

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 3312/Mum/2023
(Assessment Year: 2012-13)**

Babu Hira Patel Flat No. A 1702, Videocon Tower, Thakur Complex, Kandivali (East), Mumbai- 400101 PAN : AGTPP6170H	Vs.	Deputy Commissioner of Income Tax, Circle-4(1)(1), Room No. 648, Aayakar Bhavan, Mumbai-400020.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Vinay Bhanushali, CA
Revenue/Respondent by : Shri Ashok Kumar Ambastha,
Sr. DR

Date of Hearing : 05.02.2024
Date of Pronouncement : 06.02.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of Commissioner of Income Tax, Appeals, / National Faceless Appeal Centre [in short ‘the CIT(A)’] dated 21.07.2023 for Assessment Year (AY) 2012-13.

2. The assessee is an individual and filed the return of income for AY 2012-13 on 28.09.2012 declaring a total income of Rs.9,90,932/-. The case was selected for scrutiny under CASS and the statutory notices were duly served on the assessee.

The Assessing Officer (AO) during the course of hearing called on the assessee to furnish detailed explanation with regard to the source of funds utilized for investment in property and the assessee in response submitted that loans were taken in order to acquire the property. The AO called on the assessee to furnish details with regard to the identity, genuineness and creditworthiness of the creditors from whom the loans were taken. The assessee submitted various details of 26 creditors from whom the assessee has taken loans totaling to Rs. 2,66,29,315/-. The AO after perusing the details furnished by the assessee accepted the genuineness with regard to 13 creditors to the extent of Rs.63,46,172/-. For the balance 13 creditors the AO held that the assessee failed to establish the creditworthiness and genuineness of the loans taken from the parties. Accordingly, the AO made an addition of Rs. 2,02,83,143/-. The reasons as mentioned by the AO for making the addition are that the -

- (i) Funds were received in the creditors A/c immediately before the issue of cheque to the assessee.
- (ii) Income returned by the parties in the return of income does not support the creditworthiness.
- (iii) Bank statements in support of the movement of funds were not furnished
- (iv) Cash was deposited into creditors account immediately before lending of loan to the assessee.
- (v) The balance as per confirmation and the loan amount does not match.

3. Aggrieved, the assessee filed further appeal before the CIT(A). The CIT(A) vide notice dated 28.06.2023 called on the assessee to submit details to the following questionnaire:

“1. "With reference to appeal filed by you, you are hereby requested to submit your response in writing along with relevant documents in support of your grounds of appeal.

2. *Please ensure that the documents pertain to the relevant case and for the relevant AY/FY.*
3. *Please inform whether there was any search or survey operation in your case*
4. *Please also note that the reply and submissions should not carry any password protected documents.*
5. *Please submit all the documents submitted before AO duly page numbered and indexed. (Please file it as separate annexure).*
6. *In case the documents provided by you are being submitted for the first time and not submitted before the AO, these documents will be the nature of additional evidence.*
7. *Please submit why these documents were not submitted before the AO at the time of assessment proceedings but are being submitted now.*
8. *Please submit your reply as to why this additional evidence should be admitted as per Income Tax Act.*

Apart from the above, the following information may also be furnished to the undersigned

- (i) *Full set of copy of return of income filed.*
 - (ii) *Audit report if any*
 - (iii) *Documentary evidences as a proof of creditworthiness, identity and genuineness of transaction of loan*
 - (iv) *Submission with respect to the objection on the ground that the genuineness creditworthiness and identity of the unsecured loan lenders The submission including documentary evidences with respect to the loan taken on which the AO made an objection.*
 - (v) *Any other documentary evidences in support of your appeal.”*
4. The assessee in response to the said notice replied stating that

"We have submitted our response in previous notices and we have pleaded that addition on account of capacity to lend determined solely by learned Assessing officer without calling for verification was unjust. Sir your lordship will appreciate one of major lenders is co owner in properties purchased and hence his capacity to lend is proven beyond initial doubts and queries we seek finalisation on basis of our submissions already given and if our submissions are

lacking we may be given one more opportunity to prove our claim, may we seek reassessment based on fresh finding by assessing officer or remand back”

5. The CIT(A) confirmed the addition made by the AO for the reason that the assessee failed to furnish the additional details called for by the CIT(A) and in this regard placed reliance on the decision of the Hon'ble Gujarat High Court in the case of Pawan Kumar M Sangvi Vs. ITO (Appeal No. 1037 of 2017). Aggrieved the assessee is in appeal before the Tribunal.

6. The ld. AR submitted that the assessee has discharged the onus by furnishing the various details such as the income tax return, bank statement, loan confirmation, etc. from the parties. The ld. AR further submitted that the documents called for by the CIT(A) were already submitted before the AO and hence the assessee replied stating that the documents submitted before the AO may be verified or the case may be remanded back to the AO. The ld. AR also submitted that the CIT(A) failed to take notice of the fact submitted by the assessee that one of the major creditors from whom the assessee has borrowed money is a co-owner of the property purchase which goes to prove that the loan borrowed is genuine. The ld. AR prayed that since the CIT(A) has not verified any documents on record and has not given any findings on the merits of the issue, the appeal may be remanded back to the CIT(A) for fresh verification.

7. The ld. DR on the other hand submitted that the assessee failed to produce any additional documents before the CIT(A) to substantiate the genuineness and creditworthiness of the creditors and has also not replied to the questionnaire of the CIT(A). Accordingly the ld DR submitted that the CIT(A) has correctly sustained the addition.

8. We have heard the parties and perused the material on record. The assessee's case was selected for scrutiny for the reason that the assessee has made large investments in property as compared to the total income. In response to AO's query on the source of funds for purchase of property the assessee furnished various details such as the confirmation from loan creditors, bank statements and return of income, etc. After perusing the details furnished by the assessee, the AO accepted the genuineness and creditworthiness of 13 creditors to the tune of Rs. 63,46,172/-. However, for the rest of the 13 creditors, the AO did not accept the submissions made by the assessee for the reason as quoted in the earlier part of this order. The AO accordingly proceeded to treat the loan to the tune of Rs. 2,02,83,143/- as income of the assessee stating that assessee failed to establish the creditworthiness and genuineness of the loan creditors. The CIT(A) called on the assessee to furnish details vide notice dated 23.12.2020 to which the assessee responded on 29.12.2020. The CIT(A) issued further notices on various dates on 31.01.2022, 31.10.2022, 19.06.2023 and 28.06.2023. The assessee vide letter dated 05.07.2023 intimated that he has already submitted the details in response to previous notices. However the CIT(A) confirmed the addition stating that the assessee failed to furnish specific queries as raised vide notice dated 28.06.2023 (list as extracted in the earlier part of this order). We notice from the perusal of the CIT(A) order that the CIT(A) has not given any finding on the merits of the issue based details which were available on record and also on the basis of details claimed to have been furnished by the assessee. We also notice that the assessee in response to the questionnaire of the CIT(A) did not furnish any additional details /evidences in support of the claim. We also notice that the AO while recording the shortcomings in the details furnished by the assessee to prove the credit worthiness and

genuineness, did not take any additional steps such as summoning the parties etc., but has proceeded to make the addition merely based on the details furnished by the assessee. Given these facts in the interest of justice and fair play, we are of the considered views that the assessee should be given one more opportunity to prove the credit worthiness and genuineness of the parties from whom the loans were obtained by furnishing the additional relevant details as may be called. Accordingly, we remit the issue back to the AO for fresh examination of the issue under consideration by calling for the required details from the assessee to substantiate the credit worthiness and genuineness of the parties from whom the loans were obtained. The assessee is directed to furnish the details as may be called for by the AO and co-operate with the proceedings. It is ordered accordingly.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 06-02-2024.

Sd/-
(KULDIP SINGH)
Judicial Member

**SK, Sr. PS*

Sd/-
(MS. PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai