

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.7459/Del/2019
निर्धारणवर्ष/Assessment Year: 2013-14

Bharat Bhushan Bansal B-21A, Shivangi Kunj, Paschim Vihar, New Delhi. PAN No.AMXPB9343G	बनाम Vs.	ITO Ward-43(1), Civic Centre, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Paras Dawar, CA
Revenue by	Shri Kanv Bali, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	16.11.2023
उद्घोषणाकीतारीख/Pronouncement on	14.02.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld.
CIT(Appeals)-34, New Delhi dated 17.06.2019 for the AY 2013-14.

Assessee in his appeal raised the following grounds:

1. "The order under appeal is bad in law and is against the facts of case as the impugned order has been passed under the circumstances where the appellant failed to furnish the details and evidences in support of his claim due to the reason beyond the reasonable control of the appellant.

2. *The Ld.CIT(A) was not justified in rejecting the books of accounts as the assessee was prevented by sufficient cause in not submitting the relevant information.*
3. *The Ld.CIT(A) was justified in assuming arbitrarily gross profit margin of 12% in the business of assessee and making addition of Rs.5,74,276/-.*
4. *The Ld. CIT(A) was not justified in making addition of Rs.20,34,004/- as unexplained cash credit since the assessee was prevented by sufficient cause in furnishing relevant documents confirming the credit worthiness and genuineness of transaction.*
5. *The Ld.CIT(A) was not justified in making addition of Rs.50,000/- as unexplained cash credits since the assessee was prevented by sufficient cause in furnishing relevant documents confirming the financial capacity and genuineness of donor.*
6. *The Ld.CIT(A) was not justified in making addition of Rs.17,33,100/- as unexplained cash credit since the assessee was prevented by sufficient cause in furnishing relevant information regarding deposits appearing in bank statements.”*

2. Briefly stated the facts are that the Assessee Prop. of M/s Bharat Stores filed his return of income on 29.08.2013 declaring income of Rs.4,95,030/-. The case was selected for scrutiny and issued notice u/s 143(2) and 142(1) of the Act. As the assessee did not comply with various notices issued by the Assessing Officer (for short referred as the “AO”) as narrated in para 2 at page 2 of the assessment order the AO completed the assessment u/s 144 of the Act on 21.03.2016 determining the income of the assessee at

Rs.50,03,660/- . While doing so, the AO made addition of Rs.5,74,276/- estimating the gross profit at 12% as against 8.5% declared by the assessee from the business of trading in wheat, flour, paddy rice, etc. by rejecting the books of account. The AO also made addition of Rs.20,34,004/- u/s 68 of the Act in respect of unsecured loans. Further, the AO made addition of Rs.50,000/- u/s 68 of the Act rejecting the claim of the assessee for deduction u/s 56 in respect of gift received. The AO also made addition of Rs.17,33,100/- u/s 68 of the Act in respect of investment made by the assessee in purchase of property disbelieving the sources of investment.

3. The assessee preferred appeal before the Ld.CIT(Appeals) and adduced the additional evidences. The Ld.CIT(A) called for remand report from the AO and decided the appeal sustaining the additions/disallowances made by the AO.

4. In respect of estimation of gross profit at 12% in the business of the assessee and the addition made at Rs.5,74,276/- the Ld. Counsel for the assessee submits that the books of accounts were audited and the book results were in fact accepted while completing the assessment for the AY 2014-15 and, therefore, there is no

justification in estimating the gross profit at 12% as against 8.15% declared by the assessee.

5. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

6. Heard rival submissions, perused the orders of the authorities below. We observe that in the course of assessment proceedings the assessee never produced books of accounts nor responded to any of the notices issued by the AO and, therefore, the AO rejected the books of accounts and made best judgment assessment u/s 144 of the Act estimating the gross profit at 12%. Considering the submissions made by the assessee the Ld. CIT(A) sustained the estimation of gross profit at 12% with the following observations:

“6.1 The appellant is engaged in the business of flour, wheat and pulses under the name and style M/s Bharat Stores. During the year under consideration, appellant has declared gross turnover at Rs.1,49,18,713/- and gross profit of Rs.12,15,969/- yielding GP rate of 8.15%. The appellant has declared net profit at Rs.5,95,429/- on the sales of Rs.1,49,18,713/-. The appellant is not maintaining quantitative details of stock and item wise inventory was not furnished before the AO. The appellant failed to furnish supporting documentary evidences for purchases, i.e. purchase bill, copies of account of parties, ledger account copies and mode of payment have not been produced. The appellant has debited various expenses in the trading and profit and loss account but no evidence was produced for examination. The auditor has mentioned

in the audit report that books of account have been examined but appellant have not produced any books of account before the AO. Thus, AO has rejected the books of account of the appellant u/s 145(3) and applied GP rate at 12% as against 8.15% shown by appellant keeping in view prevailing market conditions and added difference of undeclared profit at Rs.5,74,276/- in the taxable income of the appellant.

6.2 During the course of appellate proceedings, appellant has submitted that AO was not justified in rejecting the books of account. The appellant has relied on various decisions of judicial authorities in which it is held by them that where AO has not find any specific defect in the bills, vouchers and books of account then rejection of books of account is not justified.

6.3 I have considered the facts of the case, finding of the AO, remand report and submissions of the appellant. During the course of assessment proceedings, appellant has not produced any books of account for the verification before the AO. Appellant failed to furnish purchase bills, copies of account of the parties, ledger account copies, mode of payment, inventory of opening and closing stock, stock register and evidences for payment of various expenses. In the absence of books of account and bills and vouchers trading results shown by the appellant could not be relied upon and AO is justified in rejecting books u/s 145(3). Even during the remand proceedings, appellant has not produced books of accounts and evidences in support of expenses before the AO, thus AO has correctly estimated the GP @ 12%, addition made by the AO at Rs.5,74,276/- is hereby confirmed.”

7. As could be seen from the above, it is the observation of the Ld.CIT(A) that the assessee is not maintaining quantitative details of stock, item-wise inventory, etc. and they were not furnished before the AO. It is also the observation that the assessee failed to furnish

supporting documentary evidences for purchase bills, copies of account of parties, ledger accounts, mode of payment, etc. Assessee debited various expenses in the trading and profit & loss account but no evidence was produced for examination. Though the auditors have reported that the assessee had maintained the books of accounts and no books of accounts were produced by the assessee before the AO for verification. Therefore, the Ld.CIT(A) held that the AO has rightly rejected the books of accounts and estimated the gross profit at 12%. None of these observations were disproved by the assessee. In the circumstances, we do not see any valid reasons to interfere with the findings of the Ld.CIT(A). Thus, ground no.3 of grounds of appeal of the assessee is rejected.

7.1 Coming to ground no.4 of grounds of appeal i.e. in respect of addition made u/s 68 of Rs.20,34,004/- the Ld. Counsel for the assessee submitted that out of this amount an amount of Rs.6 lakhs received from Smt. Nirmala Devi Mittal is opening balance and the said loan was not received during the assessment year under consideration i.e. 2013-14. The Ld. Counsel for the assessee referring to page no.126 of the Paper Book which is the confirmation of accounts from Nirmala Devi Mittal submits that the confirmation of accounts from 01.04.2012 to 31.03.2013 clearly shows that this

amount is opening balance as on 01.04.2012 and this amount is not received during the assessment year under consideration and, therefore, there is no reason for making addition in this assessment year.

7.2 The Ld. Counsel for the assessee further submits that in respect of the loan amount of Rs.14,34,004/- received from his wife Smt. Priti Bansal. It is submitted that assessee has taken loan from his wife during the assessment year under consideration. The Ld. Counsel referring to page 123 of Paper Book which is the bank statement of his wife Smt. Priti Bansal for the period from 01.01.2010 to 30.04.2014 submits that Smt. Priti Bansal advanced loan of Rs.13 lakhs on 01.03.2013 and Rs.2 lakhs on 02.03.2013 through NIFT and, therefore, the identity, genuineness and creditworthiness of the lender cannot be doubted. The Ld. Counsel further submits that it is not the case of the Revenue that the lender has deposited cash and advanced loan to the assessee, therefore, the addition is not warranted.

7.3 The Ld. Counsel further submits that even in the remand proceedings all these were examined by the AO and in fact the AO in the remand report stated that assessee filed confirmation of loans

from relatives and also the bank statements and Income tax returns and the same is considered and found in order.

8. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

9. Heard rival submissions, perused the orders of the authorities below and the evidences placed on record. On perusal of the confirmations of accounts which is placed at page no.126 of Paper Book of the lender Smt. Nirmala Devi Mittal it is observed that the loan of Rs.6 lakhs is appearing as opening balance as on 01.04.2012. Therefore, it is very much clear that the said Rs.6 lakhs was not lent to the assessee during the assessment year under consideration. In the circumstances, we direct the AO to delete Rs.6 lakhs received by the assessee from Smt. Nirmala Devi Mittal which was treated as unexplained cash credit u/s 68 of the Act for the assessment year under consideration i.e. 2013-14.

10. Coming to the addition of Rs.14,34,004/- made u/s 68 of the Act in respect of loan from Smt. Priti Bansal, we observed that Smt. Priti Bansal advanced loan to the assessee, Rs.13 lakhs on 01.03.2013 and Rs.2 lakhs on 02.03.2013 through NIFT. We also observed from the bank statement that there were no cash deposits

made prior to advancing such loan to the assessee by Smt. Priti Bansal in her account. On perusal of the bank statement, we noticed that on 19.02.2013 the lender has obtained funding of Rs.15 lakhs from out of which Rs.13 lakhs was advanced to the assessee on 1st and 2nd March, 2013. In the circumstances, we hold that the assessee has discharged the identity, genuineness and creditworthiness of the lender who is none other than his wife Smt. Priti Bansal. Therefore, we direct the AO to delete the addition of Rs.14,34,004/- made u/s 68 of the Act. Ground no.4 of grounds of appeal of the assessee is allowed.

11. Coming to ground no.5 which is in respect of addition of Rs.50,000/- made u/s 68 of the Act it is the submission of the assessee that this amount represents gifts received from two persons namely Ms. Sangeeta and Ms. Jyoti from whom the assessee has received Rs.25,000/- each and they are the assessee's friends, mother and wife respectively. Ld. Counsel for the assessee referring to page 137 of the Paper Book submits that the donors have executed gift deeds providing all the details i.e. the mode of gift their addresses and PAN numbers and the gift deeds were duly notarized. The Ld. Counsel further submits that the assessee claimed that these gifts cannot be assessed as income from other

sources and they are exempt u/s 56(2)(vii) of the Act as these gifts are not exceeded Rs.50,000/- as provided in the section.

12. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

13. Heard rival submissions, perused the materials placed before us. On perusal of the gift deeds, we noticed that the assessee received Rs.25,000/- each from Ms. Sangeeta and Ms. Jyoti and the donors have given their PAN numbers and the mode of gift was through NIFT. Therefore, the identity, genuineness of the transaction is proved. In the circumstances, we hold that the AO could not have treated this income as unexplained cash credit u/s 68 of the Act. Thus, we direct the AO to delete the addition of Rs.50,000/- made u/s 68 of the Act. Ground no.5 of the grounds of appeal of the assessee is allowed.

14. Coming to the last ground i.e. ground no.6 of grounds of appeal which is in respect of addition of Rs.17,33,100/- made u/s 68 of the Act in respect of investment made by the assessee. The Ld. Counsel for the assessee referring to page 143 of the Paper Book which is the sale deed of the property submits that assessee has purchased property for a sum of Rs.16,35,000/- on 04.03.2013. The

Ld. Counsel submits that the loan taken by the assessee from his wife on 1st and 2nd March, 2013 is the source for purchase of property on 04.03.2013 and, therefore, there is no justification in treating the investment in property as undisclosed income u/s 68 of the Act.

15. Ld. DR supported the orders of the authorities below.

16. We have heard the rival submissions, perused the materials placed before us. On perusal of the bank statements of Smt. Priti Bansal which is placed at page 123 of the Paper Book and the bank statement of the assessee which is placed at pages 106 and 107, we observed that Smt. Priti Bansal advanced loan of Rs.13 lakhs and Rs.2 lakhs on 1st and 2nd March, 2013 and the assessee paid sale consideration of Rs.16,35,000/- on 02.03.2013 to Shri Sukhwinder Pal Sing from whom the assessee purchased the property. The said payment was made through cheque no.659980 dated 01.03.2013 which was cleared by the bank on 02.03.2013. Therefore, the explanation of the assessee that the loan taken by him from his wife Smt. Priti Bansal is the source for purchase of property cannot be brushed aside. In the circumstances, we direct the AO to delete the addition of Rs.17,33,100/- made u/s 68 of the Act. Ground no.6 of grounds of appeal of the assessee is allowed.

17. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 14/02/2024

**Sd/-
(G.S. PANNU)
VICE PRESIDENT**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 14/02/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi