

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

AND

SHRI NARINDER KUMAR, JUDICIAL MEMBER

ITA No. 1989/DEL/2023

Assessment Year: 2016-17

RAJNESH KUMAR AGGARWAL 1116, DEVIKA TOWERS, 6 NEHRU PLACE, NEW DELHI-110019	Vs.	INCOME TAX OFFICER, WARD 30(4), NEW DELHI
PAN :..AFQPA1657L		
(Appellant)		(Respondent)

Assessee by	Shri Neeraj Jain, CA & Shri P K Mishra, CA
Department by	Ms. Indu Bala Saini, SR, DR

Date of hearing	21.08.2024
Date of pronouncement	21.08.2024

ORDER

PER : Shri Narinder Kumar, Judicial Member:

By way of present appeal, assessee has challenged order dated 26.05.2023 passed by learned CIT(APPEALS), NFAC, Delhi.

2. Vide impugned order, Learned CIT(Appeals) has dismissed the appeal filed by the assessee and thereby upheld the assessment order dated 29.12.2018 passed by the Assessing Officer, Ward 30(4), Delhi.

3. Vide Assessment Order dated 29.12.2018, the Assessing Officer observed that the assessee was provided opportunity to explain the source of fund in the hands of loan providers (details available in para 5 of the assessment order), but the assessee did not furnish any explanation, and rather, he remained silent on the issue of source of fund. The Assessing Officer further observed that the loan providers did not explain source of funds and creditworthiness. He further observed that it appeared that it was unexplained money of

the assessee, which he routed through different banks, to make the said transactions appear as genuine transactions.

4. Ultimately, the Assessing Officer made an addition of Rs.1,99,75,000/- to the income of the assessee, holding that the said income was from undisclosed sources, and that provision of u/s 68 of Income Tax Act, 1961(herein after referred to as " The Act") were attracted.

4.1 In this way, the Assessing Officer assessed the income of the assessee at Rs.2,10,77,110/-.

4.2 At the same time, the Assessing Officer initiated separate proceedings against the assessee u/s 271(1)(c) read with section 274 of the Act.

5. Feeling aggrieved by the assessment order, the assessee filed appeal. As noticed above, the CIT(Appeals) NFAC, dismissed the appeal, while holding that the appellant had miserably failed to prove the credit capacity and genuineness of transactions.

6. Hence, this appeal.

7. Argument heard. File perused.

8. Ld. AR for the appellant has contended that before framing assessment, Assessing Officer was required to conduct detailed enquiry in order to verify the genuineness and creditworthiness of the claim of the assessee. As regards unsecured loans, he was required to issue notices u/s 133(6) of the Act to all the creditors, whose details were made available by the assessee, but, no such notice was issued, and as such, the impugned assessment deserves to be set aside, but Id. CIT(Appeals) rejected the grounds raised by the assessee and dismissed the appeal, without recording cogent and convincing reasons. Ld. AR has urged that the matter needs to be remanded to the Assessing Officer for detailed enquiry and framing of assessment afresh.

9. Record reveals that after filing of return of income by the assessee for the Assessment Year 2016-17, was selected for scrutiny under CASS, for complete scrutiny, whereupon notice u/s 143(2) of the Act was issued and served upon the assessee, followed by another notice u/s 142(1) accompanied by a questionnaire, whereupon the assessee furnished details online electronically, in e-proceedings, through his account, in e-filing of the department.

10. During the relevant period, the assessee was engaged in the business of real estate development and trading in shares. The assessee claimed to have availed of unsecured

loan from ten persons, whose names with the amount of loan availed of find mention in para 2 of the assessment order.

11. During assessment proceedings, vide notice u/s 142(1), dated 5.12.2018, the assessee was called upon to prove identity, creditworthiness and genuineness of transactions.

12. In response thereto, the assessee stated to have furnished ITR and incomplete bank statements in respect of 10 persons, specified in the assessment order.

13. Therefore, the Assessing Officer issued notice u/s 142(1) dated 24.12.2018, calling upon the assessee to prove identity, creditworthiness and genuineness of transactions.

14. In response to the said notice, the assessee submitted copies of remaining bank statements and ITRs. In para 3 of the assessment order, there are details of the amounts deposited as against the names of the ten persons, who are stated to have given loans to the assessee.

15. In the assessment order, the Assessing Officer has made observations, as regards the above named 10 persons, after pursuing ITRs, passbooks, and bank statements of nine of them. As regards, the person at Sl.No.1 namely, Shri Yogesh Kumar Singhal, Assessing Officer found that copy of his ITR was not legible and that complete bank statement of the said person was not furnished.

16. The assessment order does not reveal that the Assessing Officer called upon any of the said ten persons to join the enquiry. In the course of arguments, we put a specific query as to whether the AO had issued notices u/s 133(6) of the Act to the abovesaid ten persons. Ld. AR for the assessee has submitted that no such notice was ever issued by the AO to any of the above said ten persons from whom the assessee claims to have availed of loan facility.

17. In the given circumstances, the AO was required to join all the above said ten persons in the enquiry, before passing the assessment order. In the case of ***PCIT Vs NRA Iron & Steel Pvt Ltd***, (2019) 412 ITR 161(SC), Hon'ble Apex Court held that *the Assessing Officer is duty bound to investigate the credit worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*

18. It was further held in that case that *if the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack creditworthiness, then the genuineness of the transaction would not be established.*

19. In the given facts and circumstances, we find that before passing assessment order the AO did not thoroughly enquire into or investigate the matter, by associating the above named ten persons in the enquiry. There is nothing in the assessment order to suggest that at any point of time, the AO called upon the assessee to produce the above said ten persons or their representatives for the purpose of enquiry. As noticed above, nonnotice u/s 133(6) of the Act was issued to any of the said ten persons. Therefore, we deem it to be a fit case, where the AO should conduct a detailed enquiry, after issuing notices u/s 133(6) of the Act to the concerned 10 persons before framing of assessment afresh in accordance with the law.

RESULT

20. In view of the above findings, this appeal is disposed of for statistical purposes, and the matter is restored to be files of the Assessing Officer, for a detailed enquiry having regard to the abovesaid observations made by us, and then to pass assessment order afresh, in accordance with the law. Consequently, the impugned order passed by Ld. CIT(Appeals) is hereby set aside.

20.1 Of course, the Assessing Officer shall provide reasonable opportunity of being heard to the assessee/appellant.

Order pronounced in the Open Court.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

sd/-

(NARINDER KUMAR)
JUDICIAL MEMBER

Date: 21.08.2024

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Copy forwarded to: -

1. Appellant.
2. Respondent.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar