

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "एच" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**  
**BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.7249/Mum/2011 & I.T.A.7502/Mum/11  
(निर्धारण वर्ष / Assessment Year: 2006-07 & 2007-08)

Shri Hemendra Sanghani M/s. International Agencies B-303, Ratna Tarang, Parsi Panchayat Road, Old Nagardas Road, Andheri(E), Mumbai - 400069	<b>बनाम/</b> Vs.	The Income Tax Officer Ward 20(1)(3) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ARCPS9439G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Madan Dedia
Department by:	Shri A.N.Sontakke

सुनवाई की तारीख / Date of Hearing: 03.05.2016  
घोषणा की तारीख /Date of Pronouncement:24.06.2015

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The assessee has filed the above said appeals against the order dated 11.08.2011 passed by the Commissioner of Income Tax (Appeals) 31, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2006-07 and 2007-08. Since in the present appeals the parties are the same and the matter of controversy linked with each other, therefore, these appeals are being taken up together for adjudication for the sake of convenience.

**ITA NO.7249/M/2011:-**

2. The facts of the case are that the assessee filed the return of income of Rs.1,86,272/- for A.Y.2006-07 on 30.10.2006. The return was accompanied with the computation of income, Trading Profit and Loss Account, Balance Sheet and Tax Audit Report u/s.44AB of the Income Tax Act, 1961 (in short "the Act") in form No.3CB and 3CD along with its enclosures. The return was processed u/s.143(1) of the Act. The case was selected for scrutiny and notice u/s.143(2) of the Act was issued on 08.10.2007 for A.Y. 2006-07 and served upon the assessee. Subsequently notices u/s.142(1) of the Act were issued and served upon the assessee. In enquiry the assessee was found to get the loan from different parties to the tune of Rs.25,10,000/- which was not verified, therefore the said loans were treated as unexplained cash credit u/s.68 of the Act. The Assessing Officer assessed the income of the assessee by holding his tax liability to the tune of Rs.61,74,427/-. Thereafter the assessee challenged the said assessment order before the CIT(A), who also confirmed the said unexplained cash credit u/s.68 of the Act. Therefore, the assessee has filed the present appeal before us.

3. The assessee has raised the following issues in the assessment year 2006-07:-

- "1. Disallowance of Unsecured Loan of Rs.25,10,000/- treating as unexplained cash credit u/s.68 of Income Tax Act, 1961.*
- 2. Disallowance of purchases of goods Rs.1,14,73,072/- treated as unproved purchases and considered by CIT(A) as undisclosed income u/s.69."*

**ISSUE NO.1:-**

4. The assessee has challenged the order of CIT(A) who confirmed the disallowance of unsecured loan of Rs.25,10,000/-treated as unexplained cash credit u/s.68 of the Act. The contention of the assessee is that he took loan from the nine person who were his relatives and were residing at Ahmadabad, Gujarat and proved their identities, creditworthiness, genuineness of the transaction but CIT(A) has wrongly confirmed the addition. However, the details of the said persons are hereby mentioned below:-

SR. NO	NAME	DATE	LOAN	PAN
1	Kamlaben M. Shah	06.12.2005	3,60,000/-	AZLPS4005P
2	Kantaben V. Shah	06.12.2005	3,50,000/-	
3	Bina J. Shah	15.12.2005	2,50,000/-	AZAPS6108G
4	Mandiben D. Shah	15.12.2005	3,00,000/-	BEDPS6897H
5	Kanchan R. Shah	14.12.2005	2,50,000/-	AWAPS2855F
6	Saumil B. Shah	14.12.2005	2,50,000/-	BEDPS7560H
7	Mrudula H. Shah	14.12.2005	2,50,000/-	AZAPS6107K
8	Nita A. Shah	14.12.2005	2,50,000/-	APPLIED
9	Nita V. Shah	15.12.2005	2,50,000/-	AYPPS7100J
	TOTAL		25,10,000/-	

4.1 The learned representative of the assessee has argued that the assessee had discharged the primary onus u/s.68 of the Act by explaining the nature and source of the said amount and by proving prima facie i.e. (1) identity of creditors (2) creditworthiness of the creditors (3) genuineness of transactions by filing relevant details and documentary evidences. It is also argued that the assessee received the money through

account payee cheque, or draft or any other modes but the CIT(A) has failed to consider the claim of the assessee wrongly and illegally. On the other hand the learned representative of the department relied upon the order passed by the CIT(A) in question. Keeping in view of the argument advanced by the Ld representative of the parties and perusing the record, it came into the notice that the Assessee has produced the copy of bank statement of the creditors which is lying at page no.1 of the paper book. The assessee also produced the common affidavit of 9 creditors whose names and details have been properly mentioned at pages 2 and 3 of the paper book. Most of the creditors were having their Pan Number. Detailed incomes of the creditors have also been filed. All the transactions have been rejected by the Assessing Officer on the ground that the notice u/s.133(3) of the Act were not served to the creditors and few of them did not answer to their notices. No further enquiry was done by the Assessing Officer. Anyhow, when sufficient identity of the creditors and their Pan numbers and their address is on record, therefore, in the said circumstances it is necessary to inquire the matter properly. In the instant case no proper inquiry was conducted. There should be some reasonable ground to decline the evidence produced before him. The claim of the assessee was declined on the ground of that the assessee failed to produce them and some of the notices received back unserved. It is not the sufficient ground to declined the claim of the assessee, specifically in the circumstances when the evidence produced by the assessee has not been examined and discussed properly to denied the claim if any. In view of the evidence produced before us, we are of the view that CIT(A) did not pass the order correctly and judiciously.

Therefore, we set aside the order on this issue and file is hereby ordered to be restored before the Assessing Officer to reconsider the claim of the assessee by giving an opportunity of being heard to the assessee in the interest of natural justice. Accordingly, this issue is decided in favour of the assessee against the revenue.

**ISSUE NO.2:-**

5. The second issue is in connection with the disallowance of purchases of goods to the tune of Rs.1,14,73,072/- treated as unproved as undisclosed income u/s.69 of the Act which has been confirmed by the CIT(A). The contention of the assessee is that the Assessing Officer verified the purchases from wrong addresses i.e. M/s. Arch Pharma Labs Ltd. whereas the assessee purchased goods amounting to Rs.1,14,73,072/- from M/s. Arch Pharma Labs, Prop. Kumarpal Shah, situated at A-9, A.V.Complex, Paldi, Ahmedabad. It is contented that the name of the supplier was wrongly mentioned as M/s. Arch Pharma Labs Ltd. instead of M/s. Arch Pharma Labs. It is not disputed that the Assessing Officer declined the purchases when he received letter from M/s. Arch Pharma Labs Ltd. with regard to the non-transaction with the assessee. The contention of the assessee with regard to the purchases of goods from M/s. Arch Pharma Labs was not verified even at the stage of appeal. The account of the assessee was audited u/s.44AB of the Act and was having sufficient record with regard to the purchases. The assessee has filed copies of purchase bills of M/s. Arch Pharma Labs, Ahmedabad and it's confirmation of account, transportation receipt, Bank statement confirming payment made to M/s.Arch Pharma

Labs, copy of VAT returned filed with sales tax department reflecting said purchases. Copy of sales tax registration certificate of M/s.Arch Pharma Ltd. with sales tax department Gujarat State holding Registration No:24073604147 w.e.f. 01.02.2006. It is also observed that M/s.Arch Pharma Labs is situated in Ahmedabad whereas M/s. Arch Pharma Labs Ltd. is situated at Andheri (E), Mumbai. The addresses of both the firm are totally different. In view of the said circumstances we are of the view that this issue needs proper verification at the end the Assessing Officer in view of the evidence produced in the interest of natural justice. In view of the said circumstances we set aside the order passed by the CIT(A) on this issue and restore the issue to the file of the Assessing Officer to decide the matter afresh in view of the evidence produced after giving him an opportunity of being heard in accordance with law. This issue is decided in favour of the assessee and against the revenue.

**ITA NO.7502/MUM/2011 (2007-08):-**

6. The facts of the case of the present case are quite similar with the facts mentioned above for the A.Y.2006-07. However, the figure are different. In the said assessment year the assessee has challenged the disallowance of interest claimed to the tune of Rs.3,76,648/- on unsecured loan to the tune of Rs.25,10,000/- of the A.Y.2006-07. The said deletion was confirmed by the CIT(A) vide order dated 11.08.2011, therefore the assessee filed the present appeal before us.

7. The assessee has raised the following issued in the assessment year 2007-08:-

- “1. The first ground is relating addition made by AO disallowing claim of entire interest expenses of Rs.3,76,648/- stating interest cannot be considered as incurred by assessee as unsecured loans were treated as unexplained cash credit u/s.68 of the Income Tax Act, 1961 in A.Y. 2006-07. The CIT(A)-31 erred in confirming disallowance of interest expenses claimed during the year under consideration.*
- 2. The second point is relating not providing sufficient opportunity of hearing to appellant and Ld. AO failed in making proper enquiry of case. And Ld. CIT(A) erred in confirming action of AO.”*

**ISSUE NO.1 &2:-**

8. So far as the issue no.1 in the A.Y.2007-08 is concerned, the assessee has raised the issue of disallowance claim of interest expenses of Rs.3,76,648/- on unsecured loan of Rs.25,10,000/-. This interest was claimed by the assessee against the unsecured loans of Rs.25,10,000/- in the A.Y.2006-07. Since in deciding the appeal of the assessee for A.Y.2006-07 the issue of unsecured loan of Rs.25,10,000/- has been remanded before the Assessing Officer to re-examine the matter afresh in the light of evidences adduced by the assessee, therefore in the said circumstances the interest upon the unsecured loan has become uncertain no doubt the same would be consequential and would come into existence after the decision taken by the Assessing Officer while deciding the assessment of the A.Y.2006-07. Accordingly, the finding of the CIT(A) on this issue is also hereby set aside which would be consequential on account of finding of the assessment

for the year A.Y.2006-07. Accordingly this issue is decided in favour of assessee.

9. In the result both the appeals filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 24<sup>th</sup> June, 2016.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24<sup>th</sup> June,2016

*MP*

**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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai