

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.831/PUN/2022
निर्धारण वर्ष / Assessment Year: 2014-15

Dr. Vikas Jagannath Pol, A/1/4 Rangriha Chs Salunkhe Vihar Road, Kondhwa-411048. PAN : AGIPP7216P	Vs.	ITO, Ward-11(2), Pune.
Appellant		Respondent

Assessee by : Shri Kishor B. Phadke
Revenue by : Shri Sourabh Nayak
Date of hearing : 26.06.2024
Date of pronouncement : 10.07.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 21.09.20222 passed by LD CIT(A)-11, Pune ["ld. CIT(A)"] for the assessment year 2014-15.

2. The appellant has raised the following grounds of appeal :-

"1. That the learned Commissioner of Income Tax (Appeals) has erred in law and facts upholding addition of unsecured loan of Rs.52,00,000.

2. That the Learned Commissioner of Income Tax (Appeals) has erred in law and facts by allowing rectification of order under section 143(3) under section 154 and upholding addition of unsecured loan of Rs.52,00,000 under section 68 of the Income Tax Act, 1961.

3. The Appellant craves his right to add, alter, amend or delete any or all grounds of appeal."

3. The facts, in brief, are that the assessee is an individual and a dental surgeon. He furnished his return of income on 29.11.2014 declaring total income at Rs.8,73,869/-. The case was selected for scrutiny as there was substantial cash deposit in the bank account of the assessee. Notices u/s 143(2) and 142(1) were issued and assessee was required to explain the cash deposit in his bank account. The assessee submitted that the cash deposit represents various cash loans amounting in all to Rs.62,00,000/- received from the relatives and friends of the assessee and the amount was utilized in construction of hospital wherein the assessee is promoter director. Being unsatisfied with the reply of the assessee, the Assessing Officer added the above amount in the income of the assessee as unexplained cash credit u/s 68 of the IT Act. The assessment order was passed u/s 143(3) of the IT Act on 29.12.2016 determining the total taxable income at Rs.71,65,369/-. Thereafter, a rectification order u/s 154 of the IT Act was passed on 31-08-2018 wherein the income tax was calculated at the rate of 30% on undisclosed income determined u/s 68 of the IT Act instead of normal rates. It was held that the assessed income of the assessee consists of undisclosed income of Rs.62,00,000/- u/s 68 of the IT Act which is chargeable to tax u/s 115BBE(1) at the special

rate of 30% whereas in the scrutiny assessment the tax was levied at normal rate.

3.1 Aggrieved with the action of the AO, an appeal was preferred before the ld. CIT(A), who vide order dated 23.09.2019 dismissed the appeal of the assessee for want of prosecution. Further, the assessee moved an appeal before the ITAT against the order dated 23.09.2019 passed by ld. CIT(A) and the ITAT vide order dated 05.10.2020 restored the matter back to the file of the CIT(A) for fresh adjudication. Ld. CIT(A)/NFAC giving effect to the order of the Tribunal (supra) partly allowed the appeal of the assessee vide order dated 21.09.2022.

4. Being aggrieved with the above first appeal order dated 21.09.2022, the appellant is in appeal before this Tribunal in second round of appeal.

5. LD AR submitted before us that LD CIT(A)NFAC, erred in confirming the addition made by the AO u/s 68 of the IT Act regarding unsecured loan of Rs.52,00,000/-. It was further submitted that each & every detail was produced before the AO regarding each person who has advanced the cash loan to the assessee. It was submitted that confirmation letters & the copy of income tax returns were also produced before the AO. It was the contention of the counsel of the assessee that identity, credit

worthiness & genuineness of the transaction was proved but the AO erred in not accepting the cash loan. It was also submitted that the penalty u/s 271D was also dropped. It was submitted that one Mr. Rajendra Shinde has provided only Rs.5,00,000/- as loan during the year but the AO has committed grave error in considering Rs.10,00,000/- loan from him. It was clarified that there was opening balance of loan of Rs.1,00,000/- & Rs.5,00,000/- was received during the year therefore at the end of the year total loan outstanding was only Rs.6,00,000/- but the AO as well as LD CIT(A)NFAC committed error in not allowing the claim of the assessee. LD counsel of the assessee produced copy of account & balance sheet which was produced before the AO & LD CIT(A)NFAC, wherein respective balance is appearing. It was therefore prayed before the bench to cancel the orders passed by both the subordinate authorities & further requested to delete the additions made by the AO.

6. LD DR submitted before us that the AO as well as ld. CIT(A)/NFAC has made complete enquiry regarding each & every loan & has given detailed reason for his decision. It was found by the AO that all the loan were provided only in CASH, although all the loan providers were having bank accounts & most of the loan providers have furnished their return of income on very low

income. It was also submitted that two of the loan providers are residing in Australia & how they have provided CASH LOAN in INDIA is not understood. Therefore LD DR vehemently supported the orders passed by both the subordinate authorities & requested to confirm the same.

7. We have heard LD Counsels from both the sides & perused the material available on the record. We find that LD CIT(A)NFAC has dealt in detail with each & every loan provider & after considering the claim of the assessee partly allowed the appeal by granting relief of Rs.12,00,000/- in respect of loan amount (*Rs.2,00,000/- for Abhijeet Wagh & Rs.10,00,000/- for Anil Varpe*). Therefore, we do not find any infirmity in the order passed by ld. CIT(A)NFAC. But at the same time we find that in respect of one loan provider namely Mr. Rajendra Shinde the loan amount was wrongly considered at Rs.10,00,000/- instead of Rs.5,00,000/-. In this regard with the help of copy of account & balance sheet of the assessee it was demonstrated that there was an opening balance of R.1,00,000/- & Rs.5,00,000/- cash was received in October 2013, & balance at the end of the year was Rs.6,00,000/- only, which is appearing in the assessee's balance sheet also. Therefore, addition if any in any case cannot be more than Rs.5,00,000/- loan which was claimed to be received during

the period under consideration. We find substance in the claim of the assessee & therefore out of Rs.10,00,000/- addition made in the name of unproved loan from Mr. Rajendra Shinde we direct the Assessing Officer to delete the addition of Rs.5,00,000/-. In the result the appellant gets relief of Rs.5,00,000/- & the 1st ground of appeal of the assessee is allowed partly. That at the time of hearing, LD counsel of the assessee did not press 2nd ground of appeal & therefore it is dismissed as such.

8. In the result, the appeal of the assessee stands partly allowed.

Order pronounced in the open Court on 10th July, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th July, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.