

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

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

ITA 1920/Mum/2024 - 2018-19

ITA 1921/Mum/2024 - 2016-17

Income-tax Officer 41(2)(1), Mumbai, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051	vs	Shri Ajit Sakharam Chavan, Room No.104, A2 Arjuna Garden Enclaves, Pirojsha Nagar, Vikhroli East Mumbai-400 079 PAN : AAJPC0344A
APPELLANT		RESPONDENT

Assessee by : None
Respondent by : ShriManoj Kumar Sinha (SR.DR.)
Date of hearing : 02/07/2024
Date of pronouncement : 05/ 07/2024

ORDER

PER BENCH:

Instant appeals of the Revenue are 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 Years 2016-17 & 2018-19. Both the orders are passed on dated 15.02.2024. The impugned order is emanated from the order of the Income-tax Officer, Ward-29(1)(1), Mumbai (in short, 'the A.O.'). For A.Y. 2016-17, order passed

undersection 143(3)of the Act, date of order28/12/2018 and order passed by Learned National e-assessment Centre, Delhi passed under section 143(3) read with section 143(3A) and 143(3B) of the Act, date of order 27/03/2021.

2. Both the appeals are having common nature of fact and having common issue. Therefore, both the appeals are taken together, heard together and disposed of together.**ITA No.1920/Mum/2024** is taken as the lead case.

3. When the appeals are called for hearing , none was present on behalf of the assessee. No adjournment petition was filed. Considering the merit of the case, we proceed to dispose of both the appeals in exparte qua for assessee after considering the submission of the Ld.DR.

4. The assessee has taken the following grounds of appeal for A.Y. 2018-19 (ITA No.1920/Mum/20124):-

“1. Whether the facts and circumstances of the case and in law, the CIT(A) was right in allowing the appeal of the assessee on the issue of unsecured loans of Rs.5,86,39,000/- linking it to the subsequent repayments without appreciating a fact that the section 68 specifically talks about credits into the books of the assessee.

2. Whether the facts and circumstances of the case and in law, the CIT(A) was right in allowing the appeal of the assessee on the issue of unsecured loans of Rs.5,86,39,000/- without appreciating the fact that during assessment proceedings the assessee could not prove genuineness of the transactions and credit worthiness of the lenders.

3. The appellant craves leave to add further, amend or alter any ground or add a new ground which may be necessary.”

5. Brief facts of the case are that assessment was completed under section 143(3) of the Act and the addition was made U/s 68 of the Act unsecured loan amount of Rs.5,40,000/- received from M/s Sai Transport and from M/s Vighnaharta Developers, Rs.5,80,99,000/- which works out total amount to Rs. 5,86,39,000/- and treated it as unexplained cash credit. As the assessee was not able to offer satisfactory explanation, the tax was calculated under section 115BBE of the Act. Aggrieved, assessee filed an appeal before the CIT(A). Before the CIT(A), the assessee filed the additional evidence under Rule 46A of Income-tax Rules, 1962 (in brevity, 'theRule'). The remand report was called for but after allowing several dates, the concerned Assessing Officer was not able to submit the remand report. The Ld.CIT(A) completed the appeal proceedings and allowed the grounds of the assessee. Being aggrieved on the appeal order, the revenue filed an appeal before us.

6. We heard the submission of the Ld.DR, considered the documents available in the record and perused the orders of the revenue authorities. The Ld.DR invited our attention in appeal order pages 15 to 17. The relevant paragraphs of the appeal are reproduced as below:-

"Observation and Decision:

From the perusal of the details and documents submitted during the course of appellate proceedings, it is seen that the appellant is an individual and appellant has two firms namely M/s. Sai Transport and M/s. Vighnaharta Developers. The return of income for the AY under consideration was filed on 16-10-2016. The case was selected for scrutiny and order was passed on 28-12-2018. Against the order passed wherein various additions were made, the appellant preferred the instant appeal and the same is being dealt with hereinunder: Before adjudicating

the main grounds of appeal the appellant submission which is as follows have to be dealt with :

“The Appellant has filed all the necessary documents concerning the lender during the assessment proceedings which clearly establish identity, credit worthiness and genuineness of the transactions with them. Whatever documentary evidences were filed on record, AO did not make any efforts to summon the lender and no efforts were made by the AO to verify the documents. There is no finding by the AO that materials filed before him were untrustworthy. No evidence has been brought on record to suggest that amounts given by the lender actually emanated from the coffers of the Appellant so as to render the amount of loans given by the lender as undisclosed income of the Appellant Company. Instead the AO has preferred to make irrelevant and untrue remarks about the bank statements of the lender which are of no help to him as the AO is simply groping in dark. AO has lost sight of the fact that judiciary requires higher burden of proof from Revenue to show that the money emanated from the coffers of the Appellant” The appellant has further quoted Rule 46 A of the I.T rules and certain case laws to consider his appeal on merit and based on material placed on record and the evidences provided in support of his grounds of appeal. Though the case may be treated as falling under sub clause (iii) and (iv) of Rule 46 A. However, following the principal of natural justice the remand report was requisitioned from the Ld. A.O after providing the documentary evidence submitted by the appellant for his comments. The various dates on which remand reports were requisitioned have been enumerated in tabular form which are as under: Remand report requisition:-

18/10/2023	
21/12/2023	
01/01/2024	
11/01/2024	

Considering the fact that despite requisitioning of remand report in this case by giving several opportunities as tabulated above the Ld. AO has failed to provide the same the request of the appellant for deciding his appeal on the basis of merit and material placed on record/evidences is accepted and the appeal is decided accordingly. The instant appeal related to the addition of unsecured loan taken by the appellant during the AY under consideration, which were added back to the total income on account of non-furnishing of documents/replies by the loan creditors, in response to the notices issued u/s 133(6) and 131 of the IT Act, 1961.”

7. The assessee submitted the additional evidence for verification of the unsecured loan U/R 46A of the Rules. In fact, the Ld.CIT(A) allowed a reasonable opportunity to Ld.AO for completing the verification and passed a remand report. After the absence of remand report, the Ld.CIT(A) has not initiated any verification of his own. Section 250(4) of the Act empowers the Ld.CIT(A) for verification of his own to the issue which is filed as additional evidence. Quick look on the section 250(4) of the Act.

“Procedure in appeal.

250 (4) The ⁴⁶[***] ⁴⁷[Joint Commissioner (Appeals) or the] ⁴⁸[Commissioner (Appeals)] ⁵⁰may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct

the ⁴⁹[Assessing] Officer to make further inquiry and report the result of the same to the ⁴⁶[***] ⁴⁷[Joint Commissioner (Appeals) or the] ⁴⁸[Commissioner (Appeals)].”

Related to the dispose of the additional evidence quick look of Rule 46A of the Rule:-

“Rule 46A. Production of additional evidence before the [Joint Commissioner] (Appeals) [and Commissioner (Appeals)]

(3) The [Joint Commissioner] (Appeals) [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.”

In appeal order it is perused that the assessee was not able to supply requisite documents before the Ld.AO for his satisfaction. Accordingly, the assessee filed the additional evidence before the Ld.CIT(A) which remains unverifiable. None of the revenue authorities had completed the verification from their end. The issue is entirely factual. The Ld.DR vehemently argued and placed that the Ld.CIT(A) without proper verification passed the order which is unjustified and liable to be quashed. Considering the issue, we set aside the appeal order and remit the matter to the file of the Ld. CIT(A). It is to be directed to the Ld.AO to complete the remand proceedings of the assessee and the remand report should be issued immediately for quick completion of the appeal proceedings. We are not expressing any view on the merit of the case which will impair the appeal

proceedings. Needless to say, the assessee should get a reasonable opportunity of hearing before the Ld.CIT(A) in set aside proceeding.

ITA No.1921/Mum/2024 (A.Y. 1916-17)

8. The facts and circumstances of this appeal are identical to the one decided above, therefore, the decision arrived at therein, shall apply mutatis mutandis to this appeal also.

9. In the result, both the appeals of the revenue in **ITA Nos.1920 & 1921/Mum/2024** are allowed for statistical purpose.

Order pronounced in the open court on 05th day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 05/07/2024
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