

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.422/RJT/2023

(निर्धारणवर्ष / Assessment Year: (2011-12)

(Hybrid Hearing)

Poojaben Pankajbhai Shah, Khushboo Wadi, Indira Gandhi Marg, Jamnagar - 380005	Vs.	The DCIT, Circle - 2(1), Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFGPS1755K		
(assessee)		(Respondent)

Assessee by :Shri Chetan Agarwal, AR

Respondent by :Shri Aiyushman Singh Yadav, Sr. DR

Date of Hearing : 31/12/2024

Date of Pronouncement : 17/ 03/2025

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'Ld. CIT(A)/NFAC'], dated 21.11.2023, which in turn arises out of an assessment order passed by the Assessing Officer, (in short 'AO') u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 26.12.2018.

2. The grounds of appeal raised by the assessee are as follows:

"1. Learned CIT(A) erred in invoking provisions of section 148 of the Income Tax Act.

2. Leaned CIT(A) erred in law as well as on facts in confirming addition of Rs.25,00,000/-.

3. Learned CIT(A) erred initializing the concealment penalty u/s 271(1)(c).

4. Learned CIT(A) has proceeded in re-assessment on wrong factual facts and incorrect information in recorded reasons.

5. The assessee reserves his rights to add, to alter or to amend above grounds of appeal.”

3. At the outset, Learned Counsel for the assessee, informs the Bench that assessee does not wish to press ground nos.1, 3 and 4, therefore, we dismiss ground nos.1, 3 and 4, as not pressed.

4. Succinct facts *qua* the issue are that the assessee has filed her return of income for AY.2011-12 on 31.08.2012, declaring total income of Rs.23,64,945/-. The assessee is derived income from salary and interest income during the year under consideration. As per information received from the DDIT(Inv.) Jamnagar, vide letter dated 21.03.2018 that the assessee has taken unsecured loan from the shell company amounting to Rs.25,00,000/-, namely Chancellor Commodeal Pvt. Ltd, during F.Y. 2010-11 relevant to A.Y. 2011-12. On that basis, the case of the assessee, has been reopened u/s.147 of the Act. Thereafter notice u/s148 of the Act was issued on 29.03.2018 and served to the assessee on 29.03.2018. In response to this, the assessee has filed the written submission before the assessing officer on 13.04.2018. It was stated in the written submission, that she has filed her return of income for assessment year(A.Y.) 2011-12 on 31.08.2018, vide acknowledgement No. 478076010310812, the same may be treated return of income filed in response to notice u/s 148 of the Act. The assessee also stated that she would like to know the reason recorded for reopening u/s148 of the Act. Reasons recorded for reopening has been communicated to the assessee, vide letter dated 17.05.2018. Thereafter the notice u/s 143(2) of the Act was issued on 12.09.2018 and served to the assessee. The notice u/s 142(1) of the Act, along with the questions was issued on 3.10.2018 and served to the assessee.

5. In response to this notice, the assessee has filed her reply, vide letter dated 05.12.2018, which is reproduced below:

“We have already filed the income tax return along with computation of tax. With reference to the copy of reasons recorded for reopening of assessment we would like to submit as under: -

As per para-2 and Para -5 you have stated that Rs.25,00,000/- received from Chancellor Commodeal Pvt. Ltd. In the bank account No. 325110100022362 held with Bank of India, Hospital Road Branch, Jamnagar and you have stated that Chancellor Commodeal Pvt. Ltd. is a Shell Company and entry provider. Moreover, you have reason to believe that assessee has received funds from non-genuine transactions which attract provision of Sec. 68 of I.T Act.

We would like to submit as under,

According to our records in above stated bank account No. 325110100022362 held with Bank of India, Hospital Road Branch, Jamnagar, no cheque or entry of Rs.25,00,000/- received from Chancellor Commodeal Pvt Ltd in the name of Poojaben Pankajbhal Shah. Above stated bank account is joint account in the names of Shri Pankajbhal J. Shah and Smt. Poojaben Pankajbhal Shah. All transactions relating to Pankajbhai J. Shah are operated/entered through above stated bank account. No transactions relating to Smt. Poojaben P. Shah are routed, entered or operated through above stated bank account.

In view of above facts reasons recorded by Chintamani D. Dingnagar, DCIT, Circle-2, Jamnagar is incorrect and on the basis of which you intended and were satisfied to reopen the case is basically incorrect. If the re-assessment proceedings are started on the basis of incorrect recorded reasons, then according to our view it will be against the spirit of provision of Sec. 147 and 148 of I.T Act. It will not be a legal and valid re-assessment according to our honest belief.

Considering above facts, it seems that reopening of assessment requires to be dropdown.

We request you to please re-verify above facts and let us know so that we can proceed further in the matter.”

6. However, the assessing officer rejected the contention of the assessee and stated that while recording the reasons for reopening, there was a typographical error, and there is no mistake in the reasons recorded. During the assessment proceedings, the assessee also submitted further reply before the assessing officer, dated 18.12.2018. However, the assessing officer rejected the contention of the assessee and held that the assessee has taken loan amounting to Rs.25,00,000/- from the Chancellor

Commodeal Pvt. Ltd. on 31.03.2011, and the Chancellor Commodeal Pvt. Ltd is a shell company declared by the Government of India. Therefore, the assessing officer added Rs.25,00,000/-, as cash credit in the hands of assessee, u/s 68 of the Act.

7. Aggrieved by the order of assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the assessing officer. The Ld CIT(A) noticed that claim of the assessee is not supported with any documentary evidences. Even a perusal of the assessment order reveals that no confirmation letter is submitted from the respective party substantiating the genuineness of the transactions claimed. Therefore, it was concluded by Ld CIT(A) that assessee failed to establish the genuineness of transactions claimed, and hence, the Ld CIT(A) confirmed the addition made by the assessing officer.

9. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

10. Learned Counsel for the assessee, vehemently argued that the said loan taken by the assessee, has been repaid in the subsequent year, therefore, genuineness of this loan should not be doubted. The Ld. Counsel for the assessee also took us through paper book page no.12 and 13, wherein the confirmation of accounts was submitted by assessee, before the assessing officer. The transaction was confirmed by the party, by submitting confirmation also, however, neither the assessing officer nor the Ld. CIT(A) considered the same. Apart from this, Ld. Counsel also took us through the assessment order of the assessing officer, in the subsequent year, in the assessee's own case and stated that the same nature of transaction is there in the assessment year 2012-13 and the assessing officer, after having examined the accounts of the assessee and

documents of the assessee, did not make any addition. Therefore, Ld. Counsel contended that addition made by the assessing officer may be deleted.

11. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue submitted that each year is a separate and distinct assessment year, therefore *res judicata* does not apply to the income tax proceedings, as each assessment year is treated separately, therefore order passed by the assessing officer in the subsequent year, should not be taken, as a base to delete the addition. The Ld. Sr. DR also stated that assessee has failed to prove the genuineness of the transactions, therefore Ld. CIT(A) rightly confirmed the addition made by the assessing officer.

12. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that assessee is an individual and has filed her return of income for the assessment year (AY).2011-12, on 31.08.2012, declaring total income of Rs.23,64,945/-. Subsequently case was re-opened for the reason of loan amount taken of Rs.25,00,000/- from shell company namely, Chancellor Commodeal Pvt. Ltd, declared as shell company by the Government of India in list of 16,793/- (other shell companies). When the assessee, took the loan from Chancellor Commodeal Pvt. Ltd, the said company was not declared, as shell company, by the Government of India. We find that assessee's genuine loan, taken during the F Y 2010-11, from Chancellor Commodeal Pvt. Ltd, was suspected, as bogus merely because the said company was declared as shell company, subsequently by the Government. Consequently, assessment was also framed u/s. 143(3) r.w.s. 147 of the Act dated 26.12.2018, by making an addition of

entire amount of loan taken of Rs.25,00,000/- from Chancellor Commodeal Pvt. Ltd, as unexplained credits u/s. 68 of the Act.

13. We find that the genuine loan taken by the assessee, and duly repaid by her through banking channel, is also to be doubted by the assessing officer, merely because she has taken loan from shell company, as she didnot know at the time of taking loan that the said company will be declared as shell company, later on. Thus, at the time of taking the loan, the company was not shell company. We find that the loan was repaid by the assessee through banking channel on or before 31.03.2013 and assessee also furnished affidavits from Directors of lender companies that they have received back their money from the assessee by cheque and it was also confirmed by directors of the company that they have not charged interest on unsecured loan from the assessee due to long term business dealings and relations.Hon`ble Jurisdictional High Court of Gujarat, in the case of Ayachi Chandrashekhar Narsangji, [2014] 42 taxmann.com 251 (Gujarat), held that where department had accepted repayment of loan in subsequent year, no addition was to be made in current year on account of cash credit.

14. We also find that the assessing officer had not specifically identified any specific defects in the purported evidences and documents submitted before him by the assessee. Therefore, considering the facts and circumstances, as narrated above, and the fact that the company, namely, Chancellor Commodeal Pvt. Ltd, was suspected, as bogus merely because the said company was declared as shell company, subsequently by the Government. Therefore, while the case of the assessee, under consideration, merits some relief, as the assessee repaid the amount in subsequent years, through banking channel, however, at the same time, entire relief cannot be permitted to the assessee, as the said company was declared as shell company, subsequently by the Government. Considering these facts, in ourview, the ends of justice would be met, if a net profit rate of 15% is adopted on such loan transaction, since the same would take care of the inconsistencies in the documents and evidences filed by the assessee, before

the assessing officer. Therefore, we direct the assessing officer to tax the income of Rs.3,75,000/- (15% of Rs.25,00,000) in the hands of the assessee, by applying the normal rate of income tax.

15. In the result, the appeal filed by the assessee, is allowed partly in above terms.

Order is pronounced in the open court on 17/03/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

(True Copy)

Rajkot

दिनांक/ Date: 17 /03/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot