

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 667/MUM/2023
(Assessment Year: 2007-08)**

Nitin A. Shah

31/32, 8th Floor, Giriraj Apartment,
Teen Batti, Walkeshwar,
Mumbai - 400006
[PAN: AAHPS3826K]

..... **Appellant**

ITO, 19(2)(4), Mumbai,

Matru Mandir, Tardeo,
Grant Road, Mumbai - 400007

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Tushar Nagori
For the Respondent/Department : Shri S.K. Jain

Date

Conclusion of hearing : 20.09.2023
Pronouncement of order : 11.12.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 25/05/2021, passed by the Ld. Commissioner of Income Tax (Appeals)-47[hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2007-08, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 30/03/2015, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:
 1. *"On the facts and circumstances of the case and in laws the Ld. CIT(A) erred in confirming the assessed income at Rs. 84,59,245/- as against the returned income of Rs. 9,31,190/-"*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not holding the assumption of jurisdiction by the Ld. Assessing Officer as bad in law as the conditions laid down for initiating re-assessment proceedings u/s 148 of the Act have not been fulfilled.*
 3. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in converting the protective addition of Rs. 49,83,000/- made by the Ld. A.O. to substantive addition in the hands of the appellant.*
 4. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in not holding that the Learned Assessing Officer erred in not providing an opportunity to cross examine to the appellant while relying on a third-party statement as the same was also in violation of the principles of natural justice.*
 5. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition made by the Ld. A.O. of Rs 49,83,000/- by treating a genuine loan as accommodation entry without appreciating the fact that the appellant had fulfilled all conditions required u/s 68 of the Act.*
 6. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition of interest of Rs. 1,84,301/- on account of interest allegedly received in cash by the appellant, without providing any corroborative evidence to substantiate the same and without appreciating the fact that the appellant has not earned any interest income, other than mentioned in the return of income.”*
3. The relevant facts in brief are that the Appellant is an individual engaged in the business of trading of shares and securities. The Appellant filed its return of income for the Assessment Year 2007-08 on 27/10/2007 declaring total income of INR 3,74,087/-. Subsequently, the case of the Appellant was reopened and vide notice under Section 148 of the Act was issued on 28/05/2014 on the ground that the Appellant had taken accommodation entry to the tune of INR 49,83,000/- from one Millennium Star during the year.

4. During the course of assessment proceedings, the Appellant has filed return of income in response to notice under Section 147 of the Act and also asked for copy of reason recorded for re-opening of the assessment under Section 148 of the Act. Subsequently, the Appellant filed objection against reopening of the assessment vide letter dated 21/12/2014, the same was disposed of by the Assessing Officer vide, order dated 14/01/2015. Thereafter, the Assessing Officer took up the assessment proceedings and completed the assessment under Section 147 read with Section 143(3) of the Act, vide order dated 30/03/2015, passed under Section 143(3) read with Section 147 of the Act assessing the total income of INR 55,41,388/-, as against the returned income of INR 3,74,087/- after making the following additions:
 - (a) Addition of INR 49,83,000/- on protective basis in respect of unsecured bogus loans
 - (b) Addition of INR 1,84,301/- in respect of interest income received in cash
5. Being aggrieved, the Appellant preferred appeal before CIT(A) against the order dated, 30/03/2015, passed under Section 143(3) read with Section 147 of the Act which was dismissed by the CIT(A) vide order, dated 20/05/2021.
6. The Appellant has preferred the present appeal against the above order, dated 20/05/2021, passed by CIT(A) dismissing the appeal. According to the Registry, the appeal was instituted on 12/04/2023 after a delay 595 days. In the affidavit supporting the application seeking condonation of delay, the Appellant has explained that there was an inadvertent delay in filing the appeal as the Appellant only got knowledge about the order dated 20/05/2021 having been passed on receiving notice, dated 09/02/2023, from Faceless Penalty

Unit in relation to levying of penalty under Section 271(1)(c) of the Act wherein it was stated that the appeal preferred by the Appellant had been dismissed by the CIT(A), vide order, dated 20/05/2021 and therefore, the Appellant was asked to show cause why penalty under Section 271(1)(c) of the Act should not be levied. The Appellant did not receive the copy of the order either through e-mail or through post. On enquiry, the Appellant got to know that the order dated 20/05/2021, passed by the CIT(A) was uploaded on the portal and immediately thereafter the Appellant took steps to get the present appeal filed before the Tribunal. The appeal was actually filed soon thereafter on 12/04/2023.

7. If the date of the knowledge of the order as stated in the affidavit is taken into consideration, there is no delay in filing the appeal. However, in case the date of the order is taken as the date from which the limitation starts running, as pointed out by the Registry, there is a delay of 595 days in filing the appeal. It is the contention of the Appellant that in case the period starting from 15/03/2020 to 28/02/2022 specified in the orders passed by the Hon'ble Supreme Court while dealing with the issue of limitation arising on account of Covid-19 Pandemic is excluded, the effective delay gets reduced to 370 days and the same should be condoned in view of the fact that the Appellant did not receive the order passed by the CIT(A) either by e-mail or post. Per contra, the Ld. Departmental Representative submitted that the Appellant was not vigilant and therefore delay in filing the appeal should not be condoned.
- 7.1. We have heard both the sides in relation to application for condonation of delay in filing of the appeal. The Hon'ble Supreme Court, in the case of Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC) has emphasized that substantial justice

should prevail over technical considerations. The requirement that every day's delay must be explained does not mean that a pedantic approach should be taken. The aforesaid doctrine must be applied in a rational common sense and in pragmatic manner, and more so in circumstances where a litigant does not stand to benefit by lodging the appeal late as is the case before us. It is not disputed by the Revenue that copy of the order passed by the CIT(A) was not served upon by the Appellant either by e-mail or through registered post. Further, the order was passed by the CIT(A) at a time when the Covid-19 pandemic was in place. The Appellant filed the appeal within a reasonable time after obtaining knowledge of the appeal having been dismissed by the CIT(A) through penalty notice dated 09/02/2023, issued by the Assessing Officer. After considering the totality of facts and circumstances leading to the filing of the appeal we are of the view that the delay in filing of the appeal needs to be condoned in view of the explanation furnished by the Appellant which we find to be reasonable. Further, in the facts of the present case, the Appellant was not set to gain by delay in filing of the appeal before the Tribunal. In our view, the Appellant was prevented by reasonable cause from presenting the appeal within limitation. Accordingly, the delay in filing the present appeal is condoned.

8. Now we would proceed to adjudicate the grounds raised in the present appeal which have been reproduced in paragraph 2 above.

Ground No. 3 to 5

9. At the outset, advancing arguments in relation to Ground No. 3 to 5 directed against protective addition of INR 49,83,000/- made by the Assessing Officer and confirmed by the CIT(A) in respect of bogus loan transactions, the Ld. Authorised Representative for the Appellant appearing before us submitted that the Appellant was son-

in-law of Mr. Bhanwarlal Jain. Inviting our attention to paragraph 5 v). of the Assessment Order, the Ld. Authorised Representative for the Appellant submitted that the Assessing Officer had noted that the commission amount in respect of bogus loan transactions added in the hands of Mr. Bhanwarlal Jain, who had admitted that the concerns in the name of his son-in-law were also managed by him, for the assessment year under consideration was more than the loan amount of INR 49,83,000/-, and therefore, addition was made in the hands of the Appellant on protective basis. The substantive additions made in the hands of Mr. Bhanwarlal Jain have since been confirmed by the Tribunal and therefore, the protective addition made in the hands of the Appellant should be deleted.

- 9.1. Per contra, the Ld. Departmental Representative submitted that while it is correct that the substantive addition made in the hands of Mr. Bhanwarlal Jain have been confirmed by the Tribunal. It was not clear whether the additions made in the hands of the Appellant pertaining to the loan transaction under consideration has been confirmed on substantive basis in the hands of Mr. Bhanwarlal Jain. According to the Ld. Departmental Representative, this aspect requires consideration and therefore, he submitted that the Assessing Officer be granted an opportunity to verify the aforesaid facts before deleting the additions made in the hands of the Appellant on protective basis.
- 9.2. Keeping in view, the submissions advanced by both the sides, we remit the issue to the file of the Assessing Officer with the directions to delete the protection addition made in the hands of the Appellant to the extent the same has been confirmed in the hands of Mr. Bhanwarlal Jain. The Assessing Officer shall grant reasonable opportunity of being heard to the Appellant. The Appellant is directed

to furnish all the necessary documents and details in support of the contention that the entire protective addition made in hands of the Appellant stands confirmed on substantive basis in the hands of Mr. Bhanwarlal Jain. In terms of the aforesaid, Ground No. 3 to 5 raised by the Appellant is allowed for statistical purposes.

Ground No. 6

10. Ground No. 6 raised by the Appellant is directed against the addition of INR 1,84,301/- made by the Assessing Officer in respect of interest on loans advanced by the Appellant and received in cash. In appeal, the CIT(A) decline to grant any relief on this issue and confirmed the aforesaid additions. Being aggrieved, the Appellant has carried the issue in appeal before us.
 - 10.1. We have heard the rival submissions and perused the material on record.
 - 10.2. During the appellate proceedings before us, the Appellant has failed to controvert the concurrent findings returned by the Assessing Officer (in paragraph 6 to 6.4 of the Assessment Order) and the CIT(A) (in paragraph 13 to 15 of the order impugned). We note that the CIT(A) has, after taking into consideration the statement recorded and the documents available on record, concluded that the Appellant was charging interest on loans at the rate of 18% out of which interest at the rate of 12% was received by cheque and recorded in books of accounts, whereas the balance interest at the rate of 6% was received in cash and was not disclosed by the Appellant. There is nothing on record to persuade us to take a view different from the view taken by the Assessing Officer and the CIT(A). Accordingly, we dismiss Ground No. 6 raised by the Appellant as being without merit.

Ground No. 2

11. Ground No. 2 raised by the Appellant is directed against the assumption of jurisdiction by the Assessing Officer under Section 148 of the Act.

11.1. We note that the CIT(A) had rejected the Appellant's challenge to the initiation of reassessment proceedings under Section 147 of the Act concluding as under:

"8. From the above facts, it is clear that the Assessing Officer had reopened the assessment on the basis of specific information received from Investigation Wing, Mumbai to the effect that the assessee had taken accommodation entries in nature of unsecured loan of Rs.49,83,000/-. This was sufficient reason at the end of the Assessing Officer to proceed against assessee u/s.148. It may be stated that at the time of the issue of notice u/s.148, the Assessing Officer is only forming a broad opinion, on the basis of material in his possession that some income had escaped assessment. Therefore, the action of the Assessing Officer appears to be justified and I do not find any anomaly in the same. Further, the Assessing Officer had followed due process of law as laid down by the Hon'ble Supreme Court in the case of M/s GKN Drive Shaft. He has provided a copy of reasons recorded and has disposed off objections raised by the assessee.

8.1 Therefore, this ground taken by the assessee is therefore, rejected."

11.2. We concur with the above findings returned by the CIT(A). The reassessment proceedings in the present case were initiated after formation of belief by the Assessing Officer that income had escape assessment and after taking necessary approvals. The aforesaid belief was formed on the basis of specific information received from the Investing Wing that the Appellant had taken bogus accommodation entry in the nature of unsecured loan of INR 49,83,000/- and other fresh tangible material in possession of the

Assessing Officer. Copy of the reasons recorded for reopening the assessment was furnished to the Appellant and the objections filed by the Appellant were disposed off by the Assessing Officer following the due process of law. In our considered view, in the facts and circumstances of the present case the correctness of reopening of assessment cannot be faulted. Accordingly, we confirm the action of the authorities below on this point and decline to interfere in the matter. Further, during the course of hearing, it was contended on behalf of the Appellant that the protective addition should be deleted in view of the fact that the substantive addition have been confirmed in the hands of Mr. Bhanwarlal Jain. Therefore, Ground No. 2 raised by the Appellant had, in effect, become infructuous as far as the Appellant is concerned.

11.3. In view of the above, Ground No. 2 raised by the Appellant is dismissed.

Ground No. 1

12. Ground No. 1 does not require adjudication and the same is disposed off as being general in nature.
13. In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 11.12.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 11.12.2023
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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