

**IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH
"SMC", BENCH MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 6434/Mum/2024 (AY 2018-19)

(Physical hearing)

Rohit M. Savla B/4, Flat No. 501, Kutchi Sarvoday Nagar, P.L. Lokhande Marg, Govandi (VV), Mumbai – 400043. PAN: AACPS 9562 M	Vs.	Income-tax Officer – 27(3)(1),IT Office, Vashi Railway Station, Navi Mumbai-400705.
(Appellant)		(Respondent)

Assessee by : Shri Paras Savla, Advocate
Revenue by : Ms Pradnya Gholap, Sr. DR

Date of Hearing : 16.04.2025
Date of Pronouncement : 16.04.2025

Order Under section 254(1) of Income tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. CIT(A)/NFAC dated 07.11.2024 for A.Y. 2018-19. The assessee has raised the following grounds of appeal:

"1. General

On the facts and in circumstances of the case and in law, the National Faceless Appeal Centre / Commissioner of Income Tax (Appeals) [NFAC/CIT(A)] has erred in dismissing the appeal.

2. Natural justice violated

On the facts and in circumstances of the case and in law, the Ld. NFAC/CIT(A) failed to grant sufficient opportunity to present the case and thus principles of natural justice are grossly violated.

3. Additional evidences rejected

On the facts and circumstances of the case and in law, the Ld. NFAC/CIT(A) erred in rejection the additional evidences filed during the course of appellate proceedings.

4. Addition of Rs. 17,25,000/- u/s 68

The Ld. NFAC/CIT(A) erred in making the addition of Rs. 17,25,000/- u/s 68 as unexplained cash credit without appreciating the facts and circumstances of the case.

5. Disallowance of Rs. 1,25,000/- u/s 37

The Ld. NFAC/CIT(A) erred in making disallowing Rs. 1,25,000/- u/s 37 without appreciating the facts and circumstances of the case.

6. Interest u/s 234A, 234B and 234C

On merits, the appellant denies its liability to the levy of penal interest u/s 234A, 234B and 234C, hence the interest levied may be directed to be deleted.

7. The appellant submits that all the above grounds are without prejudice to each other. The appellant craves leave to add, amend, alter, delete or substitute any of the aforesaid grounds at any time before or at the time of hearing of the matter with the Income Tax Appellate Tribunal."

2. Brief facts of the case are that assessee is individual, filed his return of income for A.Y. 2018-19 on 30.09.2018 declaring total income of Rs. 4,04,270/-. The case was selected for scrutiny. During assessment, the assessing officer noted that on perusal of profit and loss account (P & L A/c), it is noted that assessee has shown unsecured loan of Rs. 22,25,000/-. The assessee was asked to furnish the complete details of lenders which includes name, address, PAN no. and balance sheet as on 31.03.2018. The assessee was also asked to furnish details of repayment and ITR of lenders for the last three years. The assessing officer recorded that no details were provided. The assessing officer treated the unsecured loan as unexplained credit under section 68. The assessing officer further noted that assessee has shown expenditure of Rs. 1,25,000/- on account of salary expenses. The assessee was asked to explain the genuineness of salary expenses with supporting evidence. The assessing officer recorded that assessee failed to provide

supporting documentary evidence about such salary expenses and accordingly disallow the same. Aggrieved by the addition in the assessment order, the assessee filed appeal before the Id. CIT(A). Before Id. CIT(A), the assessee filed detailed statement of fact and challenged the addition of unsecured loan and disallowance of expenses. In the statement of fact, the assessee stated that he is individual and Chartered Accountant by profession. His case was selected for scrutiny. During the scrutiny, it was a severe Covid-19 Pandemic and due to lockdown he has not resumed the work, so complete details were not available. The assessee filed application for seeking time before Assessing Officer vide letter dated 20.02.2021 however, the assessing officer passed the ex-parte order. On merit of the addition, the assessee submitted that he has certain outstanding unsecured loan from his ultimate family members and friends. The details of loan were provided in the following manner:

Sr. No.	Loan taken from	Relationship	Date of receipt	Sub Total Amount	Total Amount
1	Chandrika Savla	Mother	08/02/2018 13/03/2018	400,000/- 500,000/-	9,00,000/-
2	Mulchand Savla	Father	16/03/2017 22/03/2017	300,000/- 200,000/-	5,00,000/-
3	Mulchand Savla HUF	Father's HUF	30/11/2005	225,000/-	225,000/-
4	Riddhi Enterprises (Rohit Savla HUF)	Assessee's HUF	Prior to 2011 - Exact date in not available	100,000/-	1,00,000/-
5	Navrang Central Con. Co-op W & R Stores Ltd. Repayment	Friend	01/11/2017	500,000/-	5,00,000/-
			31.12.2021 10.01.2022	2,00,000/- 3,00,000/-	5,00,000/-

3. The assessee submitted that additions were made without any basis. For explaining the each unsecured loan, the assessee submitted that loan of Rs. 9.00 lac was received from mother. His mother has expired on 31.03.2016. The assessee was having joint bank account with his mother. For explaining source of his mother, the assessee explained that his mother has paid Rs. 23,00,000/- in 2006 to Vrindavan Builders and Developers. A joint allotment letter was issued in his and in mother's name on 31.08.2010. However deal was not materialized and builder returned the money back. First installment was returned on 08.02.2018. As mother was expired the amount was shown as loan in assessee's account. His mother was also given loan to Rupchand Parmar in July 2014 which was repaid by him on March 2014. The assessee furnished death certificate of mother and bank statement from June, 2006 to December 2006 along with return of income, capital account and balance sheet. The assessee also furnished copy of allotment letter from builders and confirmation from Rupchand Parmar. The assessee also furnished his return of income from A.Y. 2015-16 and 2017-18 along with bank statement. For second loan of Rs. 5,00,000/- from Mulchand Savla (Father) who expired on 13.05.2017, the assessee stated that his father was having non-agricultural plot which was sold for consideration of Rs. 37.48 lac and he had given loan of Rs. 5,00,000/- out of sale proceeds. The assessee furnished relevant bank statement along with return of income and capital account of his father. For the loan from Mulchand Savla HUF, the assessee explained that he is one of the Co-partner in Father's HUF had given loan of Rs. 2,25,000/- on 30.11.2005. Such fact is regularly reflected in the return filed from year to

year by said HUF. For another loan from assessee's own HUF of Rs. 1,00,000/-, the assessee explained that such loan was availed in earlier years. To substantiate such fact, return of income for A.Y. 2011-12 and 2017-18 with the statement of income and capital account was filed. About loan of Rs. 5,00,000/- from Navrang Central Consumer Co-operative W & R Stores Ltd., the assessee stated that loan of Rs. 5,00,000/- was taken on 01.11.2017 through banking channel and paid in two instalments i.e. first installment on 31.12.2021 of Rs. 2,00,000/- and second on 10.01.2022 of Rs. 3,00,000/-. Confirmation of loan and return of income of lender without audited report and balance sheet was also filed. The assessee stated that identity and genuineness has clearly been proved. Against the disallowance of expenses of Rs. 1,25,000/-, the assessee submitted that he has paid salary in cash to his employee name Mr. Jaywant Raut of Rs. 6000/- for twelve months and Mr. Harishankar Yadav of Rs. 5300/- for 10 months. The assessing officer disallowed such salary expenses without any basis.

4. The Id. CIT(A) after considering the submission of assessee allowed part relief to the assessee. Against the total addition of unsecured loan, the Id. CIT(A) deleted addition of unsecured loan of Rs. 5,00,000/- taken from Navrang Central Consumer Co-operative W & R Stores Ltd. by holding that assessee has filed confirmation and no other confirmation was filed with regard to other loan amount. The Id. CIT(A) also held that income of Chandrika Savla (mother) was not commensurate with the loan of Rs. 9,00,000/-. With regard to disallowance of salary expenses of Rs. 1,25,000/-,

the Id. CIT(A) held that assessee failed to provide supporting documentary evidence to prove the genuineness of salary expenses and that no documentary evidence in support of claim is filed. Further, aggrieved the assessee has filed present appeal before Tribunal.

5. I have heard the submission of Id. Authorized Representative (AR) of the assessee and the Id. Sr. Departmental Representative (DR) of the Revenue. Ground no. 1 is general and needs no adjudication. Ground no. 2 relates to violation of natural justice and ground no. 3 relates to rejection of additional evidences. No specific submissions were made with regard to ground no. 2 and 3, therefore, ground of appeal are treated as not pressed.
6. Ground no. 3 relates to addition of Rs. 17,25,000/- under section 68. The Id. AR of the assessee submits that during assessment, it was a severe Covid Pandemic and the assessee could not furnish complete details of unsecured loan and salary expenses of his staff, though the assessee prayed for allowing time, but the assessing officer instead of allowing time passed assessment order. Against the addition of Rs. 17,25,000/-, the Id. AR of the assessee invited our attention on the details of unsecured loan from father, HUF of father and assessee's own HUF which is managing Riddhi Enterprises. The Id. AR of the assessee submitted that assessee availed loan of Rs. 5,00,000/- from his father, out of which Rs. 3,00,000/- was received on 16.03.2017 and Rs. 2,00,000/- on 22.03.2017, admittedly such loans were received in earlier assessment year. Similarly, loan of Rs. 2,25,000/- from assessee's HUF was also received from 30.11.2005 which was shown as outstanding, the same

were received in earlier years. The Id. AR invited our attention on page no. 29 of the paper book which is the bank statement of assessee's father wherein entries in the name of assessee of Rs. 2,00,000/- and Rs. 3,00,000/- is shown in March, 2017. Further, the said amount is clearly shown in the capital account of his father as loan to assessee as on 31.03.2017. Similarly, for loan from Father's HUF as on 30.11.2005 showing the entries of Rs. 2,25,000/-. Similarly, that loan from Riddhi Enterprises of Rs. 1,00,000/- is concerned, such firm is managed by assessee's own HUF, the assessee has shown capital account of Riddhi Enterprises showing loan of advances to assessee as on 31.03.2011. The Id. AR of the assessee submits that when the amount was received on earlier years, same could not be taxed in the current financial year. To support such submission, the Id AR of the assessee relied upon decision of Surat Tribunal in Geeri Fashion (P) Ltd. vs ITO reported in (2021) 130 taxmann.com 495 (Surat) and the decision of Bombay High Court in Ivan Singh vs ACIT reported in (2020) 116 taxmann.com 499 (Bombay).

7. So far as loan of Rs. 9,00,000/- from mother is concerned, the Id. AR of the assessee submitted that out of total Rs. 9,00,000/-, Rs. 4,00,000/- was received on 08.02.2018 and Rs. 5,00,000/- on 13.03.2018. The mother of assessee has received a refund of booking from Vrindavan Builders and Developers which was paid to them in 2006. His mother has received cheque of Rs. 10,00,000/- on 24.08.2006 and Rs. 30,00,000/- on November, 2006. The mother has shown advances to builder in his capital account as on 31.03.2007. Thus, the identity and creditworthiness of mother is proved

beyond doubt. The Id. AR submits that assessee received Rs. 4,00,000/- by way of RTGS on 08.02.2018 and Rs. 5,00,000/- on 13.03.2018 which is duly reflected in the bank account of his mother, copy of which is placed at page 26 of paper book. Thus, the assessee has proved the creditworthiness of lender/mother. Since the mother of assessee has expired, so it was not possible to file confirmation. Otherwise, the amount was received through banking channel; there is no involvement of any cash money. The genuineness of transaction cannot be doubted. The assessee furnished complete details to the office of Id. CIT(A). The Id. CIT(A) disregarded the submission of assessee without bringing any contrary evidence or material on record. Once, the assessee has discharged his primary onus, the onus shifted on the Revenue to prove otherwise. The assessee has proved the identity, creditworthiness and genuineness of loan from mother. The other three loans were received in earlier years which can never be added in the year under consideration. On the disallowance of salary expenses of his staff, the Id. AR of the assessee submits that assessee being a professional engaged two part time employees and paid their salary in cash. The expenses were incurred for the purpose of his professional activity. The expenses are disallowed in surmises and conjectures. The genuineness is not doubted rather it was disallowed for the purpose of confirmation or documentary evidences. Such expenses were incurred in a professional activity which was never be doubted. The Id. AR of the assessee prayed for allowing the appeal.

8. On the other hand, Id. Sr. DR for the Revenue supported the order of lower authorities on the addition of unsecured loan the Id. Sr. DR submits that no confirmation from mother was filed and that mother was not having sufficient income for lending such money. For other loans which were claimed to have been received in earlier years, the Id. Sr. DR for Revenue submits that such evidence about received of loan in earlier years not verified by lower authorities. Against the in support of disallowances of salary expenses, the Id. Sr. DR for the Revenue submits that no documentary evidence in support of such expenses was filed either before Id. CIT(A) or before the Tribunal. The Id Sr DR for the revenue prayed for dismissal of appeal.
9. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. So far as confirmation of loan to the extent of Rs. 17,25,000/- is concerned, I find that majority of loan is from mother. I further find that there is no dispute of identity and mother (lender). About creditworthiness of lender (mother), I find that she has received Rs. 23,00,000/- by way of cheques in August 2006 and November 2006 which is duly reflected in her bank statement. The loan was shown in the capital account of lender. Further, the amount was paid to the assessee by way of banking channel as has been shown in the bank statement of lender / mother. Thus, the identity, creditworthy and genuineness of transaction is proved. Thus, no addition of loan amount from mother is sustainable. So far as other addition of loan of Rs. 5,00,000/- from father is concerned, out of which Rs. 3,00,000/- was received on 16.03.2017 and Rs.

2,00,000/- on 22.03.2017 which is clearly reflected in the bank statement at page no. 29 of the paper book. Similarly, other loan of Rs. 2,25,000/- from the HUF of father of assessee and Rs. 1,00,000/- from HUF of assessee was received in earlier years. The same cannot be added in the year under consideration as has been held by Hon'ble Bombay High Court in Ivan Singh vs ACIT (supra) which has been followed in Surat Tribunal in Geeri Fashion (P) Ltd. vs ITO (supra). Thus, the remaining addition of Rs. 17,25,000/- confirmed by Id. CIT(A) is also deleted. So far as the addition / disallowance of salary expenses is concerned, I find that the Id. AO made addition by taking view that no documentary evidence or confirmation was filed. The Id. CIT(A) also confirmed the action of assessing officer with similar view. I find that profession of assessee is not disputed by Revenue Authorities. The Assessee is in the profession of Chartered Accountant and certainly required part time or full time employee to assist him in professional work. The assessee has claimed small expenses for part time salary of two staff which in my view is not on higher side. Therefore, the assessing officer is also directed to delete such addition as well. In the result, ground no. 4 & 5 are allowed. Ground no. 5 is consequential.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 16.04.2025.

Sd/-

**(PAWAN SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 16.04.2025

Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai