

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1340/Kol/2023
Assessment Year: 2014-15**

Rajendra Kumar Mishra 7G, Dr. Rajendra Prasad Sarani, Kolkata-700001. (PAN: AEWPM7325Q)	Vs.	Assistant Commissioner of Income Tax, Circle-47, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Rajesh Kumar Mishra, Advocate
Respondent by : Shri Rakesh Kumar Das, CIT, DR

Date of Hearing : 21.03.2024
Date of Pronouncement : 01.04.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1057051496(1) dated 13.10.2023 passed against the assessment order by DCIT, Circle-47, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 19.12.2016 for AY 2014-15.

2. Grounds taken by the assessee are reproduced as under:

"(1) That on the facts and in the circumstances of the case, the learned CIT (Appeals) [NFAC] erred in confirming the addition of Authority below of an amounting Rs. 32,99,000/- Under Section 68 of the Income Tax Act,1961 to the total income of the appellant, treating the entire unsecured loan as unexplained cash credit without appreciating the findings made by the Ld. A.O. on the alleged issue while passing the Original Assessment Order under

section 143(3) dated 19/12/2016 in Para No 4 by detail perusing of the Books of Accounts of the appellant that the appellant assessee had received and made the payment total of amounting Rs. 2,67,000/- on account of unsecured loan taken & repaid in cash of Rs. 20,000/- or more by violating the provisions of 26955 and 269T of the Act, and accordingly this is not justified and thus the same be deleted.

(2) That on the facts and in the circumstances of the case, Learned CIT (Appeals) [NFAC] erred in affirming the undue action done by the authority below during the course of fresh assessment proceeding to traversed beyond the scope of direction issued by the Ld. Principal Commissioner-16, Kolkata in his order dated 28/12/2018 passed under section 263 of I.T. Act, 1961, and thus made his assessment 'order dated 28/12/2019 defective and invalid.

(3) For that on the facts & circumstances of the case, the impugned assessment orders of authority below and Ld. CIT(Appeals) of NFAC is bad both on the points of law as well as on the points of facts as such void under the law. The appellant relied on a number of case laws, which he would refer to, as and when necessary during the course of hearing of this appeal.

(4) For that, your petitioner prays before your honour to cancel the disputed amount of demanded Income Tax and Interest at the appellate stage by deleting the impugned addition on the basis of records and submission of appellant or Pass such other or further order or orders as to Your honour would deem fit and proper.

(5) That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal.”

3. Before us, Ld. Counsel for the assessee has made a submission of paper book and written notes along with annexures dated 15.03.2024 whereby certain additional evidence have been brought on record for the first time before the Tribunal under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 (hereinafter referred to as “ITAT Rules”).

4. Brief facts of the case are that assessee had filed its return on 22.09.2014 reporting a total income of Rs.17,06,820/-. In the course of assessment proceedings, Ld. AO observed from the books of account that assessee had received as well as repaid certain unsecured loans during the year under consideration in cash, details of which are tabulated in para 4.1 of the said order and is extracted below:

S.No	Name	Date	Received (Rs.)	Payment (Rs.)
1	Anupam Mishra	19.03.2014		20,000
		21.03.2014		20,000
		23.03.2014		7,000
	Total			47,000
2	Anurag Mishra	15.07.2013	20,000	
		Total	20,000	
3	Sadhana Mishra	16.05.2013	20,000	

		18.09.2013	20,000	
		25.03.2014		20,000
		31.03.2014		20,000
	Total			40,000
4	Jayshree Mishra	16.07.2013	20,000	
		24.03.2014		20,000
	Total			20,000
5	Ramesh Kumar Mishra	16.05.2013	20,000	
		19.09.2013	20,000	
		25.03.2014		20,000
		31.03.2014		20,000
		Total	40,000	40,000
	Total (1 to 5)			1,20,000
				1,47,000

4.1. In this respect, explanations were called for. After considering the same, Ld. AO concluded that the total amount of Rs.2,67,000/- (Rs.1,47,000 + Rs.1,20,000/-) on account of unsecured loan taken and repaid in cash in excess of Rs.20,000/- is disallowed u/s. 269SS & 269T of the Act. He thus, added this amount to the total income of the assessee while concluding the assessment.

4.2. Subsequently, revisionary proceedings were invoked u/s. 263 by Ld. PCIT, Kolkata wherein it was observed that the addition/disallowance made u/s. 269SS and 269T by the Ld. AO is not in accordance with the said provisions. He thus, held that the said assessment is erroneous and prejudicial to the interest of revenue u/s. 263 for which the order was passed on 28.12.2018. The observation and direction given by the Ld. Pr. CIT in this respect are contained in para 8 and 9 which is extracted below:

“8. The plain reading of the sections itself makes it clear that the Assessing Officer misconstrued the meaning of section 269SS and 269T of the I.T. Act,

1961 when he added the two sum of receipt and payment of loans in cash of Rs.20,000/- & above by the assessee during the F.Y. 2013-14 on account of their "disallowance u/s 269SS and 269T" of the I.T. Act, 1961, where the right course of action should have been to impose penalty u/s 271D and 271E of the I.T. Act, 1961 by the JCIT.

9. After having considered the position of law and facts and circumstances of the instant case, the assessment order u/s 143(3) dated 19.12.2016 passed by the A.O., I am of the considered opinion that the assessment order passed by the A.O. is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the Explanation 2 below section 263 (1) of the Act. As a result, the assessment order passed by the A.O. is set aside in respect of the issue of cash loans of Rs. 20,000/- & above. The A.O. is directed to initiate fresh assessment proceedings & carry out necessary enquiries/verification & provide reasonable opportunity to the assessee to produce documents & evidences which he may choose to rely upon for substantiating his own claim. Thereafter a fresh assessment order may be passed in accordance with the relevant provisions of law."

4.3. Assessee did not contest the revisionary order u/s. 263, which thus, attained the finality. While giving effect to the said revisionary order, assessment proceedings were initiated by the Ld. AO wherein Ld. AO observed that assessee had taken unsecured loan of Rs.32,99,000/- recorded in his books of account, which in absence of any verifiable documents were held to be the own money of the assessee. He thus, made an addition of Rs.32,99,000/- u/s. 68 of the Act. In the same assessment he also initiated the penalty proceedings u/s. 271D and 271E of the Act for violation of provisions of section 269SS and 269T separately. This effect giving assessment was completed u/s. 144 read with 263 and 143(3) of the Act, dated 28.12.2019.

4.4. Assessee contested this addition before the Ld. CIT(A), who by noting that assessee has not given any documents in respect of source of unsecured loans of Rs.32,99,000/- and by placing reliance on one decision of ITAT, Delhi in the case of Kirat Hotels Pvt. Ltd. Vs. ITO, ITA No. 1628/Del/2018 dated 22.06.2023, dismissed the appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

5. The moot point asserted by the Ld. Counsel for the assessee is that Ld. AO has digressed from the directions given by the Ld. PCIT in the revisionary order wherein the issue was only in respect of loans of Rs.2,67,000/- taken and repaid in cash for which the treatment given by the Ld. AO in the assessment made u/s. 143(3) was not in accordance with the provisions of section 269SS and 269T. In the effect giving assessment order, the Ld. AO has misconstrued the directions and has gone ahead in making enquiries on the entire amount of unsecured loans of Rs.32,99,000/- reported by the assessee in his tax audit report and audited financial statement. He thus, submitted that the issue before the AO in the impugned assessment was limited in scope, for which all the relevant documentary evidence were on record. However, to further corroborate the same, assessee has furnished additional evidence by resorting to Rule 29 of the ITAT Rules.

6. Per contra, Ld. CIT, DR submitted that assessee has failed to make any submissions both before the AO and the Ld. CIT(A) which has led to the said addition.

7. We have considered the rival submissions made by the parties. We are in agreement with the submissions made by the Ld. Counsel of the assessee that the issue is related to an amount of Rs.2,67,000/- of unsecured loan taken and given in cash in excess of Rs.20,000/- during the year which ought to have been treated in accordance with the provisions of section 269SS and 269T of the Act as directed Ld. PCIT while setting aside the original assessment completed u/s. 143(3) of the Act. From the perusal of the orders of the authorities below, we note that they have been passed ex parte or in absence of adequate documentary evidence which could not be placed by the assessee

before them. Further, assessee has now placed on record, certain documentary evidence by taking resort to Rule 29 of the ITAT Rules.

7.1. Considering the facts as discussed above and the material on record, we find it proper to remit the matter back to the file of Ld. AO for verification of the documents placed before us under Rule 29 of the ITAT Rules. We also direct the Ld. AO to comply with the directions given by the Ld. PCIT in the revisionary order u/s. 263 which clearly specifies about the misconstruction done by the AO in respect of amount received and payment of loans in cash in excess of Rs.20,000/- so as to adopt right course of action to impose penalty/s. 271D and 271E of the Act, as contained in para 8 of the said order, extracted above. Accordingly, grounds taken by the assessee are allowed for statistical purposes. Needless to say that assessee be given reasonable and adequate opportunity of being heard.

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

Order pronounced in the open court on 1st April, 2024.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 1st April, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The Pr. CIT, .
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata