

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'A' BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON.VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON.JUDICIAL MEMBER &

ITA No.125/PUN/2023
(A.Y. 2012-13)

Nirmal Sharad Mutha, Plot No.83, Manik Nagar, Nagar-Pune Road, Ahmednagar. PAN: AFVPM 3572 R	vs	ACIT, Ahmednagar Circle, Ahmednagar.
Appellant		Respondent

Assessee by	:	Shri Prasad S. Bhandari, CA
Revenue by	:	Shri Ramnath P. Murkude, DR
Date of hearing	:	01/06/2023
Date of pronouncement	:	08/06/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax (Appeals)-2, Pune, dated 03.03.2020 for A.Y.2012-13 as per the following grounds of appeal:-

"1. On the facts and in the prevailing circumstances of the case, the Id. CIT(A)-2, Pune erred in confirming the addition made by the Id. AO to the extent of Rs. 2,01,647/- u/sec. 14A. Therefore, addition confirmed may please be deleted.

2. On the facts and in the prevailing circumstances of the case, the Id. CIT(A)-2, Pune erred in confirming the addition made by the Id.AO u/sec. 68 of the Act of Rs. 2,40,00,000/-. Therefore, addition confirmed which is invalid may please be deleted.
(Rs. 1,10,27,360/-)

3. The Appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the

appeal, if deemed necessary at the time of hearing of the appeal.”

2. At the outset, it is observed that there is a delay of 1004 days. This delay has been explained by the assessee by filing affidavit and condonation application. We have perused the contents of affidavit and condonation application and find that the said delay is not deliberate and intentional on the part of the assessee and even the Id.DR conceded that the delay may be condoned since the reasons for delay cannot be attributed directly to any deliberate conduct if any, of the assessee. Having heard the submissions, the delay of 1004 days is condoned and the case is heard and discussed on merits.

3. The relevant facts pertaining to ground No.2 for confirmation of addition by Id. CIT(A) u/sec. 68 of the Act of Rs.2,40,00,000/- are that this addition was made on account of unexplained cash credit in the form of loans obtained from M/s. Daksh Diamonds. In this case, information was received from DIT(Inv)-II, Mumbai through CIT-1, Pune vide letter dated 10/07/2014 that the assessee was beneficiary of the accommodation entries of bogus unsecured loans and advances by Bhanwarlal Jain Group. During search action carried out in the case of Shri Bhanwarlal Jain Group of Mumbai on 03/10/2014, certain incriminating documentary evidences were seized. Statements of various persons who assisted Shri Bhanwarlal Jain in providing bogus loans and advances through *benami* concerns to the beneficiaries were

also recorded. It was informed that in FY 2011-12, relevant to AY 2012-13, the assessee had received Rs.2,00,00,000/- and Rs.15,00,000/- from M/s. Daksh Diamonds, which was stated to be a sham concern run by Bhanwarlal Jain & family and the assessee had claimed the name of M/s Daksh Diamonds under the head "Secured Loans" by Rs.2.40 Crores. The Assessing Officer (AO) further stated in the assessment order that in the statement recorded u/sec. 132, while answering to the question no. 24, Shri Bhanwarlal Jain admitted himself that Daksh Diamonds was run by his son in the *benami* name as Shri Ritesh Siroya. The AO further stated in the assessment order that the investigation wing, Mumbai during the course of search action in the case of Shri Bhanwarlal Jain Group, identified 70 *benami* concerns related to the employees, relatives of Shri Bhanwarlal Jain and his family which provides *benami* loans and advances through accommodation entries. The AO further stated that assessee and his father Shri Sharad Mutha were also one of among such 70 *benami* and the assessee claimed to borrow loans amounting to Rs. 2,40,00,000/- during the year under consideration from M/s Daksh Diamonds. On verification, the AO observed that assessee had claimed Rs.2,40,00,000/- as "secured loans" from M/s. Daksh Diamonds. Therefore, the AO brought to the notice of the assessee about *modus-operandi* of Shri Bhanwarlal Jain and requested the assessee to produce the proprietor/partner for personal appearance along with books of accounts, copy of return of income, bank statements of

M/s.Daksh Diamonds vide show-cause notice dated 24/02/2015. In response, assessee filed a letter dated 12/03/2015 stating that he had borrowed "secured loans" of Rs.2,40,00,000/- from M/s.Daksha Diamonds as advance. However, he could not produce the proprietor Shri Ritesh Suresh Mal Siroya of M/s. Daksha Diamonds for verification nor he did produce any documentary evidence as to what for the loan was borrowed. The AO observed that in the balance sheet of M/s.Daksha Diamonds, the said amount was shown as "loans & advances" and on perusal of the returns filed by Shri Ritesh Siroya Proprietor of M/s.Daksha Diamonds, the returned income filed as under:-

S. No.	F.Y.	A.Y.	Returned Income
1.	2007-08	2008-09	Rs.1, 75, 760/-
2.	2009-10	2010-11	Rs.1,81,740/-
3.	2010-11	2011-12	Rs.2,97,800/-
4.	2011-12	2012-13	Rs.4,29,140/-
5.	2012-13	2013-14	Rs.3, 89, 220/-
6.	2013-14	2014-15	Rs. 3, 24, 820/-

3.1 The AO on perusal of the above table, doubted the credit worthiness of Shri Ritesh Siroya for the loan lent at Rs. 2,40,00,000/- to the assessee during the year under consideration. The AO further stated in Para 13 of his order that Shri Ritesh Siroya had admitted that accommodation entries were passed to all claimed "Loans & Advances" in his balance sheet along with the *modus-operandi* of the bogus purchases and sales and the assessee is also among one of

such beneficiaries, however, Shri Ritesh Siroya retracted from his statement at later stage. In view thereof, the AO stated that assessee had accepted accommodation entry from M/s. Daksh Diamonds and failed in the initial onus to prove the creditworthiness of the lender i.e. M/s.Daksh Diamonds. Therefore, the AO invoked the provisions of sec.68 of the Act and treated the entire loan amount of Rs.2,40,00,000/- as unexplained cash credit and added to the total income of the assessee.

3.2 The Id. CIT(A) in view of the reasoning appearing in his order from para 7.6 onwards, finally upheld the order of the AO at para 7.9 by holding the correctness of the addition of Rs. 2,40,00,000/- as assessee's unexplained cash credit u/sec. 68 and confirmed addition of the same to the total income of the assessee.

4. We have heard the rival contentions, analyzed the facts and circumstances and have given thoughtful consideration to all the submissions made and documents placed on record.

4.1 Admittedly, this is a case of accommodation entry and even Id.AR while opening his arguments agreed that this is a case of accommodation entry, however, before coming to the taxability of the entire loan amount as unexplained cash credit u/sec. 68, there are certain inherent discrepancies which needs factual verification. He submitted that as per the information available with the AO, the

assessee had received loan/advances of Rs. 2.40 crore during the year under consideration. However, as per the confirmation of the creditor i.e. Mr.Ritesh Siroya which is annexed at page No.36 of the paper book, there is advance of Rs. 2.25 crores made during the year and Rs. 25 lac was returned during the same year itself. Therefore, the actual net advance is Rs. 2 crores, however, as per assessee's acceptance of loan of Rs. 2.40 crores during the year under consideration and refund of Rs. 25 lac during the same year, thus as per assessee's record, there is net loan/advances of Rs. 2.15 crores. The Id.AR submitted that the actual quantum of loan may be verified by the AO. The Id.AR further contended that as per para 12 of the AO's order, he has only considered the returned income whereas the turnover should also have been considered while referring to the profit & loss account for the year under consideration of M/s. Daksh Diamonds. Another contention raised by the Id.AR was it is correct that Mr. Ritesh Siroya who is the proprietor of M/s. Daksh Diamonds has not been produced personally along with the books of account for further examination and clarification regarding his admission during the course of survey and subsequent retraction thereof, however, the AO could have summoned him and required his personal presence along with required documents which was not done in this case. In fact, the relevant documents pertaining to M/s. Daksh Diamonds, such as, confirmation statement, bank statement, balance sheet and profit & loss account have been submitted before the Department. Pointing

out another discrepancy in the facts, the Id.AR submitted that at para 7.6 of the Id. CIT(A)'s order, he had held that "*I find that only the confirmation letter has been filed from the said company as it was also filed before the AO and the evidence regarding payment of the said amount by RTGS was merely a stated in the confirmation letter but no such evidence had been furnished either before the AO or before the undersigned.*" Whereas at para 7.8, the Id. CIT(A) gives his finding that "*the copy of return, the statement of bank account and balance sheet of M/s. Daksh Diamond along with the ledger copy in the hands of the appellant enforce the undersigned to hold that the loans/advances received by the appellant from M/s.Daksh Diamonds is nothing but bogus through accommodation entry only. In other words, as the amount of Rs. 2,40,00,000/- pertained to the appellant and it was provided as accommodation entries by way of the alleged loan transaction*". The Id.AR submitted that while at para 7.6, the Id. CIT(A) says only confirmation letter has been filed from M/s. Daksh Diamonds, but at para 7.8 he says that copy of return, bank statement, balance sheet of M/s. Daksh Diamonds along with ledger copy in the books of the assessee, all these were there before him which enabled him to come to the conclusion that it was an accommodation entry. Therefore, Id.AR pleaded that there is an inherent contradiction of facts.

4.2 *Per contra*, Id.DR supported the order of the revenue authorities i.e. both the AO and the Id. CIT(A). So far as facts are concerned,

even the Id.AR for the assessee has admitted that it is a case of accommodation entry. Now the question is regarding the chargeability of tax of the amount received by the assessee as alleged loan. That for charging this amount also, the correctness of the disputed amount needs to be ascertained.

5. Before us, Id.AR has stated that the net loan is Rs. 2.15 crores and not Rs. 2.40 crores. We are of the considered view, even without going into merits of the case, it is first important to verify specifically the facts of the case after proper examination at the level of the AO. Ld.DR placing strong reliance on the orders of the subordinate authorities has contended that it is a case of accommodation entry, but has not thrown in light in clarifying the discrepancies as submitted by the assessee. That in the interest of natural justice, it is of utmost importance to first ascertain the true facts and then only it would be appropriate to examine the merits of the case. In view thereof, the order of the Id. CIT(A) is set aside and the matter is remanded to the file of the AO for adjudication afresh after verifying the matter on the points as submitted herein above by the assessee and both the assessee and the Revenue would have fair opportunity as per law for ascertaining the true facts in this case. Needless to say, the AO shall accord hearing while complying with the principles of natural justice.

6. That, since we have remanded the main issue comprising in ground No.2 to the file of the AO, therefore, ground No.1 which is in

respect of addition u/sec. 14A is also remanded to the file of the AO for completeness of the matter. It is also significant that all the issues pertaining to the grounds of appeal have to be revisited after adequate verification by the AO. The AO shall comply with the principles of natural justice while adjudicating the matter as per law. Ground No.3 is general in nature, therefore needs no adjudication. All the grounds of appeal are allowed for statistical purposes.

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

Order pronounced in open Court on 08th June, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 08th June, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "A" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.