

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)**

आयकरअपील सं./ I.T.A. No.4921/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Ashish Pratap Doshi Urja Ground floor, 8, Alkesh Dinesh Modi Marg, Mumbai-400 001	बनाम/ Vs.	ACIT Circle-19(1), Matru Mandir Tardeo Road, Mumbai-400 007
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AABPF-4770-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Ketan Vajani, Ld. AR
Revenue by	:	Shri Brajendra Kumar– Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	01/09/2021
घोषणा की तारीख / Date of Pronouncement	:	03/09/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by confirmation of certain addition for Assessment Year (AY) 2013-14, the assessee is in further appeal before us. The assessment was framed by Ld. Assessing Officer (AO) u/s 143(3) on 19/03/2016 which was confirmed Ld. Commissioner of Income-Tax (Appeals)-2, Mumbai [CIT(A)], vide impugned order dated 18/05/2018. Aggrieved, the assessee is in further appeal before us with the following grounds of appeal: -

1. On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals), hereinafter referred to as the "CIT (A)", has erred in confirming the addition of Rs.25,00,000/- made by the assessing officer merely on the basis of the statements alleged to have been recorded by the Investigation wing in the case of Bhanwarlal Jain group without appreciating the correct facts of the case.

2. **Without any prejudice whatsoever to Ground 1 above**, on the facts and in the circumstances of the case, the CIT (A) has erred in not appreciating the fact that the appellant has produced sufficient documents in support of the loan and discharged his onus of proof.

3. **Without any prejudice whatsoever to the above Grounds, the CIT (A)** has failed to appreciate that the impugned addition is made in gross violation of the principles of natural justice and settled legal position on the issue.

As evident, the assessee is aggrieved by confirmation of addition u/s 68 for Rs.25 Lacs.

2. The Ld. AR submitted that loans taken by the assessee were repaid subsequently and the assessee had filed requisite documentary evidences in support of the transactions. The Ld. AR also pleaded that failure on the part of lower authorities to provide an opportunity of cross-examination would make the addition unsustainable in law as per the decision of Hon'ble Apex Court in **M/s Andaman Timber Industries V/s CCE (CA No.4228 of 2006 dated 02/09/2015)** wherein it has been held that not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statement of those witnesses were made the basis of the impugned order, is a serious flaw which makes the order nullity in as much as it amounts to violation of principal of natural justice because of which the assessee was adversely affected.

The Ld. DR, on the other hand, justified the additions by pleading that the onus was on assessee to produce the lender for confirmation of the transaction. It was also pleaded that the matter may be restored back for the purpose of cross-examination.

3. We have carefully heard the rival submissions and perused relevant material on record. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4.1 During assessment proceedings, it transpired that the assessee obtained unsecured loan of Rs.25 Lacs from an entity namely M/s Lakshmi Diamonds. The said entity allegedly belonged to Shri Bhanwarlal Jain group who was subjected to search action by investigation wing. On the basis of investigation findings, it was alleged that the loans were bogus in nature and therefore, the same were to be added as unexplained cash credit u/s 68.

4.2 However, the assessee refuted the allegations of Ld. AO, inter-alia, by submitting loan confirmation, Income Tax Return of the lender and its financial statements. It was submitted that since the loan was repaid during June, 2013, the assessee had no relationship with the said lender and was unable to produce the party for confirmation of account. At the same time, the assessee demanded cross-examination of persons making statement which were used against assessee to make the additions. However, rejecting the same, Ld. AO added the loans u/s 68.

5. Upon further appeal, Ld. CIT, in the background of investigation findings, observed that the claim of the assessee could not be accepted looking at the surrounding circumstances. The onus of proving loan transactions could not be discharged by the assessee and therefore, the additions were to be upheld. Aggrieved the assessee is in further appeal before us.

6. Upon perusal of material on record, it could be gathered that the assessee has filed loan confirmation, Income Tax Return as well as financial statements of the lender. The assessee paid interest on these

loans after deduction of tax at source. The loans were already repaid by the assessee during June, 2013. The receipt as well as repayment of loan has taken place through banking channels. The loan confirmation bears the PAN of the lender. The loan given to the assessee has been reflected in the Balance Sheet of the lender entity. The lender has reflected turnover of more than Rs. 217 crores. As against this, the sole basis to make additions is the findings of investigation wing. No effective investigation of any sort has been shown to have been carried out by lower authorities. In the backdrop of these facts, we would conclude that the assessee had discharged its onus to prove the genuineness of the transaction. The onus was on revenue to dislodge the same. However, in the absence of such an exercise, the impugned additions are not sustainable in law. Hence, by deleting the same, we allow the appeal.

7. The Ld. Sr. DR has referred to the decision of Hon'ble Supreme Court in **ITO V/s M. Pirai Choodi (20 Taxmann.com 733; 19/11/2010)** as well as the decision of Tribunal in **ITO V/s M/s Vinaylene Textile Industries Pvt. Ltd. (ITA No.3240/Mum/2017; 23/02/2018)** for the submissions that not providing opportunity of cross-examination would not render assessment order as nullity and at the most, the matter could be remanded back to the file of Ld. AO. However, as noted by us in preceding para, the prime reason to delete the addition is the fact that the assessee has duly discharged its onus of substantiating the transactions as against the fact that no effective investigation is shown to have been carried out by Ld. AO. Therefore, we find no fruitful reason to remand the matter back to the file of Ld. AO.

8. The appeal stand allowed in terms of our above order.

Order pronounced on 3rd September, 2021.

Sd/-

(C. N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03/09/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.