

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

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

I.T.A. No.1686/Mum/2024
(Assessment Year: 2014-15)

Rita Shailesh Sheth 424, Giriraj Bldg., S.T. Road, Iron Market, Mumbai-400009. PAN : ADFPS2136P	Vs.	ITO, Ward-26(1)(1), Kautilya Bhavan, Mumbai-400051.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Nilesh Dedhia, AR

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

Date of Hearing : 15.10.2024

Date of Pronouncement : 25.10.2024

O R D E R

Per Beena Pillai, JM:

Present appeal filed by the assessee arises out of order dated 19/02/2024 passed by NFS in Delhi for assessment year 2014-15 on the following grounds of appeal:

“01. The Hon'ble CIT(A) erred in confirming the addition made by the Ld. A.O. to the tune of Rs. 28,08,500/-, without any independent enquiry.

02. The Hon'ble CIT(A) failed to independently analyze whether sufficient opportunities were given to the appellant; he formed his

opinion merely on basis of facts stated in remand report, without considering the submission made by assessee in this regard.

03. The Hon'ble CIT(A) failed to analyze the creditworthiness of loan based on an objective analysis of the facts and documentary evidence on record and based his conclusion merely on surmises.

04. The Hon'ble CIT(A) grossly erred in ignoring the fact that lender is the spouse of the appellant and can very much withdraw funds out of his own company to lend to his spouse to recoup losses incurred by the appellant.

05. The Hon'ble CIT(A) grossly erred in framing the appellate order only on basis of view / opinion borrowed from remand report, without any independent application of mind to the facts on record.”

Brief facts of the case are as under:

2. That assessee is an individual driving rental income from property and bank interest. She is also carries transaction in futures and options. It is submitted that, the assessee is regular taxpayer and also files her returns on time. For the year under consideration assessee filed return of income on 29/11/2014 declaring total income as well. Subsequently the case was selected for scrutiny and statutory notices were issued. In response to the statutory notices assessee furnish various details as called for.

2.1 The Ld. AO during the assessment proceedings noted that, the assessee availed loan from her spouse amounting to ₹28,08,500/-. The assessee was called upon to submit the genuineness and creditworthiness of the her husband as per provisions of section 68 of the act vide order she dated 26/09/2016. In response to the

query raised, assessee submitted that during the year under consideration she had carried out transaction in future and options in shares and securities. It was submitted that she took loan from her spouse. It was submitted that her husband was having proprietorship concern in the name of M/s. Salish & Brothers, for more than 20 years and has been regularly assessed to tax in the part assessment years. It was submitted that for the year under consideration assessee's husband had also earned rental income from house property and out of these taxable income, the loan was extended by the husband to the assessee.

2.2. The Ld. AO did not accept mere submissions of the assessee and for want of documents in respect of the financials of assessee's husband confirmed addition in the hands of the assessee under section 68 of the act.

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

3. Before the Ld. CIT(A) the assessee furnished various additional evidences in respect of which remand report was called by the from the Ld. AO. The Ld. AO. The ld. AO once again noted that assessee did not submit any documentary evidence to establish creditworthiness in past 3 A.Ys and genuineness of the transaction with husband and therefore held that necessary ingredients remains unprove by the assessee. Based on the remand report the Ld. CIT(A) confirmed the additions made by the Ld. AO.

Aggrieved by the order of the Ld. AO, assessee is in appeal before the strike.

4. The Ld.AR had and submitted that assessee's husband was a successful businessman engaged in the business of iron and aluminium manufacturing and was operating under the name and style of M/s. Sailesh Kamar and Co. He submitted that the assessee had furnished loan confirmation letter from her husband along with bank statements of the proprietary concerns to discharge her onus u/s. 68 of the Act. The Ld.AR thus prayed for the addition to be deleted in the hands of the assessee as the assessing officer failed to verify the documents that were furnished during the assessment proceedings.

4.1 On the contrary, the Ld. DR referring to the balance sheet of assessee, submitted that, the assessee is major shareholder in the company called Subham Galva Traders Pvt. Ltd., and that, her husband withdrew money from the said company and advanced it a loan to the assessee. The Ld. DR submitted that, there was no need for the husband to withdraw money from the company since assessee herself being a major shareholder, could have directly withdrawn money or obtain lone from the company directly.

4.2 The Ld. DR further submitted that on perusal of the assets and liabilities chart filed by the assessee before this Tribunal, reveal that the assessee has been taking unsecured loans from multiple

parties for which there is no explanation offered whatsoever. He submitted that husband of the assessee did not have sufficient funds in his account, and therefore advanced money from the company. It is submitted by the Ld.DR that the Ld. AO doubted the rooting out of the loan transaction by assessee's husband to the company and therefore was of the opinion that the credibility and genuineness of the transaction has not been fully discharged by the assessee. He thus relied on the orders passed by the authorities below.

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

5. It is noted that the assessee raised additional ground related to the main grounds filed by the assessee. Accordingly without considering the additional ground independently, all the issues are discussed in a consolidated way as it is in respect of the an issue being loan transaction entered into by assessee with her husband.

5.1 We note that the assessee took loan from her husband who had withdrawn money from the company where assessee is also a shareholder. On perusal of the assets and liabilities sheet of the assessee, we note that, the assessee has taken loan from the said company amounting to Rs.1,12,76,636/- and from her husband amounting to Rs.39,23,500/-. On a query being raised to the Ld.AR regarding the parties from whom unsecured loans were taken by the assessee, it was submitted that, most of them are family

members and friends who advanced loans to the assessee. In our considered opinion the assessing officer is directed to verify the loan transaction under consideration.

5.2 The assessee has filed at page 52 onwards the financial statement of M/s. Subham Galva Traders Pvt. Ltd. We note that during the year under consideration there was not much business activity carried on in this company we therefore fail to understand the availability of such huge amount of funds in the company. Even the cash and bank balances does not exceed more than a lakh of rupee for the year under consideration. Further this company did not incur any salaries and wages or incur any staff welfare expenses for the year under consideration which reveals that there are no activities carried on by this company. In the paper book filed before us bank statement of the assessee's husband are filed at page 47 shows that, there is no sufficient funds in the hands of assessee's husband. In fact for assessment year 2012-13, gross total income offered by assessee's husband was only to the extent of Rs. 3 lakhs. In subsequent assessment year 2013-14 the gross total income offered was Rs. 12,51,000/-.

5.3 Under such circumstances we deem it appropriate to remedy this issue back to the Ld. AO for *de novo* consideration. Assessee is directed to furnish whatever documents are required to establish her claim to the satisfaction of the Ld. AO. The assessing officer shall carry out necessary verification in respect of the same and

shall consider the claim of assessee in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result appeal filed by the assessee stands partly allowed for statistical purposes.

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

**Sd/-
(RENU JAUHRI)
Judicial Member**

**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