

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

**BEFORE SHRI B R BASKARAN , AM &
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 1191/Mum/2023
Assessment Year: 2012-13

Mahesh Rameshwar Mistry
14, Vishwakarma,
6th Ram Mandir Road, Vile
Parle (E),
Mumbai- 400054

Vs.

Income Tax Officer,
Word 25(3)(1) R. No. 233,
Kautilya Bhavan, G Block,
BKC, Bandra (E),
Mumbai- 400051

PAN No. **AAFPM4510Q**

Appellant) : **Respondent)**

Appellant by : Shri. Vinod Bindal & Satish
Gupta, Ld. CAs

Respondent by : Shri. Naganath B. Pasale Ld.
Sr.DR

Date of Hearing : 17.07.2023

Date of pronouncement : 27.07.2023

ORDER

Per N. K. Choudhry, JM:

The Assessee/Appellant herein has preferred this appeal against the order dated 03.03.2023 impugned herein, passed by the Ld. Commissioner of Income Tax (Appeal)/NFAC {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act 1961 (in short 'the Act') for the AY 2012-13.

2. In this case, the case of the Assessee was reopened by recording reasons for re-opening dated 05.07.2019, mainly on the reason that as per information received from the Deputy Directorate of Income Tax (inv) (1) unit-5(4) Mumbai dated 19.03.2019 to the effect that DGIT investigation Mumbai, on the basis of search action u/s 132 of the Act carried out in the case of M/s Evergreen enterprises that undisclosed activity on money lending and borrowing in unaccounted cash loan and interest thereon has arisen. As per the information received, the Assessee has borrowed cash loan of Rs. 58,00,000/- in FY 2011-12.

3. In the Assessment order, the AO though has not made any addition on account of the alleged cash loan borrowed amounting to Rs. 58,00,000/- from M/s Evergreen enterprises/Mr. Nilesh Bharani, however, made the addition of Rs. 96,000/- i.e. 12% of Rs. 58,00,000/- the alleged loan borrowed, on the ground that no such expenditure was debited by Assessee in its books of account and consequently, added the same in the total income of the Assessee as unexplained expenditure u/s 69C of the Act. On appeal, the Ld. Commissioner more or less on the same reasoning, confirmed the said addition.

4. Admittedly, the case of the Assessee was reopened on the reason that the Assessee has taken cash loan of Rs. 58,00,000/- from Ms/ Evergreen Enterprises, however, no addition on that account has been made by the assessing officer but infact the AO assessed some other income without issuing any fresh notice u/s 148 of the Act, which was necessary for assessing other income, therefore in view of the dictum laid down by the Hon'ble High Court of Bombay in the case of CIT-5 Mumbai vs. Jet Airways (I) Ltd. (2010) 195 Taxmann 117 (Bom), We are inclined to delete the addition under consideration hence, the same is deleted.

5. In the result appeal filed by the assessee stands allowed.

Orders pronounced in the open court on 27- 07-2023.

Sd/-

(B R BASKARAN)
Accountant Member

Sd/-

(N. K. CHOUDHRY)
Judicial Member

Shubham P. Lohar

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)

ITAT, Mumbai