

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

समक्ष श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य एवं श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य के समक्ष।
BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं / ITA No. 126/Ahd/2024
निर्धारण वर्ष/Assessment Year: 2018-19

Nyalkaran Builders LLP, A/101, Premdarshan, B/h. Abme School Sama Savli Road, Vadodara-390008 PAN : AAMFN 5952 A	बनाम Vs.	Income Tax Officer, Ward 3(3)(5), Ahmedabad
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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निर्धारिती की ओर से / Assessee by :	Shri Chetan Agarwal, AR
प्रत्यर्थी की ओर से / Revenue by :	Smt. Mamta Singh, Sr DR

सुनवाई की तारीख/Date of Hearing : 27.05.2024
घोषणा की तारीख /Date of Pronouncement: 22.08.2024

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order dated 09.01.2024 passed by the learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "the Act" in short), relating to the Assessment Year (AY) 2018-19.

2. The brief facts of the case are that the assessee is a Limited Liability Partnership Firm (LLP) engaged in the business of construction and development activities. For the assessment year 2018-19, the assessee filed its return of income on 20.10.2018 declaring total income of Rs.96,54,550/-. The return was taken-up for scrutiny assessment since it was found large increase in unsecured

loans, availed by the assessee. The Assessing Officer issued a show-cause notice calling for explanation of 13 unsecured creditors; in reply, the assessee filed various details before the Assessing Officer. After verification of the same, the Assessing Officer confirmed the unsecured loans relating to the 5 parties amounting to Rs.1,30,45,000/- as follows:-

SR NO	Name of the lender or depositor	Amount of loan or deposit taken or accepted	Reason for which creditworthiness is not proved
1	EMPIRE REALTY	1000000	As per the copy of return of AY 2018-19 the return income is only Rs 1,02,200/-. Hence the creditworthiness of the loan creditor is not proved.
2	PRAVINBHAI N GOLAVIYA HUF	725000	As per the copy of return of AY 2018-19 the return income is only Rs.2,55,2380/-. Hence, the creditworthiness of the loan creditor is not proved.
3	SHREE SHWAMINARAYAN IND	1100000	As per the copy of return of AY 2018-19 the return income is only Rs.60,955/-. Hence the creditworthiness of the loan creditor is not proved. It is stated by the assessee that outstanding balance of loan in this case is nil as the entire amount was repaid during the year, but as per column 31(a) of the audit report, the auditor has certified that the loan was not squared up during the year, Further considering the return income of SHREE SHWAMINARAYAN IND, it is seen that the creditworthiness of SHREE SHWAMINARAYAN IND is not proved.
4	PRERNA REALTY	2900000	Again No copy of ITR for AY 18-19 is filed Hence the creditworthiness of the lender could not be proved.
5	SHREEJI DEVELOPERS	7626000	Again No copy of ITR for AY 18-19 is filed Hence the creditworthiness of the lender could not be proved.

2.1 Thus, the Assessing Officer determined the total income as Rs.2,26,99,550/- and demanded the taxes thereon.

3. Aggrieved against the assessment order, the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) held that the assessee failed to establish the creditworthiness and identity of the parties and thereby confirmed the addition made by the Assessing Officer.

4. Aggrieved against the appellate order, the assessee is now in appeal before us raising the solitary ground that the ld. CIT(A) has erred in confirming the addition of Rs.1,30,45,000/- made by the Assessing Officer u/s 68 of the Act.

5. Ld. Counsel Shri Chetan Agarwal, appearing for the assessee, submitted before us a paper-book running into 43 pages containing various details and evidences relating to the unsecured loans availed by the assessee. The ld. Counsel also presented before us a tabulated chart clearly showing when the loan was taken, when the repayment has been done, and also the evidences filed before the ld. CIT(A). Therefore, the ld. Counsel requested to delete the addition made by the Assessing Officer.

6. Per contra, the ld. Sr. DR., Smt. Mamta Singh, appearing for the Revenue, supported the order passed by the ld. CIT(A) and requested to sustain the addition made by the Assessing Officer and confirmed by the ld. CIT(A).

7. We have given our thoughtful consideration to the orders of the authorities below and also perused the material available on record. It is pertinent to note the details of unsecured loans and repayment made thereon, alongwith evidences filed by the assessee, which are as follows:-

Sr. No	Name, Address and PAN	Opening Balance	Loan Taken During the Year	Loan Repaid During the Year	Closing Balance	Evidences	Page No.
1	EMPIRE REALTY, FF 12, DARSHANAM OSSIS, NR MUKHINAGAR KHODIYAR NAGAR CROSS ROAD, NEW KARELI BAUG, VADODARA PAN: AAGFE1361G		10,00,000 15.04.2017	10,00,000 18.04.2017		1. Income Tax Return 2. Computation of Income 3. Confirmation 4. Bank Ledger 5. Balance Sheet 6. Profit and Loss Account 7. Bank Statement	3 4-5 6 7 8 9 10
2	PRAVINBHAI NANJIBHAI GOLAVIYA-HUF, A/101, PREMDARSHAN, B/H AMBE SCHOOL, SAMA SAVLI ROAD, VADODARA PAN: AAOHP5895C		7,25,000		7,25,000	1. Income Tax Return 2. Computation of Income 3. Balance Sheet 4. Profit and Loss Account 5. Confirmation 6. Bank Statement	11 12-13 14 15 16 17
3	SHREE SWAMINARAYAN INDUSTRIES, PLOT NO : 3536/1, PHASE-4, GIDC, CHHATRAL, Gandhinagar PAN: ABXFS9866N		11,00,000 15.04.2017	11,00,000 21.04.2017		1. Income Tax Return 2. Computation of Income 3. Profit and Loss Account 4. Confirmation 5. PAN Card 6. Bank Statements	18 19-20 21 22 23 24-27
4	Prerna Reality, A49 Palm Green Duplex, Opp. Siddheshwar Heritage, L&T Knowledge City, Vadodara. PAN: AATFP1562B		14,50,000		14,50,000	1. Confirmation 2. Balance Sheet 3. Bank Statement 4. PAN Card	29 30 31- 32 28
5	Shreeji Developers, At D-103, Shreeji Highview, Sayaji Township Road, Karelibaug, Vadodara PAN: ACVFS9545F		58,76,000 15.06.2017	58,76,000 28.06.2017	12,50,000	1. Confirmation 2. Balance Sheet 3. Bank Statement 4. PAN Card	34 35 36-39 33
			17,50,000 15.06.2017	5,00,000 03.08.2017			

8. Perusal of the above table makes it very clear that the unsecured loans availed from Empire Realty, Shree Swaminarayan Industries and Prerna Reality were being repaid by the assessee within a short duration of seven days. Whereas, in the case of Pravinbhai Nanjibhai Golaviya-HUF, the unsecured loan remained with the assessee and details of interest paid thereof by the assessee was not shown. In the case of Shreeji Developers, unsecured loan of Rs.58,76,000/- availed by the assessee on 15.06.2017 was repaid in entirety on 28.06.2017; however, another loan of Rs.17,50,000/- availed on 15.06.2017 wherein Rs.5,00,000/- only repaid on 03.08.2017; thus, there is a closing balance of Rs.12,50,000/- with the assessee. However, the ld. CIT(A), without making any comments on the repayment of loan by the assessee, but merely relying upon the creditworthiness of the creditors, confirmed the addition made by the Assessing Officer.

9. In our considered view, the addition sustained by the ld. CIT(A) is not correct in law, in a case where repayment of loan made within the same assessment year – that too within a period of 10 days. Therefore, the addition made on this account in the case of Empire Reality, Shree Swaminarayan Industries, Prerna Reality, and Shreeji Developers are liable to be deleted. However, even before us, the assessee has not shown the loan availed from Pravinbhai Nanjibhai Golaviya HUF of Rs.7,25,000/- and the details about the repayment or interest to the creditor. In the absence of the same, the addition made on this account is liable to be sustained. Similarly, in the case of Shreeji Developers, there is a closing balance of Rs.12,50,000/- which is not being explained properly. Thus, the above additions are to be upheld.

10. In the result, the appeal filed by the assessee is partly allowed, as indicated above.

Order pronounced in the open Court on 22/08/2024 at Ahmedabad

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
(अन्नपूर्णा गुप्ता, लेखा सदस्य)

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER
(टी.आर. सेन्थिल कुमार, न्यायिक सदस्य)

Ahmedabad; Dated 22/08/2024

*btk

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, अधिकरण अपीलीय आयकर ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad