

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No.2250/M/2015 (AY 2010-2011)**

Kiran R Mehta, Plot No.82, S.V. Road, 5 <sup>th</sup> Floor, Kailash Apartment, No.3, Borivali (W), Mumbai – 400092.	बनाम/ Vs.	ITO-32(2)(2), C-11, 6 <sup>th</sup> Floor, Pratyakshkar Bhavan, BKC Bandra (E), Mumbai – 400 051.
स्थायी लेखा सं./PAN : AACPM7558H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Mandar Vaidya
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Sambit Mishra

सुनवाई की तारीख / Date of Hearing : 15.02.2017

घोषणा की तारीख /Date of Pronouncement : 28.02.2017

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 17.4.2015 is against the order of the CIT (A)-44, Mumbai dated 20.2.2015 for the assessment year 2010-2011.

2. In this appeal, assessee raised six grounds in toto and they revolve around couple of issues ie (i) regarding the addition involving M/s. Divya Tej Corporation, a loan creditor and (ii) addition on account of another loan creditor named M/s. Sunrise Enterprise.

3. In connection with the first issue ie loan credit involving the said M/s. Divya Tej Corporation, Ld Counsel for the assessee mentioned, identical addition was the subject matter of adjudication before the Tribunal vide ITA No.3884/M/2010 for the AY 2007-2008. Bringing our attention to para 3.4 of the said order of the Tribunal (supra), Ld Counsel for the assessee submitted that this issue may be remanded to the file of the AO for fresh adjudication in the lines already mentioned by the Tribunal (supra) in the said para 3.4 of its order. Considering the significance and for the sake of completeness of this order, the said para 3.4 of the Tribunal's order (supra) is extracted as under:-

*"3.4. We have considered the submissions made by the Ld Representatives of the parties. We are in agreement with the finding of the CIT (A) that the AO could not*

*have made the above mentioned additions without making proper inquiries to satisfy himself regarding the genuineness of the creditors etc. The AO firstly should have asked the assessee to furnish the required details such as PAN number etc of the creditors and secondly he himself could have summoned the records and in case of need the creditors by issuing summons under section 131 of the Income Tax act. Admittedly no such course was adopted by the AO. Hence in our view the Ld CIT (A) has rightly restored the issue to the file of the AO with liberty to the AO to make necessary inquiries about the creditworthiness etc of the creditors by making resort to the provisions of the IT Act in this respect, in accordance with law and decide the issue accordingly."*

4. Considering above settled nature of the issue and in the absence of any controversy on the issue of remanding from the Ld DR's side, we set aside the relevant ground to the file of the AO for fresh adjudication with identical directions. Accordingly, relevant grounds are allowed for statistical purposes.

5. Regarding the second issue relating to the addition involving loan credit of M/s. Sunrise Enterprise, it is the argument of the Ld AR for the assessee that the AO proceeded to make entire loan as an addition ignoring the fact that part of the loan was already repaid by the assessee to the creditor in the same assessment year. In the regard, Ld AR relied on the decision of the ITAT, Delhi in the case of ITO vs. Shyam Sunder Jajodia in ITA No. 4549/Del/2004 (2008) 26 SOT 541. After hearing the Ld Representatives of both the parties and on perusal of the orders of the Revenue Authorities on this issue, we are of the view that this issue should also be remanded to the file of the AO with a direction that when the assessee done repayment of the loan, as to why such loan can become subject matter of addition. If the loan is repaid through banking channels, there is every chance that identity and the creditworthiness related issues can be factually established with investigation / verification by the AO. Therefore, we are of the opinion, this issue must also be remanded to the file of the AO for fresh adjudication and decision in accordance with the law in force. Accordingly, relevant grounds raised by the assessee are allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28<sup>th</sup> February, 2017.

**Sd/-**  
**(PAWAN SINGH)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 28.02.2017

**Sd/-**  
**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

व.नि.स./ OKK, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**