

IN THE INCOME TAX APPELLATE TRIBUNAL, "A" BENCH  
MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3055/MUM/2024  
(A.Y.2013-14)

Atul Savailal Shah, 202, Deepak Residency, Bhogilal Phodia Road, Kandivali (West), Mumbai-400092.	Vs.	AC I T- 42(1)(1), Kautilya Bhavan, BKC, Mumbai-400051.
PAN/GIR No.AADPS2427C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Maulin Y. Shah.AR
Respondent by	ShriManojKumarSinha.Sr.DR.

सुनवाई की तारीख/Date of Hearing	07.08.2024
घोषणा की तारीख/Date of Pronouncement	20.08.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi / CIT (A), passed u/sec 143(3) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

*The learned Commissioner of Income Tax appeals [‘CIT(A)'] erred by upholding the action of the Learned Assessing Officer[‘AO'] of addition of loan amount of Rs. 18,41,584/- received during the year from four parties i.e. Ashit Atul Shah, Dhara A Shah, Dhara Plastics and Hetal Bharat Shah. On the facts and in circumstances of the case and in law, the Ld. CIT(A) ought to have held that the loan*

*received from four parties amounting to Rs. 18,41,584/- is genuine and explanation about the nature and source thereof is satisfactory and consequently ought to have directed the AO to delete the additions in respect of the loans received from four parties.*

2. The brief facts of the case that, the assessee is engaged in the business of trading and wholesalers of plastic products. The assessee has filed the return of income for the A.Y 2013-14 on 18.09.2013 disclosing a total income of Rs.15,950/-.Subsequently the case was selected for scrutiny and notice u/sec 143(2) and u/sec 142(1) of the Act along with questionnaire are issued. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The Assessing Officer (A.O) on perusal of the Audited Financial Statements and Tax Audit Report u/sec 44AB of the Act found that (i) the assessee has computed long term capital gains of Rs.1.34.784/- on sale of the immovable property of Rs.12,00,000/-. But the guide line value as per stamp duty authorities is Rs.43,07,500/-, therefore the assessing officer has invoked the provisions of section 50C of the Act and has considered the provisions of the Act, information and explanations and computed taxable Long Term Capital Gains of Rs.29,72,716/- and (ii) the AO found that the assessee has obtained unsecured loans from fifteen loan creditors and has called for information and details to substantiate the identity, genuineness and creditworthiness of the parties. Whereas the AO has considered the submissions and details and

dealt at Para 6.6 of the assessment order, where the amount received during the year, interest amount paid on loans and confirmation details were filed. Whereas the A.O was not satisfied with the explanations and information and treated the loans as Unexplained cash credits u/sec68 of the Act of Rs.24,57,596/- and similarly interest paid on loans of Rs.2,28,376/- was disallowed and finally assessed the total income of Rs. 56,88,820/- and passed the order u/sec 143(3) of the Act dated 11.03.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the AO and directed the A.O to recomputed LTCG by adopting the fair market value of the property based on the valuation report submitted by the assessee. Whereas in respect of the unsecured loans obtained by the assessee the CIT(A) sustained the addition u/sec 68 of the Act in respect of four parties which worked out to Rs. 18,41,584/- and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed the appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in ignoring the information and the submissions in respect of only four unsecured loan creditors(i) Ashit Atul Shah of Rs.1,00,000/- (ii) Dhara A Shah of Rs.1,06,296/- (iii) Dhara Plastics of Rs.13,86,300/- and interest of Rs.33,300/- (iv) Heteal Bhart singh of

Rs.1,90,000/- and interest component of Rs.25,688/-. The assessee has substantiated the identity, genuineness and creditworthiness of the parties with the evidences before the lower authorities. Further the Ld. AR emphasized that the assessee is engaged in the business as a wholesale trader and has obtained unsecured loans wholly and exclusively for the purpose of business. The Ld. AR substantiated the submissions with paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld.DR relied on the order of the CIT(A).

5. We have heard the rival submissions and perused the material on record. The Ld. AR submitted that the CIT(A) has erred in partly sustaining the addition u/s 68 of the Act of unsecured loans though the assessee has filed the requisite details before the lower authorities. We find in the assessment proceedings, the assessee has submitted information and documentary evidences in respect of unsecured loan creditors but the A.O has over looked the vital documents in respect of the sources filed by the assessee and made the addition u/sec68 of the Act, on further appeal the CIT(A) has granted partial relief and has sustained the addition in respect of four unsecured loan creditors. The assessee has submitted the written submissions before the CIT(A) and the confirmation of loan creditors, PAN, Bank account details, financial statements and the Income Tax returns. We find that the assessee has to satisfy the 3 ingredients with respect to identity, creditworthiness and genuineness of the transaction. The

CIT(A) has discussed on the provisions of the Act but has sustained the addition in respect of four parties. The assessee has cooperated in submitting the information in the assessment proceedings, whereas the A.O has ignored the information, evidences and audited financial statements and unilaterally made addition u/sec68 of the Act. The Ld. AR emphasized that the assessee has discharged its burden by submitting the financial statements of the lenders where the payment is made through banking channel and identity, creditworthiness and genuineness of the lenders are proved in the assessment proceedings. Further the assessee has submitted the audited financial statements, confirmations, Bank statements, copy of the income tax returns and the repayment details to substantiate the genuineness and credit worthiness of four loan creditors, which are placed at page 61 to 141 of paper book. Further, the A.O has failed to make enquiries and overlooked the factual aspects that the assessee has discharged the initial burden placed by furnishing the details. The information submitted by the assessee satisfied the three ingredients of provisions of Sec. 68 of the Act. Further these unsecured loans were partly repaid through account payee / banking channels in the current financial year and subsequent year which is not disputed. The Ld.AR submitted that the assessee has substantiated the stand by submitting the details before the A.O. and CIT(A) and discharged the burden. We considering the facts, circumstances and judicial decisions

set-aside the order of the CIT(A) on this disputed issues and direct the Assessing officer to delete the addition of unsecured loans and interest on loans and we allow the grounds of appeal in favour of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.08.2024.

Sd/-

Sd/-p

**(GIRISH AGRAWAL)**

**ACCOUNTANT MEMBER**

Mumbai, Dated: 20/08/2024

KRK

**(PAVAN KUMAR GADALE)**

**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt.Registrar)ITAT,  
Mumbai