

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE PAVAN KUMAR GADALE (JUDICIAL MEMBER)  
AND  
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.727/Mum/2023  
(Assessment year 2009-10)**

Arun I Keshwani 56, A-Z, Industrial Estate Ganpatrao Kadam Marg Lower Parel, Mumbai-400 013 <b>PAN AABPK0819Q</b>	vs	ITO 10(1)(3), Mumbai 3 <sup>rd</sup> Floor, Piramal, Piramal Chambers Lalbaug, Parel, Mumbai 400 012
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Shashank Mehta
Department represented by	Shri Anil Gupta

Date of hearing	29-05-2023
Date of pronouncement	30-05-2023

**ORDER**

**PER : MS PADMAVATHY S. (AM)**

This appeal is against the order of the Commissioner of Income Tax Appeals, National Faceless Appeal Centre (NFAC) [hereinafter 'Ld.CIT(A)'] dated 27/01/2023 for the assessment year 2009-10. The assessee raised the following grounds of appeal:-

1. *In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the action of the Ld. Assessing Officer in making addition of loan amounting to Rs. 8,00,000/- under section 69A of the Income Tax Act, 1961; disregarding the factual and legal matrix of the case; inter-alia the following:*
  - a) *that the impugned addition of Rs. 8,00,000/- is made disregarding the documentary evidences produced by the Appellant to substantiate the*

*genuineness of the transaction, identity of the lender and creditworthiness of the lender.*

*b) that the amount of Rs. 8,00,000/- credited in Appellant's bank account represents short term loan; which was duly repaid back within a short span of time.*

*2. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred upholding the action of the Ld. Assessing Officer in reopening the assessment under section 147 and making impugned addition of Rs. 8,00,000/- under section 69A merely based on borrowed satisfaction and merely on the basis of surmises & conjectures drawn from un-confronted dumb documents; without any independent application of mind or conducting independent inquiry in the matter.*

*3. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the action of Ld. Assessing Officer in making addition under section 69A; disregarding the fact and law that during the relevant financial year the Appellant was not found to be owner of any money; whereas one of the pre-requisite to invoke provisions of section 69A is that the Assessee must be found to be owner of money, etc.”*

2. The assessee is an individual and is engaged in the business of printing and binding. The assessee filed the return of income for A.Y. 2009-10 on 30/09/2010 declaring a total income of Rs.32,05,681/-. The return was processed under section 143(1) of the Income Tax Act (the Act) on 165/09/2020. Subsequently, the assessment was reopened under section 147 by issuing of notice under section 148 which was duly served on the assessee. The reasons recorded by the Assessing Officer for reopening is extracted as below:-

*"A search/survey act/on under sect/on 132/133A of the Income Tax Act, 1961 was carried out on 2<sup>h</sup> June, 2015 in the case of Ahuja Group and their associated concerns at their offices branches, side offices, and key offices of the subsidiaries and associate concerns and residences of M/s Ahuja Group in Mumbai,*

*During the search action the unaccounted parallel books of the Ahuja Group reveals cash transactions of unaccounted money in respect of purchases, sales, loan transactions, accommodation entries, expenses inflation etc wherein the key*

*persons of the group and large numbers of other parties admitted into entering such transactions by the Ahuja Group, Accordingly, the transactions in respect of Shri Arun Keswani maintained in the unaccounted parallel books in tally accounting software/package maintained by Directors and Promoters by M/s Ahuja Group reveals accommodation entry transaction and cash transaction as under:-*

<i>Date</i>	<i>Dr/Cr</i>	<i>Particulars</i>	<i>Narration</i>	<i>Debit</i>	<i>credit</i>
<i>18/11/08</i>	<i>Cr.</i>	<i>Entry A/c</i>	<i>Arun Keswani Cheq. For 8L issued favouring Arun Kswani form Ahuja P and Associates</i>	<i>8,00,000/-</i>	

*The above amount of Rs.8,00,000/- is in the form of cheques issued to Shri Arun Keswani and cash is given to M/s Ahuja and Associates. The source of this cash component of Rs.8,00,000/- is not explained and is to be added as unaccounted cash income.”*

3. The Assessee, before the Assessing Officer submitted that the assessee has obtained a loan from Ahuja Properties & Associates through cheque dated 18/11/2008 and the same has been repaid on 24/09/2009 through cheque. The assessee further submitted that interest on the loan taken has also been paid after deducting tax at source. The assessee also submitted the copies of bank statements reflecting the loan transactions and also the confirmation from the Ahuja Properties & Associates. However, the Assessing Officer did not accept the submissions of the assessee and added the loan amount of Rs.8,00,000 as unexplained money under section 69A of the Act by holding that –

*“7.3 Further, the statement of Mr. Jagdish Ahuja that these unaccounted transaction / accommodation entries put the said transactions in the shadow of suspicion to be a shady transaction. Moreover, the modus operandi of Ahuja Group conforms to a standard nature of hawala dealings.*

*7.4 From the above, it is evident and can be emphatically concluded that the assessee had earlier taken accommodation entry in the form of loan and in turn paid cash. During the year, the assessee had returned back the loan o*

*Rs.8,00,000/- by issuing cheques and received back equal amount of cash which was paid to Ahuja Group while taking loan. Thus, the assessee has entered into a bogus transaction with M/s Ahuja Group with his unaccounted money, an is the beneficiary of the above shady transaction to the tune of Rs.8,00,000/- from Ahuja Group as has been explained by Mr. Jagdish Ahuja in his statement. Therefore, an amount of rs.8,00,000/- is added to the assessee's total income by way of unexplained money u/s 69A of the I.T. Act 1961. **Penalty proceedings u/s 271(1)(c) of the IT Act, 1961 are initiated separately for concealment of income / furnishing inaccurate particulars of income.**"*

4. Aggrieved, the assessee filed further appeal before the CIT(A) where similar submissions were made by the assessee. The CIT(A) rejected the submissions of the assessee by stating that during the search proceedings, the statements of Shri Jagdish Ahuj and Shri Sunil Choudhary was recorded on oath where they have confirmed that they were providing accommodation entries and that during the year under consideration, the assessee has returned loan back by issuing cheque and has received cash in return. Aggrieved, the assessee is in appeal before the Tribunal.

5. During the course of hearing, the Ld.AR submitted that the assessment for the year under consideration was reopened based on the search conducted in Ahuja group where there was an alleged cash transaction towards this loan amount with the assessee. However, there was nothing brought on record by the Revenue to this effect. The Ld.AR further submitted that he assessee had submitted all the relevant documentary evidences with regard to the impugned loan transactions, which have not been considered by the lower authorities. The Ld.AR also submitted that the issue is covered by the decision of the co-ordinate bench in the case of DCIT vs Sarvaajit Patel in ITA No.879/Mum/2018 dated 28/10/2019, where for the same assessment year in connection with the alleged loan transaction

with the same party, i.e. Ahuja group, the Tribunal has held the issue in favour of the assessee by holding that –

*"In the instant case, the AO has not done even preliminary inquiry to disprove the contentions of the assessee.*

*The AO has failed to disprove the contention of the assessee that (i) the loan taken from Ahuja Group and repaid are genuine and reflected in its books of accounts and there is no cash receipt or cash withdrawal, (ii) Shri Ahuja had nowhere in the statement admitted to having given any accommodation entry to the assessee, (iii) even if Shri Ahuja maintained parallel books, it is of no concern to the assessee who had reflected the loan transactions in his books of accounts, (iv) if it is presumed that Rs.35 lacs given to the assessee by Ahuja group is an accommodation entry and out of this Rs.25 lacs has been repaid, there is no sense of making an addition of an entry amounting to Rs.61,50,000/-, which is Rs.1.50 lacs more than the amount of loan given and repaid.*

*Though the onus shifted to the AO, he failed to disprove the contentions of the assessee. Therefore, in view of the above factual scenario and position of law, we uphold the order of the Ld. CIT(A).*

*7. In the result, the appeal filed by the revenue is dismissed."*

6. The Ld.AR accordingly submitted that the Assessing Officer has reopened the assessment purely based on borrowed satisfaction without any sort of independent enquiry into the facts of the case and on alleged information received. Accordingly, the Ld.AR prayed that the addition made be deleted.

7. The Ld.DR, on the other hand, submitted that though the assessee has furnished the documentary evidence supporting the transactions, the genuineness of the transaction was not established since the parties from whom the loans were taken have admitted that they have been providing accommodation entries. The Ld.DR further submitted that the lower authorities have gone based on a wrong

premise that the assessee has repaid the loan during the year and received cash against the same whereas as per the facts of the case, during the year under consideration, the assessee has received the loan. Therefore, the Ld.DR prayed that the matter can be remanded to the Assessing Officer for a fresh verification.

8. We heard the parties and perused the materials on record. The reason for reopening as has been extracted in the earlier part of this order is that during the search conducted in Ahuja group, there were unaccounted cash transactions and accommodation entries and the loan transaction of the assessee is one such accommodation entry. We notice that the Assessing Officer, in the order of assessment had extracted certain portions of the statement recorded from Shri Jagdish B Ahuja, where he had confirmed maintenance of parallel books of account and giving the accommodation entries. However we do not find any specific finding from the statement recorded which the Assessing Officer has linked the impugned loan transaction with the statement recorded. We also notice that while making the addition under section 69A, the Assessing Officer has emphatically concluded that during the year, assessee has returned the loan and has received cash against the same without bringing any concrete evidence except the modus operandi of the transaction as has been explained in the statement given by Shri Jagdish Ahuja. It is also noticed that the factual finding given by the Assessing Officer that the assessee has repaid the loan during the year is not correct since from the perusal of records we notice that the assessee has taken the loan on 19/11/2008 through cheque (pages 43 and 47 of paper book). From the perusal of records it is also noticed that the assessee has paid interest after deducting tax at source on the same (page 47 of paper book). It is also noticed that the assessee has repaid the loan on 16/09/2009 along with interest (page 50 of

paper book). The assessee has also furnished the ledger confirmation from Ahuja Properties & Associates, the bank statement of Ahuja Properties & Associates alongwith their ITRs (pages 55 – 64 of the paper book). Therefore we see merit in the submissions of the Id AR that the assessee has discharged the onus of proving the genuineness of the transaction. The co-ordinate bench in the case of Sarvajit Patel (supra) has considered a similar issue of loan taken from Ahuja group and has given a finding that the Assessing Officer failed to disprove the contentions of the assessee and accordingly, held the appeal in favour of the assessee. In assessee's case here, the documents evidencing the impugned transactions have been submitted before the lower authorities, which fact has not been analysed by the lower authorities and that nothing has been brought on record by the Revenue to controvert the contentions of the assessee. Further, the addition in this case has been made under section 69A, which reads as under:-

*"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

9. From the plain reading of the section it is clear that when the assessee is found to be the owner of money bullion etc., that is not recorded in books and that the assessee offers no explanation about the nature and source then the said money bullion etc., may be deemed to be the income of the assessee u/s.69A. In the case under consideration we notice that the assessee has recorded the impugned transactions in the books of accounts and has also provided explanations/evidences

explaining the source of the loan transaction. Given this and considering other facts and evidences we are of the considered view that the AO is not correct in treating the loan transaction as an income u/s.69A. We according delete the addition made and allow the appeal in favour of the assessee.

10. In the result, appeal is allowed in favour of the assessee.

**Order pronounced in the open court on 30/05/2023.**

Sd/-

sd/-

<b>(PAVAN KUMAR GADALE)</b>	<b>(PADMAVATHY S)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 30<sup>th</sup> May, 2023  
Pavanan

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

**BY ORDER,**

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**Asstt. Registrar / Senior Private Secretary  
ITAT, Mumbai**