

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)  
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 441/Mum/2024 (A.Y. 2014-15)

Premji Bhuralal Gala B-301 Waterford CD Barfiwala Road Andheri West Mumbai-400 058.  PAN : AABPG9905D (Appellant)	Vs.	DCIT, Circle 24(1) Piramal Chamber Parel Mumbai-400 012.  (Respondent)
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Assessee by	Shri Anuj Kisnadwala
Department by	Shri R.R. Makwana
Date of Hearing	20.08.2024
Date of Pronouncement	23.10.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

The only issue to be decided in the above captioned appeal whether the learned Commissioner of Income Tax (Appeals) [Ld. CIT(A) for short] is correct in holding that reopening of the assessment by issuing notice under section 148 of the Income Tax Act (Act for short) is correct in law and consequently addition made to the extent of Rs. 20 lakhs under section 69A of the Act is correct.

2. In this case, the learned Assessing Officer (the AO for short) has mentioned that the appellant received cash loan of Rs. 20 lakhs from M/s. Evergreen Enterprises as per the statement of Shri Nilesh Bharani, partner of M/s. Evergreen Enterprises as well as two employees of the same firm. As the appellant has not mentioned that this amount of loan received in the return of income filed by the appellant, it was held as violation of section 269SS of

the Act. The Ld. AO has also held that the appellant failed to furnish details called for in the notice served to the appellant and hence addition of Rs. 20 lakhs was made under section 69A of the Act.

3. The Ld. CIT(A) has confirmed the above stating that the appellant received cash loan of Rs. 20 lakhs as per the statement of the employees of the M/s. Evergreen Enterprises. The said transactions of receipt of cash loan of Rs. 20 lakhs was not recorded in the books of the appellant and the appellant has not been able to prove the creditworthiness of the person from whom the cash loan was taken by the appellant, the Ld. CIT(A) confirmed the addition of Rs. 20 lakhs under section 69A of the Act.

4. Aggrieved by the orders of the Ld. AO and the Ld. CIT(A), the appellant filed an appeal before the ITAT, Mumbai stating that the reopening of the assessment is invalid and also addition made u/s. 69A is also incorrect.

5. Ld. DR has relied on the orders of the Ld. AO and the Ld. CIT(A). Ld. AR of the appellant has argued that the Ld. AO reopened the assessment for the purpose of violation of provisions u/s. 269SS (taking cash loan above the prescribed monetary limits) and made addition under different section i.e. reopening was done from the purpose of section 269SS of the Act whereas the addition made u/s. 69A of the Act. Hence, the reopening is bad in law. As far as the merits are concerned, the Ld. AR of the appellant has stated that the addition u/s. 69A of the Act can be made only if the money received by him is unexplained. The appellant has vehemently denied of taking any loan from the said purpose and it was argued that except the statements of the employees of the M/s. Evergreen Enterprises, there is no evidence to demonstrate that the appellant has taken any loan from them. In view of the above, Ld. AR of the appellant has pleaded that the addition made by the Ld. AO should be deleted.

6. After hearing both sides, it is decided to delete the addition made by the Ld. AO for the following reasons :

- a) The fundamental principle of law is that the addition in the reopened assessment should have linked with the reason for which it was reopened. In this case, the Ld. AO has recorded reason relating to section 269SS of the Act made u/s. 69A of the Act and hence the same is not correct as per law. In similar circumstances, Hon'ble Bombay High Court in W.P. No. 3620 of 2019 in the case of Sanjiv Amritlal Cheda Vs. ITO, it was held that the issue mentioned in the income escapement reasons can only be added in the reopened assessment.
- b) There is no evidence relating to the receipt of cash loan except the statements of the employees of M/s. Evergreen Enterprises, who have retracted subsequently.
- c) The same issue of taking cash loan from same people was agitated by appellant in his own case in earlier years before the Hon'ble Tribunal, Mumbai vide ITA No. 440, 442 & 443/Mum2024 dated 12.6.2024 and the issue was settled in favour of appellant.

7. Since the facts and circumstances are similar, respectfully following the decision of Hon'ble ITAT in appellant's own case and for the detailed discussion, addition made by the Ld. AO is hereby deleted.

8. The appeal of the appellant is allowed.

Order pronounced in the open court on 23<sup>rd</sup> October, 2024.

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Sd/-  
(Omkareshwar Chidara)  
Accountant Member

Mumbai : 23.10.2024

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.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai