

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 2460/Mum/2023
(Assessment year: 2012-13)**

Arun Babulal Shah 206-B, Pranamghar, Malviya Road, Opp Post Office, Vile Parle (E), Mumbai-400 057 PAN: AADPS3674B	vs	CIT Appeal NFAC
APPELLANT		RESPONDENT

Assessee by : Shri Arun B Shah
Respondent by : Shri Manoj Kumar SinhaSR.DR

Date of hearing : 02/07/2024
Date of pronouncement : 09/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 20.01.2023. The impugned order was emanated from the order of the Deputy Commissioner of Income-tax, Circle 7(2)(1), Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act date of order 24/03/2015.

2. The assessee has taken the following grounds of appeal:-

"Ground No. 1.

AGAINST ADDITION OF Rs. 7,93,74,917/- AS UNPROVED LOANS

(a) *The Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "(A)"] has erred in confirming addition in respect of Unsecured Loans outstanding as on 31 March 2012, which included those loans which were not taken during the year under appeal also, without considering all the facts available on the record in proper perspective.*

(b) *The appellant respectfully submits that all the parties who have given unsecured loans are genuine, capable to give the same and the transactions are all real ones. Therefore, the impugned addition is not justified.*

(c) *The appellant, therefore, prays that the addition of Rs. 7,93,74,91 II- be kindly deleted.*

Ground No. 2

AGAINST DISALLOWANCE OF INTEREST TO BANK- Rs. 56.06,404/-

(a) *The CIT (A) has erred in confirming disallowance of interest to UCO Bank - Rs. 56,06,404/- without appreciating t fact that it was paid on the Secured Loan taken from the Bank for and in the course of the business of the appellant.*

(b) *The appellant humbly submits that the interest on the loan from UCO Bank which was taken and utilized in t course of business of the appellant is fully allowable and the same cannot be disallowed just because the business h faced temporary lull during the year under appeal.*

(c) *In view of that, the appellant prays that the impugned disallowance be kindly deleted.*

Ground No. 3 .LEAVE TO ADD, ALTER. AMEND ETC.

The Appellant craves leave to add, alter and/or amend the Grounds of Appeal, if required."

3. The brief facts of the case are that the assessee is a diamond merchant and also the Executive Chairman of M/s Asian Electronic Ltd. During the impugned assessment year, M/s Asian Electronic Ltd was suffering loss and downfall in the business including management problem accordingly the assessee was also in suffering. The assessee had taken secured loans from different banks. On the other hand, the assessee had also taken unsecured loan amount of Rs.7,93,74,917/- as the balance stood during the impugned assessment year. The assessment order was passed by the addition of the loan amount of Rs.7,93,74,917/- and also the interest disallowed amount of Rs.56,08,404/- for rejection of the interest of secured loan from the bank. Being aggrieved, the assessee filed an appeal before the Id. CIT(A) alongwith all the facts. But the Id.CIT(A) without considering the same dismissed the appeal of the assessee. Being aggrieved, the assessee filed an appeal before us.

4. The assessee himself appeared and first explained about his distress and suffering in business during this impugned assessment year. The assessee argued and filed a written submission which is kept in the record, (in short APB). The assessee invited our attention in the order of the Hon'ble High Court of Judicature at Bombay bearing **C.P. 492 of 2011** in the case of **SBI Global Factors Limited (earlier known as Global Trade Finance) vs M/s Asian Electronics Limited**. The assessee was Executive Chairman of M/s Asian Electronics Ltd., and the Court has appointed the Official Liquidator on this company. The assessee himself has taken unsecured loan to coverup the downfall of business and payment of secured loan of business. The assessee argued and filed a chart of unsecured loan creditors of impugned assessment year, which is duly reproduced as below: -

S.No	Lender	Opening balance	Received during the year	Repaid during the year	Closing balance
1	Shailee Capital Services Pvt Limited	22,50,000	-	-	22,50,000
2	Rajesh Mehta	18,00,000	-	-	18,00,000
3	Indumati Vasa + BS Vasa	5,00,000	-	-	5,00,000
4	Binita Doshi		1,00,00,000	-	1,00,00,000
5	Integral Technologies Pvt Ltd	-	29,00,000	-	29,00,000
6	Kishor G Sheth		9,00,000	-	9,00,000
7	Laxmi Manak Finance	-	5,00,000	-	5,00,000
8	Pankit Mehta	-	15,00,000	-	15,00,000
9	NIXXON ELECTRICALS PVT LTD		96,45,500	-	96,45,500
10	PEL Limited		25,00,000	-	25,00,000
11	One Up Advisory Pvt Ltd (Stake)		10,00,000	-	10,00,000
12	Pranamghar India Pvt Ltd	1,25,14,417	2,92,00,000	35,10,000	3,82,04,417
13	Metal Tube Pvt Ltd		25,00,000		25,00,000
14	Neelkanth Iyer		75,000		75,000
15	Guatam Shah		3,00,000		3,00,000
16	Guniben Shah	-	3,00,000	-	3,00,000
		2,15,64,417	6,13,20,500	35,10,000	7,93,74,917

5. The Id. DR fully relied on the order of the revenue authorities.

6. We heard the rival submission and considered the documents available in record. The assessee argued that related to serial numbers 1 to 3 of the abovementioned chart, i.e.M/s Shailee Capital Services Pvt Limited, Mr. Rajesh Mehta andMrs. Indumati Vasa + B.S.Vasa, all the loans are from earlier years and was only the balance is carried over to this year. So, the addition in impugned

assessment year is uncalled for. Therefore, it is directed to the Id. AO that the additions amount of R.27,50,000/-, Rs.18 lakhs, Rs.50 lakhs are liable to be deleted on the ground that the loans are brought forwarded from earlier years, not related to this impugned assessment year.

6.1. Further, in the case of Mrs. Binita Doshi, the assessee received the amount of Rs.1 crore and the legal case was going on under section 138 of the N.I. Act, 1881. The documents are duly filed in APB pages 13 to 15. So, the assessee argued that entire loan is claimed as genuine considering the action is taken by the loan creditor against the assessee under section 138 of the N.I. Act. The confirmation is also attested by the assessee in APB page-15. The assessee has shifted the onus by submitting evidence in his favour. But the matter is unverified before the revenue authorities. In our considered view we remit the matter back to the file of the Id. AO to verify the loan creditor after giving the proper opportunity to the assessee.

6.2. Related to other loans, which are taken during this year, the assessee submitted the confirmations, PAN, entry in bank account and the identity of loan creditors. There is valid reason to assessee for non-submission of evidence before the authorities below. But the verification is pending before the revenue authority related to the loan mentioned below: -

S.No	Lender	Balance
1.	Integral Technologies Pvt Ltd	29,00,000
2.	Kishor G Sheth	9,00,000
3.	Laxmi Manak Finance	5,00,000
4.	Pankit Mehta	15,00,000
5.	NIXXON ELECTRICALS PVT LTD	96,45,500
6.	PEL Limited	25,00,000
7.	One Up Advisory Pvt Ltd (Stake)	10,00,000

8.	Pranamghar India Pvt Ltd	3,82,04,417
9.	Metal Tube Pvt Ltd	25,00,000
10.	Neelkanth Iyer	75,000
11.	Guatam Shah	3,00,000
12.	Guniben Shah	3,00,000

We consider the submission of the assessee and remand the matter back to the file of the Id.AO for further verification of loan creditors. The Id. DR had not made any strong objection against the setting aside matter to the Id. AO. Accordingly, the impugned appeal order is set aside. The matter is remanded back to the file of the Id. AO.

7. With regard to the interest of the bank, the issue is also unverified before any of the revenue authorities below. So, the interest amount from the bank to receive amount of Rs.56,08,404/- is also remitted back to the file of Id.AO. Needless to say, the assessee should get a reasonable opportunity of being heard in set aside proceedings.

8. In our considered view, the appeal of the assessee **Ground no-1** is partly allowed for statistical purpose, **Ground no- 2** is allowed for statistical purpose and **Ground no-3** is general in nature.

6. In the result, appeal of the assessee **ITA 2460/Mum/2023** is partly allowed.

Order pronounced in the open court on 9th day of July, 2024.

Sd/-

(PRASHANT MAHARSHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 09/07/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**