

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA No.2709/Mum/2023 for Assessment Year : 2015-16

Shine Star, BW- 3021/BW-3032, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East), Mumbai 400 051. PAN : AABFS2911F (Appellant)	Vs.	CIT(A), NFAC Delhi. (Respondent)
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Appellant By : Shri Ajay R Singh & Shri Akshay Pawar
Respondent By : Shri Suresh D Gaikwad

Date of Hearing : 15.05.2024	Date of Pronouncement: 14.06.2024
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ORDER

Per Justice (Retd.) C V Bhadang :

This is an appeal by the assessee challenging the order dated 08.05.2023 passed by NFAC, Delhi thereby confirming the addition of Rs. 45 lacs made by the Assessing Officer, as unexplained cash credit under Section 68 of the Income Tax Act, 1961 ('Act' for short) for A.Y. 2015-16.

2. We have heard the learned counsel for the appellant and the learned DR. Perused record.

3. A perusal of the assessment order dated 30.12.2017 discloses that the assessee had filed his Return of Income (RoI) on 12.09.2015 declaring

a total income of Rs.49,70,890/-. The case was picked up for limited scrutiny, inter alia, on account of certain unsecured loans. A perusal of para 4 of the assessment order shows that the Assessing Officer came to the conclusion that in respect of unsecured loans of Rs. 45 lacs from Shri Shonit Dalmia, the assessee in spite of grant of an opportunity could not produce said party or submit the bank statement and Balance sheet. In that view of the matter, the addition was made.

4. On a perusal of the impugned order dated 08.05.2023 of the learned CIT(A), it appears that the assessee failed to appear before the appellate authority as a result of which the appeal came to be dismissed.

5. The learned counsel for the appellant submitted that the impugned addition could not have been confirmed as the assessee had provided necessary material to prove the genuineness and creditworthiness of the transaction. It is submitted that the creditor, Mr. Shonit Dalmia has filed his RoI, which could have been verified by the authorities below. It is submitted that the appellant could not appear before the appellate authority under the misconception that his AR would appear and contest the appeal. It is submitted that the assessee has filed an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 for production of additional evidence, which needs to be allowed

6. The learned DR supported the impugned order. It is submitted that the assessee has neither produced the necessary material before the Assessing Officer and has failed to contest the appeal before the appellate authority. It is thus submitted that the appellate authority was constrained to decide the appeal in the absence of the assessee and no case for interference is made out.

7. We have considered the submissions made. The impugned addition has been sustained by the appellate authority after observing that the assessee had failed to appear inspite of sufficient opportunities. Be that as it may, the assessee is now seeking to file the following additional documents in respect of Mr. Shonit Prakashchand Dalmia in order to discharge the onus envisaged under Section 68 of the said Act:

- i) ITR Acknowledgment for A.Y. 2015-16
- ii) Bank Statement showing receipt of amount
- iii) Confirmation as on 31.03.2016
- iv) Bank Statement showing return of amount
- v) ITR Acknowledgment for A.Y. 2016-17
- vi) Covering letter and fresh confirmation regarding loan taken and repaid on 08.05.2024
- vii) Jurisdictional details as per Income Tax Portal

8. Upon perusal of the documents we find that the assessee has made out a substantial cause for production of the documents within the meaning of Rule 29 of the said Rules, inasmuch as the said documents are material for deciding the controversy in question. We are therefore inclined to admit the documents. However, the said documents would require verification, which can be done at the level of the First Appellate Authority, more so, when the appeal is decided in the absence of the appellant.

9. In that view of the matter, the appeal is partly allowed.

The impugned order passed by the learned CIT(A) is set aside. The appeal is restored to the file of the learned CIT(A). The appellate

authority shall examine the documents already produced along with additional documents as produced by the assessee and shall thereafter decide the appeal on its own merits and in accordance with law. The assessee shall cooperate for the disposal of the appeal.

Order pronounced in the open court on 14th June, 2024.

Sd/-

[B R Baskaran]
ACCOUNTANT MEMBER
Mumbai, Dated : 14th June, 2024.
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Sd/-

[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'G' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai