

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

SA No. 142/DEL/2023
&
ITA No. 229/DEL/2023 [A.Y 2018-19]

Shri Sunil Gupta
42/78, Punjabi Bagh West
New Delhi

Vs.

The A.C.I.T.
Circle 43(1)
New Delhi

PAN: AAPPG 3387 B
(Applicant)

(Respondent)

Assessee By : Shri K.Sampath, Adv
Shri V. Rajkumar, Adv

Department By : Shri Jitender Kale, Sr. DR

Date of Hearing : 01.05.2023
Date of Pronouncement : 03.05.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
NFAC, Delhi dated 10.01.2023 pertaining to Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the NFAC, has erred in confirming the action of the National e Assessment Centre, Delhi in :

(i) making following additions to the returned income after invoking section 68 r.w.s 115BBE of the Act.

(a) Rs. 20,00,000/- being the amount of fresh loan received from Gaurav Arora.

(b) Rs. 1,08,25,000/- being the amount of loan received from Aanchal Gupta;

(ii) Not deciding the ground No. 6 taken in Form 35 with regard to additions made to returned income being the assessee amount of interest paid to loan creditors."

3. The representatives of both the sides were heard at length, the case records carefully perused and relevant documentary evidence brought on record duly considered.

4. Briefly stated, the facts of the case are that the assessee filed his return of income electronically on 27.09.2018 declaring total income of Rs. 96,37,530/-. Return was selected for limited scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

5. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has taken unsecured loans from Shri Gaurav Arora and Smt. Aanchal Gupta amounting to Rs. 1,01,54,658/- and Rs. 91,57,000/- respectively. The loan transactions can be understood from the following charts:

Gaurav Arora

Opening balance	Addition during the year	Outstanding as on 31.03.2018	Interest paid/payable
81,54,658	20,00,000	1,01,54,658	7,60,411

Smt. Aanchal Gupta

Opening balance	Addition during the year	Outstanding as on 31.03.2018	Interest paid/payable
0000	1,08,25,000	16,68,000	2,42,475

6. In respect of the above loans, the assessee was asked to furnish confirmations, return of income, computation of income, balance sheet and profit and loss account for the A.Ys 2017-18 and 2018-19.

7. The assessee filed necessary documents. In respect of Gaurav Arora, the Assessing Officer issued notice u/s 133(6) of the Income-tax Act, 1961 [the Act, for short], which was not complied with by Shri Gaurav Arora.

8. The Assessing Officer was of the opinion that the assessee failed to prove genuineness of the transactions, credit worthiness of the lender party and identity of the persons and made addition of Rs. 20 lakhs by invoking provisions of section 68 r.w.s 115BBE of the Act.

9. Interest payable to Shri Gaurav Arora amounting to Rs. 7,60,411/- was also disallowed. In respect of loan from Smt. Aanchal Gupta, the Assessing Officer was of the opinion that the documents provided by the assessee was not absolute to demonstrate the genuineness of the loan transactions entered into during the year under consideration.

10. Notice u/s 133(6) of the Act was issued which was duly complied by with by Smt. Aanchal Gupta, supported by confirmation and copy of returns for A.Ys 2016-17, 2017-18 and 2018-19 alongwith copy of bank statements.

11. On perusal of the bank statement, the Assessing Officer found that Smt. Aanchal Gupta has entered into transaction with the assessee only except for some minor entries of GST payment, withdrawals etc. The Assessing Officer was of the further opinion that the amount of Rs. 50 lakhs was deposited into the bank account of Smt Aanchal Gupta which was immediately transferred to the assessee.

12. The Assessing Officer observed that in the absence of any evidence regarding source of income and nature of business of lender party, Smt Aanchal Gupta, it is unbelievable to accept credit worthiness of lender party Smt. Aanchal Gupta for depositing cash of Rs. 50 lakhs and other amounts credited to her bank account.

13. Once again, invoking the provisions of section 68 of the Act, addition of Rs. 1,08,25,000/- was made r.w.s 115BBE of the Act.

14. The assessee carried the matter before the ld. CIT(A) but without any success.

15. Before us, the ld. counsel for the assessee drew our attention to the respective bank accounts of Shri Gaurav Arora and Smt Aanchal Gupta which are exhibited at pages 21 to 25 and 11 to 18 of the Paper Book respectively.

16. The ld. counsel for the assessee pointed out to the transactions with the assessee by the two lenders and vehemently submitted that it is incorrect to say that the lender party have deposited cash in respective bank accounts and then transferred the loan amount to the assessee.

17. In the case of Smt. Aanchal Gupta, it was explained that she is the daughter in law of the assessee and therefore, she is not an unidentified person. Referring to the tax documents of Shri Gaurav Arora and Smt. Aanchal Gupta, the ld. counsel for the assessee stated that the tax documents clearly show that both the persons are Income tax assesseees.

18. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

19. We have given thoughtful consideration to the orders of the authorities below. The bank statement of Smt Aanchal Gupta show that the amount of Rs. 50 lakhs was transferred through RTGS/NEFT from the account of Shri Harish Kumar, who is the father of Smt. Aanchal Gupta. Thereafter, the said amount was transferred to the account of the assessee.

20. A careful perusal of the bank statement shows that Aanchal Gupta was receiving money from her father and thereafter, the amount was

transferred to the account of the assessee. Similarly, in the case of Gaurav Arora, substantial amounts were received by him through banking channels, which is evident from the bank accounts.

21. A careful perusal of the index of the Paper Book filed by the assessee shows that the bank statements were not before the Assessing Officer. Therefore, the Assessing Officer took a contrary view. Though the bank statements were before the Id. CIT(A), but the Id. CIT(A) has not called for remand report from the Assessing Officer, but simply admitted the additional evidences.

22. We are of the considered view that denial of natural justice goes to the root of the matter. Therefore, in the interest of justice and fair play, we restore the issue to the file of the Assessing Officer. The assessee is directed to furnish all bank statements before the Assessing Officer and the Assessing Officer is directed to examine the bank statements to his satisfaction and decide the issue afresh after affording reasonable and adequate opportunity of being heard to the assessee.

23. In the result, the appeal of the assessee in ITA No. 229/DEL/2023 is allowed for statistical purposes. Since the appeal has been decided, the stay application becomes infructuous.

The order is pronounced in the open court on 03.05.2023.

Sd/-

[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 03rd May, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	