

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

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.204/Lkw/2022
A.Y. 2012-13

Halwasiya Properties Private Limited, Halwasiya Court, Hazratganj, Lucknow-226001	vs.	Income Tax Officer-3(5), Lucknow New, Pratyaksh Kar Bhawan, 57, Ram Tirath Marg, Lucknow-226001
PAN:AAACH9708D		
(Appellant)		(Respondent)

Assessee by:	Sh. Devashish Mehrotra, Adv
Revenue by:	Sh. Gayasuddin, CIT DR.
Date of hearing:	03.09.2024
Date of pronouncement:	25.10.2024

ORDER

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal filed against the order of the Id. CIT(A), NFAC under section 250 of Income Tax Act passed on 23.09.2022. The grounds of appeal are as under:-

"1. That the order passed by the Ld. CIT(A), NFAC is without proper opportunity and contrary to the principles of audi alteram partem and, therefore, the same is bad in law and deserves to be set aside.

2. That on the facts and circumstances of the case as well as in law, the CIT(A), NFAC is not justified in treating the loan of Rs.50,00,000/- taken by the appellant as fictitious loan.

3. That the Ld. CIT(A), NFAC has erred in law and on facts and circumstances of the case in confirming the addition of Rs. 1,25,000/- for alleged accommodation entry of loan @ 2.5% and subjecting to tax in the hands of the appellant.

4. That the Ld. CIT(A), NFAC has failed to appreciate that the addition made by the Assessing Officer are only on surmises and conjectures and his wishful thinking, without any material on record and only because of the fact that a search was conducted in the house of the lender. The loan taken by the appellant has been treated as fictitious.

5. That the Ld. CIT(A), NFAC has failed to appreciate that the receipt of the loan was through banking channels and ECS and the repayment thereof was also made through banking channels through ECS and, therefore, there was no justification to treat the loan as bogus loan without any iota of evidence on record for the same.

6. That the appellant craves leave to add, alter, amend or withdraw any or all grounds of appeal at any time before or during the course of the hearing.”

2. The appeal seems to be late by one day. A condonation petition alongwith an affidavit has been filed in which it was submitted that the order of the Id. CIT(A), NFAC was served upon the company on 23.09.2022 and it had sent the appeal by speed post within 60 days of the receipt of the order i.e. 22.11.2022. Further, it has been submitted that the assessee was under the bonafide belief that the appeal sent by speed post, was well within time therefore, the delay of one day may kindly be condoned. After considering the facts of the case, we condone the delay and admit the appeal in the interest of justice

3. The facts of the case are that the assessee company was assessed under section 143(3) for the A.Y. 2012-13 by the Id. ACIT-3, Lucknow vide order dated 30.03.2015. Subsequently, a search and seizure operation under section 132 of the Act, was conducted by the Investigation Wing in the case of Shri Shashwat Agarwal and Rich Udyog, group of companies. During the course of search, it was found that Shri Shaswat Agarwal was engaged in providing accommodation entries through companies controlled and managed by him and his brother, Ashesh Agarwal. One of such companies was M/s Big Broker House Stock Limited. The Id. AO received information that in F.Y. 2011-12, M/s Halwasiya Properties Private Limited had

received an unsecured loan of Rs.50,00,000/- from M/s Big Broker House Stock Limited. Owing to the findings of the Investigation Wing and subsequent dismissal of writ petitions filed by two other group companies of the Shashwat Agarwal group, M/s Cityon Nano Technology Private Limited and M/s Rich Udyog Limited, the Id. AO had recorded reason to believe that the amounts transferred to M/s Halwasiya Properties Private Limited, was nothing but the undisclosed income of the transferee, which had been advanced as unsecured loan just to give it colour of legitimacy and for availing such accommodation entries, parties had paid undisclosed cash of equivalent amount and a commission of 2.5% of the same amount. He, therefore, issued notice under section 148 to all beneficiaries of loans from M/s Big Broker House Stock Limited including the assessee company. The assessee apparently asked for a copy of the reasons recorded, but submits that the same were never supplied to it. Accordingly, the assessee did not make compliance to the various notices issued by the Id. AO and the assessment was finally completed *ex parte* by adding a sum of Rs. 50,00,000/- and the purported commission @ 2.5% on the same i.e. 1,25,000/-.

4. Aggrieved by the said order, the assessee filed an appeal before the Id. CIT(A)-1, Lucknow on 13.01.2020. Subsequently, the appeal was migrated to the National Faceless Appeal Centre. The Id. CIT(A) records that he issued three notices to the appellant, but these did not meet with responses. Accordingly, he held that the assessee had no evidences/submissions to make with regard to grounds of appeal and he decided the issues on the basis of the materials on record. Quoting from the findings and reasons of the Id. AO, he held that there was no evidence to the contrary, which had been submitted and therefore, he upheld the additions of the Id. AO.

5. The assessee is aggrieved at this summary dismissal of his appeal by the Id. CIT(A), NFAC and has accordingly approached the Tribunal. During the course of

hearing, a petition for admission of additional evidence under Rule 29 of the ITAT Rules was submitted before us. It was submitted that the assessment of the assessee company had been completed by the ld. AO under section 147/143(3) vide order dated 4.12.2019. The assessee could not produce the evidence required by the ld. AO at the relevant time because the Accountant who was looking after the day to day affairs of the assessee company was suffering from a prolonged illness, due to which the documents required by the ld. AO could not be produced before him and the assessment was finalized on the basis of material available on record. It was submitted that the additional evidence was germane to the assessee's appeal and was on the subject matter of the loan taken and returned by the assessee company. It was, therefore, requested that the following documents may be admitted in the form of additional evidence:-

- i. Relevant Pages of the Bank Statement for A.Y. 2012-13 (Page 01-04);
- ii. Relevant pages of the Bank Statement for A.Y 2014-15 (Page 05-11)
- iii. Copy of Ledger Account of M/s Big Brokers House (Page-12)
- iv) Relevant pages of the Audited Balance Sheet for A.Y. 2012-13 (Page 13-41)
- v) Relevant pages of the Audited Balance Sheet for A.Y. 2014-15 (Page 42-57)
- vi) Relevant pages of Form 3CA and Form 3CD for A.Y. 2014-15 (Page 58-68)

6. We have duly considered the said petition. In the statement of facts presented before the ld. CIT(A), it has been argued that since no response was received by the appellant company to the request of supply of reasons recorded under section 147, that had led to the belief that the income that had purportedly escaped assessment, according to the notice under section 148, was not being subjected to tax and for this reason, proper compliance could not be made . We observe that the expectation that reasons to believe would be supplied to it, is a

reasonable expectation and considering that it is fairly evident that the case has been decided, both at the level of the Id. AO and at the level of the Id. CIT(A), without any representation from the assessee regarding his version of the facts of the case, it is evident that proper fact finding has not been done during the assessment or first appeal . As the documents presented are necessary to consider the defence of the assessee, in order to protect the interest of justice, the additional evidence filed by the assessee is admitted for consideration.

7. When the case was called out for hearing Shri Devashish Mehrotra, Advocate (hereinafter referred to as the “Id. AR”) represented the matter before us. He drew our attention to various judgments filed by him in the paper book and sought to argue on two propositions i.e. if the loan was made through banking channels and the repayment was also made through banking channels, there was no justification to treat the same as bogus loan and secondly, additions made on the basis of presumption drawn from noting on loose papers, cannot be incriminating for drawing adverse reference.

8. On the other hand, Shri Gayasuddin, Id. CIT DR (hereinafter referred to as the “Id. DR”) pointed out that the assessee has neither placed the facts before the Id. AO nor the Id. CIT(A). Therefore, the Tribunal should not entertain the case on facts or on legal issues at the very first instance. Rather, the assessee’s case should be dismissed or referred back to the Id. AO, with directions to the assessee to make due compliance before him.

9. We have duly considered the facts and circumstances of the case. It is a fact that compliance has neither been made before the Id. AO nor before the Id. CIT(A) and, as a result, neither authority has had an opportunity to examine the documents submitted by the assessee now . We, therefore, deem it appropriate to restore the matter back to the file of the Id. AO for a fresh assessment with the directions that the Id. AO shall provide the assessee with a copy of the reasons to believe that have

been recorded by him and, in the event of the assessee filing any objections to the same within a given time frame, he shall dispose such objections by way of a speaking order, before proceeding further with the assessment. The Id. AO, thereafter, may pass a final order after considering the submissions of the assessee and the materials produced before him, including the materials produced before the ITAT and admitted as additional evidence by us We also direct the assessee to make full compliance before the Ld AO, to enable him to properly appreciate the facts of the case and caution that failure to do so, would result in adverse inference

10. As the matter has been restored back to the file of the Id. AO for a fresh decision, in accordance with law, the appeal of the assessee is deemed to be allowed for statistical purposes and it is not necessary for us to decide each individual grounds of appeal.

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

Order pronounced on 25.10.2024 at Allahabad, U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

DATED:25/10/2024

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

By order
Sr. P.S.