

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.373/Ind/2022
Assessment Year : 2013-14

Delhi Traders, G-2/119-A, Milestone, 100 Complex, Trilanga, Gulmohur Colony, Bhopal	बनाम/ Vs.	Income-tax Officer, 2(4), Bhopal
(Appellant/Assessee)		(Respondent/Revenue)
PAN: AAHFD 1362 P		
Assessee by	Shri Sumit Nema, Sr. Adv., Shri Gagan Tiwari and Shri Arun Dwivedi, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.02.2024	
Date of Pronouncement	15.02.2024	

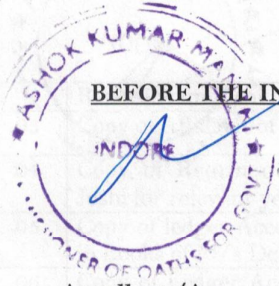
आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 02.09.2022 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 21.03.2016 passed by learned ITO, 2(4), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2013-14, the assessee has filed this appeal.

2. Ld. Senior Advocate, Shri Sumit Neema, representing the assessee/ appellant straightaway submitted that the AO has made additions u/s 68 in

respect of unexplained unsecured loans/sundry creditors which the assessee contested in first appeal but did not get any relief. He further submitted that the impugned additions have been made by AO/upheld by first-appellate authority for the reason that the assessee was not able to file documents of/from concerned lenders/creditors. However, the assessee has subsequently received documents from concerned parties and the same are being submitted in the form of a separate paper-book. He submitted that the assessee has moved an application under Rule 29 of Income-tax (Appellate Tribunal) Rules, 1963 for admission of these documents as additional evidences. A copy of the application filed by the assessee, which also contains the details of additional evidences, is scanned and reproduced below :-



BEFORE THE INCOME TAX APPELLATE TRIBUNAL, INDORE
BENCH, INDORE

ITA No. 373/Ind/2022

(Hearing Fixed for: 22/11/2023)

Appellant / Assessee : M/s Delhi Traders, Bhopal

V.

Respondent : Income Tax officer – 2 (4), Bhopal

APPLICATION UNDER RULE 29 OF APPELLATE TRIBUNAL
RULE, 1963 FOR PRODUCTION OF ADDITIONAL EVIDENCE
BEFORE THE TRIBUNAL

The Applicant humbly begs to submit as under:-

1. The aforesaid Appeal filed by the Appellant/ Applicant is fixed for hearing on 02.11.2023 before this Hon'ble Tribunal.
2. That the present Appeal has been filed before this Hon'ble Tribunal against the order dated 02/09/2022 passed by National Faceless Appeal Centre (NFAC), Delhi (Appeal No. CIT (A) -1 /10011/2016-17 related to A.Y 2013-14.
3. That by way of Present Application the Assessee is filing Following Additional Documents :-

S. No.	Document / Particular	Page No.	Annexure
01	Copy of letter dated 22/09/2023 by M/s Delhi Traders to Shri Radheshyam Joshi	11-12	A/1
02	Copy of Letter dated 05/10/2023 by Shri	13-13A	A/2

03	Radheshyam Joshi to M/s Delhi Traders Copy of Affidavit of Shri Radheshyam Joshi	14-16	A/3
04	Copy of Return of Income of Shri Radheshyam Joshi for relevant year	17-25	A/4
05	Copy of ledger Account of M/s Gulmohar Traders in Books of M/s Delhi Traders	26	A/5
06	Copy of Ledger Account of M/s Delhi Traders in books of M/s Gulmohar Traders	27	A/6

4. That vide order dated 02/09/2022 the Ld. NFaC, Delhi has confirmed the Assessment order and sustained the Following Additions:—

- i. Addition of unsecured loan of Rs 1,51,89,207/- u/s 68 of the Act taken from Shri Radheshyam Joshi and;
- ii. Addition of unsecured loan amounting to Rs 15,00,000/- in name of Shri Alok Singh, Rs 15,00,000/- in name of Shri Dhanbahadur Singh, Sidhi and Rs 4,60,000/- in name of Smt. Uma Singh Rawa.

5. Additional Documents related to unsecured loan taken from Shri Radheshyam Joshi (Relevant Documents A/1 to A/4 marked above-mentioned in tabulated chart)

5.1 That during the financial year 2012-13 related to Assessment year the Assessee firm has taken unsecured loan from Shri Radheshyam Joshi amounting to Rs 1,51,89,207/-. That Shri Radheshyam Joshi has paid the amount through his account in State bank of India (Account No. 32323604136) bearing IFSC Code SBIN0030099.

5.2 Following are details of Payment made by Shri Radheshyam Joshi :-

Date	Cheque No.	Issued to	Amount
27/06/2012	051509	Delhi Traders	15,00,000/-

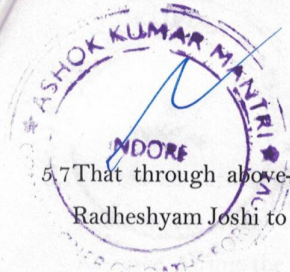
05/11/2012	051521	Delhi Traders	53,75,000/-
30/11/2012	051533	Delhi Traders	10,75,000/-
02/01/2013	051538	Delhi Traders	12,50,000/-
02/01/2013	051536	Delhi Traders	19,76,137/-
04/02/2013	051549	Delhi Traders	26,13,070/-
30/03/2013	051561	Delhi Traders	14,00,000/-
Total			Rs 1,51,89,207/-

5.3 That case of Appellant was selected for Scrutiny Assessment u/s 143 (3) of the Act and vide order dated 21/03/2016 the Ld. AO made addition of Rs 1,51,89,207/- u/s 68 of the Act on the ground that Assessee has failed to prove identity, Creditworthiness and genuineness of the Transaction of unsecured loan taken from Shri Radheshyam Joshi amounting to Rs 1,51,89,207/-.

5.4 That being aggrieved by the Assessment order, the Assessee preferred Appeal before the Ld. CIT (A) and vide order dated 02/09/2022 the Ld. CIT (A) confirmed the Assessment order and Addition made in respect of Shri Radheshyam Joshi of unsecured loan.

5.5 That the CIT (A) has given a finding the Assessee has failed to file documentary evidences viz. Income Tax return & PAN of the Radheshyam Joshi to prove the identity of loan Creditor.

5.6 That after passing of CIT (A) order the Appellant filed an Appeal before this Hon'ble Income Tax Appellate Tribunal and during the pendency of Appeal before this Hon'ble Tribunal the Assessee sent a letter dated 22/09/2023 to Shri Radheshyam Joshi. Copy of letter dated 22/09/2023 by M/s Delhi Traders to Shri Radheshyam Joshi is attached herewith as Annexure (A/1)



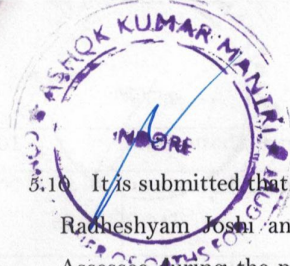
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5.7 That through above-mentioned letter the Assessee made request to Shri Radheshyam Joshi to provide following relevant documents :—

- A copy of Income Tax Return (ITR) for the Financial Year 2012-13 & 2013-14.
- Bank statements or documentation clearly illustrating the transfer and repayment of the loan amount for Financial Year 2012-13 & 2013-14.
- Copy of your PAN Card.
- An affidavit, to be submitted before the Hon'ble ITAT, detailing the circumstances surrounding your non-participation in the assessment proceedings and not providing the copy of Bank Statements, ITR, PAN to us on our oral requests.

5.8 That in the letter sent to Shri Radheshyam Joshi the Assessee has stated the reason for requirement of abovementioned documents at the earliest and in response to the Shri Radheshyam Joshi responded through its letter dated 03/10/2023. Copy of Letter dated 05/10/2023 by Shri Radheshyam Joshi to M/s Delhi Traders is marked as Annexure (A/2)

5.9 That along with letter Shri Radheshyam Joshi also provide his Affidavit wherein Shri Radheshyam Joshi stated the reason for not providing the required documents at early stage to M/s Delhi Traders at their oral request on may occasion. Copy of Affidavit of Shri Radheshyam Joshi is annexed as Annexure (A/3). That along with affidavit Shri Radheshyam Joshi also provided his Return of Income for A.Y 2012-13, 2013-14 & 2014-15. Copy of Return of Income of Shri Radheshyam Joshi is annexed as Annexure (A/4)



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5.10 It is submitted that the Abovementioned Documents i.e. Affidavit of Shri Radheshyam Joshi and Income tax Return was not available with the Assessee during the proceeding before lower authorities as same was not provided by Radheshyam Joshi to the Assessee. That it is submitted that earlier on number of occasions the Assessee has requested to Radheshyam Joshi for providing the required documents, however every time Radheshyam Joshi either denied the access to the Document or some time even not responded. Therefore, the Assessee could not filed the required documents including Affidavit, Income Tax Return & PAN of Radheshyam Joshi to prove the identity of loan creditor.

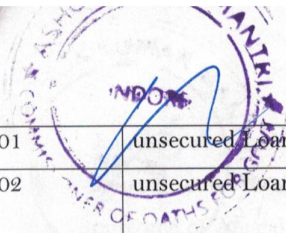
5.11 That now on 05/10/2023 Shri Radheshyam Joshi has only provided the required documents at the written request of Assessee (letter dated 22/09/2023) and therefore the Assessee is filing before this Hon'ble Tribunal.

6. Additional Documents related to General Entry from M/s Gulmohar Traders (Annexure A/5 & A/6)

6.1 That through this Application the Assessee is filing Ledger copy of M/s Gulmohar Traders in books of Assessee firm & ledger copy of Delhi Traders (Assessee) in books of M/s Gulmohar Traders.

6.2 That the Ld. AO has made addition on following Addition in hands of Assessee :-

S.No.	Nature of Addition & made under section	Loan creditor	Amount



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01	unsecured Loan u/s 68	Alok Singh	15,00,000/-
02	unsecured Loan u/s 68	Danbahadur Singh	15,00,000/-
03	unsecured Loan u/s 68	Uma Singh	4,60,000/-

- 6.3 It is submitted that the above unsecured loan qua above-mentioned loan creditor has been added to the income of Assessee u/s 68 of the Act. that right from the Assessment proceedings the Assessee is submitting that no credit / actual transfer of money has been credited to the Account of Assessee by above-mentioned loan creditors but the Id. AO has made addition and further Ld. CIT (A) confirmed the Addition.
- 6.4 It is submitted that basically the above loan creditors namely Alok Singh, Danbahadur Singh & Uma Singh have transfer/remitted by RTGS the amount to bank account of M/s Gulmohar Traders and thereafter the amount so received from above loan creditors to M/s Gulmohar Traders was transferred by journal entry on 17/03/2013 to the account of Delhi Traders.
- 6.5 That though at the proceedings before Ld. AO the Assessee has filed the ledger account of above-mentioned loan creditor but could not file the complete ledger of M/s Gulmohar Trader in books of Assessee and simantaneouly ledger of Assessee in books of M/s Gulmohar Trader.
- 6.6 That now the Assessee is filing above-mentioned Annexure marked as A/5 & A/6 in above tabulated chart as additional documents. That the abovementioned documents could not be filed before Ld. Authorities because the Assessee was of opinion that the Assessee has already filed the ledger of above loan creditor in the books of Assessee where in entry qua M/s Gulmohar Trader is reflecting and showing the narration of

Journal entry and therefore it would be sufficient to establish that only Journal entry was given received by Assessee but looking at the outcome of Appeal proceedings it has become necessary at this stage to file complete copy of ledger of M/s Gulmohar Trader to show that only Journal entry was transferred by the M/s Gulmohar Trader to the Assessee for business purpose.

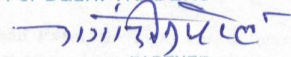
6.7 That M/s Gulmohar Trader and Assessee regularly exchange the entries for business purpose and same is evident from the ledger account filed as Additional documents. That though the Assessee is filing these additional documents but same will not change the nature of arguments rendered before Ld. Lower authorities and also these additional documents are filed in support of ledger account of loan creditor already filed before Lower authorities wherein name of M/s Gulmohar Trader is reflecting. Thus these additional documents may kindly be admitted.

7. It is, therefore, prayed that this application for taking additional Evidence may be allowed & the abovementioned marked Annexures may kindly be taken on record in the larger interest of justice.

Indore

27/11/2023

For DELHI TRADERS



Assessee

3. Ld. AR submitted that these evidences are very crucial for adjudication of assessee's grievances and required to be examined by AO. Therefore, it would be an appropriate action at this stage to remand this matter back to the concerned AO for adjudication afresh after taking into account these evidences and also any evidence as may be produced by assessee during hearing by AO. Ld. DR for revenue did not have any objection to the proposal of Ld. AR but, however, requests the Bench to direct the assessee to ensure proper participation before AO.

5. In view of the consensus by both sides and having regard to the principal of fair play and to impart justice, we are inclined to remand this case back to the file of AO for adjudication afresh. The AO shall consider the additional evidences filed by the assessee as aforesaid and also any other evidence as the assessee may produce before him at the time of hearing. The assessee is also directed to ensure adequate participation in the hearing fixed by the AO and do not seek unnecessary adjournments. Accordingly, this matter is remanded to the file of AO.

6. Resultantly, the appeal is allowed for statistical purposes.

Order pronounced in open court on 15.02.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 15.02.2024

CPU/Sr. PS

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

By order
Assistant Registrar, Income Tax Appellate Tribunal, Indore Bench, Indore