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

श्री डी.टी. गरासिया,न्यायिक सदस्य **एवं**
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आ□कर अपील सं./I.T.A. No.3483/Mum/2014
(**निर्धारण वर्ष** / Assessment Year: 2009-10)

Income Tax Officer 25(2)(2) C-11 Building, Room.No.106, Pratyakshkar Bhavan Bandra Kurla Complex Bandra(E) Mumbai-400 051	**बनाम**/ Vs.	**Mrudula Chandrakant Vora** B-10, Shashi Tara Apartment S.V.P.Road, Borivali(W) Mumbai-400 092
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. **AEMPV-2322-J**		
(□पीलार्थी /**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	Priti Vora, Ld.AR
Revenue by	:	Suman Kumar, Ld. Sr. DR

सुनवाई की तारीख / **Date of Hearing**	:	02/11/2017
घोषणा की तारीख / **Date of Pronouncement**	:	13/12 /2017

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by revenue for Assessment Year [AY] 2009-10 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-35 [CIT(A)], Mumbai, *Appeal No. CIT(A)-35/ITO.25(2)(2)/ITA.356/11-12* dated 06/02/2014. The assessment for impugned AY was framed by *Ld. Income Tax Officer 25(2)(2), Mumbai [AO] u/s 143(3) of the Income Tax*

Act,1961 on 21/12/2011. The revenue has raised the following effective grounds of appeal:-

1. *"On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in restricting the addition of Rs.20,68,687/- to Rs.4,075/- on account of cessation of liability u/s.41(1) on the ground that AO has not doubted on the genuineness of the credit outstanding which is incorrect.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.95 lacs made by the Assessing Officer on account of unexplained cash credit without appreciating the fact that assessee failed to provide basic details of loans obtained during the year under consideration such as loan confirmation, bank statement and copy of return of income of the loan creditors.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in admitting additional evidences in violation of Rule 46A.*

2. Facts leading to the same are that the assessee being *resident individual* was assessed for impugned AY on 21/12/2011 u/s 143(3) at Rs.1,26,48,690/- as against *Nil* return filed by the assessee on 30/09/2009. The assessee reflected *Sundry Creditors* for Rs.20,68,687/- but did not furnish any details which led to the addition thereof u/s 41(1). The assessee suffered another addition of Rs.95 Lacs as cash credit u/s 68 on account of loan received from an entity namely *Grevek Investment & Finance Limited* since the assessee could not file sufficient details in support of the same.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 06/02/2014. The Ld. CIT(A) after considering the *remand report,* restricted the addition u/s 41(1) to Rs.4075/- being un-reconciled difference of ledger balance as shown by assessee vis-à-vis balance as reflected by the *sundry creditor. Qua* addition u/s 68, Ld. CIT(A) noted that Ld. AO, in the remand proceedings, recorded the statements of the lender and nowhere questioned about the genuineness or creditworthiness of the lender and

merely doubted the same on the premises that the lender did not make any attempt to recover the amount. Therefore, Ld. AO, after considering assessee's submissions and remand report, deleted both the additions, against which the revenue is in further appeal before us.

4. The Ld. DR contended that the assessee could not substantiate the claim and also could not fulfill prime conditions of Section 68 and therefore, rightly been saddled with impugned additions. It was further pointed out that the assessee submitted additional evidences which were nowhere confronted to the Ld. AO. Per *Contra,* Ld. AR placed documents on record to support the said transactions.

5. We have heard the rival contentions. *Qua* addition u/s 41(1), the ledger account in the books of the concerned broker namely *Way2wealth brokers Private Limited* as placed on record reflects a balance of Rs.20,72,762.48 as on 31/03/2009 as against balance of Rs.20,68,687/- as reflected by the assessee. The Ld. CIT(A) has already upheld the addition for differential amount. Clearly, the balance addition could not be sustained as there was no remission or cessation of trading liability within the meaning of Section 41(1) since the amount was outstanding in the books of both the parties. Moreover, the documents on record reveal that arbitration proceedings are already pending to settle the same. Therefore, the conclusion of Ld. CIT(A) on this issue do not require any interference and hence, revenue's appeal on this ground stands dismissed.

6. *Qua* addition u/s 68 for Rs 95 Lacs on account of unconfirmed loan, the same has been stated to be taken by the assessee from *Grevek Investment & Finance Private Limited.* The assessee has placed

on record evidences in the shape of confirmation of account, reply of the lender to Ld. AO, Bank Statement, Board resolution etc. to support the cash credit. Therefore, on the facts, we deem it fit to restore the same to the file of Ld. AO for appreciation of the same and re-adjudicate the matter in the light of assessee's contentions / submissions. The assessee, in turn, is directed to show fulfillment of three ingredients of Section 68 viz. identity, creditworthiness & genuineness. Resultantly, the revenue's appeal stand allowed for statistical purposes on this ground.

7. In nutshell, the revenue's appeal stands partly allowed for statistical purposes.

Order pronounced in the open court on 13th December, 2017.

Sd/-
(D.T. Garasia)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13.12 .2017
Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**