

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.177/Ind/2023
(Assessment Year: 2018-19)

ACIT, Circle -II Bhopal	vs.	M/s. UR Are Pvt. Ltd. 204A, Annapurna Housing Society, Opp. Oshiveera park Above Mumbai Darbar, New Link Road Mumbai
(Appellant /Revenue)		(Respondent/ Assessee)
PAN: AAACU9550G		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.01.2024	
Date of Pronouncement	19.01.2024	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the Revenue is directed against the order dated 20.02.2023 of Commissioner of Income Tax (Appeal), for Assessment Year 2018-19.

2. None has appeared on behalf of the assessee/respondent despite the various notices sent through registered post AD, E-mail ID as well as through AO for service. It transpires from the record that

notices issued to the assessee were received back unserved with the postal remark that “addressee left without instruction”. The notice sent through E-mail duly delivered. In the interest of justice the bench also directed to serve the notice through the AO and in response the AO has filed the report of service of notice. The AO in the report has stated that the inspector was deputed to serve a copy of notice on Smt. Shivani Jhariya director of the assessee respondent company however she refused to accept the notice. Therefore, it is reported that the notice was served by affixture by inspector on the door of Flat No.301, A4 Block, Canal Kinship Salaiya Bhopal-462026 occupied by Smt. Shivani Jhariya director of the assessee company. The Affixture report is also filed with four witnesses. Accordingly the bench proposes to hear and dispose of this appeal ex-parte.

3. The Revenue has raised following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 78,00,10,272/-?”

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 78, 0 ,10,272/- on the basis that there is mistake in assessment order due to incorrect mention of section ignoring that erroneous 'construction' of transaction was only due to unjustified non-compliance by the assessee during the assessment proceedings (duly recognized in para 3.1.2 of appeal order) which led to assessment u/s 144?

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 78,00,10,272/- on account of incorrect section mentioned in asstt order, without utilizing the wide powers available to him under the

Income Tax Act to make or cause to be made any such further enquiry as he thought fit and give directions to correct the mistake done by the AO in terms of the ratio of SC decision in case of Commissioner of Income Tax Vs. Kanpur Coal Syndicate (1964) 53 ITR 225?

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 78,00,10,272/- ignoring Jansampark Advertising & Marketing (P.) Ltd [2015] 56 taxmann.com 286 (Delhi) which held that though it is obligation of Assessing Officer to conduct proper scrutiny of material, in event of Assessing Officer failing to discharge his functions properly, the obligation to conduct proper inquiry shifts to Commissioner (Appeals) and Tribunal and they cannot simply delete addition made by Assessing Officer?"

4. The Ld. DR has submitted that the case of the assessee was taken up for compulsory scrutiny u/s 143(3) of the Act. The AO issued notice u/s 143(2) as well as the u/s 142(1) but there was no response on behalf of the assessee. Accordingly the AO issued show cause notice u/s 144 of the Act on 23rd June 2021 but still there was no response on behalf of the assessee. He has further submitted that the AO has specifically asked the assessee to file the audit report as per the provisions of section 44AA of the Act and also asked the reasons of default of not filing the audit report along with return of income. However, the assessee failed to furnish the audit report as well as reasons for such default. The AO observed from the balances of the loans and advances as on 31.03.2017 and 31.03.2018 that there is a repayment of loan of Rs. 78 crore during the assessment year 2018-19. The assessee was asked to submit the details of the repayment of loans along with documentary evidences vide show cause notice u/s 144 of the Act. However the

assessee has failed to furnish the details of repayment of loans along with documentary evidences. Accordingly the AO made an addition of Rs.78,00,10,272/-. Ld. DR has further submitted that the Ld. CIT(A) had deleted the addition only on the reason that the provisions of section 69C are not applicable in respect of repayment of loan but there was no factual verification carried out by the CIT(A) about the source of the said repayment of loan. Thus, ld. DR has submitted that when the assessee has not appeared before the AO nor filed any supporting evidence then deletion of addition by the CIT(A) without referring any evidence to explain the source of the repayment is not justified. He has thus pleaded that matter may be set aside to the record of the AO for verification of the necessary details to be filed by the assessee and then adjudication of the issue.

5. We have considered the submissions of the Ld. DR and carefully perused impugned order of the CIT(A). The AO has made addition of Rs.78 crores & some odd amount on account of unexplained repayment of the loan by the assessee during the year under consideration. The CIT(A) has deleted this addition by noting the fact that there was an increase in the loans and advances during the year under consideration and therefore, the addition made by the AO on account of repayment of loan is not sustainable. The CIT(A) has not referred any documents or evidence in support of the repayment or increase of the loan during the year under consideration. Though there may be some mistake in the details of the loans and advances as taken by the AO however, even if there is

increase in the loan and advances during the year under consideration the assessee is required to satisfy the conditions as provided u/s 68 of the Act. Since nothing has been filed by the assessee and even the audit report was also not filed to ascertain the correct facts about the loan taken by the assessee or repayment of loan if any. Therefore, in the facts and circumstances of the case, we are of the considered view that this matter is required a proper verification and examination at the level of the AO regarding the transactions of loan and advances and repayment of the loan if any during the year under consideration. Hence, the matter is set aside to the record of the AO for fresh adjudication after giving one more opportunity to the assessee to furnish the necessary details and evidence.

6. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on 19.01.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 19.01.2024

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*