

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

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

**ITA No. 3214/MUM/2023
(Assessment Year: 2018-19)**

Rajendra Mulchchand Verma,
1406/14A, Nirlon Compound,
Goregaon (East) - 400063
[PAN: AARPV5135G]

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Appellant

ACIT-DCIT,
Central Circle 4(3), Mumbai,
19th Floor, Air India Building,
Nariman Point, Mumbai - 400021

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : Shri Viraj Mehta
For the Respondent/Department : Smt. Mahita Nair

Date

Conclusion of hearing : 02.01.2024
Pronouncement of order : 05.01.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 20/07/2023, passed by the Ld. Commissioner of Income Tax (Appeals) 52, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 28/05/2021, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:
 - "Ground No. 1:
 - 1 a. The Ld. AO has erred in making an addition of Rs.

9,75,97,928/- without issuing a show cause notice as per the provisions of the law. The appellant contends that the order of the Ld. AO making an addition without the issue of show cause notice is bad in law and needs to be quashed.

b. The Ld. CIT(A) has erred in accepting such order.

c. The appellant contends that the order passed by the Ld. AO is bad in law and needs to be quashed in toto.

Ground of Appeal No.2:

a. The Ld. AO has erred in making an addition of Rs. 9,75,97,928/- in respect of loan taken during the year on account of Unexplained Cash Credit u/s. 68.

b. The Ld. CIT(A) has erred in law and in facts in confirming addition on account of unexplained cash credits u/s 68 of the Act amounting to Rs. 57,00,000/-. Without appreciating the fact that the appellant had filed PAN, ledger of party and bank statement of the appellant evidencing the receipt of loan from the party, therefore the appellant had produced all the primary evidence to prove identity of party, genuineness of transaction and creditworthiness of the parties.

c. The appellant contends that the order passed by the Ld. AO is against the provisions of the law and needs to be deleted.”

3. The relevant facts in brief are that the Appellant has filed return of income for the Assessment Year 2018-19 on 31/10/2018 declaring total income at INR 3,15,60,300/-. The case was selected for scrutiny. During the assessment proceedings, the Assessing Officer noted that that the Appellant has shown unsecured loans amounting to INR 24,24,75,514/- as outstanding as on 31/03/2014 and out of the same the Appellant had received unsecured loan amounting to INR 9,75,97,928/- during the relevant previous year. In this respect, vide notice under Section 142(1) of the Act, the Appellant was asked to furnish party-wise details of unsecured loans during the year along with loan confirmation & copy of loan account from the parties

concerns, and also substantiate the genuineness, identity and creditworthiness of the lenders with supporting documents. In response the Appellant filed reply/submission dated 29/10/2020. After considering the aforesaid reply/submission, the Assessing Officer concluded that the Appellant had failed to explain the source and nature of the loans taken during the relevant previous year and also failed to establish identity, creditworthiness of the lenders and genuineness of the transactions with cogent documentary evidence. The Appellant had, thus, failed to discharge the primary onus of proving a transaction in terms of Section 68 of the Act and therefore, the Assessing Officer made an addition of INR 9,75,97,928/- in the hands of the Appellant vide Assessment Order dated 28/05/2021, passed under Section 143(3) of the Act.

4. Being aggrieved, the Appellant has preferred appeal before the CIT(A) and furnished additional evidence. The CIT(A) called for a remand report from the Assessing Officer which was furnished by the Assessing Officer and a copy of the same was also provided to the Appellant vide notice dated 30/06/2023. The Appellant vide letter, dated 10/07/2023, filed response to the remand report. Taking the aforesaid into consideration, the CIT(A) admitted the additional evidence. Thereafter, considering the additional evidence taken on record, the CIT(A), vide order dated 20/07/2023, deleted all addition made under Section 68 of the Act except the addition of INR 57,00,000/- made by the Assessing Officer in respect of loan received from one Mr. Hariram Jagdish (for short 'HJ').
5. Not being satisfied with the above relief granted by the CIT(A), the Appellant has preferred the present appeal before the Tribunal challenging the order of CIT(A) confirming the addition of INR 57,00,000/- in the hands of the Appellant.

6. The Ld. Counsel for the Appellant appearing before us contended that in respect of the loan of INR 57,00,000/- taken by the Appellant from HJ during the relevant previous year, the Appellant had furnished copy of own bank statement showing receipt of loan through banking channel, along with PAN and address of HJ which were not considered by the CIT(A).
7. Per contra, the Ld. Departmental Representative submitted that the Appellant had failed to discharge the primary onus in terms of Section 68 of the Act to prove the genuineness of the transaction and creditworthiness of the lender. Neither during the assessment proceedings nor before the CIT(A) did the Appellant produce any documents substantiating loan transaction such as loan confirmation or bank statement of HJ and thus, failed to explain the nature and source of the credit of INR 57,00,000/-. Further, the Appellant also failed to produce the HJ before the Assessing Officer or the CIT(A).
8. In rejoinder, the Learned Authorised Representative for the Appellant reiterated that the Appellant had filed its own bank statement as well as address and Permanent Account Number of the Lender. However, the CIT(A) failed to take the same into consideration. The Ld. Authorised Representative for the Appellant further submitted that in case an opportunity is granted, the Appellant would be able to satisfy that the loan transaction under consideration was genuine, and shall also make efforts to produce the lender before the concerned income tax authority. Ld. Authorised Representative for the Appellant also emphasized upon the facts that out of addition of INR 9,75,97,928/- made by the Assessing Officer, the CIT(A) has deleted all additions except addition of INR 57,00,000/- which also represented genuine loan transaction undertaken by the Appellant.

9. We have heard the rival submissions and perused the material on record. We note that while sustaining the addition, the CIT(A) has stated that the Appellant has failed to furnish income tax return of HJ. However, we note that though the Appellant has furnished PAN and address of the lender/HJ, the order passed by the CIT(A) is silent as to inquiry/investigation, if any, carried out by the CIT(A) or the Assessing Officer during the remand proceedings. No reference has been made by the CIT(A) to the ledger account, and bank statements furnished by the Appellant showing receipt of money through banking channels. We further note that out of total addition of INR 9,75,97,928/- made by the Assessing Officer under Section 68 of the Act, already deleted the addition of INR 9,18,97,928/- in respect of loans taken from various parties. In our view, the fact that the Appellant had neither filed income tax return weighed heavily with the CIT(A) while sustaining the addition of INR 57,00,000/-. During the appellate proceedings before us, the Learned Authorised Representative for the Appellant sought another opportunity to discharge the onus cast upon the Appellant under Section 68 of the Act by furnishing relevant details/documents in support of loan transaction of INR 57,00,000/- and also to produce lender/HJ for explaining the source and nature of the credit of INR 57,00,000/-. Keeping in view the facts and circumstances of the present case, we deem it appropriate and in the interest of justice to grant another opportunity to the Appellant and therefore, set aside the order passed by the CIT(A) confirming the addition of INR 57,00,000/- restoring the issue back to the file of the CIT(A) for denovo adjudication as per law. The Appellant is directed to file before the CIT(A) the relevant documents/details/confirmation on which the Appellant wishes to place reliance to support his claim/contentions forthwith on receiving notice of hearing of appeal by the CIT(A). In

terms of the aforesaid, Ground No. 2(b) raised by the Appellant is allowed for statistical purposes, while all the other grounds raised by the Appellant are dismissed as being infructuous at this stage.

10. In result, the present appeal preferred by the Assessee is partly allowed

Order pronounced on 05.01.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 05.01.2024
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