

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Vikas Awasthy (JM)

I.T.A. No. 2913/Mum/2022 (A.Y. 2014-15)

M/s. Mahadeo Shahra & Sons 706, Tulsiyani Chambers Nariman Point Mumbai-400 021. PAN : AACFM0431H (Appellant)	Vs.	DCIT, Central Circle-7(1) Mumbai. (Respondent)
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Assessee by	Shri Rakesh Joshi
Department by	Ms. Sanyogita Nagpal
Date of Hearing	27.03.2024
Date of Pronouncement	03.04.2024

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 19.2.2021 passed by the learned CIT(A)-49, Mumbai and it relates to A.Y. 2014-15. The only issue urged in this appeal relates to the assessment of loan of Rs.10.00 crores received by the assessee from a concern named M/s. Teej Impex Pvt. Ltd., as unexplained cash credit under section 68 of the I.T. Act.

2. There is a delay of 575 days in filing the appeal. The assessee has furnished an affidavit explaining the reasons for the delay and accordingly requested the bench to condone the delay. It is stated that the Ld CIT(A) had passed the order during Covid period on 19-02-2021 and the same was served through the e-mail id of the Auditor. However, the auditor failed to inform the assessee about the receipt of order. Subsequently, the assessee received notice in respect of another matter and when the status of old

appeals was checked, it came to light that the order has already been passed by Ld CIT(A). Thereafter, the assessee had taken steps to file the appeal immediately. It is submitted that the effective delay is only 261 days only after deducting the period allowed by Hon'ble Supreme Court. Accordingly, it is prayed that the delay may be condoned.

3. We heard the parties on this preliminary issue. Having regard to the submissions made by the assessee, we are of the view that there was reasonable cause for the assessee in filing the appeal belatedly. Accordingly, we condone the delay and admit the appeal.

4. The facts of the issue are that the assessee is engaged in the business of dealing in agricultural commodities, acting as commission agents in agriculture produce and also undertaking financing activities. During the year under consideration the assessee had received loan of Rs.10.00 crores from a group concern named M/s Teej Impex Pvt. Limited. During the course of assessment proceedings, the assessee filed annual report of the above said company to prove the identity and credit worthiness of the creditor and genuineness of transaction. However, the AO took the view that creditworthiness of the above said company was not proved, since it was having negative net worth and was also declaring losses. The Assessing Officer also issued summons under section 131 of the Act to the address of the creditor, but the same was returned back unserved. When this fact was pointed out, the assessee furnished new address of the creditor. However, the Assessing Officer chose not to make any further inquiry with the creditor. Accordingly, he treated the loan amount of Rs. 10 crores as unexplained cash credit and assessed the same under section 68 of the Act. The Ld CIT(A) also confirmed the addition and hence the assessee is in appeal before the Tribunal.

5. The Learned AR submitted that the assessee had initially furnished the annual report of M/s Teej Impex Pvt. Limited, confirmation of ledger account and copy of assessee's bank account before the AO. He submitted that these documents prove the identity of the creditor, credit worthiness of the creditor and genuineness of transactions. He submitted that the AO has, however, looked into the negative net worth and losses, but failed to note that the said company had sufficient money in the form loans for giving the impugned loan of Rs.10.00 crores to the assessee. He submitted that the creditor is a group concern and hence there is no reason to suspect the loan. He further submitted that the assessee furnished further documents like photo copy of assessment order of the creditor, copy of an order passed by the Tribunal in the hands of creditor, copy of loan ledger for three years etc. before the Ld CIT(A). However, the first appellate authority did not even look into those details and passed the impugned order. Further, the Ld CIT(A) has observed that the assessee was not aware of the whereabouts of the company or the director from whom the money was taken. He submitted that the assessee had furnished new address of the creditor to the assessing officer, but the AO chose not to make enquiries with the creditor. Hence the above said observation of the Ld CIT(A) is totally duly against the facts available on record. Accordingly, he submitted that the assessee has discharged the onus placed upon its shoulders and hence, learned CIT(A) was not justified in confirming the addition without properly examining the documents furnished by the assessee.

6. The Learned CIT-DR, on the contrary, supported the order passed by Ld CIT(A). The Ld D.R submitted that the creditor was declaring losses and was having negative net worth. Hence the credit worthiness of the creditor has not been proved. She further submitted that the case of the assessee that the Ld CIT(A) has not examined the details filed by the assessee. If it is found to be correct, then matter may be restored to the file of Ld CIT(A).

7. In the rejoinder, the Ld A.R submitted that the matter may be restored to the file of Assessing officer, since the relevant documents are required to be examined at the end of AO.

8. We have heard the rival contentions and perused the record. We noticed that the main case of the Assessing Officer is that the net worth of the creditor is in negative and further, it has declared huge losses. The AO has also observed that the notices issued to the creditor has been returned back, since the creditor was not available in that address. On the contrary, the case of the assessee is that the creditor has given impugned loan out of funds available with it by way of loans. Further, it is stated that the assessee has furnished new address details of the creditor before the AO. The ld A.R further submitted that the assessee furnished some more documents before Ld CIT(A), but the same was not considered by the him.

9. Accordingly, under the above mentioned set of facts, we are of the view that this issue requires fresh examination, since the tax authorities have not considered all the documents before arriving at their decision. Accordingly, in the interest of natural justice, we are of the view that this issue may be restored to the file of the Assessing Officer for examining it afresh by duly considering all the documents furnished/that may be furnished by the assessee and also any other information and explanation that may be furnished by it. Accordingly, we set aside the order passed by the learned CIT(A) and restore all the issues to the file of the Assessing Officer for examining them afresh. We also direct the assessee to fully cooperate with the Assessing Officer for expeditious completion of the assessment.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced on 03.04.2024.

Sd/-
(Vikas Awasthy)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 03/04/2024

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai