus in proving identity, genuineness and creditworthiness of the lender. The Assessing Officer held that creditworthiness of the lender is not proved as the assessee has not furnished confirmation, bank statement and other evidence. The assessee stated that during the assessment, the Assessing Officer himself admitted that assessee has filed confirmation and there were no cash deposits in lender's bank account and prior to giving loan the assessee as recorded in **para-4.7** of the assessment

order, which is contradictory. With regard to unsecured loan of Rs.8.00 lakh from Smt. Bhavnaben J Thummar, the assessee stated that he furnished similar evidence of bank statement on 20.11.2018 and 22.11.2018 along with copy of bank statements of Smt. Bhavnaben J Thummar and discharged his onus to prove identity, genuineness and creditworthiness. The Assessing Officer, however, noted that opening cash balance as on 01.04.2015 was at Rs.9,91,018/- without any proof and on the basis of such observation made addition of Rs.8.00 lakh. The assessee reiterated that he has filed ITR, computation of income of lender for immediate preceding year i.e. assessment year 2015-16, wherein closing balance was at Rs.9,91,018/- which was already disclosed in her return of income, copy of which was furnished. On the basis of such submission, assessee prayed for deleting the addition. The assessee further stated that he has paid the loan amount to Smt. Bhavnaben J Thummar through banking channel, which is clearly evident from perusal of her bank statement. Therefore, the addition made by Assessing Officer was not justified. The assessee also relied on the decisions of

Hon'ble jurisdictional High Court in the case of CIT vs. Ayachi Chandrashekhar Narasngi 42 taxmann.com 251 (Guj), wherein it was held that when repayment of loan is made subsequently, addition under section 68 is to be deleted. The assessee further relied on the decision of Hon'ble jurisdictional High Court in the case of Deputy Commissioner of Income-Tax vs. Rohini Builders (2003) 127 Taxman 523(Guj)/[2002] 256 ITR 360 (Guj) 182 CTR 373 (Guj) [19-03-2001], wherein it was held that when assessee proved identity by giving complete addresses, GIR numbers / PAN as well as confirmation along with copies of assessment order wherever available and discharged his onus no addition to be sustained. The assessee also relied on the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Ranchhod Jivabhai Nakhava in Tax Appeal No.50 of 2011 dated 20.03.2012.

4. On the disallowance under section 80C of Chapter-VIA of Rs.1.50 lakh, the assessee furnished LIC receipt of Rs.1,77,369/-. The Assessing Officer disallowed the sum by taking view that cash withdrawal during the year was only at Rs.1,20,621/- and the same is used for household

expenses and disallowed the deduction of Rs.1.50 lakh, the assessee reiterated that Assessing Officer wrongly observed that withdrawal stated in the capital account is used for payment of LIC premium. In fact, such represent is withdrawal made for household expenses, LIC premium is not shown as withdrawal from capital account of assessee rather it is shown as investment in assessee's balance-sheet, copy of balance-sheet, investment account and receipt of LIC premium were enclosed. On the basis of such submission, the assessee prayed for deleting the addition of Rs1.50 lakhs.

5. The NFAC/Ld. CIT(A) after considering the submission of assessee and perusal of the assessment order upheld the addition of unsecured loan by holding that on examination of bank account of Ashokbhai J Dhanani shows that cash deposit of Rs.7.00 lakh before issuing cheque of loan of Rs.7.00 lakh to assessee. The lender has shown income of Rs.3,24,090/- in his return of income and his advance of unsecured loan of Rs.12,49,000/-. Against the disallowance loan of Rs.8.00 lakh, lender Smt. Bhavnaben J Thummar, the NFAC/Ld. CIT(A) held that she has shown income of

Rs.2,63,760/- in her ITR and advance of Rs.8.00 lakh given to assessee. The source of cash deposit was stated cash-in-hand on 01.04.2015 of Rs.9,91,018/-, no prove of cash balance was filed before the Assessing Officer as well as NFAC/Ld. CIT(A). On the basis of such observation, the addition / disallowance of Rs.15.00 lakhs was confirmed. Against the disallowance under Chapter-VIA of Rs.1.50 lakh, NFAC/Ld. CIT(A) held that in appellate proceeding, the assessee could not explain his source of cash for LIC premium paid. The assessee simply stated that investment was shown in assessee's balance-sheet. Further aggrieved the assessee has filed present appeal before the Tribunal.

6. I have heard the submissions of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental-Representative (Ld. Sr-DR) for the Revenue and perused the materials available on record and the orders of lower authorities carefully.
7. Ground No.1 relates to addition of Rs.15.00 lakh of unexplained cash credits under section 68 of the Act. The Ld. AR for the assessee submits that during the assessment, assessee furnished complete details of lenders

consisted their confirmation, ITR, computation of income with profit and loss account and balance-sheets, relevant portion of bank statement, cash flow statement for assessment year 2015-16. The Ld. AR for the assessee submits that assessee discharged his onus in proving identity, creditworthiness and genuineness of such transaction. The Assessing Officer neither issued notice under section 133(6) or summons under section 131 to bring any contrary evidence. Once the assessee discharged his onus and the Assessing Officer did not pursue the matter further in examining the source of income of the alleged creditors, to find out whether they were capable of creditworthiness or the advance the alleged loan or not, no addition in absence of adverse materials available on record can be made against the assessee. In absence of any adverse material, the evidence filed by the assessee cannot be discarded. The Ld. AR for the assessee further submits that in case of Bhavnaben J Thummar, the assessee repaid the loan in subsequent year. Such fact was brought in the notice of lower authorities, despite bringing all such facts, the lower authorities instead of making further investigation

made the addition. The Ld. AR for the assessee submits that in the subsequent year, the repayment of alleged loan is not doubted by the Revenue. The Ld. AR for the assessee submits that when Department has accepted the repayment of alleged loan in subsequent year, no addition is to be made in the current year also on account of such credit. To support his submission, Ld. AR for the assessee, relied upon the decision of Hon'ble jurisdictional High Court in the case of Ranchhod Jivabhai Nakhava (supra) and Ayachi Chandrashekhar Narsangji (supra).

8. On the other hand, Ld. Sr-DR for the Revenue, supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that from the evidence furnished by the assessee, it is clear that it can easily be inferred that such lenders are not creditworthiness as they are not having sufficient means of income. And the addition made by assessing officer is liable to be sustained.
9. I have heard the rival submissions of both the parties and have gone through the order of lower authorities carefully. I find that Assessing Officer made the addition of both the lenders by taking view that they are not men of means and

having nominal income in their respective return of income. The NFAC/Ld. CIT(A) confirmed the addition by taking similar view also. Before me Ld. AR for the assessee vehemently argued that assessee has discharged his onus by filing complete evidence of identity, creditworthiness and genuineness of such transactions. I further find that Assessing Officer has not disputed the identity of the creditors though the Assessing Officer disputed only the creditworthiness of the creditors. I find that loan was received through banking channel and no cash was deposited just before issuing cheques to the assessee in case of both the lenders. The Assessing Officer has not issued any notice under section 133(6) or summons under section 131 of the Act. To make further investigation against the creditworthiness in issuing such cheques on account of unsecured loan.

10. I find that Hon'ble Jurisdictional High Court in CIT Vs Ayachi Chandrashekhar Narsangji (2014) 42 taxmann.com 251(Gujrat) held that where department has accepted repayment of loan in subsequent financial year, no addition was to be made in the current year on account of cash loan.

I find that the repayment of loan form Bhavnaben J Thummar is not disputed by revenue. Thus, by following the decision in Ayachi Chandrashekhar (supra), the addition of loan form Bhavnaben J Thummar is liable to be deleted.

11. Further, in case of CIT Vs Ranchod Jivabhai Nakhava (2012) 21 taxmann.com 159 (Gujarat), the Hon'ble jurisdictional high court held that where the lenders of the assessee are income tax assessee whose PAN have been disclosed, the assessing officer cannot not ask assessee to further prove genuineness of the transaction without first verifying such facts from income tax returns of lenders. I also find that in the present appeal, the assessee furnished all such details of the lenders/ depositors. There is no evidence that credit/ advance in the books of assessee was result of some circular transactions. Thus, respectfully following the decision in CIT vs. Orissa Corporation. (P.) Ltd. (1986) 25 Taxman 80F (SC) and in CIT Vs Ranchod Jivabhai Nakhava (supra), I direct the assessing officer to delete the addition of unsecured loan from Ashokbhai J Dhanani as well. The assessing officer is directly accordingly. In the result, ground no. 1 of the appeal is allowed.

12. Ground No.2 relates to taxing the addition of unsecured loan under section 115BBE. Keeping in view that while I have already deleted the addition of Rs.15.00 lakh, therefore this ground of assessee's appeal is consequential in nature and allowed. The Assessing Officer is directed accordingly.
13. Ground No.3 relates to disallowance u/s 80C of the Act. The Ld. AR for the assessee submits that Assessing Officer wrongly recorded that withdrawal shows in the capital account of assessee used for payment of LIC premium and LIC premium is not shown in the withdrawal from such capital account rather it is shown investment of assessee's balance-sheet copy of balance-sheet, investment account and receipt of insurance is filed on record. Hence, there is no undisclosed used for payment of such premium and addition is liable to be deleted.
14. On the other hand, Ld. Sr-DR for the Revenue submits that Assessing Officer doubted the source of payment against LIC premium which the assessee failed to prove either before the Assessing Officer or NFAC/Ld. CIT(A).
15. I have considered the rival submission of both the partis and have gone through the orders of lower authorities

carefully. I find that Assessing Officer made the disallowance of LIC premium by treating as “income from undisclosed source” and accordingly deduction was disallowed by NFAC/Ld. CIT(A). Before making addition, the Assessing Officer noted that total withdrawal of assessee of Rs.1,20,621/- during the whole of the year, which was expanded to meet out day-to-day household expenses of assessee. Before NFAC/Ld. CIT(A) the assessee stated that investment is shown in his balance-sheet. I find that assessee failed to disclose the source of income used for payment of LIC premium. Therefore, I do not find any reason to interfere in the order of NFAC/Ld. CIT(A). Hence, I affirm the order of NFAC/Ld. CIT(A). This ground of assessee’s appeal is dismissed.

16.In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 03/03/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 03/03/2023
Dkp. Out Sourcing Sr.P.S

// True Copy //

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

Senior Private Secretary/
Secretary/Assistant Registrar, Private
Surat ITAT,