

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. 458/Ind/2023
Assessment Year: 2012-13

Shri Nemchandra Bhandari, 20, Mahavir Marg, Agar Malwa (Assessee/Appellant)	<u>बनाम/</u> Vs.	ACIT/DCIT-1(1), Ujjain (Revenue/Respondent)
PAN: ACMPB 4312 Q		
Assessee by	Shri S.S. Deshpande, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	08.04.2024	
Date of Pronouncement	09.04.2024	

आदेश / ORDER

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

Feeling aggrieved by appeal-order dated 22.09.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 27.06.2019 passed by learned DCIT-1(1), Ujjain ["AO"] u/s 147 read with section 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee is an individual engaged in the business of money lending. For AY

2012-13, the assessee filed original return on 29.05.2012 declaring a total income of Rs. 8,51,150/- which was assessed. Subsequently, the case was re-opened u/s 147 vide notice dated 31.03.2018 u/s 148 on the basis that the assessee had made cash deposits of Rs. 28,62,000/- in bank a/c during the relevant year from unexplained sources which had escaped assessment. During assessment-proceeding, the AO show-caused assessee qua the sources of impugned deposits. In reply, the assessee made submissions which are mentioned by AO in assessment-order. The AO has noted the details of deposits in assessment-order as under:

S.No.	Date of Deposit	Amount (Rs.)	Mode
1.	15.10.2011	7,00,000/-	Cash
2.	17.10.2011	3,55,000/-	Cash
3.	10.03.2012	5,35,000/-	Cash
4.	19.03.2012	2,37,000/-	Cash
5.	26.03.2012	5,35,000/-	Cash
6.	31.03.2012	5,00,000/-	Cash
	Total	28,62,000/-	

The AO has noted that it was submission of assessee that the deposits had been made out of recoveries made from 'pawning debtors' to whom loans were given in the course of money lending business carried by assessee. The assessee filed details in a PDF file which included date, names of 'pawning debtors', moneys and interest received from them and names of their villages. The assessee also submitted to AO that it was difficult to produce debtors for statements because they were villagers and the amounts given to them were also petty. The AO considered assessee's reply and observed that the assessee did not furnish full address, PAN or Voter ID Numbers of

debtors. The AO observed that the assessee did not establish identity and creditworthiness of a single borrower. The AO also noted that the assessee made deposits of huge amounts only on six dates (as mentioned in the above table) and not on regular intervals. Based on these observations, the AO was not satisfied with the sources of deposits as explained by assessee and made addition of Rs. 28,62,000/- in assessment-order. Aggrieved, the assessee contested in first-appeal but could not succeed. Now, the assessee has come in next appeal before us.

3. The assessee has raised following grounds:

- "1. The re-opening of the assessment is bad in law and therefore the assessment should be annulled.
2. The Ld. CIT(A) erred in maintaining the addition of Rs. 28,62,000 being the deposits in the bank.
 - 2.1 It was proved before the lower authorities that the amounts lent by the assessee has been received which were deposited in cash in the bank. The addition made as undisclosed income is bad in law and may please be deleted.
 - 2.2 The reasoning that without turnover, the cash deposit cannot be made is itself based on surmises. The assessee produced the cash book which has not been rejected. The addition made without any basis and hence may please be deleted."

Ground No. 1:

4. During hearing, none of the learned Representatives has made any submission qua Ground No.1. Therefore, the Ground No. 1 is treated as non-pressed/non-pleaded and dismissed.

Ground No. 2:

5. In this ground with all sub-grounds, the assessee has challenged the addition of Rs. 28,62,000/- made/upheld by lower-authorities.

6. Apropos to this issue, Ld. AR for assessee drew our attention to assessment-order as also the documents filed by assessee in a Paper-Book and submitted as under:

- (i) That the assessee has not taken any loan for making deposits in bank a/c. The assessee has made recoveries from 'pawning debtors' and deposited proceeds of those recoveries. Ld. AR contended that the recoveries of assessee's own money from debtors, cannot be taxed under any provision of the act.
- (ii) That the assessee filed, vide letter dated 25.06.2019, complete details to AO in a PDF file which included date, names of concerned 'pawning debtors', moneys and interest received from those persons and names of their villages. Thus, the assessee has filed complete details as available with him to satisfy the AO. The assessee also submitted to AO that it was difficult to produce debtors for statements because they were villagers and the amounts given to them were also petty. These submissions made by assessee are clearly noted/acknowledged by AO in assessment-order. Still the assessee has filed copy of aforesaid letter dated 25.06.2019 and PDF files submitted to AO at Page 14-15, 30 and 33-49 of Paper-Book.

- (iii) That the assessee had given loans to about 4,600 debtors (as mentioned in Para No. 18 of submission made to CIT(A) – copy at Page NO. 3 of Paper-Book). Since the assessee had given to such a large number of persons and the amounts advanced were also petty, it was not possible to produce those debtors before AO or to file identity documents of those persons to AO. Therefore, the assessee has expressed genuine difficulty to AO. Ld. AR went on submitting that the requirement to prove identity and creditworthiness does not arise in case of recoveries from debtors.
- (iv) That the assessee's Balance-Sheet of AY 2012-13 under consideration as well as preceding AY 2011-12 are filed at Page 7-12 and 51-54 of Paper-Book. Those Balance-Sheets clearly show a significant amount of 'debtors' to whom loans were advanced by assessee.

7. Per contra, Ld. DR for revenue strongly opposed assessee's submissions with following contentions:

- (i) That the assessee claims to have given loans to a large number of persons, as many as 4,600 persons, then how can it be accepted that the assessee did not have details such as address, PAN or identity proof of those persons? He submitted that the assessee has only supplied "village" names of debtors which is not sufficient. He exclaimed that the assessee has not submitted document of a single debtor from whom recovery was made!

(ii) That the AO has categorically noted in assessment-order *"On the contrast, the assessee is claiming the genuineness of the transaction just by furnishing fictitious name of the borrower without their proper address and without any identity proof such as PAN/Copy of Voter card or Aadhar Card."* This noting clearly shows that the AO had a very high degree of dis-satisfaction made by assessee in absence of supporting documents.

8. In rejoinder, Ld. AR made following submissions:

(i) That the assessee is residing and working in a small village and has advanced loans of petty amounts to borrowers of same village or surrounding villages. He submitted that the assessee has supplied names of 'villages' to AO.

(ii) That, on one hand the AO has taxed 'interest' income received from debtors as declared by assessee in computation of total income but on other hand, the AO has doubted the recoveries consisting of principal and interest made by assessee from those very debtors. Ld. AR submitted that there is a contradiction in AO's approach. He strongly contended that once the 'interest' income had been taxed, how can the recovery made from those very debtors be doubted?

9. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. The dispute between assessee and revenue is

with respect to the source of cash deposits of Rs. 28,62,000/- made by assessee in bank a/c. At the outset, we note certain undisputed factual aspects, namely (i) the impugned deposits were made on 6 dates as noted in a table in foregoing para; (ii) the assessee claims that the deposits were made out of recoveries from debtors to whom loans were given; (iii) the assessee has not filed any document qua the identity of debtors to AO; and (iv) the assessee has only filed PDF files, copies at Page 30 and 33-49 of Paper-Book, to explain his stand that the deposits were made out of recoveries from debtors. Having noted thus, we *firstly* discuss our observations on the PDF files submitted by assessee to AO. Those PDF files are basically pages of cash-book for 6 dates on which impugned deposits were made by assessee. Ld. AR explained a few entries on receipt-side of cash-book in an attempt to show that the assessee has noted names of respective debtors from whom recoveries were made alongwith their village names and there are separate entries for recovery of principal and interest. Next Ld. AR explained entries on payment-side of cash-book which included the impugned deposits made in bank a/c. By showing these entries of receipt-side and payment-side, Ld. AR attempted to explain that the cash-book itself shows that the assessee has made recoveries from debtors and utilized the same for making deposits. After a careful examination, we find that the recoveries made from debtors on those 6 dates are much lesser than the deposits made in bank a/cs. For example, on 15.10.2011, the assessee has deposited Rs. 7,00,000/- in bank a/c but recovered only Rs. 1,90,034/- from debtors. Similar is the situation of other dates. In fact, the assessee has himself filed a summary-sheet of PDF files/Pages of Cash-Book of those 6 dates at Page 30 of Paper-Book, we re-produce below the same for an immediate reference:

30

NEMCHANDRA BHANDARI AGAR

CASE BOOK DISCRPTION O N THE DATE CASH DEPOSITED IN BANK OF INDIA

DATE	OPENING BAL	CASH RECEIVED	CASH PAY OTHER THEN BANK	CASH DEPOSITED IN BANK	CLOSING BANLANCE
15-10-11	1476896.05	190034	128920	700000	838010.05
17-10-11	929481.05	164861	48501	355000	690841.05
10-03-12	1513393.05	161651	130587	535000	1009457.05
19-03-12	585827.05	67201	42800	237000	373228.05
26-03-12	824706.05	120602	257000	535000	153308.05
31-03-12	835636.05	170628	137519	500000	368745.05

₹ 28,62,000.00

(Handwritten signature)

If we carefully look into the above summary-sheet supplied by assessee himself, we find that all figures mentioned in Column No. 3 titled "Cash received" are much lower than the figures mentioned in Column No. 5 titled "Cash deposited in Bank". Therefore, one thing is very clear i.e. the deposits made on those 6 dates in bank a/c cannot not be fully sourced from recoveries made from debtors, at the best only a part of the deposits can be. That means, the impugned deposits would have been made from opening balances available on those dates but the assessee has not filed any document to AO for explaining the accumulation of opening balances. Therefore, in the first instance, the PDF files/Page of Cash-Book of 6 dates filed by assessee to AO are insufficient to explain assessee's claim that the deposits were made out of recoveries from debtors, therefore there is a necessity to look beyond these PDF files/Pages of Cash-Book of 6 dates. *Secondly*, we find that even if it is found that the impugned deposits (or any part thereof) was made out of recovery from debtors, the revenue authorities are very much correct in claiming that the assessee has to file some document to prove the identity of the concerned debtors and to establish that there was actual receipt of moneys from those debtors. In fact, section 68 also prescribes "*Where any sum is found credited in the books of an assessee.....*". Admittedly, the assessee has credited sums in books of account shown as recovery from debtors. Therefore, to say that section 68 does not apply is, in our view, not a correct interpretation of section 68. In any case, the department is not taxing the 'recoveries from debtors', the

department is simply asking the assessee to explain the source of cash-deposits made in bank a/c and it is the assessee who is claiming that the same were made out of recoveries from debtors. Therefore, the burden is upon assessee to explain his claim. If a satisfactory explanation is not coming from assessee, the department is treating the impugned deposits as unexplained and thereby taxing it under the provisions of act, which is very much permissible. Therefore, there is a necessity on the part of assessee to file documentary evidences of at least some of the debtors if not all to enable the AO to gain satisfaction *qua* assessee's stand. *Thirdly*, we find that the AO has taxed entire deposits of Rs. 28,62,000/- made on 6 dates although the inflow of interest shown in assessee's cash-book on those very dates is separately taxed as interest income. Apparently, this might have resulted in double taxation to the extent of interest inflow on those 6 days. Therefore, the AO is also required to look into this critical aspect so that the assessee is not saddled with double taxation. Thus, there are several aspects which need examination by AO and also filing of details/documents by assessee. Therefore, in our mindful consideration, this issue should go back to the file of AO for a fresh adjudication after giving opportunities to assessee. We order accordingly. Consequently, this ground is allowed for statistical purpose.

10. Resultantly, this appeal is partly allowed for statistical purpose.

Order pronounced in open court on 09.04.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 09.04.2024
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