

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY
JUDICIAL MEMBER

ITA No. 780/Mum/2023
(A.Y. 2013-14)

Rajan Janardhan Ghadge Versus ITO Ward -6(2)(1),
Flat No. 604, 6th Floor,
Samartha Aangan 111A,
Azad Nagar,
Mumbai-400053.
PAN: AALPG1327K

Aayakar Bhavan,
M.K. Road,
Mumbai-400020

Appellant

Respondent

Appellant/Assessee by : None
Respondent/Department by : Ms. Mini Vinod, DR

Date of hearing : 01/06/2023
Date of pronouncement : 20/06/2023

ORDER

N.K. CHOUDHRY, J.M:

This Assessee/Appellant herein has preferred this appeal against the order dated 21.11.2022 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-12, Mumbai / NFAC, Delhi {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for AY 2013-14.

2. The assessee is proprietor of business entity namely "M/s Prentority" which deals in the manufacturing of printing and publishing materials. During the year under consideration declared its total income at Rs. 14,52,810/- by filing its return of income on 30.09.2013, which was selected for scrutiny through CASS and resulted into issuance of various statutory notices. In response, the assessee attended and filed required details, which were verified and placed on record by the Assessing Officer (AO).

3. The AO observed that during the year under consideration, the assessee has shown a gross sales of Rs. 1,67,76,471/- and Gross Profit of Rs. 60,05,679/- from its business activity. After debiting various expenses qua indirect expenses, depreciation and financial cost, Net Profit is arrived at Rs. 13,05,697/- in the computation of income. The assessee has also shown loss under the head "Income from House Property", Income from Capital Gain of Rs. 50,000/- and Income from Other Sources of Rs. 58,753/- after due adjustment to business income and claim of deduction under VI-A, total income is returned at Rs. 14,52,810/-.

4. The AO ultimately made various additions including the sum of Rs. 5,00,000/- which is under consideration, shown to have received from one Shri Dharamlal N. Shah as unsecured loan, by observing as under:

“The assessee in support of its claim though filed a confirmation from Shri Dharamlal N. Shah who in the confirmation has submitted that he has advanced an interest free loan of Rs. 5,00,000/- to the assessee and mentioned his PAN (BHQPS3282Q). Shri Dharamlal N. Shah though mentioned his PAN Number but stated that he has not filed his return of income, as his business gross total income does not exceeds exemption limit for A.Y. 2013-14. Shri Dharamlal N. Shah has also filed copy of his bank statement of Sarswat Bank, Ville Parle (E), Branch. On careful perusing of the same, the name mentioned in the bank statement is different as mentioned “Shah Dhanvant Nagindas” instead of Dharamlal. Not only this, name written in the PAN is Dhanubhai Nagindas Shah. This discrepancy in the names makes this confirmation not reliable and identity of the loan creditor is thus not proved”.

5. In appeal before the Ld. Commissioner, the assessee in order to justify its claim that the assessee has discharged its onus of proving the identity of the loan creditor and the difference in the name of the creditor was due to the fact that in Gujarati community elders are called by people in different names, like Kantilal called Kantubhai, Jaswant Bhai called Jasubhai and so on. It is to be a pattern and nothing is wrong in this. The AO ought to have made further enquiry in this case. Apart from the name of the creditor, there is no difference in the address mentioned in the confirmation and the bank statement. The AO ought to have used power under section 133(6) of the Act by summoning the loan creditor for further verification, if he had any doubt. Therefore, the assessee claimed to have discharged the primary onus which lies on it, in terms of section 68 by proving the identity of the loan creditor by giving complete address and PAN.

6. The Ld. Commissioner though considered the claim of the assessee, however, not found tenable, mainly on the following reasons:

“That the assessee has remained tight lipped as regard to the lending capacity of Shah, who have himself admitted that his income is beyond the purview of section, as the income earned does not exceeds exemption limit for AY 2013-14. Apparently as a matter of fact, the assessee needs to specify all the terms as prescribed under section 68 of the Act viz., identity, genuineness of the transaction and capacity of the lender. The assessee has utterly failed to prove the creditworthiness of the lender Shri Shah. The primary onus to prove a credit, explaining the nature and source thereof satisfactorily is on the assessee. Further as explained the same is on the parameters of identity, capacity and genuineness, by leading relevant materials, is on the assessee. It is only there upon that the assessee can be said to have discharged the burden of proving of it, which then shifts to the AO/Assessing Authority.”

6.1 The Ld. Commissioner by noting the provisions of section 68 and various judgments of the Hon’ble Apex Court which includes Kale Khan, Md. Hanif Vs. CIT (1963) 50 ITR 1 (SC) wherein it was held *“It is well established that the onus of proving the source of some of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it*

was, it was exempt from taxation under the provisions of the Income Tax Act. In the absence of such prove the ITO is entitled to treat it as taxable income”, held as under:

That there was nothing on record towards establishing the creditworthiness of the creditors and/or genuineness of the impugned creditors. Mere furnishing of a confirmation letter by a creditor, as it was settled, does not prove the credit; the same would at best only establish the identity of the creditors. There was no whisper of the capacity of the loan or advance. The assessee has failed to address pre-conditions as laid down in section 68 of the Act inasmuch as the identity and the creditworthiness of the lender, has not been established by the assessee, therefore, the addition made by the AO of amounting Rs. 50,00,000/- is confirmed.

7. Having perused the orders passed by the authorities below, I observe that the AO doubted the confirmation and identity of the loan creditor namely Shri Dharamlal N. Shah due to wrongly mentioning of his name or spelling mistake on the confirmation letter, PAN Number, bank statement etc. It reflects from the assessment order that though the AO held that discrepancy in the name makes the confirmation not reliable and the identity of loan creditor is thus not proved, however, not doubted the capacity of Mr. Shah for paying the loan of Rs. 5,00,000/-. No doubt Mr. Shah has mentioned in confirmation letter that his gross total income does not exceeds exemption limit for AY 2013-14, therefore, he has not filed his return of income, however on the basis of standalone statement it cannot be construed that Mr. Shah was not in capacity to advance any interest free loan of Rs. 5,00,000/- to

the assessee, therefore considering the following discrepancies:

- a. The confirmation was under the name of 'Dharamlal N Shah'
- b. The name as per the PAN records was 'Dhanubhai Nagindas Shah'
- c. The bank account of the lender was in the name of 'Shah Dhanvant Nagindas'

As observed by the AO, I am in concurrence with the claim of the assessee that the AO in order to confirm the name of the lender namely Mr. Shah, could have issued notice/summon under section 133(6) of the Act to Mr. Shah in order to verify his identity, hence considering the peculiar facts and circumstances and for the ends of justice just and decision of the case, I am inclined to remand the instant issue qua loan of Rs. 5,00,000/- on which the addition has been made by the AO and affirmed by the Ld. Commissioner, to the file of the AO for decision afresh, by exercising its power under section 133(6) of the Act or other provisions of the Act as applicable, in order to verify the identity of Mr. Shah and his creditworthiness. Suffice to say by affording proper and reasonable opportunity of being heard to the assessee.

The Assessee is also directed to co-operate with the assessment proceedings and provide the latest address of Mr. Shah and file the relevant documents/details, as and when would be required by the AO for proper adjudication of the issue under consideration.

9. In the result, appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 20-06-2023.

Sd/-
(N K CHOUDHRY)
JUDICIAL MEMBER

SK, Sr.PS

Copy of the Order forwarded to:

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt.Registrar)
ITAT, Mumbai