

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 5747/Mum/2024  
Assessment Year : 2018-19

Income Tax Officer, 501, 5 <sup>th</sup> Floor, Piramal Chamber, Lalbaugh, Mumbai.	vs.	Ami Sandeep Sanghavi, 81-B, Heera Panna, Bhulabhai Desai Road, Haji Ali, Mumbai. PAN : ADQPJ8303G
(Appellant)		(Respondent)

For Assessee :	Shri Vimal Punamiya
For Revenue :	Shri Ram Krishna Kedia, Sr.DR

Date of Hearing :	17-12-2024
Date of Pronouncement :	26-12-2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

The Revenue has filed this appeal challenging the order dated 06-09-2024 passed by the Ld.CIT(A), NFAC, Delhi and it relates to the Assessment Year (AY.) 2018-19. The Revenue is aggrieved by the decision of the Ld.CIT(A) in deleting the addition made by the AO u/s.68 of the Income Tax Act, 1961 ('the Act').

2. The facts relating to the case are discussed in brief. The assessee filed her return of income declaring a total income of Rs.17,28,180/-. The same was taken up for scrutiny for the reason that the assessee has made huge investments in acquisition of two properties in Dubai and one property in Mumbai during the year under consideration. Upon enquiry, it was noticed by the AO that the assessee had made agreement for purchase of two under construction properties in Dubai in an earlier year. However, the assessee has made certain payments during the year under consideration and the aggregate amount of such payments was Rs.1,62,68,007/-. The Indian property, viz., Flat No.6, Ground Floor, Shanti-1, Sukhshanti CHS, Peddar Road, 19, Dr. Deshkukh Marg, Mumbai was purchased during the year under consideration for a consideration of Rs.5,25,00,000/-. The assessee submitted that she has taken loan from her husband for making above said payments/investments. In support of the same, the assessee furnished copies of her husband's ITR, wherein the husband of the assessee named Shri Sundeep Sanghavi had declared income of Rs.13,84,350/-. The AO took the view that the income of the assessee's husband is very low viz-a-viz the quantum of loan given by him. Accordingly, the AO took the view that the assessee has failed to prove the sources of the above said investments made. Accordingly, he added the aggregate investments of Rs.6,87,68,007/- as unexplained income of the assessee u/s.69A of the Act.

3. Before the Ld.CIT(A), the assessee reiterated that the investments were made by her out of loan received from her husband. The assessee also furnished details of her husband's sources for giving loan to her as additional evidences. Hence, the Ld.CIT(A) called for a remand report from the AO. However, the AO reported that the assessee did not furnish any new document and accordingly supported the addition made by him.

Accordingly, the Ld.CIT(A) proceeded to admit the additional evidences. Upon the examination of those evidences, the Ld CIT(A) found that the assessee's husband had enough sources to give the impugned loans of the assessee. He also noticed that the assessee has proved the identity, credit worthiness and genuineness of loans received from her husband. Accordingly, he deleted the addition made by the AO u/s.69A of the Act. The revenue is aggrieved.

4. We heard the parties and perused the record. It is the submission of the assessee that she had taken loan from her husband for making the impugned investments aggregating to Rs.6.87 crores during the year under consideration. The receipt of money by the assessee from her husband is not being doubted by the AO. He was only of the view that the income declared by her husband in his income tax return was low viz-a-viz the loan amounts, i.e., he was doubtful of availability of sources with the husband of the assessee.

5. Hence, the Ld.CIT(A) examined as to whether the husband of the assessee, Shri Sundeep Sanghavi was having enough funds for giving loans to the assessee. As rightly observed by the Ld.CIT(A), the total income declared by the assessee is not relevant to determine the credit worthiness or availability of funds. It is required to be seen as to whether the lender has got sufficient funds on the date of giving loans to the assessee. Hence, the Ld.CIT(A) has proceeded to examine the loans received from husband of the assessee in terms of sec.68 of the Act.

6. Before the Ld.CIT(A), the assessee has furnished following documents to prove the loans received from her husband:-

1. *Copy of Ledger A/c of the Appellant in the Books of Mr.Sundeep M Sanghavi Loan Creditor.*
2. *Photocopy of Bank Passbook of Mr.SundeepM.Sanghavi.*

3. *Copy of Ledger A/c of Bank of India, Bhulabhai Desai Rd Branch in the books of Mr. Sundeep M Sanghavi.*
4. *Copy of Ledger A/c of Mr.Sundeep M Sanghavi in the Books of Mahavir Polyfilms Private Limited.*
5. *Copy of Balance sheet of Mr.Sundeep M Sanghavi as on 31-03-2018.*

It was submitted that the assessee's husband is a whole time Director in a company named M/s.Mahavir Polyfilms P. Ltd, wherefrom he has withdrawn funds from his account maintained with that company and gave loan to the assessee. Further, the assessee's husband has received loan from his father and also from a friend named M/s. Stewart Mario D Souza. The details of sources of loans given by the husband of assessee were submitted as under:-

(A) For loan given for investment in Dubai Properties –

Rs.1,61,68,007/-:

Loan from father of assessee's husband	-	1,46,00,000
Withdrawal from Mahavir Polyfilms P Ltd	-	25,00,000
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		1,71,00,000
		=====

(B) For loan given for investment in Mumbai property –

Rs.5,25,00,000/-

Withdrawals from Mahavir Polyfilms P Ltd	-	5,26,00,000
Loan from Stewart Mario D Souza	-	1,42,00,000
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		6,68,00,000
		=====

7. Based on the above discussed information, the Ld.CIT(A) concluded that the addition made by the AO is not warranted. The relevant observations made by the Ld.CIT(A) are extracted below:-

*“4.3.4. The finding of the AO appears only as a general comment without any enquiry/investigation. The income shown by a particular person for taxation in a single year does not throw full light on the net worth of the individual and his credit worthiness. The AO should have called for further details with regard to the sources of the loan lender, if he wished so or should have made independent enquiry before proceeding with the addition. In any case, the Appellant during the appeal proceedings has submitted the additional evidence in the form of bank accounts of the lender, his balance sheet and copy of his ledger Account in the books of Mahavir polyfilms limited etc. The evidences although sent to the AO, he has only summarily submitted the Remand Report with remarks that no additional documents are submitted in the appeal proceedings, which is factually incorrect.*

*4.3.5. The additional documents submitted by the appellant have been examined. It is seen that the Sri Sundeep Sanghavi was having sufficient funds at the time/on the dates of lending loans to the appellant in his bank account. One of the sources as explained by Mr. Sundeep Sanghavi is the amount of Rs. 4,56,80,000/- received by him from the loan given earlier to M/s Mahavir Polyfilms. Sri Sundeep Sanghavi is also a full time director in M/s Mahavir Polyfilms Pvt. Ltd, which has substantial turnover during the year under consideration. Another source is the loan availed of Rs.1,96,00,000/- from his father Sri Mahendra Sanghavi. All the transactions are through banking channels. The receipts from the respective firms/persons are reflected in the Bank accounts of Mr Sundeep Sanghavi. The AO has neither made any effort either during the assessment proceedings or during the submission of Remand Report to make any enquiry /investigation to counter the above submissions which are substantiated by the transactions made through banking channels. In view of the above discussion, there is no reason to disbelieve the submissions / sources explained by the appellant with regard to loan from her husband Sri Sundeep Sanghavi. In any case, the appellant need not go to explain the source of source to prove the credit worthiness of the loan lender. No money trail has also been established by the AO to prove that it is in fact appellant's money and was routed through the above transactions for the said investments. Hence, the appellant has discharged her onus with regard to the sources of the payment made towards investment in foreign/ Indian properties. In the above background of the facts, the addition made by the AO cannot be sustained. The AO is hence, directed to delete the addition”*

8. From the foregoing discussions, we notice that, in the facts of the present case, there is no scope to make any addition u/s.69A of the Act. The assessee has explained the sources of making investments as the loan from her husband and also shown that her husband was having sufficient funds with him on the date of giving loan to the assessee. All transactions have been routed through banking channels. Hence, we are of the view that the Ld.CIT(A) has rightly held that the assessee has discharged the onus in terms of sec.68 as well as u/s.69A of the Act. When the assessee has discharged her onus and the AO did not prove the same to be incorrect, then no addition could be made u/s.68 of the Act as held by the Hon'ble Bombay High Court in the case of Gaurav Triyugi Singh vs. ITO (2020)(121 taxmann.com 86)(Bom). Accordingly, we confirm the order passed by the Ld.CIT(A) on this issue.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 26-12-2024

Sd/-  
[ANIKESH BANERJEE]  
JUDICIAL MEMBER

Mumbai,

Dated: 26-12-2024

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

TNMM

Copy to :

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "A" Bench, Mumbai
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,  
ITAT, Mumbai