

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA Nos. 809 & 836/MUM/2024  
Assessment Year: 2016-17**

Asst. CIT-32(1),  
202, 2<sup>nd</sup> floor, Kautilya Bhavan,  
BKC, Bandra (E)  
Mumbai-400051.

**Appellant**

Nanubhai N Desai,  
3, Aashirwad 51, Vallabh  
Nagar N.S. Road No. 2, JVPD  
Scheme Vile Parle (West),  
Mumbai-400056.  
**PAN NO. ADNPD 9241 N**  
**Respondent**

Assessee by : Dr. Tusharkumar Desai  
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 28/05/2024  
Date of pronouncement : 30/05/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

These appeals by the Revenue are directed against two separate orders dated 27.12.2023 and 28.12.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2016-17 related to quantum of addition made in assessment



proceedings and penalty levied by the Assessing Officer corresponding to the quantum additions, respectively.

2. Both the appeals being connected to the same matter of dispute, therefore, same were heard together and disposed off by way of this consolidated order for convenience. The grounds raised by the Revenue in ITA No. 809/Mum/2024 for quantum of addition are reproduced as under:

1. *"Whether on the fact and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 2,05,81,181/- to total income as unexplained cash credits u/s 68 of the IT. Act, 1961 made in respect of unsecured loans which were taken from Nanu Bhai Desai HUF ignoring the fact that no such advances appeared in the balance sheet of Nanubhai Desai HUF."*

2. *"Whether on the fact and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 2,58,34,686/- to total income as unexplained cash credits u/s 68 of the IT. Act, 1961 being differential amount of closing balance of unsecured loans as on 31.03.2015 and 31.03.2016 despite the fact that the assessee had not submitted any documentary evidence to establish the creditworthiness of the parties and genuineness of the transaction."*

3. *"Whether on the fact and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 4,27,86,117/- to total income on account of disallowance of interest expenses claimed in the P & L account and the same been set off against management fees even though there exist no nexus between interest expenses claimed and management fees earned."*

4. *The appellant craves leave to amend or alter or add a new ground which may be necessary.*

3. Briefly stated facts of the case are that for the year under consideration, the assessee e-filed its return of income on 16.10.2016 declaring total loss of Rs.(-)2,23,30,022/-. The return of income filed by the assessee was selected for scrutiny and notice u/s 143(2) of the Income-tax Act, 1961 (in short 'the Act') was



issued on 11.07.2017 and was served electronically upon the assessee. Thereafter, the Assessing Officer issued notice u/s 142(1) of the Act dated 17.09.2018 and 21.11.2018 , which remain non-complied. The Assessing Officer further issued summon u/s 131 dated 03.12.2018 asking the assessee to appear before him however same remain non-complied. Thereafter, the Assessing Officer issued specific show cause notice proposing the additions u/s 68 of the Act as well as for disallowance of interest expenses. But in view of the non-compliance on the part of the assessee, the Assessing Officer passed the assessment order u/s 144 of the Act i.e. best judgment order whereby he made additions, **firstly**, for unsecured loan of 2,05,81,181/- from M/s Nanu Bhai Desai, **secondly**, difference of Rs.2,58,34,686/- between closing unsecured loan and opening unsecured loan invoking section 68 of the Act and **thirdly** disallowance of interest expenses of Rs.4,27,86,170/-.

4. On further appeal, the Ld. CIT(A) deleted all the three additions.

5. Aggrieved, the Revenue is in appeal before the Tribunal by way of raising grounds as reproduced above.

6. We have heard submission of the parties and perused the relevant material on record. As far as ground No. 1 of the appeal is concerned, the fact qua the issue in dispute are that the Assessing Officer observed from the return of income filed by Nanu Bhai Desai



HUF for assessment year under consideration i.e. AY 2016-17 and found that no unsecured loan was advanced by HUF to the assessee, whereas in the return of income filed by the assessee, an advance of Rs.2,05,81,181/- was appearing from HUF. During the course of the assessment proceedings neither any kind of the explanation or any documentary evidence to explain the inconsistency between the advance of Rs.2,05,81,181/- by the Nanu Bhai Desai HUF to the assessee was explained and therefore, the Assessing Officer held the same as unexplained cash credit u/s 68 of the Act. The Ld. CIT(A) however has deleted the addition observing as under:

*“6. Ground No. 3(a) and (b): In this ground the appellant is contesting the addition of Rs.2,05,81,181/- u/s 68 being the unsecured loan taken from Nanu Bhai Desai HUF as unexplained cash credits. On perusal of the audit report in form CD dated 13.10.2016 filed by the appellant, it is noted that at item no. 31(b) [particulars of repayment of loan made during the previous year the appellant had disclosed that the total loan from Nanu Bhai Desai HUF was Rs. 13,83,55,200/- against which the amount of repayment was Rs. 11,77,74,019/- Therefore, the balance outstanding loan at the end of the year was Rs.2,05,81, 181/- The Ld. AO had mistakenly construed that the loan from Nanu Bhai Desai HUF was taken during the year while the loan was taken in earlier year and is brought forward figure. The addition of the loan brought forward from earlier year cannot be added as cash credit u/s 68 in the current year. Therefore, the Assessing Officer is directed to delete the addition of Rs.2,05,81,181/-. Accordingly, the appeal on these grounds is allowed.”*

6.1 We find that though the Ld. CIT(A) inferred from the statement of the facts that loan amount of Rs.2,05,81,181/- was opening balance of the outstanding loan from the Nanu Bhai Desai HUF however, the Ld. CIT(A) has ignored the contrary fact brought on record by the Assessing Officer that said loan or advance was not appearing as debtor in the return of income filed by the Nanu Bhai



Desai HUF. In the circumstances, the finding of the Ld. CIT(A) is without appreciation of the complete facts of the case and therefore, we set aside the said finding and restore the matter back to the file of the Assessing Officer for deciding afresh with the direction to the assessee to explain the queries raised by the Assessing Officer along with necessary documentary evidence. The ground No. 1 of the appeal of the Revenue is accordingly allowed for statistical purposes.

7. As far as the ground No. 2 of the appeal is concerned, the Assessing Officer treated the closing balance difference in closing balance and opening balance as unsecured loan as the loan introduced during the year under consideration and in absence of any documentary evidence to justify identity, creditworthiness and genuineness of the transaction in respect of that difference, he treated the same as unexplained cash credit u/s 68 of the Act. The Ld. CIT(A) however referred to the statement of the facts filed wherein he referred to auditor report in Form No. 3CD for details of loan provided during the year and loan repaid during the year under consideration. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“7. Ground No. 3(c): In this ground the appellant is contesting the addition of Rs.2,58,34,686/- u/s 68 being the difference of unsecured loan as on 31.03.2015 and 31.03.2016 as unexplained cash credit. The Ld. AO has simply stated that the assessee had not furnished any details and added the said amount u/s 68. On perusal of the audit report in form CD filed by the appellant it is noted that at Item No. 31(a) [particulars of each loan accepted during the previous year] details of the parties along with address and PAN from whom the appellant had taken loans during the*



*year are mentioned. As per the said details in form CD the appellant had taken Rs. 18,44,95,335/- as loan during the year. As already mentioned at para 6 supra, the appellant had also disclosed at item no. 31(b) [particulars of repayment of loan made during the previous year]. The total loan repaid during the year was Rs.15,86,13,448/-. The details required by the Assessing Officer were already available in the audit report filed by the Appellant-Assessee. The Assessing Officer had not conducted any inquiry with the lenders as disclosed in form CD. In fact the Assessing Officer does not even mention the details disclosed in the audit report. Whereas as per the audit report the appellant had taken loans of Rs.18,44,95,335/- and also repaid loans of Rs.15,86,13,448/- during the year. The Assessing Officer had taken the difference of unsecured loan as on 31.03.2015 and 31.03.2016 and simply stating that the assessee had not furnished any details added the amount as unexplained cash credit u/s 68. It is to be noted that the books of account of the appellant are audited and the requisite information as certified by an accountant is filed in the audit report in form CD. As stated supra, the details necessary for conducting an investigation were already available with the Ld. AO. However, the Assessing Officer had made a summary addition without conducting any inquiry and therefore, the same is bad in law. Therefore, the Assessing Officer is directed to delete the addition of Rs.2,58,34,686/-. Accordingly, the appeal on this ground is allowed.”*

7.1 We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has adjudicated the issue without taking into consideration the details of the party-wise unsecured loan at the beginning of the year under consideration as well as the loan outstanding at the closing of the relevant previous year. In the circumstances, we feel it appropriate to restore this issue back to the file of the Assessing Officer with the direction to the assessee to provide all the necessary details in respect of unsecured loan outstanding at the beginning of the previous year as well as at the closing of the previous year. The Assessing Officer is directed to decide the issue after verification of the amount of loan taken during the year under consideration for the purpose of invoking section 68 of the Act. The ground No. 2 of



the appeal of the Revenue is accordingly allowed for statistical purposes.

8. As far as the ground No. 3 of the appeal of disallowance of the interest of Rs.4,27,86,117/- for interest of expenditure claimed against the management fee is concerned, the Assessing Officer held that there was no link between the interest expenditure incurred for borrowing funds and the management fee. However, the Ld. CIT(A) deleted the addition observing as under:

*“8. Ground No. 4: In this ground the appellant is contesting the disallowance of Rs.4,27,86, 117/- being the interest expenditure debited to P&L account. As stated at para 2 supra, the appellant along with his wife are Directors and Share Holders in M/s Anoushka Medicare and Diagnostic Pvt. Ltd. The appellant had availed loan of Rs.27,60,00,000/- from M/s Cosmos Co-operative Bank for purchase of the building for the hospital. The appellant receives management fee of Rs. 1,95,22,000/- from the hospital. Therefore, there is a direct nexus between the management fee received from the hospital and the interest paid towards the loan taken for purchase of property to run the hospital. Therefore, the Assessing Officer is directed to delete the addition of Rs.4,27,86,117/- being the interest expenditure debited to P&L account. Accordingly, the appeal on this ground is allowed.”*

8.1 We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has not justified as how the receiving of the management fee is connected to the interest loan taken towards purchase the property to run hospital. Therefore, we set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to the file of the Assessing Officer with the direction to the assessee to furnish necessary evidence in support of claim that interest expenditure was incurred towards earning of management fee. The ground of



appeal of the Revenue is accordingly allowed for statistical purposes.

9. The appeal in ITA No. 836/Mum/2024 is in respect of penalty levied u/s 271(1)(c) of the Act in respect of additions which we have already restored to the file of the Ld. Assessing Officer while adjudicating the appeal in ITA No. 809/Mum/2024 ,therefore, since we have already set aside the additions made by the Assessing Officer, the penalty levied in respect of those additions cannot survive and therefore, all the grounds raised by the Revenue in respect of appeal filed against penalty levied u/s 271(1)(c) of the Act are also restored to the file of the Assessing Officer. The Assessing Officer may consider initiating penalty proceedings in the quantum assessment proceedings in accordance with law.

10. In the result, both the appeals of the Revenue are allowed for statistical purposes.

**Order pronounced in the open Court on 30/05/2024.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 30/05/2024  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**