

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “A” BENCH, BENGALURU**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Keshav Dubey, Judicial Member**

ITA No. 612/Bang/2024 (Assessment Year: 2018-19)		
Rafeeq Ismailsab Bairakdar CTS Yadawad Cross Lokapur Mudhol Mudhol 587313 PAN – AYSPB5817A (Appellant)	vs.	The Income Tax Officer Ward 1 & TPS Aayakar Bhavan Sector No. 24, Navanagar Bagalkot 587102 (Respondent)
Assessee by:	Shri Saidappa B. Gadadi, CA	
Revenue by:	Shri Guru Kumar S., Addl CIT-DR	
Date of hearing:	28.05.2024	
Date of pronouncement:	08.06.2024	

ORDER

Per: Keshav Dubey, J.M.

This appeal at the instance of the assessee is directed against DIN & order No. ITBA/NFAC/S/250/2023-24/1060531591(1) of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 06.02.2024 under Section 250 of the Income Tax Act, 1961 (the Act) for Assessment Year (AY) 2018-19.

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

- “1. *The Hon'ble CIT (Appeals) being a quasi-judicial authority has failed verify the loan taken from Shri Aslam I Bairakdar as in the appellate order the learned CIT(A) has reiterated the name of appellant only it shows that order has been passed in hurry burry manner without going into detailed verification and simply stated assessee has submitted only ICICI bank account.*
2. *The Hon'ble CIT(Appeals) has erred in not giving reasonable opportunity of being heard while confirming the additions as every time the learned CIT(A) has asked "in support of your*

Grounds of Appeal, you are requested to furnish or cause to be furnished Ground wise written submission, along with supporting documentary evidence(s) and/or documents as specified in the attached Annexure, if any."

- 3. The Hon'ble CIT (appeals) and the faceless assessing authority have failed to cross verify the transactions with Shri Aslam I Bairakdar from the Banker of Shri Aslam I Bairakdar and the transaction with Shriram Transport Finance by invoking power vested u/s 133(6) of the act.*
- 4. The Hon'ble CIT (appeals) has erred in not appreciating the fact that based on particulars submitted only the assessee can satisfactorily explain the creditworthiness and genuineness of the transactions as the person from whom the appellant has availed the credit has filed his return of income.*
- 5. The Hon'ble CIT(Appeals) and the learned faceless assessing officer have erred in not appreciating the fact that Shriram Transport Finance is a Non-Banking financial company which has lent a loan on hypothecation of vehicles same could have been confirmed by invoking power vested u/s 133(6) of the act.*
- 6. The Hon'ble CIT(Appeals) has made discussion of applying the test of human probabilities but the Hon'ble CIT(A) has erred in not appreciating the bank statements and ledger extract of a person from whom loan has been availed were duly submitted.*
- 7. The Hon'ble CIT (Appeals) being a quasi-judicial authority has been vested wide variety of powers under the income tax act, 1961 and the learned CIT(A) has reproduced provisions of section 68 and reiterated that the appellant has to satisfactorily explain before AO the transactions legitimacy but the learned CIT(A) has failed understand the fact that being quasi-judicial authority the learned CIT(A) steps into the shoes of AO.*
- 8. The learned faceless assessing officer has erred in simply disallowing the penal interest at Rs.9,61,227/- stating that the said interest is not business expenditure without giving any reason how the said amount would result is expenditure not allowable u/s 37 of the act.*
- 9. The learned faceless assessing officer has erred in not appreciating the fact that appellant assessee is engaged in the business of poultry farming and has effected sale to tune of Rs. 13,94,54,601/- almost all sales are effected in cash and said sale proceeds realized in cash are duly deposited in the bank to make payments to the creditors who have supplied to assessee.*

10. *The learned faceless assessing officer has erred in not appreciating the fact that the cash deposited in the bank account is out of sale proceeds only and without giving a thought to sales effected and tax audit report uploaded u/s 44AB of the act, the assessing officer opined that the transactions are High risk transactions;*
11. *The appellant craves leave to amend, add, alter or delete any of the above grounds of appeal.*
12. *For these grounds & other grounds that may be urged at the time of hearing, your petitioner prays to allow the appeal.”*

3. The brief facts of the case are that the assessee is assessed as an individual and engaged in the business of poultry farming. The assessee filed his return of income for the Asst. Year 2018-19 declaring taxable income at Rs. 8,07,469/-. The Accounts of the Assessee are also audited by a Chartered Accountant U/s 44AB of the I. Tax act, 1961. Subsequently the case was selected for complete scrutiny on the issue of “Verification of Transactions”. The Assessing Officer (AO) observed that during the course of assessment proceedings, in spite of sufficient opportunities offered, the assessee had not complied with any of the statutory notices issued. Further as the assessee remained non-cooperative and did not take any interest to prosecute the appeal & therefore, the AO completed the assessment proceedings ex-parte and passed a best judgement Order as provided under the provisions of Section 144 of the Act by making the following additions –

- i) Unsecured loan from Aslam I Bairakdar to the tune of Rs. 46,99,399/- added by invoking provisions of s. 68 or the Act on the ground of bogus loan.
- ii) Unsecured loan from Shriram Transport Finance Ltd. to the tune of Rs. 32,10,195/- added by invoking provisions of s. 68 or the Act on the ground of bogus loan.
- iii) The assessee debited a sum of Rs.9,61,227/- being penal interest. The AO not considered the same as business expenditure and accordingly added back the sum by invoking the provisions of s. 37 of the Act.
- iv) Due to the non-verification in the absence of information, bills & vouchers for the expenses such as miscellaneous expenses, repairs and

maintenance, staff salary, transportation, travelling expenses and vehicle maintenance totalling to Rs. 9,44,861/- disallowed 10% of the said expenditure resulting in total addition worked out to Rs. 94,486/-.

Thus the AO made total addition of Rs.89,65,307/- and accordingly assessed on a Total Income of Rs. 97,72,780/-. Aggrieved by the assessment completed under Section 144 read with section 144 B or the Act vide order dated 23.04.2021 the assessee preferred appeal before the CIT(A).

4. With regard to the addition Nos. 1 & 2 of above, the learned CIT(A) confirmed the view taken by the AO and dismissed the appeal on the ground that s.68 of the Act creates a legal fiction which cast an obligation on the assessee to explain to the satisfaction of the AO about the nature and source of the credit in case any amount is found credited in the books of account of the assessee maintained for the previous year. With regard to addition Nos. 3 & 4, the learned CIT(A) was of the view that the assessee has not brought any documentary evidence to prove that the said expenditure was incurred for the purpose of business and expended wholly and exclusively for the purpose of business or profession. The onus lies on the assessee to prove that the expenditure was incurred for the purpose of business and, therefore, the CIT(A) was of the view that the AO is rightly made the said disallowance of the expenditure of Rs.7,62,267/- and accordingly dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

5. The assessee filed a paper book containing 203 pages enclosing therein copies of the following: -

1. *Facts & Grounds*
2. *Copy of ITR Acknowledgement.*
3. *Audit Report for the A.Y.2018-19.*
4. *Audited Profit & Loss A/c and Balance Sheet for the A.Y.2018-19.*
5. *Affidavit of Shri Aslam Bairakdar stating loan given to his brother.*

6. *ITR copy of loan giver Shri Aslam Bairakdar.*
7. *Copy of memorandum of deposit of title deed of property entered into by Shri Aslam Bairakdar and M/s. Shrirarm Transport Finance Company.*
8. *Copy of extract of Form-15 showing ownership of Shri Aslam Bairakdar of property mortgaged in favor of M/s. Shriram Transport Finance Company Limited.*
9. *Copy of application submitted by Shri Aslam Bairakdar to M/s. Shriram Transport Finance Company Limited.*
10. *Copy of highlighted Bank Statement of Shri Aslam Bairakdar from 01/04/2017 to 30/06/2017 indicating amount of loan received.*
11. *Copy of highlighted Bank Statement of Shri Aslam Bairakdar from 01/07/2017 to 30/09/2017 and indicating paid to appellant.*
12. *Copy of highlighted Bank Statement of the appellant from 15/05/2017 to 17/07/2017 indicating amount received from Shri Aslam Bairakdar.*
13. *Copy of certificate, schedule of repayment, summary of received payments etc and application form of all*
14. *Copy of certificate, schedule of repayment, summary of received payments etc and application form of all hypothecation loans namely MDOLBO506100002, MDOLBO612290003, MDOLBO701230005, MDOLBO701230004, MDOLBO701230006 and MDOLBO709290014 availed from Shriram Finance Limited.*
14. *Self-certified copy of ITR Acknowledgement for the A.Y.2016-17.*
15. *Self-certified copy of Profit & loss account for the year ending 31/03/2016 of appellant in respect of loan availed from The Karnataka Minority Credit Co-operative Society Ltd.*
16. *Self-certified copy of Balance sheet as at 31/03/2016 of appellant in respect of loan availed from The Karnataka Minority Credit Co-operative Society Ltd.*
17. *Details of documents submitted before The Karnataka Minority Credit Co-operative Society Ltd for availing loan.*
18. *Copy of certificate confirming loan availed, interest charged, repayments made and outstanding loan from 09/04/2015 to 31/03/2018*
19. *Highlighted self-certified copy of loan sanction letter, statement and bank statement of DCB Bank stating loan taken to close the business loan of Rs.30,62,877/-.*

20. Copy of Statement clarifying amount admitted before the Hon'ble CIT(A) in respect of loan of Shri Aslam Bairakdar

6. Before us the learned A.R. of the Assessee submitted that as it was the first year of assessment and that too the assessment was made through faceless mode and for this reason the assessee was completely unaware about the procedural aspect of filing reply to the notices by virtual e-mode. The AR of the Assessee also submitted that the assessee came to know about the completion of the assessment proceedings only after receiving physical recovery notice. Further, the learned A.R. of the assessee vehemently submitted that all the transactions are genuine and incurred for the purpose of business. The learned A.R. also filed various supporting documents, confirmations, bank statements, which are part of the paper book submitted before us.

7. The learned D.R., on the other hand, supported the orders of the authorities below and submitted that the assessee has not availed the several opportunities given by the AO during the course of assessment proceedings.

8. We have heard the rival contentions and perused the material on record. It was explained before us that the assessee was not well versed with the ITBA portal and procedural aspects of e-filing as this was his first assessment made through faceless mode and pleaded to give one more opportunity to present his case before the AO with all the documents to prove his claims as evidenced by the paper book filed before us. Accordingly, in the interest of justice & fair play we are of the opinion that it is appropriate to remand the issue in dispute in its entirety to the file of the AO to consider the case afresh in the light of the documents produced before us. The assessee is directed to file all these documents before the AO and satisfy him regarding the genuineness of the claims made by the assessee and the AO is to decide the issue afresh after giving reasonable opportunity of hearing in accordance with law. The assessee

is directed to cooperate with the proceedings and in case of further default the assessee shall not be entitled to any leniency.

9. In the result, the appeal filed by the assessee is partly allowed for the statistical purposes.

Order pronounced in the open Court on 08th July, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bengaluru, Dated: 08th July, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru