

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.379/Ind/2023
Assessment Year : 2010-11

Ultimate Construction, G-1, Kamdenu Tower, E-2/21, Arera Colony, Bhopal (Appellant/Assessee)	<u>बनाम/</u> Vs.	DCIT-1(1), Bhopal (Respondent/Revenue)
PAN: AABFU9241J		
Assessee by	Shri S.S. Deshpande, C.A.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	30.01.2024	
Date of Pronouncement	29.02.2024	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 19.05.2023 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["CIT(A)"], which in turn arises out of assessment-order dated 14.03.2013 passed by learned DCIT-1(1), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2010-11, the assessee has filed this appeal on following effective grounds:

1. *That on the facts and in the circumstances of the case of the assessee, the Ld. CIT(A)-3 was not justified in dismissing the appeal.*

2. *That on the facts and in the circumstances of the case of the assessee, the Ld. CIT(A)-3 was not justified in confirming the addition against unsecured loan amounting to Rs. 6,00,000/- as unexplained cash credit u/s 68 of the Act.*
3. *That on the facts and in the circumstances of the case of the assessee, the Ld. CIT(A)-3 was not justified in confirming the addition against unsecured loan amounting to Rs. 20,00,000/- as unexplained cash credit u/s 68 of the Act.*
4. *That on the facts and in the circumstances of the case of the assessee, the Ld. CIT(A)-3 was not justified in confirming the addition towards disallowance of Rs. 29,867/- on account of donation and charity expenses.”*

2. The registry has informed that the present appeal is delayed by 66 days and therefore time-barred. Ld. AR for assessee carried us to an affidavit of one Shri Brijesh Kumar Pandey, owner of Shop No. 12, Ground Floor, Block-A, Kamdhenu Tower, E-2/21, Arera Colony, Bhopal who is neighbour of assessee. In the said affidavit, Shri Brijesh Kumar has averred the factual position according to which the post containing the impugned order was served upon him on 05.06.2023 but on that day, the assessee's shop was closed. Therefore, he received the post but thereafter he had to go out of Bhopal for attending some urgent work and missed to deliver to assessee. Subsequently, he delivered post to assessee on 10.08.2023. This way, the impugned order dated 19.05.2023 was effectively served upon assessee on

10.08.2023 and thereafter the assessee filed present appeal on 09.10.2023 which is within prescribed time-limit. Ld. AR made a specific mention that Shri Brijesh Pandey has no relationship with assessee and his submission is correct and bonafide. Ld. AR submitted that there is no delay in filing this appeal but still if the Bench considers it as a delay, the same deserves to be condoned due to sufficient cause. Ld. AR very humbly submitted that there is no deliberate lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. Ld. DR for Revenue left the matter to the wisdom of Bench. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a sufficient cause for delay in filing present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a sufficient cause for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

3. The background facts leading to present appeal are such that the assessee-firm is engaged in the business of construction. For the relevant AY 2010-11, the assessee filed return showing a total income of Rs. 45,09,195/-. The case was selected under scrutiny and statutory notices u/s 143(2)/142(1) were issued. Ultimately, the AO passed assessment-order after making certain additions and determining total income at Rs. 71,39,062/-. Aggrieved, the assessee went in first-appeal but did not get any relief. Still aggrieved, the assessee has come in next appeal before us.

4. The assessee has taken as many as four grounds as re-produced earlier. But the Ground No. 1 is general in nature and does not require any specific adjudication. We proceed to decide other three grounds in seriatim.

Ground No. 2:

5. In this ground, the assessee challenges the addition of Rs. 6,00,000/- made by AO and upheld by CIT(A) on account of unexplained cash credit u/s 68.

6. The AO has dealt this issue in Para 4 of assessment-order. Basically, the AO noted that the assessee had taken a loan of Rs. 6,00,000/- from Reshma Qureshi (Rajesh Malviya) but, however, the assessee filed only copies of cheques and did not file any evidence like A/c confirmation, ITR details, Bank details of the lender. Accordingly, the AO was not satisfied with creditworthiness of the lender and made addition.

7. During first-appeal, the assessee filed additional evidences in the shape of A/c Confirmation of lender, Bank Statement of lender and Assessee's own bank statement to CIT(A) in terms of Rule 46A of Income-tax Rules, 1962. The CIT(A) admitted those evidences after obtaining remand-report from AO. However, the CIT(A) upheld addition making these observations : (i) The assessee has given address and filed A/c Confirmation and Bank Statement of the lender which proves identity but does not prove creditworthiness of lender; (ii) The assessee claimed to have repaid loan on 29.10.2012 but the bank statement was filed for the period 14.10.2009 to 30.03.2011 only; (iii) In remand-report, the AO has pointed out that the repayment was made through crossed-cheques and not through a/c payee cheques; (iv) The assessee has not paid any interest to lender.

8. Before us, Ld. AR for assessee made following arguments to show that the creditworthiness of the lender as well as genuineness are proved:

- (i) The assessee has taken a total loan of Rs. 6,00,000/- through cheque No. 526311 & 526312 each of Rs. 3,00,000/- both dated 18.01.2010, drawn on lender's a/c with Bank of Baroda. Copies of cheques are filed at Page 39 of Paper-Book.
- (ii) There is a credit of Rs. 6,20,000/- in lender's bank a/c through Cheque No. 19448 on 27.11.2009 which made up a credit balance of Rs. 9,11,622/- in lender's a/c on that date. The credit balance continued for about 2 months till 18.01.2010 when the lender gave

loan of Rs. 6,00,000/- to assessee. Thus, there is no cash deposit in the a/c of lender for giving loan to assessee. Furthermore, there was a pre-existing balance for about 2 months in the a/c of lender which the lender utilized for giving loan to assessee.

- (iii) That the loan was repaid through cheque Nos. 065386 & 065387 each of Rs. 3,00,000/- both dated 29.10.2012, drawn on assessee's current a/c with HDFC Bank. Copies of cheques are filed at Page 40 of Paper-Book. The assessee has also filed a copy of bank statement to show debit entries of these cheques cleared on 08.11.2012 having a clear narration that the funds have gone to Smt. Reshma Qureshi, the lender (Paper-Book Page 43).
- (iv) That, although the above documents were sufficient enough, still the assessee filed a written request to the AO vide letter dated 29.01.2023, copy filed in Paper-Book Page 44, for issuing a summon u/s 131 to the lender at the cost of assessee since the assessee developed a dispute with lender. But the AO did not act upon assessee's request.
- (v) That the assessee was blessed with a close-friendly relations with the lender, although there developed a dispute in the end, and therefore the loan was interest-free, hence no interest was paid.

9. Thus, Ld. AR submitted that the lender has made loan to assessee from sufficient funds available in her bank a/c which shows that the

creditworthiness of lender is proved. Accordingly, Ld. AR prayed to delete the addition.

10. Per contra, Ld. DR for revenue supported the orders of lower-authorities. He iterated that the assessee did not file requisite documents to AO. He submitted that although the assessee filed documents before CIT(A) but the AO, in remand-report, pointed out that the repayment was made to the lenders through cross-cheques and not a/c payee cheques.

11. We have considered rival submissions of both sides and perused the orders of lower-authorities as also the documents filed in Paper-Book to which our attention has been drawn. After a careful consideration, we find that the assessee has taken a total loan of Rs. 6,00,000/- through 2 cheques each of Rs. 3,00,000/-. In support of transactions, the assessee has filed documentary evidences in the form of (i) A/c Confirmation of lender, (ii) Lender's Bank Statement and (iii) Assessee's own bank statement. The lender's bank statement shows that there was a credit entry of Rs. 6,20,000/- in the a/c of lender which made up a sufficient balance for about 2 months from which the lender gave loan to assessee. It is not a case where there is any cash deposit in lender's bank a/c before giving loan to assessee. Thus, the source or creditworthiness of lender qua the giving of loan to assessee is proved. The A/c Confirmation, which is basically in the form of a certificate of lender, also makes a clear confirmation of giving loan to assessee as well as receipt of repayment subsequently from assessee. So far as the point raised by CIT(A) that the repayment has been made via cross-

cheque and not a/c payee cheque, the assessee has filed complete bank statement at Page No. 43 of Paper-Book showing debit entries of payments which have a clear mention of the repayment having gone to "Reshma Qureshi", lender. Therefore, any doubtful apprehension by CIT(A) in this regard is dislodged. Thus, taking into account entire conspectus, we are of the view that the assessee has filed sufficient evidences to prove the creditworthiness of loan; therefore the addition made by AO should not stand. We, accordingly, delete the same and allow this ground of appeal.

Ground No. 3:

12. In this ground, the assessee challenges the addition of Rs. 20,00,000/- made by AO and upheld by CIT(A) on account of unexplained cash credit u/s 68.

13. The AO has dealt this issue in Para 5 of assessment-order. Basically, the AO noted that the assessee had taken a loan of Rs. 20,00,000/- from Shri Ajay Gupta and the assessee filed copy of ITR, A/c Confirmation and Bank Statement of lender. From those documents, the AO noted (i) that the lender was having a meagre income of Rs. 79,180/-; (ii) that the lender has advanced loan to assessee from a credit entry of Rs. 25,00,000/- in his bank a/c on 11.06.2009 from another bank a/c of the lender but the source of such credit entry is not furnished or explained. Accordingly, the AO was not satisfied with creditworthiness of the lender and made addition.

14. During first-appeal, the assessee filed additional evidences in the shape of Bank Statement of one M/s Unitrade & Services and Assessee's own Bank Statement to CIT(A) in terms of Rule 46A of Income-tax Rules, 1962. The CIT(A) admitted those evidences after obtaining remand-report from AO. However, on perusal of bank statements, the CIT(A) observed that the assessee has received loan from M/s Unitrade & Services and wrongly shown in the name of Shri Ajay Gupta. Hence, the assessee should have proved the ingredients of section 68 of M/s Unitrade & Services and not of Shri Ajay Gupta. The CIT(A) further noted that the assessee has not paid interest to lender. With these observations, the CIT(A) upheld addition.

15. Before us, Ld. AR for assessee made following arguments to show that the creditworthiness of lender as well as genuineness are proved:

- (i) The lender was non-resident and his taxable income in India was just Rs. 79,180/- as declared in the return. Therefore, his taxable income cannot be taken as indicator of real creditworthiness.
- (ii) Regarding source of Rs. 20,00,000/- advanced by Shri Ajay Gupta to assessee, Ld. AR submitted that the assessee took loan in two tranches, Rs. 5,00,000/- and Rs. 15,00,000/-. For the source of first tranche of Rs. 5,00,000/-, Ld. AR submitted that M/s Unitrade & Services issued a Cheque No. 245084 from their Bank A/c in favour of Shri Ajay Gupta and the same was credited in Shri Ajay Gupta's NRO A/c with Axis Bank on 24.11.2009 and from Axis Bank A/c, it was

transferred to assessee's bank a/c on 25.11.2009, which is very much clear from Ledger A/c of Shri Ajay Gupta extracted from books of account of M/s Unitrade & Services (Paper-Book Page 23), Debit entry in Bank Statement of M/s Unitrade & Services (Paper-Book Page 25) and Credit/Debit entries in Bank Statement of lender with Axis Bank (Paper-Book Page 22) and Bank Statement of Assessee (separately filed). For the source of second tranche of Rs. 15,00,000/-, Ld. AR submitted that M/s Unitrade & Services issued a Cheque No. 245085 from their Bank A/c directly in favour of assessee and the same was credited in assessee's bank a/c on 26.11.2009, which is very much clear from Ledger A/c of Shri Ajay Gupta extracted from books of account of M/s Unitrade & Services (Paper-Book Page 23), Debit entry in Bank Statement of M/s Unitrade & Services (Paper-Book Page 25) and Credit entry in Bank Statement of Assessee (Paper-Book Page 26). Thus, the funds of Rs. 5,00,000/- and 15,00,000/- have originated from M/s Unitrade & Services in the a/c and on behalf of Shri Ajay Gupta and have reached to assessee. This is so because M/s Unitrade & Services was a partnership firm of Shri Ajay Gupta's brother and Shri Ajay Gupta was having a deposit with M/s Unitrade & Services. Ld. AR submitted that the CIT(A) got confused and made an observation that the assessee has taken loan from M/s Unitrade & Services whereas the correct position is such that the assessee took loan from Shri Ajay Gupta and it is Ajay Gupta who had made

recoveries from M/s Unitrade & Services and out of such recovery given loan to assessee. Therefore, as far as assessee is concerned, Shri Ajay Gupta is the lender. Ld. AR drew us to Page No. 19 of Paper-Book to show that the tax auditors have also reported the receipt of loan by assessee from Shri Ajay Gupta alongwith Shri Ajay Gupta's address and PAN in Form No. 3CD. Ld. AR went on submitting that the AO has made a wrong observation that the Shri Ajay Gupta has given loan to assessee from a credit transaction of Rs. 25,00,000/- in his bank a/c. The correct fact, as can be seen from Page No. 25 of Paper-Book, is such that the credit entry of Rs. 25,00,000/- is not in the bank a/c of Shri Ajay Gupta, it is in the a/c of M/s Unitrade & Service and it was on 11.06.2009 much prior to the loans of Rs. 5,00,000/- and Rs. 15,00,000/- made by Shri Ajay Gupta to assessee on 24.11.2009/26.11.2009. Therefore, the credit entry of Rs. 25,00,000/- in the a/c of M/s Unitrade & Service is an independent transaction and nothing to do with the receipt of loans of Rs. 5,00,000/- and Rs. 15,00,000/- by assessee from Shri Ajay Gupta.

- (iii) That the loan was repaid through banking channel which is duly proved by debit entries in bank statement filed at Page No. 27-27A of Paper-Book.
- (iv) That the partners of assessee-firm had a friendly relationship with Shri Ajay Gupta and therefore the loan was interest-free.

16. With these submissions, Ld. AR contended that Shri Ajay Gupta has made loans to assessee from the funds sourced from recoveries made from M/s Unitrade & Service. Therefore, the source of giving loans to assessee is proved. Accordingly, Ld. AR prayed to delete the addition.

17. Per contra, Ld. DR for revenue supported the orders of lower-authorities. He re-iterated the observations made by CIT(A).

18. We have considered rival submissions of both sides and perused the orders of lower-authorities as also the documents filed in Paper-Book. On a careful consideration of various debit/credit entries in the bank statements of assessee, Shri Ajay Gupta (lender) and M/s Unitrade & Service and also the Ledger A/c of Shri Ajay Gupta as extracted from books of M/s Unitrade & Services which are filed in the Paper-Book and also analysed before us during hearing, we find that Shri Ajay Gupta was having a pre-existing deposit with M/s Unitrade & Service and by making recoveries therefrom, made loans to assessee. Thus, there should be any doubt so far the availability of funds with the lender Shri Ajay Gupta is concerned. Ld. CIT(A) has made an observation that the assessee has taken loan from M/s Unitrade & Service but as can be seen the correct position is different. It is true that funds have originated from M/s Unitrade & Service but Ld. AR has shown by reference to documents in Paper-Book that Shri Ajay Gupta made a recovery from M/s Unitrade & Service for giving loans to assessee. We do not find any weakness in this explanation of assessee which is fully supported by documents. Consequently, we are satisfied that Shri Ajay

Gupta has made loans to assessee from funds available with him and there is no reason to treat the loans taken by assessee as unexplained. Being so, we are inclined to delete the addition made by AO and we do so. This ground of assessee is also allowed.

Ground No. 4:

19. In this ground, the assessee challenges the addition of Rs. 29,867/- made by AO on account of disallowance of Charity & Donation Exp.

20. Ld. AR for assessee submitted that impugned donations are in the nature of contributions given to various organisations which helped in advertising business of assessee, therefore they are very much in the nature of business expenditure and must be allowed. Per contra, Ld. DR for revenue carried us to the Ledger A/c of Charity Exp. filed at Page No. 49 of Paper-Book and submitted that the donations have been given to Gurudwara, Sai Mandir, Hindu Utsav Samitis, etc. which are on the face of it not related to business of assessee, therefore the AO has rightly disallowed. On a careful consideration, we agree with the submissions of Ld. DR and do not find any weightage in the argument of Ld. AR which is just a submission for the sake of submission. There is no evidence to show that the impugned donations helped the assessee in advertising business. Therefore, we uphold the disallowance made by AO. This ground is accordingly dismissed.

21. Resultantly, this appeal is partly allowed.

Order pronounced in open court on 29.02.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 29.02.2024.

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