

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
ITA No.724/Del/2022
(ASSESSMENT YEAR 2012-13)**

Rajinder Kumar Malhotra A-122, 1 st Floor, Lok Vihar Pitampura, New Delhi PAN No.AADPM6552C	vs	ITO Ward- 40(5) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Neeraj Mangla, CA
Respondent by	Sh.S.L. Anuragi, Sr. DR

Date of Hearing	16/11/2023
Date of Pronouncement	28/11/2023

ORDER

PER M. BALAGANESH, AM:

This appeal of the Assessee arises out of the order of the Commissioner of Income Tax (Appeals)-34, New Delhi [hereinafter referred to as 'CITA(A)'] in Appeal No.144/18-19, dated 21/06/2019 against the order passed by Assessing Officer u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 31/03/2015 for the Assessment Year 2012-13.

2. At the outset, we find that there is a delay in filing of appeal by the assessee by 973 days. This Tribunal had already passed an interim order vide order sheet dated 09.09.2022 wherein the delay in filing of the appeal has already been condoned. Accordingly, we take up the appeal for adjudication.

3. The assessee has raised the following grounds of appeal :-

“1. That the CIT is not justified in dismissing the appeal as the income tax officer was not justified by adding back of Rs. 25,00,000/- u/s 68 because the genuineness of the loan received from Purbanchal is not proved and assesses could not furnish any documentary evidence to prove the genuineness of the loan. This confirmation is unjustified in nature of the law as the value addition was unexplained credit in the book of accounts u/s 68 and is unfair to the applicant as he was not given the opportunity to prove the genuineness of the transaction. That the CIT Appeal-34 upon the mere ground of not providing the Interest on the loan taken disregarding the past transactions is not justifiable to the appellant as this amount of Rs.25,00,000/- is completely unfair to the appellant. Hence this appeal shall be allowed for the reconsideration.

3. That Mrs. Premlata is his wife and she is a very old loan creditor. Out of the total loan as on 31.03.2012 of Rs.26,30,000/-. She has received an amount of Rs. 19,39,000/- from M/s Purbanchal Trade and Industries Ltd. By cheque and same has been credited in her bank account. Out of this amount Mrs. Premlata has provided him a fresh loan of Rs.19 lacs during the year. The applicant has filed the confirmation, copy of bank account of Smt. Premlata in support of his contention.

3. That the CIT is not justified in dismissing the appeal as the income tax officer was not justified by adding back of Rs. 6,71,780/- on account of cash expenses without any valid reason. That in Appeal order 8.3 the ground was dismissed hereby confirming the amount of Rs.6,71,780/- stating as cash expenses without any valid reason.

4 That the CIT is not justified in dismissing the appeal as the income tax officer was not justified by adding back of Rs. 1,80,000/- U/s GB on the ground that the details are submitted at the end of the time so it is not possible to verify the genuineness of loans taken from various parties. - That the Appeal order 7.3 was confirmed adding the assessed value of Rs.1,80,000/- to the assessed income. Upon proving the relevancy of which to the AO the details were submitted late in the end of time, hence there was no possibility of proving the genuineness of the loans taken from all the 10 persons.-

That the CIT Appeal-34 in the Appeal order 7.3 merely not providing the PAN Nos, of the 10 persons cannot be regarded as considering Rs.1,80,000/- as an unexplained cash credit, which is not reasonable and does not serve the principles of natural justice to the Appellant as this unreasonable value addition is not justifiable. Hence, this Appeal ground shall be allowed.

4. We have heard the rival submissions and perused the material available on record. The return of income for the A.Y. 2012-13 was filed by the assessee individual on 18.09.2013 declaring total income of Rs.9,58,860/-. In the assessment proceedings, the Learned AO had made addition u/s. 68 of the Act by treating the loans received from following persons as unexplained cash credit :-

Loan from Smt. Prem Lata (wife of the assessee) –	26,30,000/-
Loan from Purbanchal Traders Ltd. -	25,00,000/-
Cash loans taken from various persons	- 1,80,000/-

5. Apart from this, the Ld. AO made an addition of Rs.6,71,780/- on account of unexplained expenditure incurred on account of purchase of stamps and drawings.

6. The Ld. CIT(A) in respect of additions made u/s. 68 of the Act gave credit to the tune of Rs.7,30,000/- in respect of loan received from Smt. Prem Lata and confirmed the remaining additions. Aggrieved, the assessee is in appeal before us.

7. At the outset, the Ld. AR before us stated that the new Counsel is appointed in this case pursuant to the death of the old Counsel Mr. Joshi and that he is not having complete possession of all documentary evidences to support the grounds of appeal of the assessee. For this purpose, he had sought inspection of assessment and appellate records from the files of the lower authorities. Despite his earnest efforts in getting the inspection carried out, the lower authorities were reluctant to grant him permission to carry out inspection records. Hence, from the available details with him, he had furnished an application under Rule 29 of the ITAT Rules by filing certain additional evidences together with the prayer for admission of the same. The Ld. AR tried to make out a prima facie case to explain the source of even the loan creditors from whom the assessee had taken loans during the year. Since these additional evidences were not furnished before

the Ld. AO by the erstwhile Chartered Accountant on behalf of the assessee, the present AR prayed for admission of those additional evidences and prayed for setting aside of the entire appeal to the file of the Ld. AO for denovo adjudication.

8. Per contra, the Ld. DR vehemently objected to the admission of those additional evidences.

9. We find that pursuant to the death of the erstwhile Chartered Accountant Mr. Joshi, the assessee could not furnish all the necessary documentary evidences before the lower authorities to support his claim. Hence, we deem it fit and appropriate to admit the additional evidences filed by the assessee before us under Rule 29 of the ITAT rules and restore the entire appeal to the file of the Ld. AO for denovo adjudication in accordance with law qua the issues raised in this appeal. Needless to mention that the assessee be given reasonable opportunity of being heard. The assessee is also at liberty to furnish further evidences, if any, in support of his claim. Hence, the Ld. AO is directed to pass a fresh assessment order qua the issues raised herein uninfluenced by earlier order

passed and based on correct appreciation of facts. The grounds raised by the assessee are disposed of in the above mentioned terms.

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

Order pronounced in the open court on 28.11.2023.

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Dated: 28/11/2023

Neha, Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI