

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2430/PUN/2024
निर्धारण वर्ष / Assessment Year : 2017-18

ACIT, CC-2(1), Pune.	Vs.	Sarvottam Construction, F-64, Indraprastha Complex, 589, Rasta Peth, Pune- 411011. PAN : AAHFS8551M
Appellant		Respondent

Revenue by : Shri Arvind Desai
Assessee by : Shri Sarvesh Kandelwal

Date of hearing : 09.01.2025
Date of pronouncement : 07.04.2025

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the Revenue is directed against the order dated 27.08.2024 passed by Ld. CIT(A), Pune-12 ['Ld. CIT(A)'] for the assessment year 2017-18.

2. The Revenue has raised the following grounds of appeal :-

- "1) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition made on account of bogus unsecured loan amounting to Rs.1,69,54,328/- taking during the year under consideration, without appreciating the fact that the assessee failed to prove the identity and creditworthiness of the creditors along with the genuineness of*

the transactions during the assessment proceedings as well as in remand proceedings.

2) *The appellant craves leave to add, amend, modify or alter any of the grounds of appeal.”*

3. Facts of the case, in brief, are that the assessee is a firm engaged in the business of civil construction and furnished its return of income declaring total income at Rs.Nil. The case was selected for scrutiny and notices u/s 143(2) and 142(1) respectively were issued to the assessee. The Assessing Officer found that the assessee has shown unsecured loan amounting to Rs.11,06,49,590/- in its balance sheet but detail and confirmation was not filed before the Assessing Officer, therefore, identity, creditworthiness of creditors and genuineness of transactions were not proved. Since the assessee has not responded any of the abovementioned notices, one last opportunity was given to the assessee and a show-cause notice u/s 144 was issued but the assessee also did not responded to the show-cause notice, therefore, the assessment was completed u/s 143(3) r.w.s. 144 on a total income of Rs.12,13,56,220/-. The above assessed income includes addition of Rs.11,06,49,590/- u/s 68 of the Act relating to the amount of unsecured loan shown by the

assessee and Rs.1,07,06,628/- towards disallowance of expenses claimed by the assessee as interest paid on above unsecured loan.

4. After considering the reply of the assessee, & the remand report sent by the AO, Ld. CIT(A) partly allowed the appeal by restricting the addition of Rs.11,06,49,590/- made on account of unproved unsecured loan u/s 68 of the Act to Rs.2,50,000/- only. It is this order against which the Revenue is in appeal before this Tribunal.

5. Ld. DR appearing from the side of the Revenue submitted before us that the order passed by Ld. CIT(A) wherein he deleted the addition Rs.1,69,54,328 made on account of unproved unsecured loan is unjustified. Ld. DR further submitted before the Bench that the assessee failed to prove the identity, creditworthiness of the creditors and genuineness of the transactions regarding unsecured loan of Rs 1,69,54,328/-. Ld. DR submitted before the Bench that Revenue is challenging deletion of unsecured loan obtained from following persons,

(i)	Vishalkumar K. Jain	-	Rs.92,53,724/-
(ii)	Vishalkumar K. Jain (HUF)	-	Rs.49,18,604/-
(iii)	Nikeeta Vijay Kering	-	Rs.12,00,000/-
(iv)	Manjula N. Parmar	-	Rs.10,00,000/-
(v)	Kushal Estate	-	Rs. 2,00,000/-

(vi) Naman Developers	-	Rs. 1,12,000/-
(vii) Kirti I. Chhajed	-	<u>Rs. 20,000/-</u>
Total deletion challenged by the Revenue Rs 1,67,04,328/-		
(viii) Sanjay Kumar Jain -		<u>Rs 2,50,000/-</u>
[Already Conformed by LD CIT(A)]		
Total	-	Rs.1,69,54,328/-

which were not fully proved before Ld. CIT(A) and also the identity and creditworthiness of the creditors and genuineness of the transactions could not be proved before Ld. CIT(A). But Ld. CIT(A) committed error in treating the above loan as proved and thereby further erred in deleting the addition made by the Assessing Officer. Accordingly, it was prayed before the Bench to set-aside the order passed by Ld. CIT(A) to the extent of Rs.1,67,04,328/- and further requested to confirm the order passed by the Assessing Officer in this regard.

6. Ld. AR appearing from the side of the assessee relied on the order passed by Ld. CIT(A) wherein he accepted the contentions made by the assessee and deleted the addition of Rs.11,03,99,590/- made by the Assessing Officer on account of unsecured loans except for unsecured loan of Rs.2,50,000/- which was confirmed by him. However, it was submitted by him that the Revenue has only

challenged deletion of unsecured loan of Rs.1,67,04,328/- which pertains to 7 persons. Ld. AR produced three paper books in support of his contentions wherein various documents were produced before the Bench which were also furnished before Ld. CIT(A). Accordingly, Ld. AR requested before the Bench to dismiss the appeal filed by the Revenue.

7. We have heard Ld. Counsels from both the sides and perused the material available on record including the paper books & case laws furnished by the assessee. In this regard, we find that the Assessing Officer made addition of Rs.12,13,56,218/- out of which Rs.1,07,06,628/- was interest paid on unsecured loan and Rs.11,06,49,590/- was total outstanding unsecured loan. Ld. CIT(A) while deciding the appeal filed by the assessee deleted the whole of the addition of Rs.1,07,06,628/- made by the Assessing Officer towards interest on unsecured loan and restricted the addition on account of unsecured loan of Rs.11,06,49,590/- to Rs.2,50,000/- only. We find that the Revenue has challenged the deletion of addition of unsecured loan amounting to Rs.1,67,04,328/- only, which pertain to 7 persons as mentioned in

the preceding paragraphs of this order. In this regard, we find that Ld. CIT(A) has deleted the unsecured loan by observing as under :-

“5.12 I have considered the facts of the case, the assessment order, remand report and submissions made by the appellant. It is held that the appellant has been taken the unsecured loan from 34 parties, which is showing its balance sheet. After verification of serial nos. 9 to 33 of Annexure 'A' of remand report, it is ascertained that these loans have been taken in earlier years. The details of these loans showing their position in the earlier 3 years is as in Para 5.8 of this order. Moreover, the appellant has also submitted all these confirmation letters from the lenders giving all the particulars such as the name of the lender, the address of the lender, the PAN of the lender and confirmation of the extract of the ledger account. In view of above, these loans were not credited in the books in the previous year, the same cannot be added to AY 2017-18.

Further, after verification of serial nos. 1 & 2 of Annexure 'A' of remand report, it is seen that the capital & loan account has been transferred to Vishalkumar Jain & Vishalkumar Jain (HUF), after death of his father Shri Kantilal Jain. So factually these are not the new loans at all raised in AY 2017-18 but merely the transfer of loan & transfer of capital account from father's HUF & individual capacity. Thus, the same cannot be added in the AY 2017-18.

Further, after verification of serial nos. 3 to 8 of Annexure 'A' of remand report, it is seen that the appellant has submitted the confirmation letters from the lenders giving all the particulars such as the name of the lender, the address of the lender, the PAN of the lenders and confirmation of the extracts of the ledger accounts. Thus, the loans taken by appellant in respect of serial nos. 3, 4, 6 to 8 are genuine. However, it is seen that during the year under consideration the appellant has taken loan of an amount of Rs. 2,50,000/- from Shri Sanjay Shah (as per serial no. 4). However, in the regard, the appellant has not submitted any confirmation of accounts. Thus, the same is not proved to be genuine and creditworthy. Thus, the disallowance of Rs. 2,50,000/- deserves to be upheld. In view of the above, the addition of Rs. 11,06,49,590/- made by the Ld. AO on account of unsecured loan u/s 68 is restricted to Rs. 2,50,000/-. The ground no. 1 raised by the appellant is hereby partly allowed.”

8. Now, we shall discuss each unsecured loan one by one which was deleted by Ld. CIT(A) & which is challenged by the Revenue. With regard to sum of Rs.92,53,724/- appearing in the name of Vishalkumar K. Jain and Rs.49,18,604/- appearing in the name of Vishalkumar K. Jain (HUF), we find that during the period under consideration a credit entry was recorded in the books of the assessee in the name of these two persons for the first time. It was contended before the Bench that both the above loans were not obtained during the year but they were transferred in the name of Vishalkumar K. Jain & Vishalkumar K. Jain (HUF) and the above credit entry was already appearing in the books of the firm since last many years in the name of Kantilal Jain & Kantilal Jain (HUF) regarding loan & capital respectively. However, we find that Kantilal Jain expired in the year 2010 and it is claimed that since then these two credit entries were appearing in the books of accounts of the assessee firm. We further find that Ld. CIT(A) has deleted both the above unsecured loans by observing that no new loan has been obtained either from Vishalkumar K. Jain or from Vishalkumar K. Jain (HUF). In this regard, we find that it is true that the above two loans were not obtained during the financial year

under consideration but since the language of section 68 says that any credit entry made in the books of accounts of the assessee with respect to unsecured loan, & the explanation offered by the assessee is not satisfactory the addition can be made by the Assessing Officer. Accordingly, we find that however these two loans were not obtained during the period under consideration but an entry to this effect was made in the books of accounts under the respective ledger accounts of related parties for the first time, therefore, the Assessing Officer has right to enquire into the entries made in the books of accounts for the first time. We also find that the person in whose names i.e. Kantilal Jain/ Karta of Kantilal Jain (HUF) had already expired in the year 2010 and it is not clear in between the period what happened & who was availing the benefit of interest on loan/ capital advanced to the assessee since last many years. We also do not know why the entries were existing in the name of an expired person and according to us if the person who has provided loan/ capital is no more his credit balances should have been transferred to his legal heirs immediately after his death. Since Ld. CIT(A) has not enquired into this aspect, we hold that the order passed by Ld. CIT(A) deleting the addition made on account of both

these unsecured loans is unjustified. Accordingly, we set-aside the order passed by Ld. CIT(A) on this issue (unsecured loan from Vishalkumar K. Jain & Vishalkumar K. Jain HUF) and remand the matter back to the file of the Assessing Officer to decide the issue afresh in the light of observations made in the preceding paras after providing reasonable opportunity of hearing to the assessee.

9. With regard to a sum of Rs.12,00,000/- appearing in the name of Nikeetaa Vijay Kering, we find that the Assessing Officer in his remand report mentioned that income tax return of the above person is not furnished by the assessee. Even the copy of her bank account statement was not provided by the assessee before Ld. CIT(A) but still Ld. CIT(A) has accepted above unsecured loan as proved. In this regard, we find that the assessee has only produced the copy of ledger account in his books of account before Ld. CIT(A). Since the copy of income tax return of the lender, confirmation letter and the copy of bank account statement of the lender was not produced before Ld. CIT(A), we hold that Ld. CIT(A) was not justified in accepting the above said loan of Rs.12,00,000/- received during the year from Nikeetaa Vijay Kering. Accordingly, we set-aside the order passed by Ld. CIT(A) wherein he deleted the addition made

by the AO towards unsecured loan of Rs.12,00,000/- received from Nikeetaa Vijay Kering, and remand the issue back to the file of the Assessing Officer to decide the issue afresh after providing reasonable opportunity of hearing to the assessee.

10. With regard to a sum of Rs.10,00,000/- appearing in the name of Manjula N. Parmar, we find that the Assessing Officer in his remand report has mentioned that the copy of income tax return was not furnished by the assessee. We find that with respect to Manjula N. Parmar the assessee had produced bank account statement of the lender before Ld. CIT(A) along with confirmation letter, however, copy of income tax return of Manjula N. Parmar was not furnished before Ld. CIT(A). Accordingly, we find that the identity of the creditor and genuineness of the transaction is proved but the creditworthiness has not been proved since copy of income tax return was not furnished before Ld. CIT(A). Accordingly, we hold that Ld. CIT(A) has erred in deleting the addition made by the Assessing Officer on account of unsecured loan obtained from Manjula N. Parmar, therefore, we deem it appropriate to set-aside the order passed by Ld. CIT(A) on this issue and remand the matter back to the file of Assessing Officer to decide this issue of

unsecured Loan from Manjula N. Parmar afresh after providing reasonable opportunity of hearing to the assessee.

11. With regard to a sum of Rs.2,00,000/- appearing in the name of Kushal Estate, we find that the Assessing Officer in his remand report mentioned that the return of income of Kushal Estate has not been furnished by the assessee. However, copy of bank account statement of Kushal Estate was furnished by the assessee. However, the Assessing Officer observed that just prior to loan of Rs.2,00,000/- there is a credit in bank account of Kushal Estate amounting to Rs.82,00,000/- and assessee has not furnished any copy of return of income of Kushal Estate, therefore, creditworthiness of the assessee is not proved. In this regard, we find that the assessee has furnished the copy of bank account statement of Kushal Estate and also furnished confirmation letter of the lender, but the copy of Income Tax Return was not furnished. Since we have already remanded back some of the issue regarding unsecured loan for verification to the AO, we deem it appropriate to set-aside the order passed by Ld. CIT(A) on this issue & remand the matter back to the file of Assessing Officer to decide this issue of

unsecured Loan from Kushal Estate afresh after providing reasonable opportunity of hearing to the assessee.

12. With regard to a sum of Rs.1,12,000/- appearing in the name of Naman Developers, we find that the Assessing Officer in his remand report has mentioned that party-wise loans/advances in the books of Naman Developers has not been shown, therefore, the loan is not proved. In this regard, we find that the assessee has furnished copy of income tax return of this lender for three years i.e. assessment years 2015-16 and 2016-17 and also for the assessment year 2017-18, secondly confirmation letter in support of loan was also produced by the assessee. Therefore, we do not find any error in the order passed by Ld. CIT(A) wherein he deleted the addition of Rs.1,12,000/-.

13. With regard to a sum of Rs.20,000/- appearing in the name of Kirti I. Chhajed, we find that the Assessing Officer in his remand report has accepted that the copy of bank account statement of this lender has been furnished wherein transaction of Rs.20,000/- is appearing. Further, the copy of income tax return for 3 years & confirmation letter were also produced. Accordingly, we do not find any error in the order passed by Ld. CIT(A) wherein he deleted

the addition of Rs.20,000/- made on account of above unsecured loan. Thus, the grounds of appeal filed by the Revenue are partly allowed for statistical purposes.

14. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced on 07th day of April, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 07th April, 2025.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Pune-12.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.