

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
& SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.676/Ahd/2019
(Assessment Year: 2014-15)

Mayur Nirmalkumar Jain, 1, Arihant Bunglows, Nr. Daxani Society, Maninagar, Ahmedabad-380008	Vs.	Income Tax Officer, Ward-6(1)(3), Ahmedabad
[PAN No.AFYPJ0552R]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Dhrunal Bhatt, A.R.
Respondent by:	Shri Ashok Kumar Suthar, Sr. DR
Date of Hearing	07.08.2024
Date of Pronouncement	14.08.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

The present appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-6, (in short “Ld. CIT(A)”), Ahmedabad vide order dated 27.08.2018, for Assessment Year 2014-15.

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

“1. On the facts and in the circumstances of the case, the learned CIT(A) erred in rejecting ground of appeals raised by the appellant before him challenging the validity of assessment order passed under section 143(3) of the Act dated 21.12.2016.

2. In law and in facts and circumstances of the case of appellant, the CIT(A) erred in confirming the addition under section 68 of the Act on account of credit balance in case of two sundry creditors amounting to Rs. 1,09,48,350/-.

3. In law and in the facts and circumstances of the Appellant’s case, the learned CIT(A) has grossly erred in upholding disallowance made under section 68 of the Act of Rs. 21,38,214/- in respect of unsecured loan from few parties.

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4. *In law and in facts and circumstances of the Appellant's case the learned CIT(A) has grossly erred in rejecting additional evidence furnished by the Appellant during the course of Appellate proceedings.*

5. *The Appellant craves leave to add, amend and/or alter the ground or grounds of Cross-objections either before or at the time of hearing."*

3. At the outset, we observe that the appeal of the assessee is time-barred by 163 days. The assessee has filed an application for condonation of delay vide Affidavit dated 15.04.2019 wherein the assessee stated that the appeal in filing was delayed owing to the fact that the assessee was suffering heavy losses continuously and as a result all the accounts staff and other administrative staff were terminated. Therefore, it was the assessee who personally looked into compliance related matters for all statutory provisions. The assessee submitted that on account of heavy losses, the assessee was under state of trauma and depression and was under litigation from August 2018 onwards. The assessee also furnished a certificate regarding his health condonation issued by Dr. Abhay Jain in order to demonstrate that the assessee was having serious health issues from August 2018 onwards. Accordingly, a prayer was made that since the assessee has a good case on merits, in the interest of justice, the delay in filing of appeal may kindly be condoned. Accordingly, looking into the facts of the case instant case, the delay of 163 days in filing of the present appeal is hereby condoned.

4. The brief facts of the case are that the assessee is engaged in the trading of petroleum products under the proprietorship concern "Jay Ambe Enterprise". The assessee filed return of income for the Assessment Year (A.Y.) 2014-15 on 18.07.2014, declaring a total income of Rs. 3,25,680/-.The return was processed under Section 143(1) of the Income Tax Act, 1961 ("the Act").The case was selected for limited scrutiny under CASS scheme. Accordingly, a notice under Section 143(2) was issued on 08.09.2015 and

served on the assessee on 11.09.2015. During the course of assessment proceedings, the Ld. Assessing Officer observed that the assessee had shown the following sundry creditors in the books of account:

- K Shah & Co.: Rs. 1,28,205/-
- Sagar Trading Co.: Rs. 23,72,450/-
- Shah Associates: Rs. 4,53,600/-
- Aman Trading: Rs. 1,99,73,330/-

5. The Ld. Assessing Officer observed that though the assessee had submitted the ledger accounts of these creditors, but it failed to provide confirmation from them. The Ld. Assessing Officer issued notices under Section 133(6) to these creditors at the addresses provided by the assessee. In response to notices issued by the Ld. Assessing Officer, in case of Sagar Trading Co., the notice was returned by the postal department with the remark "left." The AO was of the view that the assessee failed to provide confirmation from the party. The Ld. Assessing Officer observed that the that there was an opening balance of Rs. 19,18,850/- and a credit entry of Rs. 4,53,600/- during the year. Since the identity, creditworthiness, and genuineness of the transaction were not proved by the assessee , a sum of Rs. 4,53,600/- was added to the total income under Section 68 of the Act. With regards to another creditor namely Aman Trading, the notice issued by the Ld. Assessing Officer was returned by the postal department with the remark "left." The AO was of the view that the assessee failed to provide confirmation. Ld. Assessing Officer observed that the ledger showed an opening balance of Rs. 1,40,28,750/- and a credit entry of Rs. 1,04,94,750/- during the year. A journal entry was passed on 31.03.2014 for Rs. 45,50,170/- as "Mayur N Jain-Loan." As the identity, creditworthiness, and genuineness of the transaction were not proved, a sum of

Rs. 1,04,94,750/- was added to the total income under Section 68 of the Act. Accordingly, the Ld. Assessing Officer made a total of addition of Rs. 1,09,48,350/- as unexplained cash credits to the assessee's income. Penalty proceedings under Section 271(1)(c) of the Act were initiated for furnishing inaccurate particulars and concealing income. In addition to the above, the assessee had shown unsecured loans amounting to Rs. 21,38,214/- in the balance sheet. Notices under Section 133(6) were issued to the depositors, but all were returned by the postal department with the remark "left." The assessee was asked to submit confirmations and supporting evidence but he failed to do so. Accordingly, the Ld. Assessing Officer was of the view that in view of lack of response and evidence, the identity, creditworthiness, and genuineness of the transactions remained unproven. Accordingly, the entire amount of Rs. 21,38,214/- was treated as non-genuine and added to the total income under Section 68 of the Act. Penalty proceedings under Section 271(1)(c) were initiated for furnishing inaccurate particulars and concealing income.

6. In appeal, Ld. CIT(Appeals) confirmed the additions with the following observations:

“7.3 After considering findings of the AO and submissions of the appellant, this ground is adjudicated as under.

It is seen that during the assessment proceedings the AO noted that the appellant had shown the following sundry creditors in his books of accounts:-

<i>1. K Shah & Co.</i>	<i>Rs. 1,28,205/-</i>
<i>2. Sagar Trading Co.</i>	<i>Rs. 23,72,450/-</i>
<i>3. Aman Trading</i>	<i>Rs.1,99,73,330/-</i>

When asked by the AO, the appellant did not file confirmation of accounts from the above sundry creditors. Further, notices sent u/s 133(6) of the Act were received back from postal department with remark 'Left'. Accordingly, the AO made addition of Rs. 1,09,48,350/- treating the balance in the name of the above sundry creditors as unexplained cash credit. It is seen that during the appeal proceedings

also the appellant did not file confirmations from the said parties. The appellant merely submitted additional evidence in the form of copy of VAT Return as additional evidence. As detailed above additional evidence has not been admitted. In any case the balance outstanding in the name of above sundry creditors is not confirmed from VAT Return. Case laws relied on by the appellant does not apply as the facts are different. Therefore, it is held that the AO was justified in adding the amount of Rs.1,09,48,350/-. This ground of appeal is rejected.

....

8.3 *After considering findings of the AO and submissions of the appellant, this ground is adjudicated as under.*

It is seen that the AO noted that the appellant has shown unsecured loans of Rs. 21,38,214/-. When asked by the AO, the appellant did not file any confirmations from the depositors along with other supporting evidence. The notices sent u/s 133(6) of the Ac to the creditors were returned back with the postal department remark 'Left'. It is seen that the appellant had shown unsecured loans of Rs. 21,38,214/- from the following three (3) persons:-

1. *Nirmal Motilal Jain Rs. 11,32,500/-*
2. *Shakuntala N. Jain Rs. 4,00,000/-*
3. *Sunilbhai K. Jain Rs. 6,43,213/-*

As detailed above, no confirmations and other supporting documents to prove the identity and creditworthiness of the creditors and genuineness of the transactions were filed before the AO. Even during appeal proceedings no confirmations were filed. The appellant filed some additional evidences in respect of these creditors like ITRs etc. which as mentioned above have not been admitted. Case laws relied on by the appellant does not apply as the facts are different.

In view of discussion above, the appellant has failed to establish the identity and creditworthiness of the creditors and genuineness of the transactions in respect of above creditors. Accordingly, addition of Rs. 21,38,214/- is upheld. This ground of appeal is rejected.”

7. Before us, the counsel for the assessee submitted that the assessee filed detailed evidences before the Ld. CIT(Appeals) during the course of appellate proceedings. The Ld. CIT(Appeals) had also called for a Remand Report and the contention of the remand report are self-explanatory, insofar of facts relating to the assessee's case were discussed in the remand report and no adverse inferences were drawn in the remand report submitted by the assessing officer. The only issue raised by the assessing officer in the remand report was

that the assessee was not covered in any of the circumstances mentioned in 46A of the Income Tax Rules and hence the assessee should not be permitted to file additional evidences in support of its claim during the course of appellate proceedings before CIT(Appeals). The Ld. Counsel for the assessee submitted that during the appellate proceedings, the assessee had provided supporting evidence in form of quarterly VAT returns for the last quarter of the F.Y. 2013-14 (January-March 2014), with regards to addition of Rs. 1,09,48,350/- as unexplained cash credit in respect of sundry creditors in respect of two sundry creditors namely Sagar Trading Co. and Aman Trading. The assessee submitted before us that the purchases and sales, including transactions with the aforementioned creditors, were duly reported to the VAT department. The Ld. Assessing Officer in the Remand Report duly verified the VAT returns and confirmed that the transactions with Sagar Trading Co. and Aman Trading were indeed reported in March 2014. However, the Department emphasized that reporting to the VAT department does not negate the responsibility of the assessee to prove the creditworthiness of the creditors under Section 68. The fact that the notices under Section 133(6) were returned undelivered does suggest that creditors were not in existence and that the genuineness of the transactions was doubtful. With regards to addition of ₹21,38,214 as Unexplained Cash Credit (Unsecured Loans), the Ld. Counsel for the assessee submitted that the AO made an addition of ₹21,38,214 to the assessee's income, treating the amount as unexplained cash credits related to unsecured loans from three individuals namely Nirmal Motilal Jain (₹11,32,500), Shakuntala N. Jain (₹4,00,000) and Sunilbhai K. Jain (₹6,43,214). The addition was made because the assessee did not provide sufficient documentation to establish the identity, creditworthiness, and genuineness of these transactions during the assessment proceedings.

However, in the appellate proceedings before Ld. CIT(Appeals), the assessee presented additional evidence, including ITR acknowledgments for AY 2014-15, Computation of total income, Confirmation of accounts, Copies of PAN cards and Bank passbooks with a view to substantiate the credibility of the loans. The Ld. Assessing Officer in the Remand Report reviewed the additional evidence and verified that in so far Nirmal M. Jain is concerned, the bank passbook showed deposits totaling ₹32,500 during March 2014, with a closing balance of ₹11,32,500/-. The Department found this explanation verifiable. For Shakuntala N. Jain, the Ld. Assessing Officer observed that the confirmation of the ledger account showed an opening and closing balance of ₹4,00,000, with no new loans taken during FY 2013-14. For Sunilbhai K. Jain, the Ld. Assessing Officer observed that the ledger account showed an opening balance of ₹6,43,214 with no new loans during March 2014. The Department verified this, with the observation that Sunilbhai K. Jain was a retired partner of the firm M/s. Jay Ambe Enterprise, and the business was taken over by the assessee. However, despite verifying the evidence submitted during the appellate proceedings, the Ld. CIT(A) disregarded the supporting evidence only on the ground that these documents should have been presented during the original assessment. The Department also not has not pointed out any defect or infirmity in the supporting evidences furnished by the assessee during the course of appellate proceedings before Ld. CIT(Appeals). Accordingly, the counsel for the assessee submitted that given the present facts, the assessee has furnished all supporting evidences to prove the genuineness of the unexplained cash credits amounting to ₹ 1,09,48, 350/- (with respect to two sundry creditors namely Sagar Trading Co and Aman Trading)and also has furnished verifiable supporting evidences with respect to addition of ₹ 21,38, 214/-as unexplained cash credit in unsecured loans.

8. In response, DR placed reliance on the observations made by assessing Officer in Ld. CIT(Appeals), in their respective orders. The DR submitted that despite ample opportunity having been provided to the assessee during the course of assessment proceedings, the assessee did not avail of such opportunity and hence Ld. CIT(Appeals) has not erred in facts and in law in refusing to admit any additional evidences and thereby confirming the additions made by the assessing officer.

9. We have heard the rival contentions and perused the material on record.

10. Now at this stage, it would be useful to reproduce the relevant extracts of the remand report issued by the assessing officer, while dealing with the additional evidences submitted by the assessee, in support of the additions made during the course of assessment proceedings:

“5. Addition of Rs. 1,09,48,350/- as unexplained cash credit in respect of sundry creditors:

In the assessment order, the AO has made the addition of Rs.1,09,48,350/- on account of unexplained cash credit u/s. 68 of the Act in respect of two sundry creditors namely (i) Sagar Trading Co. and (ii) Aman Trading. During the course of assessment proceedings, the assessee did not file the confirmations of the said two creditors as well as the notice u/s. 133(6) of the Act issued to these two creditors returned by the postal department and accordingly the AO has treated the sum of Rs. 4,53,600/- in case of Sagar Trading Co. and Rs. 1,04,94,750/- in the case of Aman Trading as unexplained cash credit and added to the total income of the assessee. During the appellate proceedings before your honour, the assessee has filed the copy of quarterly VAT Returns filed for the last quarter of FY 2013-14 i.e. for the period of January-2014 to March-2014 and contended that the purchases and sales of the assessee are duly reported therein to the VAT department. The copy of the quarterly VAT returns has been verified and it is seen that the purchases from Sagar Trading Co. and Aman Trading have been reported in the month of March-2014. Further, the assessee has also reported the sales for the month of March-2014. But as per the addition made u/s. 68 as unexplained cash credit, the liability to prove the credit worthiness on the assessee's hand which he failed to do so. In respect of the receiving rack of the Notices u/s. 133(6) of the Act, the assessee contended before your honour that merely because the creditors were not found at the address available with the

assessee. Moreover, as additional evidence is not clear and therefore, no comments can be offered on the same.

6. Addition of Rs. 21,38,214/- as unexplained cash credit in unsecured loans:

In the assessment order, the AO has made the addition of Rs. 21,38,214/- on account of unexplained cash credit u/s. 68 of the Act in respect of unsecured loans from three parties namely (i) Nirmal Motilal Jain for Rs. 11,32,500/-, (ii) Shakuntala N. Jain for Rs. 4,00,000/- and (iii) Sunilbhai K. Jain for Rs. 6,43,213/- totaling to Rs. 21,38,214/-. During the course of assessment proceedings, the assessee did not file the confirmations of these depositors along with other supporting evidences and therefore the AO has treated the total sum of Rs. 21,38,214/- as unexplained cash credit and added to the total income of the assessee since the identity, creditworthiness and genuineness of the transactions were not proved.

In the appellate proceedings before your honour, the assessee has filed following details in respect of the unsecured loans:

1. In case of Nirmal M. Jain, copy of ITR acknowledgment for AY 2014-15 along with the copy of computation of total income, confirmation of account for the period from 01-12-2014 to 31-03-2014, copy of PAN card of the depositor and copy of the bank pass book of Bank of Baroda, Bhadra Branch, Ahmedabad.

The confirmation of ledger account of the depositor shows the opening balance of Rs. 10,95,000/- as on 01/02/2014. On verification of the bank pass book, it is seen that during the month of March-2014, the said depositor has given loan/deposit of Rs.20,000/- and Rs. 12,500/- totaling to Rs. 32,500/-. The closing balance as on 31/03/2014 is of Rs. 11,32,500/-, which has been added by the AO u/s. 68 of the Act is verifiable and no disallowance or addition on this ground is warranted.

2. In case of Shakuntala N. Jain, copy of ITR acknowledgment for AY 2014-15 along with the copy of personal Profit & Loss Account, Balance sheet and Capital Account for the FY 2013-14, copy of confirmation of account and copy of PAN Card of the depositor submitted before your honour.

The confirmation of ledger account of the depositor shows the opening balance of Rs. 4,00,000/- and the closing balance is also of Rs. 4,00,000/-. There is no new loan/deposit taken / accepted from the said depositor during the FY 2013-14. The AO has added the amount of Rs. 4,00,000/- u/s. 68 of the Act is verifiable, and no disallowance or addition on this ground is warranted.

3. In case of Sunilbhai K. Jain, the ledger account for the period from 1/4/2013 to 11/03/2014 has been submitted. There is opening balance of Rs. 6,43,214/- as on 11/03/2014 and no new loan / deposit has been accepted during the month of March-2014. The Closing balance as on 31/03/2014 is of Rs. 6,43,214/- which has been added by the AO u/s. 68 of the Act. Sunilbhai K. Jain is the retired partner of the erstwhile partnership firm M/s. Jay Ambe Enterprise. He retired from the said partnership firm w.e.f. 28/03/2014 and the running business of the said firm has

been rake over by the remaining partner Mayur N. Jain i.e. the assessee with all its assets and liabilities. The copy of the notarized dissolution deed of partnership dated 24/05/2014 has been produced for verification. Is verifiable.

7. However, the assessee had failed to avail the opportunities and hence, assessee's case is not covered under any circumstances mentioned in Rule 46A(1) of the I.T.Rules viz.

(a) During the course of assessment proceedings, the assessee was provided with adequate opportunities and ample time. In spite of the above, he had not furnished details which have been now furnished before your honour as per the above.

(b) The Assessing Officer has riot refused to admit evidence which ought to have been admitted.

(c) The appellant was not prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer.

8. As stated above, there is no such circumstance in existence as referred in the rule 46 A of the I. T. Rules, 1962, in the case of the assessee. In view of the above, your honour is kindly requested not to admit the above additional evidence and take into account the same, produced by the assessee before /our honour against the addition made of Rs. 1,09,48,350/- if otherwise considered necessary.

In view of the above, the appeal of the assessee is not tenable and it is hereby requested to confirm the disallowances / additions made by the AO in due course. ”

11. Accordingly, in view of the facts of the case, the submissions made by the counsel for the assessee before us during the course of proceedings, the findings made by the assessing officer in the Remand Report and various evidences placed on record before us, we are of the considered view that Ld. CIT(A) has erred in facts and in law in not allowing the assessee to file additional evidence and has erred in not considering the additional evidences under Rule 46A of the Income Tax Rules. In the remand proceedings, the assessee submitted certain additional evidence in support of it's contention, which were not admitted by Ld. CIT(A) while dismissing the appeal of the assessee. Accordingly, in the interest of justice, we are restoring the matter to the file of the Ld. CIT(A) with a direction to consider the additional evidences placed by the assessee on record, with a further liberty to place any other

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additional evidences which the assessee would like to produce during the course of set-aside proceedings. We clarify that we have not commented on the merits of the issue.

12. In the result, appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on	14/08/2024
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Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 14/08/2024

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad