

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1386/Mum/2023
(A.Y. 2014-15)**

Suraj Air Flow Engineers 4, Ground Floor, Akashdeep, 1 st Road, T.P. S. VI, Santacruz (W) Mumbai – 400 054	Vs.	The ACIT, Circle 22(3) Room No. 322, 3 rd Floor, Piramal Chambers, Lalbaug, Mumbai – 400 012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACFS4159E		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Suresh D. Gaikwad

Date of Hearing	10.07.2023
Date of Pronouncement	18.07.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 16.03.2023 for A.Y. 2014-15. The assessee has raised the following grounds before us:

“(A) Addition on account of alleged Cash Credits- Rs.77,80,000/-

- The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [CIT(A)] erred on facts and in law in confirming the addition made by the Assistant Commissioner of Income Tax, Circle - 22(3), Mumbai (AO) of Rs.77,80,000/- on account of alleged cash credits by holding that the appellant did not file application for admitting the additional evidences by providing reasonable cause to admit the same.*
- The learned CIT(A) erred on facts and in law in not invoking the powers vested in him under section 250(4) while not considering the additional evidences furnished by the appellant.*

3. *The learned AO and CIT(A) failed to appreciate that the loans of Rs.77,80,000/- were genuine and that no addition was called for on that account.*
4. *The appellant prays that the addition of Rs.77,80,000/- made by the AO and confirmed by the CIT(A), may be deleted.*

(B) Disallowance of Interest-Rs.8,89,446/-

5. *The learned CIT(A) erred on facts and in law in confirming the disallowance of interest made by the AO of Rs. 8,89,446/- with respect to the addition of Rs. 77,80,000/- made by the AO on account of alleged cash credits by holding that the appellant did not file application for admitting the additional evidences by providing reasonable cause to admit the same.*
6. *The appellant prays that the disallowance of interest of Rs. 8,89,446/- made by the AO and as confirmed by the CIT(A) with respect to the loans added of Rs.77,80,000/-, may be deleted.”*

2. The fact in brief is that return of income declaring total income of Rs.34,48,220/- was filed on 26.11.2014. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 31.08.2015. During the course of assessment the AO noticed that assessee has obtained unsecured loan amounting to Rs.1,02,89,000/- from 15 parties. During the course of assessment the AO asked the assessee to submit evidences as identity, creditworthiness of loan creditors and genuineness of transactions in respect of loan taken during the year. However, the assessing officer stated that assessee has not filed the required detail and evidences to prove identity, creditworthiness of the loan creditors and genuineness of the transaction etc. Therefore, the assessing office has issued notices u/s 133(6) of the Act to the 13 parties directing them to submit evidences with regard to their identity, creditworthiness and genuineness of the loan transaction. The assessing officer stated that out of the 15 loan creditors amounting total of Rs.1,02,80,000/- only 5 loan creditors amounting to Rs.25,00,000/- have responded to the notices issued u/s 133(6) of the Act and given evidences of loan advances by them. However, the remaining loan amount of Rs.77,80,000/- was remained

as unexplained, therefore, the same was added to the total income of the assessee as unexplained credit u/s 68 of the Act.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard the ld. D.R. and perused the material on record. During the course of assessment the assessing officer issued notices u/s 133(6) to all the 15 parties who have given loan to the assessee firm, however, 5 parties have responded and filed the detail on or before passing the assessment order by the assessing officer u/s 143(3) on 16.12.2016. Therefore, the AO treated the amount of loan received from the remaining parties to the amount of Rs.77,80,000/- as unexplained u/s 68 of the Act. Before the ld. CIT(A) the assessee has categorically explained that those parties have informed the assessee that the detail could not be sent to the AO because the notices have been served late upon those parties, therefore, all those parties have directly sent the detail to the assessee. Thereafter, the assessee had tried to file those details before the AO and the AO had refused to accept these details stating that assessment had already been completed. During the course of appellate proceedings before the ld. CIT(A) the assessee has filed such detail comprising loan confirmation of the lenders along with acknowledgment of income tax returns and lenders bank statements as additional evidences, however, the ld. CIT(A) has not considered such additional evidences stating that assessee has not given justified reason for not submitting such information before the AO. We find that assessee had specifically brought to the notice of the ld. CIT(A) as per the detailed statement of fact in column no. 11 to the Form No. 35 that details from part of the lenders could not be sent to the AO because notices u/s 133(6) of the Act could not be served and in case of some parties the notices u/s 133(6) were served late. We further notices that the assessee

has also brought to the notice of the ld. CIT(A) these facts in their detailed submission reproduced at page 4 to 10 in the order of the ld. CIT(A). The assessee has explained the cause for delay in making submission by the lenders as discussed supra, however, the ld. CIT(A) has not considered the same on merit as provided in Rule 46A of the I.T. Rule 1962. We find that ld. CIT(A) has neither called any remand report from the assessing officer nor controvert the explanation of the assessee with any relevant supporting material that there was delay in serving the notice u/s 133(6) to the loan creditors. Therefore, we restore this case to the file of the ld. CIT(A) for deciding on merit after considering the relevant supporting material furnished by the assessee. Therefore, this ground of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 18.07.2023

Sd/-

(Aby T Varkey)
Judicial Member

Place: Mumbai

Date 18.07.2023

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.