

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.258/MUM/2013
(Assessment Year 2005-06)

ITA No.259/MUM/2013
(Assessment Year 2006-07)

Shri Mangeram Sharma,
Room No.402, 4th Floor, 13/A,
Mehzabeen Arcade,
Chakla Cross Lane, Vadgadi
Mumbai – 400003
PAN : AAQPS0917G

..... Appellant

v/s

ITO, – 14(1)(2),
Mumbai

..... Respondent

Assessee by : Shri Rahul Hakani
Revenue by : Ms. Monika H. Pande, Sr.DR

Date of Hearing – 30/01/2025

Date of Order - 01/04/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeals against the separate impugned order of even date 22/11/2022, passed under section 250 of the Income Tax Act, 1960 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-52, Mumbai, [*"learned CIT(A)"*], for the assessment years 2005-06 and 2006-07.

2. Since both the appeals pertain to the same assessee involving additions arising out of the similar factual matrix, therefore, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order.

3. In his appeal for the assessment year 2005-06, the assessee has raised the following grounds: –

"1. The Ld. CIT (A) -25 has erred in confirming the addition of the loan amount of Rs. 75,00,000/- u/s. 69A as unexplained loan without considering the submission of the appellant dated 22-12-2011 and other various submissions.

2. The Ld. CIT (A) -25 has erred in confirming the addition of notional interest of Rs. 1,00,000/- on the loan of Rs. 75,00,000/-."

4. While in his appeal for the assessment year 2006-07, the assessee has raised the following grounds: –

1. The Ld. CIT (A) -25 has erred in confirming the addition of notional interest of Rs. 9,00,000/- on the loan of Rs. 75,00,000/-."

5. The brief facts of the case are that the assessee is an individual and for the assessment year 2005-06, filed his return of income on 31/10/2005, declaring a total income of INR 2,19,070. The return filed by the assessee was processed under section 143(1) of the Act. On the basis of the information received from the DCIT, Central Circle-1(3), Ahmedabad that Shri Bhanuprasad D. Trivedi (HUF) has claimed to have taken loan amounting to INR 75 lakh from the assessee and filed confirmation of loan given, notice under section 148 of the Act was issued to the assessee and proceedings under section 147 of the Act were initiated as the assessee in his balance sheet did not declare any loan advanced to its Shri Bhanuprasad D. Trivedi (HUF). During the assessment proceedings, statutory notices under section

143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to explain why the loan appeared in the loan confirmation submitted before the DCIT, Central Circle-1(3), Ahmedabad. Further, the AO also considered that in response to the summons issued under section 131 of the Act, the assessee admitted to having advanced loans to Shri Bhanuprasad D. Trivedi (HUF). In response to one more opportunity being granted to the assessee to show cause why the loan advanced be not treated as unexplained money under section 69A of the Act, the assessee vide its letter dated 22/12/2011 retracted from the statement made pursuant to the summons issued under section 131 of the Act on the basis that he was under a lot of confusion and was mentally disturbed at the time of recording the statement under section 131 of the Act. The Assessing Officer ("AO"), vide order dated 23/12/2011 passed under section 143(3) read with section 147 of the Act, disagreed with the submissions of the assessee and held that the assessee has advanced loans to Shri Bhanuprasad D. Trivedi (HUF) and same has been admitted by the assessee in his statement recorded under oath. The AO further held that Shri Bhanuprasad D. Trivedi (HUF) has also claimed to have taken a loan from the assessee. The AO held that the assessee's denial of advancing the loan to Shri Bhanuprasad D. Trivedi (HUF) is an afterthought to evade the consequences of admitting the advancement of loan and therefore, is not acceptable. Accordingly, the AO treated the loan amounting to INR 75 lakh as unexplained income of the assessee under section 69A of the Act. Further, by imputing interest at the rate of 12% per annum, the AO made an addition of INR 1 lakh on account of interest in the hands of the assessee.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the additions made by the AO. The learned CIT(A) held that the assessee's retraction is false, as he, after due verification, specifically confirmed the advancement of the loan to Shri Bhanuprasad D. Trivedi (HUF) in a statement recorded pursuant to summons issued under section 131 of the Act. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the information relied upon by the AO was not furnished to the assessee despite various RTI applications filed by the assessee. The learned AR further submitted that since no money has been found with the assessee, therefore, no addition can be made under section 69A of the Act.

8. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

9. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the office of DCIT, Central Circle-1 (3), Ahmedabad that the assessee has advanced loan amounting to INR 75 Lacs to Shri Bhanuprasad D. Trivedi (HUF), and the same has not been reflected by the assessee in his balance sheet, proceedings under section 147 of the Act were initiated. The AO, vide assessment order, treated the entire loan amounting to INR 75 lakh as unexplained sum of the assessee under section 69A of the Act by placing reliance on the loan confirmation submitted by Shri Bhanuprasad D. Trivedi (HUF) and the statement of the assessee recorded

pursuant to summons issued under section 131 of the Act. It is evident from the record that the said statement was retracted by the assessee vide its letter dated 22/12/2021 during the assessment proceedings, and the assessee denied having ever given any loan or advance to Shri Bhanuprasad D. Trivedi (HUF). The assessee further denied giving any confirmation letter of a loan amounting to INR 75 lakh. During the assessment proceedings, the assessee, inter-alia, sought a copy of the bank statement, the name of the bank and branch from which the alleged loan was given, and the copy of the loan confirmation letter filed by Shri Bhanuprasad D. Trivedi (HUF) in its assessment proceedings. Since the said information was not given to the assessee, the assessee filed an application under the RTI Act, 2005 on 19/01/2012 for seeking the aforementioned documents. In response to the assessee's application under the RTI Act, 2005, the AO provided a copy of the reasons recorded. However, denied having a statement of Shri Bhanuprasad D. Trivedi recorded and also submitted that there is no copy of the loan confirmation filed by Shri Bhanuprasad D. Trivedi (HUF). The AO, vide its aforesaid letter dated 15/02/2012, forming part of the paper book on page 28, also stated that no detail is available in respect of the name of the bank and branch and copy of the bank statement from which alleged loan was given by the assessee. Vide its another response dated 15/03/2012, the AO reiterated its finding made in the assessment order that the confirmation letter regarding the loan by the assessee to Shri Bhanuprasad D. Trivedi (HUF) was duly shown to the assessee while recording his statement under section 131 of the Act. We find that vide another letter dated 22/10/2012 before the Central Public Information Officer, DDIT, Ahmedabad, the assessee again

sought a copy of the loan confirmation by the assessee. The assessee also sought a copy of the bank statement of Shri Bhanuprasad D. Trivedi (HUF), wherein the amount of the loan was advanced by the assessee. However, instead of furnishing the information as sought by the assessee, the DCIT, Central Circle-1 (3), Ahmedabad, rejected the application filed by the assessee under the RTI Act, 2005.

10. Thus, in the present case, it is evident that though on one hand the learned CIT(A), vide impugned order dated 22/11/2012, claimed that the copies of the letter of the assessee and confirmation produced before the DCIT, Central Circle-1(3), Ahmedabad, were verified, however, on the other hand vide letter dated 15/02/2012, in response to the assessee's application under the RTI Act, 2005, it is the replied by the Revenue that no copy of loan confirmation was filed by Shri Bhanuprasad D. Trivedi (HUF). Further, it is also evident from the record that despite multiple requests being made by the assessee for seeking the copy of the confirmation filed by Shri Bhanuprasad D. Trivedi (HUF), the Revenue merely rejected the request of the assessee on technical grounds without proving the existence of any such confirmation being filed by Shri Bhanuprasad D. Trivedi (HUF) during its assessment proceedings. Therefore, not only the statement of the assessee recorded under section 131 of the Act was retracted by the assessee vide its letter dated 22/12/2011, but the loan confirmation, which was claimed to have been given by Shri Bhanuprasad D. Trivedi (HUF) during its assessment proceedings, is also not available with the Revenue. Thus, in the present case, it is evident that no material/document is available with the Revenue which

could prove that the assessee's retraction is *per se* false. Therefore, in the present case, the basis for making the addition under section 69A of the Act in the hands of the assessee either does not survive or does not exist in the records of the Revenue. Accordingly, we do not find any basis in sustaining the addition made by the AO under section 69A of the Act in the hands of the assessee, and the same is deleted. Consequently, the addition on account of interest earned by the assessee from the aforesaid loan transaction with Shri Bhanuprasad D. Trivedi (HUF) has no legs to stand on, and therefore, the same is also deleted. Accordingly, the grounds raised by the assessee in its appeal for the assessment year 2005-06 are allowed.

11. Since in the assessment year 2006-07, the only grievance of the assessee pertains to the addition of notional interest from the aforesaid loan transaction, therefore, in view of our findings, in assessee's appeal for the assessment year 2005-06, the said addition is also deleted. Accordingly, the ground raised by the assessee in its appeal for the assessment year 2006-07 is allowed.

12. In the result, the appeal by the assessee for the assessment years 2005-06 and 2006-07 is allowed.

Order pronounced in the open Court on 01/04/2025

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 01/04/2025
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai