

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.164/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Mayuri Infrastructure Pvt. Ltd.,
5, Esctacy Park, Suyog Colony,
Gurukul Society, Nashik – 422007

PAN : AAGCM0929H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1(4), Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 09-11-2017

घोषणा की तारीख / Date of Pronouncement : 03-01-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-I, Nashik dated 17-12-2014 for the assessment year 2010-11.

2. The assessee in appeal has raised solitary issue assailing confirming of various additions u/s. 68 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. The brief facts of the case as emanating from records are: The assessee company is engaged in the business of buying and selling non-agriculture plots, development and construction. During scrutiny assessment proceedings for assessment year 2010-11, the Assessing Officer inter alia observed that the assessee has outstanding unsecured loans to the tune of Rs.1,31,69,930/-. The list of persons from whom the assessee has allegedly taken loans are as under :

Sr. No.	Name	Opening Balance	Accepted During the year	Closing Balance
1	Asif Ali Nigar	0	2750000	2750000
2	Balu Daware	0	100000	100000
3	Bhanudas Chuadhari	905000	1875000	2780000
4	Dhananjay Marathe	1699933	2170000	3869933
5	Dnyaneshwar Chaudhari	250000	150000	400000
6	Kalpan Prakash Maharaj	100000	0	100000
7	Madhuri Dhananjay Marathe	400000	1020000	1420000
8	Nitin Gite	0	150000	150000
9	Pankaj Surana	0	500000	500000
10	Ramdas Sonawane	0	400000	400000
11	Sunita Bhanudas Chaudhari	200000	100000	300000
12	Vinayak Yeola	0	150000	150000
13	Vishwanath Jadhav	0	250000	250000
	Total	35,54,933	96,15,000	1,31,69,933

The Assessing Officer made addition of the entire outstanding unsecured loans u/s. 68.

Aggrieved by assessment order dated 26-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The First

Appellate Authority after examining the facts of the case and explanation furnished by the assessee deleting opening balances of the outstanding loans. The Commissioner of Income Tax (Appeals) further accepted the explanation furnished by the assessee in respect of loan from Ramdas Sonawane and deleted the addition thereof. The Commissioner of Income Tax (Appeals) confirmed the addition of Rs.92,15,000/- u/s. 68 after deleting opening balance and outstanding loan from Ramdas Sonawane. Still aggrieved, the assessee is in second appeal before the Tribunal.

4. Shri Pramod Shingte appearing on behalf of the assessee submitted that the authorities below have erred in disbelieving the confirmations filed by various creditors. The ld. AR submitted that in the case of Bhanudas Chaudhari, Dhananjay Marathe, Madhuri Dhananjay Marathe and Sunita Bhanudas Chaudhari the assessments were reopened and the Assessing Officer has accepted the availability of funds. The other creditors are mostly agriculturists. The assessee had furnished 7/12 extracts in respect of all such creditors and had also provided Assessing Officer with PAN of majority of the creditors. The assessee had also furnished confirmations from them. The ld. AR contended that if an opportunity is granted, the assessee would furnish all the necessary documents before the authorities below to prove creditworthiness of the creditors.

5. On the other hand Shri Mukesh Jha representing the Department vehemently supported the findings of Commissioner of Income Tax (Appeals). The ld. DR submitted that ample opportunity was given to the assessee by the Assessing Officer and thereafter by the Commissioner of

Income Tax (Appeals) to prove creditworthiness of the creditors. However, the assessee failed to furnish any cogent evidence to support his contentions. The ld. DR submitted that the Assessing Officer has given specific finding that the assessee has introduced fictitious creditors in the form of unsecured loans. The assessee has introduced its own unaccounted money through the fictitious creditors.

6. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. The assessee in appeal has raised 12 grounds assailing the additions made u/s. 68 of the Act. The ground Nos. 1 to 11 relate to single issue i.e. addition u/s. 68 loans from unsecured creditors. The ground No. 12 is general in nature. The assessee has assailed the findings of Commissioner of Income Tax (Appeals) in confirming the additions in respect of following creditors.

Sr. No.	Name	Unsecured loan (amount in Rs.)
1	Asif Ali Nigar	27,50,000
2	Balu Daware	1,00,000
3	Bhanudas Chuadhari	18,75,000
4	Dhananjay Marathe	21,70,000
5	Dnyaneshwar Chaudhari	1,50,000
6	Madhuri Dhananjay Marathe	10,20,000
7	Nitin Gite	1,50,000
8	Pankaj Surana	5,00,000
9	Sunita Bhanudas Chaudhari	1,00,000
10	Vinayak Yeola	1,50,000
11	Vishwanath Jadhav	2,50,000

7. It has been contended before us that in reassessment proceedings in the case of Bhanudas Chaudhari (Sr. No.3), Dhananjay Marathe (Sr. No.4), Madhuri Dhananjay Marathe (Sr. No.6) and Sunita Bhanudas Chaudhari

(Sr. No.9), the Assessing Officer has accepted the source of funds. However, the assessment order in the case of above said persons were not placed on record by the ld. AR. In respect of other creditors it has been contended that they are agriculturists and the assessee would furnish all the relevant documents for re-verification, if an opportunity is granted. It is pertinent to mention here that during assessment proceedings, the assessee had furnished confirmation letters from all the creditors and had also furnished 7/12 extracts in respect of creditors who are stated to be agriculturists. We observe that some of the creditors are salaried employees. The Assessing Officer rejected the contentions of assessee, as the assessee had failed to furnish bank statements of the creditors.

8. We are in agreement with the findings of authorities below that mere furnishing of confirmations and PAN are not sufficient to prove the creditworthiness of the creditors. The assessee has to prove financial capacity of the creditors. The assessee was required to furnish evidence that would show financial worth of the creditors, such as bank statements, to remove the shadow of doubt from the mind of Assessing Officer. Taking into consideration totality of facts, we deem it appropriate to restore this issue back to the file of Assessing Officer in respect of 11 creditors mentioned in the grounds of appeal. The assessee is directed to furnish all necessary documents before the Assessing Officer to prove the genuineness and creditworthiness of the creditors. The Assessing Officer after affording opportunity of hearing to the assessee shall decide this issue, in accordance with law. It is made clear that the Assessing Officer shall not

disturb the relief already granted by the First Appellate Authority in respect of addition u/s. 68 of the Act.

9. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced on Wednesday, the 03rd day of January, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd January, 2018

RK

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)-I, Nashik
4. आयकर आयुक्त / The CIT-I, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune