

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'H(SMC)', MUMBAI

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA No.4054/Mum/2024
Assessment Year: 2012-13**

Sudhir Damji Bharani Flat No. 1302, Tower No. 8, Orchard Residency, LBS Marg, Behind R City Mall, Ghatkopar (West), Mumbai-400086. PAN: AAAPB 6726 C (Appellant)	vs	ITO, Ward-27(3)(1), Mumbai (Respondent)
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Present for:

Assessee by : Mr. Aditya Ramchandran
Revenue by : Shri Uodal Raj Singh, Sr. DR

Date of Hearing : 6.11.2024

Date of Pronouncement : 12.12.2024

ORDER

PER AMARJIT SINGH, AM:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 12.07.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC Delhi. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Assessing Officer erred in issuing the notice under Section 148 based on the information pertaining to the appellant which was found from the books of accounts/documents seized during the course of search of the other person which was contrary to the provisions of Section 153C.

2. On the facts and circumstances of the case and in law, the assessment framed u/s 147 of the Act is bad in law in so far as the same should have been framed u/s 153C of the Act since it is based on the information contained in the books of accounts/documents seized or requisitioned during the course of search of the other person.

3. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the addition of unexplained money amounting to 20,00,000 under Section 69A.*

4. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the findings of the Assessing Officer that the appellant had advanced a loan of ₹ 20,00,000 in cash to M/s. Evergreen Enterprises.*

5. *On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have appreciated the fact that M/s. Evergreen Enterprises itself was not in existence during the year under consideration and, therefore, there could not have been any transactions between it and the appellant.*

6. *On the facts and circumstances of the case and in law, since the appellant had not been provided the opportunity to cross examine those persons on whose statements the ld. AO has relied upon to make addition, the said addition is required to be deleted.”*

2 Fact in brief is that return of income declaring total income at Rs. 3,04,300/- was filed on 30.07.2012. The return was processed u/s 143(1) of the Act on 17.08.2013. Subsequently information was received from DDIT(Inv), Unit-5(4), Mumbai that assessee had received cash loan from the entity of M/s. Evergreen Enterprises operated by Mr. Nilesh Bharani on the basis of documentary evidences found in the search as well as statement of Shri Nilesh Bharani recorded u/s 132(4) of the Act. On the basis of such information it was found that assessee Shri Sudhir Damji Bharani has lent cash loan of Rs. 20,00,000/- to the assessee in the F.Y. 2011-12 relevant to the A.Y. 2012-13. Since the assessee had not explained such cash loan transaction, therefore, the same was added to the total income of the assessee as unexplained money u/s 69A of the Act.

3. The assessee filed appeal before the ld. CIT(A). However, the assessee failed to make any compliance before the ld. CIT(A), therefore, the ld. CIT(A) has dismissed the appeal filed by the assessee reiterating the fact stated by the assessing officer.

4. During the course of appellate proceedings before us, the ld. Counsel submitted that assessee could not make compliance before the ld. CIT(A) as assessee could not keep track on the e-mail through which notices of hearing was issued to the assessee. The ld. Counsel contended that more opportunities be provided before the ld. CIT(A) for deciding the appeal of the assessee on merit.

5. Heard both the sides and perused the material on record. During the course of appellate proceedings before us, the ld. Counsel submitted that assessee could not keep track on the notices received through e-mail in respect of the hearing proceedings initiated before the ld. CIT(A) and requested for providing more opportunities for adjudicating the case of the assessee on merit before the First Appellate Authority. In the light of the above facts and circumstances, we consider it appropriate to restore the case of the assessee to file of the ld. CIT(A) for deciding afresh on merit in accordance with the provisions of section 250(6) of the Act after providing three more opportunities to the assessee to make submission on the points raised by the First Appellate Authority. The assessee is also directed to make due compliance before the ld. CIT(A) without any failure.

Accordingly, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12.12.2024

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai: 12.12.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai