

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No.3592/MUM/2023
Assessment Year: 2018-19

Deputy Commissioner of Income Tax , Central Circle – 4(3), Mumbai	Vs.	Rajendra Mulchand Varma Nirlon Compound, 1406/14-A, Goregaon East, Mumbai -400 063 (PAN : AARPV5135G)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Viraj Mehta, CA
Respondent by : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.05.2024
Date of Pronouncement : 06.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A)-52, Mumbai, vide order no. ITBA/APL/S/250/2023-24/1054493850(1) dated 20.07.2023 passed against the assessment order by Assistant Commissioner of Income Tax, Central Circle 4(3), Mumbai, u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 28.05.2021 for AY 2018-19.

2. The only ground taken by the Revenue is in respect of deletion of addition of Rs.9,18,97,928/- made towards unsecured loans taken by the assessee during the year under consideration out of total of Rs.9,75,97,928/-, when assessee failed to submit complete details in support of its claim.

3. Brief facts of the case are that assessee filed his return of income on 31.10.2018 reporting total income at Rs.3,15,60,300/-. In the course of assessment proceedings, ld. AO observed that assessee had taken unsecured loans during the year amounting to Rs.9,75,97,928/. Assessee was asked to furnish details for the said loans alongwith loan confirmation, copy of loan account as well as to substantiate the identity and creditworthiness of the parties and genuineness of the transactions. In this respect, assessee furnished certain documents and details for some of the parties. Based on these submissions, ld. AO noted that nature and source of unsecured loans taken by the assessee is not satisfactorily explained as required u/s.68 of the Act. He referred to series of judicial precedents on the provisions contained in the section 68 of the Act and thus made an addition of Rs.9,75,97,928/- as unexplained cash credit u/s. 68, to complete the assessment. Aggrieved, assessee went into appeal before the CIT(A).

4. Before the ld. CIT(A), assessee furnished additional evidences to substantiate his claim in respect of addition made by the AO by resorting to Rule 46A of the Income-tax Rules, 1962('the Rules'). The details of additional evidences furnished by the assessee is extracted below, as reproduced in the order of ld. CIT(A).

Sr. no.	Name of the party	PAN	Address	Addition u/s.68	Supporting documents submitted	Page nos.
1	Vedarambh Properties LLP	AAMFV0720G	Omkar House, Off E, E Highway, Opp Sion Chunabhatti Signal, Sion E, Mumbai	8,21,977/-	Ledger Confirmation, ITR ack and Balance sheet of LLP with schedules, ledger account, bank statement of assessee for repayment to the LLP with ledger account and LLP agreement	16-36
2	Life Cement Products	AAFFL7049H	105, Runwal & Omkar Esquare, EE Highway, Nr. Sion Chunabhatti Signal, Sion E, Mumbai	3,40,00,000/-	Ledger Confirmation, ITR ack and Balance sheet of LLP with schedules, ledger account, bank statement of assessee for repayment to the LLP with ledger account and LLP agreement	37-45
3	Bhumi Enterprise	AAKFB2039C	105, Runwal & Omkar Esquare, EE Highway, Nr. Sion Chunabhatti Signal, Sion E, Mumbai	48,00,145/-	Ledger Confirmation, ITR ack and Balance sheet of LLP with schedules, ledger account, bank statement of assessee for repayment to the LLP with ledger account and LLP agreement	46-54
4	MBH Enterprise	AAPFM2118Q	105, Runwal & Omkar Esquare, EE Highway, Nr.	22424086/-	Ledger Confirmation, ITR ack and Balance sheet of LLP with schedules, ledger	55-68

			Slon Chunabhatti Signal, Slon E, Mumbai		account, bank statement of assessee for repayment to the LLP with ledger account and LLP agreement	
5	Tarachand Varma	ABPPV5003E	1306A, Raheja Sherwood, Behind The Hub, Off W.E. Highway, Goregaon E, Mumbai	10,25,000/-	Ledger Confirmation, ITR ack and Balance sheet of Lender with schedules, ledger account, bank statement of assessee for repayment to the LLP with ledger account and LLP agreement	69-79
6	Babulal Varma	AARPV5136M	B-2402, 24 th floor, Beaumontde, Opp Tata Motor, Prabhadevi, Mumbai	625,000/-	Ledger confirmation, ITR ack and Balance sheet of Lender, Bank statement of assessee for repayment to the lender with ledger account	80-86
7	Continental Infracon P. Ltd.,	AALCC6363K		11000000/-	Ledger confirmation, ITR ack and Balance sheet of Lender, Bank statement of assessee for repayment to the lender with ledger account	87-95
8	Ekatma Developers	AAGFE2014G		9576820/-	Ledger confirmation, ITR ack and Balance sheet of Lender, Bank statement of assessee for repayment to the lender with ledger account	96-115
9	Bajrangball Varma	AARPV5133A		2125000/-	Ledger confirmation, ITR ack and Balance	116-125

					sheet of Lender, Bank statement of assessee for repayment to the lender with ledger account	
10	<i>Shashikant Mehta</i>	<i>AABPM0550K</i>		<i>50,00,000/-</i>	<i>Ledger confirmation, ITR ack and Balance sheet of Lender, Bank statement of assessee for repayment to the lender with ledger account</i>	<i>126-138</i>
11	<i>Hantram Jagdish</i>	<i>AACFH0043L</i>		<i>5700000</i>	<i>Ledger of party from books of assessee alongwith bank statement of assessee towards receipt of loan</i>	<i>139-140</i>

5. On the above submission of additional evidences, ld. CIT(A) called for a remand report from the AO which was furnished by him vide letter dated 26.06.2023. In the remand report, ld. AO furnished his comparative analysis of the loans received, total assets and total income based on the additional evidences furnished by the assessee. The said comparative analysis made by him is reproduced as under:

Sr. no.	Name of the party	Loan taken (in Rs.)	Total asset (in Rs.)	Total income/Loss (in Rs.)
1.	Vedarambh Properties LLP	6,21,977/-	72,83,36,697/-	(-)33,80,298/-
2.	Life Cement Products	34000000/-	7,00,66,315/-	77,03,940/-
3.	Bhumi Enterprises	48,99,145/-	4,35,83,480/-	69,89,570/-
4.	MBH Enterprises	22424986/-	138983740/-	171353370/-
5.	Tarachand M. Varma	1625000/-	700956381/-	66927560/-
6.	Babulal Varma	625000/-	748856810/-	68633110/-
7.	Continental Infracon P. Ltd.	11000000/-	41818178/-	455580/-
8.	Ekatma Developers	9576820/-	15787123/-	Nil
9.	Bajrangbali M. Varma	2125000/-	No balance sheet submitted	5828300/-
10.	Shashikant Mehta	5000000/-	49345166/-	2398470/-
11.	Hariram Jagdish	5700000/-	No ITR has been submitted	
	Total	97597928/-		

5.1. In the said remand report, ld. AO also observed that bank statements of the three lenders were not submitted by the assessee, viz. –

- I. Babulal Varma
- II. Shashikant Mehta
- III. Hariram Jagdish

5.2. Based on the above analysis and observation, ld. AO submitted before the ld. CIT(A) that issue involved may be decided on merit.

6. Assessee furnished his rebuttal on the remand report vide letter dated 10.07.2023 and also explained his case in respect of the three lenders for which ld. AO had observed that the assessee had not submitted the bank statements. The explanation so furnished is reproduced below:

Sr No	Lender Name	Arguments
1.	Babulal Varma	The said lender has advanced a loan of Rs. 6,25,000/-
		during the relevant year. The appellant has filed a duly signed loan confirmation by the lender. The ITR Acknowledgement of the said lender returning a total income of Rs. 6,80,33,110/- for the concerned year and the Balance Sheet of the lender reflecting a capital of Rs. 15.54 crores and reflecting the loan given to the appellant. The appellant has also submitted ledger copies and bank statement of repayment of the loan to the lender.
2.	Shashikant Mehta	The said lender has advanced a loan of Rs. 50,00,000/- during the relevant year. The appellant has filed a duly signed loan confirmation by the lender. The ITR Acknowledgement of the said lender returning a total income of Rs. 25,30,270/- for the concerned year and the Balance Sheet of the lender reflecting a capital of Rs. 4.21 crores and reflecting the loan given to the appellant. The appellant has also submitted ledger copies and bank statement of repayment of the loan to the lender.
3.	Hantram Jagdish	The said lender has advanced a loan of Rs. 57,00,000/- during the relevant year. The appellant has provided the lender's PAN and address and also the appellants own bank statement for receipt of the loan reflecting the name of the lender on the bank statement itself.

7. Ld. CIT(A) on considering the additional evidences furnished by the assessee as well as the remand report and its rebuttal, analysed the factual matrix of the eleven parties from whom the assessee had taken unsecured loans during the year. He took into consideration the

comparative analysis made by the ld. AO for the lender parties in the remand proceedings which is already extracted above and not reiterated.

7.1. Ld. CIT(A) also for each of the parties analysed the details and documents furnished by the assessee. He took note of documents like ledger confirmation, ITR acknowledgement, computation of income, bank statements of the lenders placed on record to hold that assessee has discharged his prima facie onus. He also took note of the fact about income returned by the lenders and their net-worth in relation to the loans taken by the assessee from those parties. He also noted in certain cases about the relationship of the assessee with the lenders whereby the lender is the brother of the assessee or assessee is a partner in the lending entity.

7.2. In respect of the three lenders for whom the AO in his remand report has observed about non-submission of bank statement, ld. CIT(A) noted that for the two lenders namely, Shri Babulal Varma and Shri Shashikant Mehta, the loans have been repaid. It is only in one case of Shri Hariram Jagdish, the addition made has been confirmed since no proper documents have been furnished as called for, to discharge the onus in terms of Section 68 of the Act.

8. We have considered the above observations and factual noting made by the ld. CIT(A) vis-à-vis explanation and documentation furnished by the assessee before him, remand report submitted by the AO and the rebuttal made by the assessee there upon. All these analysis and details are tabulated in the tables extracted above. Ld. Sr. DR had contended about the non-submission of documents and details before the Assessing Officer because of which the addition was made. In this respect, we note that assessee furnished the required documents and details before the ld. CIT(A) as additional evidence by

complying with rule 46A of the Rules. Remand report called from the ld. AO on these additional evidence does not suggest anything adverse on the same nor does it point out any defect or deficiency in the documents furnished by the assessee of the lenders. These evidences furnished have neither been controverted by the Ld. AO during the remand proceedings nor anything substantive brought on record before us to justify the addition made by him.

8.1. Considering the facts and circumstances of the case and detailed narration above, we do not find any reason to interfere with the factual findings arrived at by the ld. CIT(A) in deleting the addition of Rs.9,18,97,928/ out of the total addition Rs.9,75,97,928/-, made by the AO u/s.68 of the Act. Accordingly, the sole ground taken by the Revenue in this respect is dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 06 May, 2024.

Sd/-
(Sunil Kumar Singh)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 06 May, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai