

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.828/PUN/2023
निर्धारण वर्ष / Assessment Year: 2015-16

Vikesh Sampat Jain, 501, Ajanta Complex, Rasta Peth, Near K.E.M. Hospital, Pune- 411011. PAN : ABBPJ0844K	Vs.	ITO, Ward-6(1), Pune.
Appellant		Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri Sourabh Nayak
Date of hearing : 25.06.2024
Date of pronouncement : 20.09.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 22.05.2023 passed by LD CIT(A)/NFAC for the assessment year 2015-16.

2. The appellant has raised the following grounds of appeal :-

- "1. The learned CIT(A) erred in confirming the assessed income at Rs. 54,68,490/- as against the returned income of Rs. 8,18,490/-*
- 2. The learned CIT(A) has erred in confirming addition of Rs.6,50,000/- in respect of loan availed by Assessee from Mr.*

Sampatraj P Jain without considering the facts of the case for following reasons

3. *The learned CIT has erred in confirming additions of Rs.40,00,000/- in respect of loan availed by Assessee from Mr. Sampatraj P Jain (HUF) without considering the facts of the case for following reasons*
4. *The appellant has furnished the evidence in support of the loans and has discharged the burden to prove the identity, creditworthiness and genuineness of the loans.*
5. *The appellant may be permitted to adduce further evidence in support.*
6. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. The facts of the case, in brief, are that the assessee is an individual engaged in the business of wholesale trading of electrical and electronic goods. The return of income was furnished on 30.09.2015 declaring taxable income of Rs.8,18,490/-. The case was selected for scrutiny through CASS and a notice u/s 143(2) of the IT Act was issued and served upon the assessee. During the course of assessment proceedings, the Assessing Officer found that the assessee has shown an amount of Rs.1,08,42,000/- as unsecured loans received from following persons :-

- | | | |
|------|-----------------------|------------------|
| (i) | Smt. Basanthi S. Jain | - Rs.39,42,000/- |
| (ii) | Shri Sampat P. Jain | - Rs.7,00,000/- |

(iii) Shri Sampatraj P. Jain (HUF) - Rs.62,00,000/-

4. The assessee was asked to file bank statements, confirmation of loans in respect of above unsecured loan providers. The Assessing Officer accepted the unsecured loans received from Smt. Basanthi S. Jain of Rs.39,42,000/-. Further, the Assessing Officer accepted the unsecured loan of Rs.50,000/- and confirmed the remaining unsecured loan of Rs.6,50,000/- received from Shri Sampat P. Jain. However, with respect to unsecured loan received from Shri Sampatraj P. Jain (HUF) of Rs.62,00,000/-, the Assessing Officer accepted the unsecured loan of Rs.22,00,000/- and remaining unsecured loan of Rs.40,00,000/- was confirmed by him. Accordingly, the Assessing Officer assessed the income of Rs.46,50,000/- (Rs.6,50,000/- + Rs.40,00,000/-) u/s 68 of the IT Act and vide order dated 28.11.2017 the assessment was completed u/s 143(3) of the IT Act by determining the total income at Rs.54,68,490/- against the income shown by the assessee at Rs.8,18,490/-.

5. Being aggrieved with the above assessment order, the assessee preferred first appeal before the ld. CIT(A)/NFAC. After

considering the reply of the assessee, the ld. CIT(A)/NFAC dismissed the appeal filed by the assessee and confirmed the addition of Rs.46,50,000/- made by the Assessing Officer u/s 68 of the IT Act. It is this order against which the assessee is in appeal before this Tribunal.

6. The ld. AR submitted before us that the order passed by the ld. CIT(A)/NFAC is not correct. It was further submitted that the ld. CIT(A)/NFAC has not considered any of the documents furnished before him and without considering all such documents dismissed the appeal of the assessee. It was submitted before us that the Assessing Officer has disbelieved the contention of the assessee merely on the basis of non-filing of income tax return by the loan providers. It was submitted by the assessee that the identity, creditworthiness and genuineness of the transactions was proved before the Assessing Officer. In this regard, it was submitted that the loan provider is none other than the father of the assessee and another loan provider is the HUF of father of the assessee. Therefore, the identity of the loan provider is beyond doubt. All the transactions were made through banking channels, so genuineness of the transactions is also proved and it was also

the contention of the assessee that the loan provider has obtained loan from other persons who are income tax payee, having PAN and already furnished their return of income on substantial income & also advanced the amount through banking channels. Therefore, the creditworthiness is also proved, hence there was no question of disbelieving the submissions made by the assessee and, therefore, it was prayed before the Bench to delete the additions made by the Assessing Officer u/s 68 of the IT Act and sustained by the Id. CIT(A). LD AR also produced some additional evidences before the bench & requested to consider the same.

7. On the other hand, Id. DR supported the orders passed by the subordinate authorities and requested to dismiss the appeal of the assessee.

8. We have heard the Id. Counsel from both the sides and perused the material available on record. We find that the loan provider is none other than the father of the assessee and another loan provider is also HUF of father of the assessee. It is also an admitted fact that the Assessing Officer has already accepted the unsecured loan to the tune of Rs.39,42,000/- received from mother of the assessee, namely, Smt. Basanthi S. Jain. It is also found that

the father of the assessee, namely, Shri Sampat P. Jain advanced to the assessee amounting in all Rs.7,00,000/- in two instalments i.e. Rs.4,00,000/- & Rs.3,00,000/-, the source of which was claimed to be loan of Rs.5,00,000/- received on 17.12.2014 from Prakash B. Mehta, proprietor of Mehta Construction, PAN – AAYPM0314K. It is further found that father of the assessee was engaged in commission business and during the financial year 2014-15 received commission income of Rs.2,02,947/- from Mehta Construction. Copy of ledger account in the books of Mehta Construction was also produced. From perusal of these ledger accounts, it is apparently clear that the father of the assessee has received loan of Rs.5,00,000/- from Mehta Construction on 17.12.2014 and out of this amount he had advanced Rs.4,00,000/- to the assessee through banking channel. Thereafter, the assessee has returned Rs.50,000/-. Further, the father of the assessee has advanced Rs.3,50,000/- on 27.03.2015 to the assessee through banking channel. It is worthwhile to mention here that on 18.03.2015 the father of the assessee has also received Rs.2,02,947/- as commission income from Mehta Construction. This commission income is also appearing in the ledger copy of

books of accounts supplied by Prakash B. Mehta, proprietor of Mehta Construction. Copy of return of income filed by Prakash B. Mehta, proprietor of Mehta Construction, is also produced before us, wherein, an income of Rs.19,89,473/- was disclosed by Prakash B. Mehta who has paid the commission and also advanced the loan to the father of the assessee, which was further transferred by father of the assessee, Shri Sampat P. Jain to the assessee as unsecured loan. From perusal of these documents, we are of the considered view that out of loan amount of Rs.7,00,000/-, the addition made by the Assessing Officer at Rs.6,50,000/- does not appear to be correct and, therefore, we set-aside the order passed by LD CIT(A) & direct the AO to verify the facts in this regard in the light of additional evidences produced before us and decide the issue afresh as per fact & law after providing reasonable opportunity of being heard to the assessee. The ground of appeal raised in this regard is partly allowed.

9. Regarding other addition of Rs.40,00,000/- made by the Assessing Officer u/s 68 of the IT Act and sustained by the ld. CIT(A)/NFAC, it is found that this unsecured loan amount was received by the assessee from Shri Sampatraj P. Jain HUF (HUF

of father of the assessee). It was claimed by the assessee that for providing this loan to the assessee, Shri Sampatraj P. Jain (HUF) took loan of Rs.25,00,000/- from R.B. Chaphalkar Construction Company Ltd, on two dates i.e. on 11.06.2014 of Rs.15,00,000/- and on 10.07.2014 of Rs.10,00,000/-. It was also submitted before us that above Shri Sampatraj P. Jain (HUF) has deposited Rs.10,00,000/- on 11.08.2012 for flat booking advance with R.B. Chaphalkar Construction Company Ltd, and the same amount was returned back on 20.05.2014 to the HUF. Therefore, it was the contention of the assessee that Rs.10,00,000/- was the own money of HUF and Rs.25,00,000/- was obtained as loan by the HUF. Accordingly, this total amount of Rs.35,00,000/- & also other amount was utilized in advancing the loan to the assessee on various dates. It was the contention of the assessee that in the shape of additional evidences i.e. copy of income tax return, copy of flat advance booking receipt, copy of bank statements and copy of ledger accounts of R.B. Chaphalkar Construction Company Ltd & Mehta Construction the addition deserves to be deleted. We find that all these evidences could not be filed either before the AO or before LD CIT(A)/NFAC but are produced before us, wherein,

it is apparent that the flat advance of Rs.10,00,000/- was returned to HUF on 20.05.2014 and thereafter on 11.06.2014 Rs.15,00,000/- and on 10.07.2014 Rs.10,00,000/- was advanced to the HUF by R.B. Chaphalkar Construction Company Ltd. and this whole of the amount was further utilized to advance to the assessee by above HUF. It was the contention of the assessee that the whole of the loan amount was not obtained at one instance but some of the loan amount was received and thereafter certain amount was returned back also and again some loan amount was received and some loan amount was returned back by the assessee. The Assessing Officer disbelieved the explanation of the assessee merely on the basis of non-filing of return of income by Shri Sampat P. Jain individual and Shri Sampatraj P. Jain (HUF). In this regard, we find that Shri Sampat P. Jain individual is furnishing return of income since assessment years 2008-09 to 2016-17 except the return of income for the assessment year 2015-16. It was contended that the income was below taxable limit, therefore, the return of income was not furnished only for this assessment year i.e. A.Y. 2015-16. With regard to Shri Sampatraj P. Jain (HUF), we find that Shri Sampatraj P. Jain (HUF) is furnishing return of income since

assessment years 2004-05 to 2016-17 except for the assessment year 2015-16. It is contended that the income for the assessment year 2015-16 was below taxable limit, therefore, the return of income was not furnished only for this assessment year. In the light of all these facts, we find force in the arguments of the assessee and in the interest of justice, we deem it appropriate to provide one more opportunity to the assessee to explain his case before the Assessing Officer in the light of additional evidences produced before us. In the foregoing paragraphs we have already set-aside the order passed by LD CIT(A), & remand the case back to the file of the AO for deciding the issue afresh, therefore, on this ground also, we remand the case back to the file of the Assessing Officer to verify the facts with regard to unsecured loan amount of Rs.40,00,000/- advanced to the assessee by Shri Sampatraj P. Jain (HUF). We, therefore, direct the Assessing Officer to decide the issue afresh after providing reasonable opportunity of hearing to the assessee. The assessee is also directed to appear before the Assessing Officer and produce all the evidences in support of his claim in this regard before the Assessing Officer. The grounds of appeal raised by the assessee are partly allowed

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 20th day of September, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th September, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.