

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 4008/Mum/2023
(Assessment Year: 2011-12)**

Jignesh Chimanlal Jobanputra 402, 4 th Floor, Ronik Apartment, M.G. Road, Kandivali (West), Mumbai-400067. PAN : AAIPJ5954G	Vs.	ITO, Ward-33(2)(1), Kautilya Bhavan, BKC, Bandra, Mumbai-400051
Appellant)	:	Respondent)

Appellant/Assessee by : Ms. Kinjal Bhuta, CA
Revenue/Respondent by : Shri R.R. Makwana, JCIT

Date of Hearing : 17.04.2024
Date of Pronouncement : 18.04.2024

ORDER

Per Padmavathy S, AM :

This appeal is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 12.09.2023 for the AY 2011-12. The assessee raised the following grounds:

“1. The Ld. Commissioner of Income Tax (Appeals)- NFAC, erred in confirming the actions of Ld. Assessing Officer in making an addition of Rs. 31,89,681/- being unsecured loans and treating it as unexplained investments, thereby completely misunderstanding the factual matrix of the case.

2. The Ld. Commissioner of Income Tax (Appeals)- NFAC, erred in confirming the actions of Ld. Assessing Officer in making an addition of Rs. 31,89,681/-

under section 69 of the Income Tax Act, 1961, failing to appreciate that section 69 does not apply to the facts of the case.

3. The Ld. Commissioner of Income Tax (Appeals)- NFAC erred in confirming the actions of the Assessing Officer in making an addition of Rs. 31,89,681/- on account of alleged unexplained investment under section 69 of the Income Tax Act, 1961.”

2. The assessee is an individual and is proprietor of M/s. Manav Display engaged in the manufacturing of display items. The assessee filed the return of income for assessment year (AY) 2011-12 on 29.08.2011 returning loss of Rs.7,96,993. The Assessing Officer (AO) based on information received that the assessee had made bogus purchases from various parties totalling to Rs.15,51,506, reopened the assessment by issue of notice under section 148 of the Income Tax Act (the Act). The assessee in response requested the AO to treat the original return as the return filed in response to the notice under section 148 of the Act. During the course of reassessment proceedings the AO noticed that the assessee has made investments in immovable property for an amount of Rs.52,23,570 and called on the assessee to produce the details including the source for purchase of the said property. The assessee submitted that the source is the withdrawals from the proprietary concern and loan from parties. From the details furnished the AO noticed that the assessee has borrowed loan from 4 parties to the tune of Rs.31,89,681 and called on the assessee to prove the identity, creditworthiness and the genuineness of these parties. Since the assessee did not furnish the loan confirmation, income tax returns and copy of bank account etc., the AO treated the loan as non-genuine and made the addition under section 69 towards the entire loan. The AO on the bogus purchases made an addition of Rs.1,93,938 by applying a profit ratio of 12.5%.

3. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A), besides the grounds on merits the assessee also contended the legal issue that addition could not have been made under section 69 since the impugned transaction has already been recorded in the books of accounts of the assessee. Since the assessee did not appear or make any submissions before the CIT(A), the CIT(A) dismissed the appeal confirming both the additions made by the AO. The CIT(A) also recorded findings on merits based on materials available on record while confirming the additions. The assessee is in appeal before the Tribunal contending the addition made under section 69 towards the loan transactions.

4. The ld AR submitted that the addition ought not to have been made under section 69, since the loan transactions are already recorded in the books of accounts of the assessee. In this regard our attention was drawn to the Statement of Accounts of the assessee. The ld AR further submitted that the AO has made the addition without properly considering the details submitted before him. The ld AR also submitted that the assessee did not appear before the CIT(A) for the reason that the assessee did not receive the notices of hearing.

5. The ld DR on the other hand argued that the assessee has not appeared before the CIT(A) and has not cooperated with the appellate proceedings. Therefore the ld DR supported the order of the lower authorities submitting that the assessee has not discharged the onus of proving the genuineness of the loan transaction.

6. We heard the parties and perused the material on record. The AO during the course of reassessment proceedings, called on the assessee to furnish the details of source for purchase of immovable property. Since the assessee did not furnish

details such as loan confirmation, income tax returns and copy of bank account etc., the AO treated the loan as non-genuine and made the addition under section 69 towards the entire loan. The CIT(A) dismissed the appeal for the reason that the assessee did not appear nor furnish any details to prove the genuineness of the transaction. From the perusal of the materials on record we notice that the addition is made primarily for the reason that the assessee has not furnished details to substantiate the genuineness of the impugned transactions thereby not discharging the onus. It is also noticed that the assessee has not appeared before the CIT(A) to contend the issue on legal grounds as well as on merits. On the legal contention that the addition could not have been made under section 69, in our considered view, the addition cannot be deleted for the sole reason that the section under which the addition is made is mentioned erroneously and that it is necessary to look into the merits of the case. Therefore in the interest of natural justice and fair play, we deem it fit to remit the issue back to the CIT(A) for consideration of the issue afresh. The assessee is directed to submit the necessary details in support of the claim that the loans are genuine, without seeking any adjournments and cooperate with the appellate proceedings. It is ordered accordingly.

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

Order pronounced in the open court on 18-04-2024.

Sd/-
(ANIKESH BANERJEE)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai