

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.3839/Mum/2024
(Assessment Year :2011-12)**

Dy. Commissioner of Income Tax Room No.450, 4 th Floor Kautilya Bhavan BKC, Mumbai- 400 051	Vs.	Ashok Jasraj Jain 45/12, 2 nd Floor Rajkotwala Bldg., 1 st Carpenter Street Near C.P. Tank, Mumbai-400 004
PAN/GIR No.AAOPJ2690M		
(Appellant)	..	(Respondent)

**CO No.180/Mum/2024
(Arising out of ITA No.3839/Mum/2024)
(Assessment Year :2011-12)**

Ashok Jasraj Jain 45/12, 2 nd Floor Rajkotwala Bldg., 1 st Carpenter Street Near C.P. Tank, Mumbai-400 004	Vs.	Dy. Commissioner of Income Tax Room No.450, 4 th Floor Kautilya Bhavan BKC, Mumbai- 400 051
PAN/GIR No.AAOPJ2690M		
(Appellant)	..	(Respondent)

Assessee by	Shri Suchek Anchaliya
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	05/09/2024
Date of Pronouncement	14/10/2024

आदेश / O R D E R**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Revenue and the cross objection has been filed by the assessee against order dated 01/05/2024 passed by Id. CIT(A)-54, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s. 144 for the A.Y.2011-12.

2. Revenue has raised the following grounds of appeal:-

i. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.3,44,27,000/- as undisclosed income made in the assessment order despite the fact that assessee has failed to establish the genuineness and creditworthiness of person from whom loan and advances was provided?"*

ii. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 3,44,2700/- despite the fact that M/s Sneha Ferromet Pvt. Ltd. is a group company of assessee concern which had provided loan to the assessee of Rs. 1,85,00,000/- while balance sheet of this group company has capital of Rs 24,41,033/- only?"*

3. Where as in the cross objection assessee has challenged the validity of reopening u/s.147.

4. The brief facts are that the assessee has filed its return of income on 28/09/2011 declaring total income of Rs. 35,00,611/- The same was duly accepted u/s.143(1). Earlier, a search and seizure action u/s.132 was conducted on 12/10/2011 of M/s. Pipava Defence and Offshore Engineering Co. in which assessee

was also included. Accordingly, assessment was passed u/s. 143(3) r.w.s. 153A vide order dated 26/03/2014 declaring total income at Rs.49,06,660/- after making certain additions / disallowance. Later on, an information was received from Investigation Wing vide letter dated 16/03/2018 that assessee had purchased property for Rs.3,44,27,000/- in F.Y.2010-11 and had shown gross total income of Rs.29,15,842/- in his return of income. Further, there is no nexus between the income of the assessee with the amount of property purchased and the source of funds appeared from the sister concern and do not have a net worth as per financial profile from ITD system. It was further reported that M/s. Sneha Ferromet Pvt. Ltd., has given loan of Rs.2.65 Crores to the assessee in F.Y.2010-11 whereas the total profit of the company was Rs.21 lakhs and total outstanding loan of the company is Rs.1.85 Crores. Based on this information, the assessee's case was reopened and notice dated 30/03/2018 u/s.148 was issued and served upon the assessee holding that source of income of the property purchased to the tune of Rs.3.44 Crores remained unexplained and is found suspicious. For the sake of ready reference, the reasons recorded by the AO are reproduced hereunder:-

“The assessee had filed its return of income on 28.09.2011 declaring total income at Rs. 35,00,611/ Assessment order U/s 143(3) of the Act was passed on 26.03.2014 determining total income at Rs 49,06,660/- making certain addition/disallowances.

Information has been received from Investigation Wing, Mumbai that the assessee SHRI ASHOK JASRAJ JAIN has purchased property of Rs 3,44,27,000/- in FY 2010-11. On perusal of the ROI

filed by the assessee for year under consideration, it is noticed that the assessee has shown Gross Total Income at Rs 29,15,842/- only. No nexus between incomes of the assessee with the amount of property purchased has been found. The source of funds primarily appears from sister concerns who do not have net worth as per financial profile from ITD System. For instance, M/s Sneha Ferromet Pvt. Ltd. shown to have provided Rs 2.65 crores in FY 2010-11 relevant to A.Y 2011-12 whereas the total gross receipts of the company were Rs 21 lacs & company had total outstanding loans of Rs 185 crores only Therefore, source of income of the property purchased to the tune of Rs 3.44 crores remains unexplained and found suspicious.

In view of the above, I have reasons to believe that substantial income chargeable to tax i.e., Rs 3,44,27,000/- has escaped assessment for AY 2011-12 in term of provisions of section 147 of the Act. Further, with reference to the first proviso to section 147 of the Act, there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

5. In response the assessee after filing the return of income on 10/08/2018 declaring total income of Rs.28,02,890/-, raised objections stating that during the course of original assessment proceedings, all the details of immovable properties were filed and were examined. Assessee had submitted specific details which were called for re-conciliation of entries in light of AIR information alongwith return of income; copy of purchase agreement, bank statements highlighting the source of purchase of property made during the year. Assessee had already responded and filed the detailed reply vide letter dated 12/03/2014 wherein all the necessary purchase agreement alongwith ledger account, bank statement etc. were filed for the

property (i.e. residential Flat Neel Kamal and land at Alibaug Zirad). Further, during the course of assessment proceedings u/s.153A, ld. AO had again specifically examined the claim of the assessee for purchase of whole of property and the same was duly accepted after considering the explanations. Therefore, reopening the case once again u/s.148A is bad in law and the amounts to 'change of opinion'. Alongwith the said objection assessee had filed all the details filed earlier during the course of assessment proceedings and in response to various queries. However, ld. AO rejected the said objections after citing certain decisions and held that reopening has been done on the basis of credible information received which form sufficient reason to believe. His entire order disposing objection contains extracts of judgments only.

6. During the course of re-assessment proceedings, assessee stated that assessee has taken loan of Rs.1,96,50,000/- from M/s. Sneha Ferromet Pvt. Ltd and also filed the loan confirmation alongwith relevant bank statement and acknowledgement of return of income. However, the ld. AO rejected the assessee's contention and made addition after observing as under:-

"6 The submission of the assessee has been considered carefully During the year under consideration, the assessee has purchased property of Rs 3,44,27,000/-. On perusal of submission, it is noted that M/s Sneha Ferromet Pvt. Ltd. is a group company of assessee and it has provided loan amounting to Rs 1,85,00,000/- in the year under consideration. The Financial profile of the company M/s Sneha Ferromet Pvt. Ltd. for FY 2010-11 relevant to A.Y 2011-12 shows that the company has gross receipt of only Rs 21

lacs. Further, on perusal of Balance Sheet of M/s Sneha Ferromet Pvt. Ltd., it is seen that the company has capital of Rs 24,41,033/- only and the source of fund is Rs 1,85,00,000/- which are far less than the advanced loan to assessee. Therefore, it is clear that the company M/s Sneha Ferromet Pvt. Ltd. has not sufficient capital to provide loan to the assessee.

7. In view of the above, it is clear that the assessee has failed to prove the creditworthiness of person advancing the loans and genuineness of the transactions. The creditworthiness is not proved by showing issue and receipts of cheque or furnishing a copy of the statement of bank account, there should be evidence of a positive nature to show that the lender had worth to advance such loan. The onus of proving the source of a sum of money found to have been received cannot be satisfactory explained then the same is to be treated as unexplained credit and no further burden lies on the revenue to show that the income is from any particulars source. The Calcutta High Court in the case of Precision Finance Pvt. Ltd. (208 ITR 465) has held that mere proof of identity of creditor or that the transactions were by cheque is not sufficient. The Supreme Court in the case of Sumati Dayal (214 ITR 801) held that if the explanation offered by the assessee about the nature and source thereof any sum credited in the books of accounts then the same is chargeable to tax as income of the assessee.

Considering the above facts and circumstances of the case, it is held that the assessee failed to prove the creditworthiness of person from whom loan and advances was provided. Thus, the source of income of the property purchased amounting to Rs 3,44,00,000/- remains unexplained and found suspicious and the same is being added to the total income for the year under consideration. Penalty u/s 271(1)(c) of the Act, 1961 is being initiated for concealment of income.”

7. Before the ld. CIT (A) assessee has challenged the reopening u/s.147. However, the ld. CIT(A) dealt the issue on merits. In so far as addition made by the ld. AO, ld. CIT(A) after considering

the entire material placed on record have deleted the addition after observing as under:-

7.3 In this regard, it is observed that the identity of the lender is proved by the ITR. Further, the genuineness of the transactions can also be safely concluded from the confirmations filed and the fact that the transactions have been done through the banking channels, duly recorded in the books of accounts of the assessee and duly reflected in the financial statements of the assessee. Further, the creditworthiness or financial strength of the lender is proved from the audited financial statements of the lender. As regards, the argument of the AO that the lending party had meager Income, it is common knowledge that it is not the result in the Profit and Loss account alone which determines the capacity of the lender to extend the loan but it is also the Balance Sheet which explains the capacity to provide the loan. The appellant has vehemently argued that while it has provided all the documentary evidence to prove the genuineness of the transactions. I thus find merit in the contentions of the appellant that he has adequately explained the genuineness of the transactions and the creditworthiness of the lender.

7.4 It is also seen that the AO has himself admitted in para 5 and 7 of the assessment order that the addition is being made as the source of the property purchased was suspicious.

8. Ld. DR submitted that the onus laid upon the assessee to prove that the company which has given loan had creditworthiness to advance such loan and when the company itself had very meager income and huge liability of Rs.1.84 Crore, then giving such a loan is dubious. Accordingly, he strongly relied upon the order of the ld. AO.

9. Before us, ld. Counsel submitted that the market value of the investment was Rs.2,79,80,000/- and what AO has done he has taken the market value as on date which was

Rs.3,44,27,000/- to make the addition. Once assessee has provided all the details of the company who has given the loans like ledger account, income tax returns, balance etc., then onus stands discharged to prove the source of purchase of the property. He further submitted that during the year assessee had paid only Rs.1.80 Crores for the purchase of the property and Rs.97,52,561/- investment was made in the earlier year. He drew our attention to the following details regard the payment made during the year with regard to the property purchased.

Date	Particulars	Amount (Rs.)
01/04/2010	Opening Balance	97,52,567/-
25/03/2010	Registration Fees	30,000/-
25/08/2010	Stamp Duty	6,53,220/-
14/10/2010	Installment Payment	99,830/-
Total		10,535,611/-

10. He submitted that Assessee had already submitted the source of investment in the reply dated 16/11/2018 before the AO. Regarding source from Sneha Ferromet Pvt. Ltd., he submitted that assessee is a Director of the said company and assessee has given the bank statement, confirmation of account and the balance sheet to prove the source of the funds for giving the loan. Thus, the source of purchase of the property could not

have been disputed. Accordingly, the ld. CIT(A) has rightly deleted the said addition.

11. We have heard both the parties and also perused the relevant material placed on record. First of all it is seen that ld. AO has reopened the case completed u/s.1 43(3) / 153A solely based on information from the Investigation Wing which too was based on analysis of the value of the property, gross total income shown by the assessee and presumed incapacity of the company M/s. Sneha Ferromet Pvt. Ltd who has provided such loan on the premise that the income of such company was meager. There was neither any inquiry by the Investigation Wing nor by AO from the Company. There is no application of mind by the AO on the information received to verify the records whether assessee had shown the investment in this year or the earlier year and what was the actual investment made by the assessee because as pointed out by the assessee that in one of the property Rs.97,52,561/- was paid in the earlier year and this year only registration fee, stamp duty and one installment payment has been done. Further, the actual value of investment made by the assessee was Rs.2,79,83,000/- whereas the reopening has been done for the current market value of Rs.3,44,27,000/-. Thus, the entire reason to believe is based on certain presumption without any tangible material to prove that the investment made by the assessee was from undisclosed sources of the company which has given loan. There is nothing on record that some kind of investigation or in some inquiry any adverse material was found

that the loan given by the said company was not genuine. The entire reason is based on certain hypothesis and presumptions that looking to the overall turnover of the company, it could not have given such loan. Nothing has been brought on record whether the company was asked to prove the source of the loan given to the assessee and the company has failed to substantiate the sources. Apart from that, this precise issue was raised during the course of the assessment proceedings u/s.143(3) / 153A and also in response to the query raised on the basis of AIR information. The assessee had submitted all the details of the purchase of the property including the source of investments made and after examining these documents, the assessment was completed and no adverse inference was drawn. There is no tangible material coming on record post completion of assessment that investment has been made by the assessee from some undisclosed sources or the sources were not explained. Accordingly, we hold that the reasons recorded by the AO does not given jurisdiction, reopened the assessment completed u/s.143(3) / 153A and same deserves to be quashed. Accordingly, the grounds raised by the assessee and cross objection filed by the assessee are allowed.

12. Even on merits which has been challenged by the department in their grounds of appeal, it is seen that the entire addition is based on the reason that source of investment made in the purchase of property has not been explained. First of all, as stated above, the total value of investment in the two properties aggregated to Rs.2,79,83,000/-. If the AO is making

the addition on account of investment, then, he has to examine the source of investment debited in the books of accounts and not the market value of the property of which has been added i.e. Rs.3,44,27,000/-. Apart from that, in one of the property, major investment was done in the earlier financial year and not in this year. AO has not even examined the records filed before him while making the addition, because once the major investment has been made in the earlier year then, how the same can be added in this year? In so far as source of funds are concerned, the assessee had explained that same was through loan taken from a company, M/s. Sneha Ferramet Pvt. Ltd. And in support assessee filed the confirmation, bank statement and return of income of the company and from the perusal of the bank statement, it is seen that the funds have come from clearing and has been given on various dates to the assessee. No questions have been asked about the source of the funds from the company by the AO. Once company had shown the source of giving loan from various transactions reflected in the bank statement and has given the details, we do not find any reason to doubt the source of funds. Apart from that, in the balance sheet, the company had shown reserves and surplus of Rs.224.41 lakhs unsecured loans of Rs.1,85,00,000/- and has also disclosed the loan given to assessee. Thus, onus which lied upon the assessee had been fully discharged to prove the source of purchase of the property. Accordingly, on merits also, the addition made by the AO cannot be sustained and accordingly,

we uphold the order of the ld. CIT(A) in deleting the said addition.

13. In the result, appeal of the Revenue is dismissed and Cross Objection filed by the assessee is allowed.

Order pronounced on 14th October, 2024.

**Sd/-
(RENU JAUHRI)**

ACCOUNTANT MEMBER

Mumbai; Dated 14/10/2024
KARUNA, *sr.ps*

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai