

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

**BEFORE SHRI ANIKESH BANERJEE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 4224/Mum/2023
(Assessment Year: 2013-14)**

Rubberwala Developers, Ground Floor, Rubberwala House, Dr. A. Nair Road, Agripada, Maharashtra-400011 PAN : AAIFR9899Q	Vs.	ITO-19(3)(2) 2 nd Floor, Matru Mandir, Mumbai.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Prateek Jain, CA
Revenue/Respondent by : Shri R.R. Makwana, JCIT

Date of Hearing : 25.04.2024
Date of Pronouncement : 29.04.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of the Commissioner of Income Tax (Appeals)-51, Mumbai [for short 'the CIT(A)] dated 04.10.2023 for the AY 2013-14. The assessee raised the following revised grounds:

“The following grounds of appeal are without prejudice to one another.

- 1. On the facts and circumstances of the Appellant's case and in law Ld. CIT (A) erred in passing an ex-parte order, without providing an adequate opportunity of being heard to the appellant.*
- 2. On the facts and circumstances of the Appellant's case and in law Ld. CIT (A) erred in confirming the action of Ld. A.O. erred in holding that the*

appellant had availed accommodation entries in the form of bogus unsecured loans, for the reasons mentioned in the impugned order or otherwise.

3. On the facts and circumstances of the Appellant's case and in law Id. CIT (A) erred in making an addition of Rs.22,50,000/- on account of unsecured loans taken by the appellant from M/s. Radhey Krishna Gems Pvt. Ltd, treating the same as unexplained cash credit, by invoking the provisions of section 68 of the Act, for the reasons mentioned in the impugned order or otherwise.

4. On the facts and circumstances of the Appellant's case and in law Id. CIT (A) erred in disallowing an interest on unsecured loans amounting to Rs. 1,27,048/- paid by the appellant, for the reasons mentioned in the impugned order or otherwise.

5. The Appellant craves leave to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing.

The appellant prays this Hon'ble Tribunal to delete the disallowance made by the Id, AO, which is confirmed by the Id. CIT (A).”

2. The assessee is a partnership firm engaged in the business of builder and developer. The assessee filed the return of income for AY 2013-14 on 01.10.2013 declaring a total income of Rs. 4,90,953/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (the Act). Subsequently information was received from the office of ADIT (Inv.), Unit-4(2), Mumbai that survey action under section 133A of the Act was conducted at the premises of M/s. Rubberwala Housing & Infrastructure Ltd. and its group concerns whereby the assessee also included in the said survey. The Director of M/s. Rubberwala Housing & Infrastructure Ltd. who is one of the partners in the assessee-firm has admitted during the survey proceedings that accommodation entries have been taken of unsecured loans from certain parties in all its group concerns. The Assessing Officer (AO) noticed that the assessee firm has taken loan of Rs. 22,50,000/- from one M/s. Radhe Krishna Gems Pvt. Ltd. who is identified as accommodation entry

providers based in Surat. Accordingly, the AO issued notice under section 148 of the Act reopening the assessment of the assessee. The assessee vide letter dated 22.09.2016 submitted that the return originally filed may be treated as the return filed in response to notice under section 148 of the Act. During the course of reassessment proceeding, the assessee was required to furnish documents to substantiate and establish the genuineness of the unsecured loans and the assessee filed certain documents in this regard. The AO was not satisfied with the details furnished and the explanation provided by the assessee. The AO held that the assessee firm failed to prove the nature of transaction, creditworthiness and genuineness of loan transaction obtained from M/s Radhi Krishna Gems Pvt. Ltd. and accordingly made an addition of Rs. 22,50,000/- as unexplained cash credit under section 68 of the Act. Aggrieved the assessee filed appeal before the CIT(A). The assessee did not appear before the CIT(A) in response to various notices nor filed any details. Therefore, the CIT(A) dismissed the appeal in limine confirming the addition made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. The ld. AR submitted that the notices were served through online and that the employee of the assessee failed to take notice of the same. The ld. AR further submitted that the CIT(A) served the notices within a short period of time i.e. June 2023 to September 2023 and therefore, the assessee could not prepare and appear before the CIT(A). Therefore, the ld. AR prayed for one more opportunity to represent the case before the CIT(A).

4. The ld. DR on the other hand vehemently opposed the claim of the assessee and submitted that the assessee was given plenty of opportunities to represent the

case which the assessee failed to do thereby the onus was not discharged by the assessee. Accordingly, the ld. DR prayed for upholding the order of the CIT(A).

5. We have heard the parties and perused the material on record. The AO based on the information obtained during survey that the assessee has taken accommodation entries from M/s Radhi Krishna Gems Pvt. Ltd. in the form of unsecured loan, reopened the assessment under section 148 of the Act. Before the AO the assessee submitted that the loan transaction are genuine and that the statement of one of the partners was obtained under duress. The assessee also submitted before the AO that tax has been duly deducted on the interest paid on the unsecured loan and also the loan confirmation was submitted. The assessee has also submitted that the financial statements to substantiate the creditworthiness of the loan creditor. However, the AO did not accept the submissions of the assessee and proceeded to make the addition under section 68 of the Act towards unsecured loan based on the statement recorded from one of the partners of the assessee. The AO also disallowed the interest paid by the assessee on the said loan to the tune of Rs. 1,47,048/-. The CIT(A) dismissed the appeal for the reason that the assessee has not responded to various notices and did not submit any further details. From the perusal of the order of the CIT(A) we noticed that the CIT(A) has issued various notices from 16.06.2023 to 20.09.2023 and that the assessee had sought adjournment on few occasions in response to the notices. We further notice that besides the materials which were on record the assessee did not file any further details before the CIT(A) in support of the claim that the unsecured loan is genuine. We also notice that the CIT(A) has dismissed the appeal stating that the assessee has not responded to the notices without considering the issue on merits. Therefore, in the interest of natural justice and fair play, we deem it fit to remit the issue back to the CIT(A) for a fresh consideration of the issue by calling for

necessary details that may be required in this regard. The assessee is directed to submit the relevant details as may be called for by the CIT(A) to substantiate the genuineness of the impugned transaction without seeking any adjournments and cooperate with appellate proceedings. It is ordered accordingly.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 29-04-2024.

Sd/-
(ANIKESH BANERJEE)
Judicial Member
**SK, Sr. PS*

Sd/-
(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