

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI. VIKAS AWASTHY (JUDICIAL MEMBER)  
AND  
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.2842/Mum/2023  
(Assessment year 2012-13)**

SHRI VIJAY SURESH DAVE 14, GITANJALI SOCIETY, LOKHANDIPADA, PANVEL-410 206 <b>PAN : AFTPD0987N</b>	vs	Dy. Commissioner of Income-tax, Panvel Circle, Panvel
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Nishit Gandhi
Department represented by	Ms. Rajeshwari Menon SR AR

Date of hearing	05-03-2024
Date of pronouncement	07-03-2024

**ORDER**

**PER : MS PADMAVATHY S. (AM)**

This appeal by the assessee is against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, the Ld.CIT(A)'] ] dated 19/06/2023 for the assessment year 2012-13. The assessee raised the following grounds of appeal:-

*"1- In the facts and in the circumstances of the case the Learned AO erred in making addition of Rs. 79,44,162/- being Closing balance of the old loan as well as addition to old loan received during the year without considering the compliance made by appellant in respect of to the identity capacity and genuineness of loan and Learned CIT erred in confirming the same.*

2. *In the facts and in the circumstances of the case the Learned A.O. erred in not considering the facts that none of the loan creditors has denied the advancing of loan and the said loan was repaid fully later on with interest subject to TDS as applicable. But the A.O. made addition arbitrarily on the basis of assumption and presumption and without any adverse material on I-TD record and the learned CIT erred in confirming the same.*

3. *In the facts and in the circumstances of the case the Learned A.O. erred in making addition of Rs. 7944162/- U/s. 68 of the Income Tax Act, 1961 and Learned CIT erred in confirming the same without considering the details such as Confirmation Letter, PAN Card, Aadhar Card, Acknowledgement of Income Tax Return filed, Bank Statement, Financial Statement, Affidavit as received from the Loan creditors and there is no denial from loan creditors in response to the notice of A.O.*

4. *The Appellant prays the Hon'ble ITAT to set aside the order of A.O. and transfer the matter to physical A.O. since, the appellant was facing difficulty in explaining the facts and circumstances of the case and bringing the loan creditors before such authority for genuineness of the claim of the appellant."*

2. The assessee is an individual carrying on the business as a manufacturer of aluminium ingots, allied metals and scrap in wastage steel under the name and style of M/s Vidhi Industries as Proprietor. The assessee filed the return of income for A.Y. 2012-13 on 25/09/2012 declaring total income of Rs.15,27,319. The return was processed under section 143(1) under the Income-tax Act, 1961 (in short, "the Act"). The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer noticed from the balance-sheet of the assessee that the assessee has outstanding unsecured loans to the tune of Rs.79,44,162/-. The Assessing Officer added the entire amount of unsecured loan as income under section 68 of the Act for the reason that the assessee has not furnished any details / explanations with regard to the identity of the loan creditors, creditworthiness and the genuineness of the transactions. The Assessing Officer

also disallowed the interest paid to the tune of Rs.13,633/- for same reason that the loan is not genuine.

3. Aggrieved, the assessee filed further appeal before the Ld. CIT(A). The assessee furnished additional evidences before the CIT(A) with regard to the loan creditors such as confirmation letters from loan creditors, bank statement etc., and submitted that all the creditors are assessed to tax. The details of additional evidences submitted by the assessee along with other details are tabulated below –

Sr. No.	Name of Loan Creditors with PAN and Address	Opening Balance	Addition during the year	Withdrawal during the year	Closing balance	Document submitted by the assessee
1	Neeta S Kadam ADMPK6130C	9,20,000			9,20,000	Confirmation letter & bank statement of loan repayment
2	Nikita V Dave ARSPD2153N		31,00,000	18,00,000	13,00,000	Confirmation letter & statement accounts of personal and proprietorship firm
3	Ranjit K Yadav	23,24,162			22,24,162	Confirmation letter, statement of accounts & bank statement of loan repayment
4	Shamun A R Tungekar ACTPT3797J	15,00,000	8,00,000		23,00,000	Confirmation letter & bank statement of loan repayment
5	Sunil Lahane ADXPL8105H	8,00,000			8,00,000	Confirmation letter & bank statement of loan repayment of Rs.6,00,000
6	Umesh Bagwale AIRPB5749A		7,00,000	5,00,000	2,00,000	Confirmation letter & bank statement of loan repayment
7	Vinod Talekar AEBPT2418G	1,00,000			1,00,000	Confirmation letter & bank statement of loan repayment
		<b>56,44,162</b>	<b>46,00,000</b>	<b>23,00,000</b>	<b>79,44,162</b>	

4. The Ld.CIT(A) called for a remand report from the Assessing Officer to examine the additional evidences submitted by the assessee. The Assessing Officer, in the remand report, had relied on the statement of oath under section 131

of the Act obtained from Shri.Ranjit K Yadav and Shri Umesh Bagwale to conclude that the amount reflected against their name are bogus entries and therefore not genuine. With regard to the rest of the creditors, the Assessing Officer held that the assessee has not furnished the balance sheet, bank statement, etc. of the creditors and, therefore, failed to prove the creditworthiness and the genuineness of the transactions. The assessee filed the response to the party wise observations made by the Assessing Officer as to why the addition cannot be sustained. The Ld.CIT(A) after perusing the details furnished by the assessee and the remand report upheld the disallowance by holding that –

*“I have considered the facts of the case, remand report and counter comments of the appellant on the remand report. I find from the remand report that the appellant has not proved the identity, creditworthiness and genuineness of the loan transactions with supporting evidences. Though the appellant has claimed that the most of the loans have been repaid by cheque, the appellant has not established the creditworthiness of the loan transactions with supporting evidences either before AO during assessment or remand report proceedings or during the appellate proceedings, hence on the basis of repayment of loans by cheque subsequently cannot prove the creditworthiness of the loan giving parties. I find from the remand report that the loan transactions of Rs.23,24,000/- was not actually loan transaction but the same was on account of contract amount to be received from the appellant by the said party which is erroneously claimed by the appellant as unsecured loan. Similarly in respect of loan of Rs.7,00,000/-, during the course of the inquiry u/s 131, the said party had admitted that the cash of Rs. 7 lakh was given to him the by appellant for depositing in bank account and thereafter the same was given to the appellant by cheque. This clearly shows that the appellant had introduced his own unaccounted money in the books of account in the guise of unsecured loan. The appellant has not submitted satisfactory explanation on the observations made by the AO in remand report.*

*Regarding the remaining loans also, the appellant failed prove the genuineness and creditworthiness during the\*'appellate proceedings with supporting evidences. Regarding the finding of the AO remand report that the opening balance of loan as per audit report for AY 2012-13 was Rs.35,700/-, the*

*appellant submitted that there was error in the audit report which the auditor has given the certificate. However I find from the return of income for AY 2011-12 available in ITBA that the closing balance of unsecured loans as 31/03/2011 was Rs.35,70,000/-, thus the opening balance as on 1/04/2012 should have been Rs.35,70,000/- whereas the auditor claims the same to be Rs.55,44,162/-, thus the certificate given by the auditor is not reliable. Thus the above facts shows that the appellant is not coming forward with the true facts of the case. In view of the above discussion, the action of the AO of making addition of Rs.79,44,162/- & Rs.13,633/- is confirmed. .*

*As far as the initiating the penalty u/s 271(1)(c) is concerned, I find the AO has initiated the penalty based on the observations made during the assessment proceedings. Since the penalty has not been decided by the AO and the penal proceedings are separate proceedings, hence there cannot be grievance against the initiation of penalty proceedings the penalty proceedings are not decided by the AO.*

*In view of the above discussions the grounds of appeal raised by the appellant are dismissed.”*

4. The assessee is in appeal before the Tribunal against the order of the CIT(A). The Ld.AR submitted that out of the loans borrowed, loan amount to the tune of Rs.56,44,162/- is the opening balance and that the addition cannot be made to this extent since it is settled position that old loans not taken during the year under consideration cannot be treated as addition under section 68 of the Act. The Ld.AR further submitted that the assessee has furnished all the relevant details including PAN, loan confirmations, bank statements evidencing the subsequent repayments etc., thereby discharging the onus of proving the genuineness of the loans and that the entire loan transaction is through banking channel. With regard to statement recorded under section 131 from Shri.Ranjit K Yadav the ld AR submitted that the Shri.Ranjit K Yadav is business creditor to whom the assessee has given a contract and the advance given against the said contract is reflected as laon. The ld AR further submitted that on completion of contract, the amount is

adjusted and settled by making balance payments. Therefore the Id AR argued that the addition is not sustaining. With regard to statement of Shri Umesh Bagwale Id AR submitted that the same is obtained under coercion and that the assessee has submitted the loan confirmation from the said party. The Id AR also submitted that the entire transactions are routed through banking channel and therefore there is no merit in the statement that cash was involved in the transaction. The Id AR also pointed out that the discrepancy noticed in the audit report with regard to balance as on 31.03.2011 has no relevance and that the same is a clerical error on the part of auditor for which a letter has been submitted admitting the same.

5. The Ld.DR, on the other hand, relied on the order of the lower authorities.

6. We heard the parties and perused the material on record. The Assessing Officer, during the course of assessment found that assessee has an outstanding loan balance of Rs.79,44,162/- and treated the same as addition under section 68 for the reason that the assessee has not furnished any explanation to prove the identity, creditworthiness and the genuineness of the transactions. In this regard, it is relevant to note that the Assessing Officer in the assessment order has given contrary findings with regard to assessee's representative appearing before him and furnishing details such as auditors report, balance sheet, details of expenses etc., and subsequently stating that the assessee has not attended and not furnished any details pertaining to loan creditors (refer pages 1 & 2 of assessment order). Before the CIT(A), the assessee furnished additional evidences in order to prove the genuineness of the loan transactions. The Ld.CIT(A), called for remand report from the Assessing Officer and upheld the addition by placing reliance on the various observations of the Assessing Officer in the remand report.

7. The first contention of the Id AR is that the opening balance of loan creditors cannot be added under section 68 holding it as non genuine, since the loan is not obtained during the year under consideration. In this regard we will look at the relevant provisions of section 68 which reads as follows –

***Cash credits.***

***68.*** *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:\*\*\**

8. From the plain reading of the provisions of Section 68 it is clear that the Assessing Officer is required to make addition of unexplained cash credit only in the previous year in which such cash credit has been made and the assessee is not in a position to offer satisfactory explanation relating thereto. The law is well settled in this regard that the addition under section 68 could be made only during the year in which such credit has been received and that if the credit balance appearing in the account of the assessee is not pertaining to the year under consideration, the Assessing Officer cannot make addition under section 68 in the subsequent previous year i.e. the year under consideration. Accordingly we hold that the Assessing Officer is not correct in making addition which pertains to the loan obtained during earlier years.

9. With regard to the loans taken during the year under consideration we notice that the assessee has submitted before the CIT(A), the PAN, the statement of accounts of proprietary concern, capital account, personal balance sheet etc (page

157 to 261 of the paper book) in the case of Smt Nikita V Dave, and PAN, confirmations, Income Tax returns, statement of income, bank statements etc for the others. The assessee has also furnished ledger accounts and bank statements to substantiate that all the loans have been repaid subsequently through banking channel. The Assessing Officer, it is noticed that, in the remand report has not given any adverse finding with regard to the various documents submitted by the assessee as additional evidence, but has stated that the credit worthiness and genuineness are not substantiated for want of some more documents. It is also relevant to mention that the assessee has repaid the part of the loan during the year under consideration and the balance in subsequent financial years. Considering the fact and circumstances of the case in our considered the Assessing Officer is not correct in adding the outstanding loan balance as unexplained, without recording any adverse finding with regard to the various documentary evidences submitted by the assessee and without bringing any other material against the claim of the assessee. Accordingly we direct the Assessing Officer to delete the addition made towards outstanding balance of loans and the interest.

7. In the result, appeal of the assessee is allowed.

**Order pronounced in the open court on 07/03/2024.**

Sd/-

sd/-

<b>(V IKAS AWASTHY)</b>	<b>(MISS. PADMAVATHY S)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 07<sup>th</sup> March, 2024

Pavanan



**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
  
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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Asstt. Registrar / Senior Private Secretary  
**ITAT, Mumbai**

