

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**BEFORE SMT. BEENA PILLAI, JM &
SMT. RENU JAUHRI, AM**

I.T.A. No.3967/Mum/2024
(Assessment Year: 2012-13)

Jiten Dhiraj Furia 154, Kalpataru Aura 2, Bldg No.3, LBS Marg, Ghatkopar West, Mumbai-400086. PAN : AAGPF2054H	Vs.	Office of the CIT(A) / Addl.-JCIT(A)-1 Delhi.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Fenil Bhatt, AR

Revenue / Respondent by : Ms. Usha Gaikwad, Sr.DR

Date of Hearing : 14.10.2024

Date of Pronouncement : 25.10.2024

O R D E R

Per Beena Pillai, JM:

Present appeal arises out of order dated 10/06/2024 passed by a CIT/JCIT(A)-1/NFAC, for assessment year 2012-13 on following rounds of appeal:

"1. On the Facts and circumstances of the case and in law, the learned ADDL/JCIT (A)-1 Delhi has erred in holding that the loans received by the appellant are non-genuine, in spite of all the details available by it was filed during the course of hearing before the ADDL/JCIT(A)-1

2. The Learned ADDL/JCIT(A)-1 has failed to appreciate that while accepting the loan of Rs.1,00,000/-, the appellant was informed that the name was "Mr. Paresh Saiya". However, the loan was actually given from the bank account of his wife Mrs. Harsha Paresh Saiya. Her Bank Statement, Acknowledgement of Return filed, Computation of Income, Balance Sheet (Where the name of the assessee is stated) is already on records.

Merely stating that there is a difference in the name and hence the loan has not been explained is improper and no addition can be made on that ground.

3. The Learned ADDL/JCIT(A)-1 has failed to appreciate that the loans of Rs.1,50,000/- each received from Mr. Premji Ramji Dharod and from Mr.Premji Ramji Dharod HUF is received on 15/10/2012 i.e. in the next assessment year. The Learned ADDL/JCIT(A)-1 has failed to appreciate that the loan was taken in the next assessment year as the moneys were required to be paid to the builder in the next assessment year. The addition have been made solely on the basis of the loan is received in the subsequent year & that the appellant could not be explain the source of the amount of Rs.3,00,000/-. Also the loan taken in AY:2013-14 cannot be added to the income of AY:2012-13.

4. The appellant prays that all the loans received by it are genuine and explainable and no additions can be made to the returned income.”

Brief facts of the case are as under:

2. The assessee is an individual and is employed in private sector company. He filed his return of income on 13/07/2012 declaring total income of Rs.11,51,790/-. During the year under consideration, the assessee purchased residential flat by obtaining loan from banks and private parties being family members.

2.1 The Ld.AO during the assessment proceedings called upon the assessee to furnish details of the loan taken. The assessee furnished all relevant details that were available. However, in respect of five parties the assessee could furnish only loan confirmation, the details of which are as under:

- | | |
|----------------------------|------------|
| 1. Paresh Jivraj Salia HUF | 1,00,000/- |
| 2. Paresh Jivraj Salia | 1,00,000/- |
| 3. Pramji R. Dharod | 1,50,000/- |
| 4. Vaibhav C Gala | 1,00,000/- |
| 5. Premji R Dharod | 1,50,000/- |

2.2 The Ld.AO on 09/02/2015 called upon the assessee to furnish acknowledgement of the return, computation, balance sheet and bank statements of the above referred 5 individuals. The assessee's representative vide letter dated 27/02/2015 conveyed to the Ld.AO that, the above loan creditors hesitated to hand over their personal details to the assessee. It is submitted that the assessee therefore requested the ld. AO to issue summons under section 133(6) of the act.

2.3 The Ld.AO noted that, the loan taken from Premji Ramji Dharod HUF and Mr.Premji Ramji Dharod, amounting to ₹ 150,000/- each was added in the hands of the assessee. It was submitted that these loans were in fact taken by the assessee in subsequent assessment years to pay to the builder towards part payment.

2.4 The Ld.AO after considering all the submissions, passed assessment order by observing, that, the assessee failed to substantiate the investment by not providing necessary documentary evidence from the above referred 5 loan creditors. The Ld.AO made addition of Rs. 6 lakh in the hands of the assessee under section 69 of the act.

Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld. CIT(A).

3. The Ld.CIT(A) observed and held as under:

“4.5 In view of the facts, the source of the amount of Rs 1,00,000/- each in the names of Paresh Jivraj Saiya HUF and Vaibhav Chandrakant Gala is accepted. The appellant purchased the flat during the financial year 2011-12, whereas, the bank credits in the name of Premji Ramji Dharod and Premji Ramji Dharod HUF amounting to Rs. 1,50,000/- each has been debited to the bank accounts of the loan creditors on 15.10.2012 i.e. during the subsequent financial year 2012-13. Hence, these could not be utilized by the appellant for investment in purchase of the flat during the financial year 2011-12. Hence, the appellant could not explain the source of the amount of Rs. 3,00,000/- in the name of Premji Ramji Dharod and Premji Ramji Dharod HUF, as the amounts of Rs. 1,50,000/- was debited to their bank accounts on 15.10.2012 during the subsequent financial year i.e. financial year 2012-13. Further, the appellant contended that an amount of Rs. 1,00,000/- was received from Paresh Jivraj Saiya, whereas, no documents in his name have been filed. Some documents in the name of Harsha Paresh Saiya have been filed and his relationship or relevance with Paresh Jivraj Saiya has not been explained. Accordingly, it is held that the appellant could not prove source of the loan amounts of Rs 2,00,000/- and was not able to prove the source of the balance loan credits amounting to Rs 4,00,000/- Hence, the addition made

by the AO at Rs 6,00,000/- is restricted to Rs 4,00,000/- and the appellant gets a relief of Rs 2,00,000/-. The ground No 1 and 2 of the grounds of appeal are partly allowed.

5. In the 3rd ground of appeal, the appellant has contended that the Assessing Officer erred in adding back the loan amount received only on the ground that the loan creditors have not responded to the notices u/s 133(6). The contention of the appellant has duly been considered. During assessment proceedings, the appellant claimed that he raised loan credits of Rs 6,00,000/- from five persons for making investment in purchase of flat. The AO required the appellant to prove identity and capacity of the loan creditors and the genuineness of the transactions. The appellant Filed confirmations only from the loan creditors and no other details like their copies of ITRs and bank accounts were filed. Filing of merely confirmations did not prove capacity of the loan creditors and genuineness of the transactions. The loan creditors even did not respond to the notices issued u/s 133(6) of the Act by the AO. It is a settled principle of law that the onus of proving the source of a sum of money found to have been received by an assessee is on him as held by the Hon'ble Supreme Court in the core of Roshan Di Hatti vs CIT, 107 ITR 938. The appellant failed to discharge such onus Hence, the contention of the appellant that the Assessing Officer erred in adding back the loan amount received only on the ground that the loan creditors have not responded to the notices u/s 133(6) is factually incorrect as This AQ added back the amounts of loan on account of failure of the appellant to discharge his onus by submitting complete evidence to prove the source of the loan amounts: The contentions of the appellant in this regard are rejected and the 3rd ground of appeal of the appellant is dismissed,”

3.1 The ld. CIT(A) thus gave partial relief to the assessee. Aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before the *Tribunal*.

4. At the outset the Ld.AR submitted that, initial onus cast upon the assessee stands fulfilled. The assessee furnished loan

confirmation of all the loan creditors, bank statements etc. The Ld.AR submitted that, Ld.CIT(A) partly allowed the claim to the extent of Rs. 2 lakhs. It is the submissions of the Ld.AR that, in case of the loan creditor, being Paresh Jivraj Salia, who advanced Rs. 1 lakh to the assessee, it was actually advanced by Harsha Paresh Salia, wife of Paresh Jivraj Salia. It is submitted that bank statements of Harsha Paresh Salia from where Rs. 1 lakh was debited to assessee's account. It was furnished for necessary verification.

4.1 The Ld.AR submitted that Mr.Harsha Paresh Salia is assessed to tax, and her return of income is placed at page 19-20 of the paper book filed before this *Tribunal*. The Ld.AR submitted that, it was for the sake of convenience that the husband's name was mentioned instead of his wife's name in the books of the assessee, though the loan was actually given from wife's account amounting to ₹ 1 lakh.

4.2. Regarding loan creditors, Shri.Premji Dharod and Premji Dharod HUF, amounting to Rs.150,000 each, the Ld.AR submitted that was received on 15/10/2012 and the known was confirmed to have been given by his party for financial year 2012-14 and 2013-14 which is subsequent years to the financial year under consideration. The Ld.AR thus submitted that all the confirmation is necessary to discharge the onus of the assessee is submitted, however the same was not considered by the authorities below. It is

submitted that the documents that assessee could not obtain during the assessment proceedings were remanded by the Ld. CIT(A) under Rule 46A. However no response was received from the Ld.AO which is categorically noted by the Ld.CIT(A) in the order passed by him.

4.3 The Ld.AR vehemently argued that parties from whom the assessee took loan are family members and therefore genuineness cannot be doubted. When everyone are regularly assessed to tax. He further submitted that all have advanced loan not exceeding Rs. 2 lakh as confirmed by them. He submitted that the genuineness and creditworthiness has any ways not been doubted by the authorities.

4.4 The Ld.AR thus prayed for the addition to be deleted as necessary documents required to discharge the onus was filed by the assessee. He further submitted that, the investement made by the assessee stood disclosed in his statement of accounts, and thus the addition made under section 69 is bad in law.

4.5 On the contrary the Ld.DR vehemently opposed the submissions of the assessee and relied upon the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

5. We are considering all the grounds together since the nature of addition are same in **Ground no.2 & 3.**

5.1 In respect of loan obtained from Paresh Jivraj Salia, there are sufficient proofs furnished by the assessee to establish that the same was given by wife of Paresh Jivraj Salia. Bank statement of Harsha Paresh Salia clearly reveals this fact. The assessee also filed confirmation form Harsha Paresh Salia. All these details has not been found to be false by the revenue authorities. Merely assessee mentioned name of Paresh Jivraj Salia will not hold the loan advanced by the wife to be bad.

5.2 In respect of the loan creditors, Shri.Premji Dharod and Premji Dharod HUF, admittedly, was received by the assessee in the subsequent years, which is apparent from their confirmation filed in the paper book. Nothing contrary was observed by the Ld.CIT(A) regarding the documents brought on record by the assessee. The loan obtained from Shri.Premji Dharod and Premji Dharod HUF cannot therefore considered for the year under consideration under any circumstances.

5.3. We note that the addition is made by the Ld.AO under section 69 of the Act. The said section envisages a situation where, an assessee has made an investment;

- (i) which is not recorded in the books of account or
- (ii) the assessee offers no explanation about the nature/source of the investment or

(iii) the explanation offered is not found to be satisfactory.

5.4 None of the above requirements are satisfied in the facts of the present case. In fact we note that the explanation offered by the assessee is substantiated by the bank statements and the confirmation given by the loan creditors in respect of whom the addition is confirmed by the Ld.CIT(A). Merely because the loan creditors did not respond to the notices issued under section 133(6) of the Act, cannot lead to the conclusion that the assessee failed to satisfactorily explain the investment. In fact the details filed by the assessee has not been refuted by the revenue authorities in any manner what so ever. The Ld.AO did not respond to the direction of Ld.CIT(A) under Rule 46A. We therefore do not find any reason to doubt the loan creditors, and do not find any reason to confirm the addition in the hands of the assessee and the same stands deleted.

Accordingly the Grounds raised by the assessee stands allowed.

In the result the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 25-10-2024.

Sd/-
(RENU JAUHRI)
Judicial Member

25/10/2024

*SK, Sr. PS

Sd/-
(BEENA PILLAI)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai