

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.236/SRT/2022 (AY 2015-16)

(Hearing in Physical Court)

Kashiram Atmaram 3/1949, Siddhi Sheri, Salabatpura, Surat-395003 PAN No. AADFK 2670 H	Vs	Deputy Commissioner of Income-tax, Central Circle-(1)(1)(1), Room No.108, Aayakar Bhawan, Majura Gate, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Hiren M. Diwan, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	02.03.2023
उद्घोषणा की तारीख/Date of pronouncement	13.03.2023

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 22.06.2022 for the assessment year 2015-16, which in turn arises out of assessment order passed by Assessing Officer/ Income tax Officer ward-1(2)(2), Surat under section 143(3) of Income Tax Act, 1961 (‘the Act’) on 22.12.2017. The assessee has raised the following grounds of appeal:-

“1.The ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the action of the ld. A.O of making

addition to the tune of Rs.35,00,000/- on the ground of alleged unexplained cash credit u/s 68 of the Act.

2. The ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the actin of the ld. A.O of disallowing interest expenses of Rs.2,78,500/- paid on unsecured loans.

3. The Appellant craves leave to add, amend, alter, modify, substitute, delete, change or vary all or any of the ground or grounds of appeal.”

2. Brief facts of the case are that assessee is a partnership firm & proprietor of Darshan Processors, engaged in processing of dyeing and printing man-made fabrics on job work basis. The assessee filed its return of income for assessment year 2015-16 on 29.09.2015 declaring loss of Rs.96,20,339/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that assessee has shown unsecured loan and paid interest in its books of account from following three parties

Sr No	Name of lender	Amount and the date on loan was shown	Interest Rs.
1	Virender Majumdar	Rs. 10.00 lacks on 08.08.2014	98,000/-
2	Sharad Fabrics	Rs. 10.00 lacks on 16.10.2014	68,750/-
3	Vishal Fabrics	Rs. 10.00 lacks on 16.10.2014	68,750/-
		Rs. 35.00 lacks	235,500/-

3. The assessee also squared up loan of Rs.5 lakh received from Chunilal Jivanram (PAN AABFC9998C). Thus, assessee has shown transaction of unsecured loan of Rs.35 lakhs. The

assessee was asked to furnish identity of creditors, genuineness of such transactions and creditworthiness of such creditors. The Assessing Officer recorded that despite giving repeated opportunities, the AR of the assessee expressed his inability to produce the such details. The Assessing Officer recorded that assessee failed to explain its unsecured loan of Rs.30.00 lakh received from lenders and further explained other unsecured loan of Rs.5.00 lakhs squared up during the year from Chunilal Jivanram. The Assessing Officer made addition of Rs.35 lakhs as well as interest of Rs. 2,35,500/- paid by assessee to all four parties. The Assessing Officer taxed such addition under section 115BBE.

4. Aggrieved by the addition in the assessment order, the assessee filed appeal before Ld. CIT(A). The case of assessee migrated to NFAC/Ld. CIT(A). Before NFAC/Ld. CIT(A) the assessee filed detailed written submission. The submissions of the assessee is recorded in **para-4** of the NFAC/Ld. CIT(A). The assessee submitted that Assessing Officer made addition of unsecured loan of Rs.35.00 lakhs and disallowed interest paid of Rs.2,78,500/-. The assessee submitted that it

explained the details by filing reply on 09.10.2017, 18.12.2017 and again on 21.12.2017 before the Assessing Officer. The assessee submitted that Assessing Officer has not considered the fact properly which has been explained in detailed by assessee during personal hearing on 21.12.2017 and produced documentary evidence in response to show cause notice. The assessee submitted that they have obtained loan of Rs.2.65 crores from thirteen lenders during the previous year. The complete details of loan or deposits were provided before Assessing Officer which was forming part of audit report. The assessee filed confirmation, ledger account, return of income, computation of income, financial statements, bank pass-book particularly of Vishal Fabrics, Sharad Fabrics and Virender Mujumdar from whom the assessee has received Rs.10.00 lakhs each. Similar documents of Chunilal Jivanram to whom the assessee repaid Rs.5.0 lakhs was furnished during assessment. The assessee furnished their PAN, copy of ledger account, contra confirmation, books of account, and copy of Form16A certifying the fact that assessee has paid interest on loan and TDS was deducted from the interest payment, Form 16A

shows the PAN and addresses of the lenders. During the personal hearing before Assessing Officer, the assessee requested before Assessing Officer to verify the transaction by issuing summons under section 131 or notices under section 133(6) of the Act as assessee could not get the return of income of the lenders and their bank pass-book. The Assessing Officer has not made any efforts to obtain necessary details from lenders by issuing summons under section 131 or notice under section 133(6) of the Act. The assessee appeared before Assessing Officer on 22.12.2017 with return of income of lenders, computation of their income, financial statement and copy of their pass book, which was received with the help of business associates of assessee, however, the Assessing Officer refused to receive such submission, though assessment order was served upon assessee on 26.12.2017. The assessee further stated that Assessing Officer while making the addition, did not considered the confirmation filed by lenders with other documentary evidence and no investigation was carried out by the Assessing Officer. All the loan transactions were received through banking channel / account payee cheque,

which can be verified from the bank statements of assessee.

The assessee paid the interest amount and deducted TDS and copy of Form-16A were also furnished. The assessee specifically contended that they have discharged onus to prove the identity, creditworthiness and genuineness of such transaction. To support, the assessee submitted case law 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] and Hon'ble Apex Court in the case of Commissioner of Income Tax Vs Orissa Corporation (P.) Ltd. (1986) 52 CTR 0138/(1986) 159 ITR 0078 SC.

5. The NFAC/Ld. CIT(A) after considering the submission of assessee confirmed the addition of Rs.35.00 lakh under section 68 of the Act by holding that as per the decision of superior courts, the assessee has to prove the identity of creditors and genuineness of such transaction and creditworthiness of the creditors. The, onus lies upon the assessee to prove that the amount credited in the account did not represent income as has been held by the various courts. The transaction made through banking channel is not

conclusive evidence about the genuineness as held by Hon'ble Calcutta High Court in Precision Finance P Limited (208 ITR 465) unless the creditworthy of the lenders and genuineness of transaction is proved. The assessee could not prove the unsecured loan in its books of account satisfactory and upheld the addition. The NFAC/ Ld. CIT(A) also upheld the addition of interest expenses as well as taxing the additions under section 68 under section 115BBE. Further aggrieved assessee has filed present appeal before the Tribunal.

6. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and have gone through the orders of the lower authorities carefully. The Ld.AR for the assessee submits that during the assessment, the assessee furnished the complete details of the loan transaction consisting of contra confirmation, Form-16A, details of PAN of all creditors acknowledgement of return of income, profit and loss account and capital account of lenders and relevant page of bank statement of assessee. The assessee discharged its primary onus to prove the identity,

creditworthiness and genuineness of such transaction. Otherwise, lower authorities have not disputed the identity. The assessee proved the creditworthiness of the lenders by filing their return of income and genuineness of such transaction was proved by furnishing Form-16A, wherein assessee while making payment of interest deducted TDS. The Assessing Officer has not issued any notice under section 133(6) or summons under section 131 of the Act. The Ld. AR of the assessee submits that complete details were filed before lower authorities which has been placed on record in support of all loans. The Ld. AR for the assessee submits that assessee also filed bank statement showing the credit through banking channel otherwise this fact is not disputed by Assessing Officer. Once the assessee discharged its onus, the burden shifted before Assessing Officer to discard the evidence furnished by assessee and no contrary evidence whatsoever was brought on record by the Assessing Officer. The Ld. AR for the assessee relied upon the following decision;

- CIT Vs Orrisa corporation (P) Limited 1986 159 ITR 78 SC,
- CIT Vs Ranchhod Jivabhai Nakhava (2012) 208 TAXMAN Gujrat,
- CIT VS M.K. Brothers (1987) 39 TAXMAN 547 –GUJ,
- Lanchand P Dhariwal vs ITO ITA No 2623/Ahd/2016 dated 11,02.2022

7. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The Ld. Sr-DR submits that assessee submitted the copy of bank account was not furnished by assessee despite repeated direction of Assessing Officer.
8. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We also deliberated various case law relied by Ld. AR for the assessee. We find that the assessing officer made addition of Rs. 35.00 lakhs by taking view that the assessee failed to provide the complete details of the lenders to prove the identity, creditworthy and genuineness of transaction. We find that before Id CIT(A) the assessee specifically contended that they have filed complete details of lenders to prove their identity, creditworthy and genuineness of transaction, except return of income and the copy of their bank pass book. The assessee also specifically stated before Id CIT(A) that they appeared before Assessing Officer on 22.12.2017 with return of income of lenders, computation of their income, financial statement and copy of their pass book, but the assessing officer not entertained such evidences. The Id CIT(A) also

confirmed the addition of loan and consequential interest of payment of by taking view that onus lies upon the assessee to prove that the amount credited in the account did not represent income as has been held by the various courts. The transaction made through banking channel is not conclusive evidence about the genuineness as held in Precision Finance P Limited (supra) unless the creditworthy of the lenders and genuineness of transaction is proved.

9. We find that not only before assessing officer but before ld CIT(A) as well the assessee filed complete details of the lenders, consisting their name, PAN, which is otherwise reflected on their Form-16 alongwith addresses, contra confirmation, their bank pass books, return of income with capital accounts. No investigation against such evidences was carried out either by assessing officer or by ld CIT(A). No contrary evidences are brought on record to discard such evidences filed by the assessee. We find that in absence of any comment of the evidences furnished by the assessee in discharging its primary onus, assessing officer was not justified in making such additions.

10. We find that Hon'ble Apex Court in the case of CIT vs. Orissa Corporation (P.) Ltd. (supra) and Hon'ble jurisdictional High Court in the case of M/s Pankaj Enka Pvt limited (Tax Appeal No.967 of 2015), and CIT vs. Ranchhod V. Nakhava (supra) held that if the transaction is through regular banking channels and the assessee has filed confirmation along with PAN of the creditors, the assessee has discharged its onus.
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. At the cost of repetition, we find that 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 or any cash was deposited before issuing cheques to the assessee. In case of Chunilal Jivanram, the assessee has square up the loan during the present financial year. Thus, in view of the aforesaid factual and legal

discussion, we do not find justification in making addition under section 68 of the Act. In the result, ground No.1 of assessee is allowed.

12. Ground No.2 relates to disallowance of interest expenses of Rs.2,78,500/-. We find that interest payment is consequential addition of unsecured loan. As we have already allowed assessee's ground No.1 hence ground No.2 is consequential in nature and this ground No.2 of assessee is also allowed.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 13/03/2023.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 13/03/2023

Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)

Copy to:

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

// True Copy //

By order

Sr. Private Secretary /Private
Secretary /Assistant Registrar,
ITAT, Surat