

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA.No.1772/Mum./2024  
Assessment Year 2018-2019

The ACIT-32(1), 202, 2 <sup>nd</sup> Floor, Kautilya Bhawan, BKC, Mumbai – 400 051 Maharashtra.	vs.	Raj Romell Relators, 101,B-Wing, Gharkul CHS Limited, Azad Road, VileParle East, Mumbai – 400 057. Maharashtra. PAN AAPFR2973N
(Appellant)		(Respondent)

For Revenue :	Smt. Mahita Nair, Sr. DR
For Assessee :	Shri Nitesh Joshi

Date of Hearing :	11.07.2024
Date of Pronouncement :	22.07.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M.**

This Revenue's appeal, for assessment year 2018-2019, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1061283797(1) dated 21.02.2024, in proceedings u/s.147 r.w.s.144 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The Revenue pleads the following twin substantive grounds in the instant appeal :

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.99,00,000/- made in respect of unsecured loans despite the fact that the assessee failed to prove the creditworthiness of the creditor ie. Mrs.Safiabai Rampurawala and the creditor had never filed return of income including that for the year under consideration and hence huge amount of loan given by the creditor is unexplained cash credit u/s 68 of the Income tax Act".*
2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.32,13,464/- which was paid in form of penalty to the owners by the assessee, for not complying with agreed conditions made with them and any form of penalty is not allowable expense".*
3. *The appellant craves leave to amend or alter or add a new ground which may be necessary."*

3. We advert to the first and foremost issue of sec.68 unsecured loans addition of Rs.99 lakhs made in assessee's hands

in course of assessment as deleted in the CIT(A)-NFAC's order. The Revenue's case is that the assessee had not discharged its onus of proving identity, genuineness and creditworthiness thereof so as to satisfy the rigor of unexplained cash credits u/sec.68 of the Act.

4. Mr. Joshi on the other hand took us to the assessee's detailed paper book running into 294 pages wherein he claims that all the supportive details as well as confirmations etc., stood duly filed before the lower authorities. He also quotes Assessing Officer's corresponding remand report dated 12.12.2023 [pages 238 to 243] as well as his rejoinder filed before the CIT(A)-NFAC and clarifies that the learned lower appellate authority has rightly deleted the impugned addition.

5. We find from perusal of the Assessing Officer's remand report herein that the assessee had not been able to prove either genuineness of the impugned unsecured loans or creditworthiness of the sole creditor as it is evident from the Assessing Officer's findings. Mrs. Nair invited our attention to the assessee's rejoinder against the said remand report filed on 24.01.2024 [pages 244-247] that he had in fact filed additional details of bank statements etc.,

which allegedly indicated the concerned party Smt. Safiabai Rampurawala to have received various sums from her son Shri Mustaq Ahmed Fazli Hussain [settled in Dubai]. Mr. Joshi drew strong support from the CIT(A)-NFAC findings that the impugned addition has rightly been deleted in light of the said material.

5.1. All these assessee's arguments fail to evoke our concurrence. This is for the precise reason that it had filed its rejoinder containing additional details/evidence before the CIT(A)-NFAC which had nowhere been put to factual verification at the Assessing Officer's end during remand proceedings. The assessee is found to have very well missed the bus by not filing all the relevant details before the Assessing Officer in remand proceedings. Mr. Joshi at this stage drew strong parallels between the impugned loan entry vis-à-vis other amounts received. His case is that the Assessing Officer had adopted pick and choose method in adding only the loan in question of Rs.99 lakhs. We see no merit in assessee's arguments for the reason already quoted hereinabove that the department has not been able to get all the corresponding bank accounts et., verified at the Assessing Officer's end. We

accordingly deem it appropriate in these facts and circumstances to restore the Revenue's instant former substantive grounds back to the Assessing Officer for his afresh appropriate adjudication as per law, subject to the rider that it shall be the taxpayer's risk and responsibility only to plead and prove all the relevant facts in consequential proceedings, within three effective opportunities of hearing. The Revenue instant first and foremost grievance is accepted for statistical purposes. Ordered accordingly.

6. Next comes the second issue of disallowance/addition amounting to Rs.32,13,464/- made in the course of assessment and reversed the CIT(A)-NFAC lower appellate discussion.

7. Suffice to say, it emerges from perusal of the Assessing Officer's remand report (supra) that he had indeed expressed agreement with the assessee's explanation that the foregoing amount was incurred wholly and exclusively for the purpose of redevelopment of project since the payments were made to the already existing tenants for their temporary transit alternative accommodation. We thus quote Smt. B. Jayalaxmi vs. ACIT [2018] 96 taxmann.com 486 (Mad.) and CIT vs. DN Purnesh426 ITR 169

(Kar.) that the Revenue could hardly be held as an aggrieved party once the assessing authority submits a favourable remand report before the CIT(A)-NFAC and accordingly reject the Revenue's instant second latter substantive ground in very terms. Ordered accordingly.

8. This Revenue's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open Court on 22.07.2024

Sd/-  
[GIRISH AGARWAL]  
ACCOUNTANT MEMBER  
Mumbai, Dated 22<sup>nd</sup> July, 2024  
VBP/-  
Copy to

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "D" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,  
Mumbai.