IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND SHRI R.S. PADVEKAR, JUDICIAL MEMBER

ITA No.824/PN/2007
(Assessment Year : 1999-2000)

Asstt. Commissioner of Income Tax,
Circle – 2, Nashik …. Appellant

Vs.

Shri Prakash Laxaman Suryawanshi,
Shalin, Shriramnagar, Dindori Road,
Nashik

PAN : APEPS9108E …. Respondent

ITA No.887/PN/2007
(Assessment Year : 1999-2000)

Shri Prakash Laxaman Suryawanshi,
Flat No. 15, Pentagaon, Hsg. Society,
Savarkar Nagar, Gangapurroad,
Nashik – 422 013

PAN : APEPS9108E …. Appellant

Vs.

Asstt. Commissioner of Income Tax,
Circle – 2, Nashik …. Respondent

Assessee by	:	Mr. Nilesh Khandelwal
Department by	:	Mr. K. K. Ojha
Date of hearing	:	06-08-2013
Date of pronouncement	:	28-08-2013

ORDER

<u>PER G. S. PANNU, AM</u>

The captioned cross-appeals, each by the assessee and the Revenue, pertaining to the assessment year 1999-2000, were heard together and are being disposed-off by way of a consolidated order for the sake of convenience and brevity. The captioned appeals are directed against the order of the Commissioner of Income Tax (Appeals) - I, Nashik dated 28.03.2007 which, in turn, has arisen from an assessment order dated 31.03.2004 passed by the

Assessing Officer, under Section 143(3)/148 of the Income Tax Act, 1961 (in short "the Act"), for the assessment year 1999-2000.

2. In the captioned cross-appeals, the issue raised is similar, namely, additions made by the Assessing Officer treating certain credits appearing in the books of account as unexplained invoking Section 68 of the Act. The rival grievances can be understood as follows. The assessee is an individual engaged in the business of land developers and builders. In the course of impugned assessment proceedings under Section 143(3)/148 of the Act, it was noticed that assessee had raised certain unsecured loans from various parties totaling to Rs.38,83,208/-. The assessee was required to furnish relevant evidence in support of the unsecured loans. Similarly, assessee has shown advances against booking of plots of Rs.24,12,734/- in the Balance-sheet as on 31.03.1999. The assessee was also required to furnish party-wise detail of the payments received against each plot. As per the Assessing Officer, assessee did not furnish any evidence in respect of unsecured loans or booking advances and therefore Assessing Officer treated the unsecured loans of Rs.38,83,208/- and advances of Rs.24,12,734/- as unexplained within the meaning of Section 68 of the Act. Accordingly the addition of Rs.62,95,942/- was made.

3. In appeal before the CIT(A), assessee filed detailed submissions giving information about various creditors towards loans and advances and also with respect to certain persons from whom booking advances against sale of plots was received. The CIT(A) forwarded the submissions of the assessee to the Assessing Officer and called for a remand report. In para 4 of the impugned order, the CIT(A) has narrated the various remand reports submitted by the Assessing Officer and assessee's comments thereof which have been duly considered by him. After considering the submissions of the assessee as also the remand reports of the Assessing Officer, the CIT(A) deleted the addition of

Rs. 25,25,000/- out of unsecured loans of Rs.38,83,208/- and retained the balance addition of Rs.13,58,208/-. Presently, assessee is in appeal challenging the sustenance of addition of Rs.13,58,208/- out of unexplained loans whereas the Revenue has challenged the deletion of Rs.18,60,000/- out of the unsecured loans made by the CIT(A).

4. Similarly, with regard to the advances against sale of plots of Rs.24,12,734/- treated as unexplained by the Assessing Officer, the CIT(A) deleted the addition of Rs. 15,07,582/- and retained the addition of Rs.9,05,152/-. The assessee in its appeal has challenged the sustenance of the addition of Rs.9,05,152/- whereas the Revenue has only challenged the deletion of Rs.12,48,582/- made by the CIT(A).

5. In the above manner, it would be seen that issue raised in the cross-appeals is similar and therefore they are being considered together hereinafter.

6. The assessee is an individual engaged in the business of land developers and builders. On a perusal of its Balance-sheet as on 31.03.1999, the Assessing Officer observed that assessee has shown liabilities towards unsecured loans amounting to Rs.38,83,208/- and also booking advances against sale of plots of Rs.24,12,734/-. The assessee was required to explain such credits appearing in his accounts. Section 68 of the Act provides that where any sum is found credited in books of an assessee 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. Quite clearly, in so far as the impugned credits are concerned, the onus was on the assessee to explain the nature and source thereof. It is a trite law that in order to discharge the onus cast on the

assessee in terms of Section 68 of the Act, it is imperative for the assessee to explain the identity, creditworthiness of the creditor and the genuineness of the transaction. It is, in this background, that we may now proceed to examine whether the assessee has discharged such onus or not.

7. Firstly, we may take-up the appeal of the Revenue wherein the first issue is with regard to an addition of Rs.18,60,000/- representing unsecured loans raised from one Shri B.T. Gaikwad, which has since been deleted by the CIT(A). In this connection, it is noticed that the CIT(A) found that the said loan was accepted by the assessee through banking channels. In para 6.3 of the impugned order, the CIT(A) observes that the Assessing Officer accepted the position that the amount was received by cheques found deposited in the bank account as per information obtained directly from the bank. The CIT(A) has also recorded a finding that by way of the remand report, Assessing Officer confirmed that the said creditor had orally confirmed the advancing of loan to the assessee. It is further noted by the CIT(A) that the said creditor had filed a show-cause notice against the appellant in the Court of law under Section 138 of the Indian Penal Code and a copy of the same was also produced before the CIT(A). The CIT(A) has also considered the objection of the Assessing Officer that in the absence of the requisite explanation coming forth from the creditor, the creditworthiness of the creditor was not proved. The CIT(A) noticed that considering the factual background of the matter as the relations of the assessee with said creditor were strained, the creditor would not furnish the requisite information to prove his creditworthiness. However, considering the totality of circumstances, the CIT(A) has deemed it fit and proper to delete the addition.

8. The learned Departmental Representative has primarily reiterated the stand of the Assessing Officer taken in the remand report to the CIT(A) which is to the effect that in the absence of the requisite details forthcoming from the

creditor, the creditworthiness of the creditor was not proved. In our considered opinion, the said objection is not fatal so as to treat the credit as unexplained having regard to the other material on record. Ostensibly, the loan in question has been received through banking channels which is duly credited in the bank account of the assessee and in response to the enquiries conducted by the Assessing Officer through his Inspector in remand proceedings, the said creditor confirmed advancing of loan to the assessee. It is also not in dispute that the creditor has lodged recovery proceedings and therefore, the relations between the assessee and the creditor are strained. In this background the creditor did not cooperate with the assessee in furnishing the requisite details about the creditworthiness. Considering the overall circumstances, in our view, the CIT(A) made no mistake in deleting the addition of Rs.18,60,000/- with respect to loan raised from Shri B.T. Gaikwad. Thus, on this aspect, Revenue has to fail.

9. The second aspect raised by the Revenue is with regard to an amount of Rs.12,48,582/- representing booking advances/deposits from customers which was treated as unexplained by the Assessing Officer but has been deleted by the CIT(A). The detail of such creditors are tabulated in para 7.1 of the order of the CIT(A). Factually speaking, in this regard, assessee furnished requisite details before the CIT(A), which were forwarded to the Assessing Officer and remand report of the Assessing Officer was considered by the CIT(A). After considering the material on record the CIT(A) noticed that all the above advances are confirmed by the customers, and the customers confirmed that the amounts are paid against sale of plots to them. The CIT(A) also noticed that the advances have been received mainly through account Payee Cheques/DDs. The Assessing Officer in the remand report raised an objection that the creditworthiness of the creditors has not been proved. The CIT(A) has dealt with the said objection and observed that the assessee was not expected to collect information above creditworthiness of his customers

and that in view of the fact that the assessee had filed their addresses and confirmations, the onus on the assessee stood discharged. The CIT(A) has emphasized that Assessing Officer erred in not appreciating the fact that these are not loans *per se* but are advance sale proceeds. In this manner, the addition of Rs.12,48,528/- has since been deleted by the CIT(A).

10. Before us, the stand of the Revenue remains the same as has been considered by the CIT(A). As per the learned Departmental Representative filing of confirmation and the addresses of the customers does not *ipso facto* show the creditworthiness of the persons advancing the impugned sums to the assessee. In our considered opinion, Revenue has not controverted the position that the nature of the impugned sums is on account of booking advances received against sale of plots. Therefore, once it is accepted that the impugned amounts are not in the nature of loans *per se* but are part of sale proceeds received from customers, the assessee is not expected to prove the creditworthiness of such creditors to the hilt. The CIT(A) has rightly observed that in such circumstances it would be enough if the assessee is able to furnish the requisite confirmations and identify the customers. In the present case, the requisite confirmations have been obtained which prove the nature of the advances as also the identity of the customers. Therefore, in our view, the CIT(A) made no mistake in deleting the addition of Rs.12,48,582/- and accordingly, Revenue has failed on this Ground also.

11. In the result, appeal of the Revenue is dismissed.

12. In so far as the appeal of the assessee is concerned the first issue is with regard to addition sustained by the CIT(A) of Rs.13,58,208/- representing loans, treating the same as unexplained. The details of Rs.13,58,208/- are as under :-

1.	*V.D. Pendse*	*Rs.3,20,000/-*
2.	*Shree Builders*	*Rs.10,00,000/-*
3.	*Kinetic Finance Ltd.*	*Rs.38,208/-*
	Total	***Rs. 13,58,208/-***

13. The relevant discussion by the CIT(A) is contained in paras 6.1 and 6.5 of the impugned order. The CIT(A) has confirmed the addition on the ground that assessee could not file the confirmation of the creditors i.e. their addresses, PAN Nos. and also could not prove their creditworthiness. Before us, the assessee has not furnished any fresh material to prove the impugned credits, inasmuch as there is no material so as to explain the identity, or creditworthiness of the creditor or even the genuineness of the transactions. Therefore, in our view, the CIT(A) has rightly sustained the impugned addition invoking Section 68 of the Act. We hereby affirm the same.

14. Only other aspect raised in the assessee's appeal is with regard to an addition of Rs.9,05,152/- sustained by the CIT(A) out of the advances received from customers. The relevant discussion in this regard is contained in paras 7.2 and 7.5 of the order of the CIT(A). The details of Rs.9,05,152/- are as under :-

1.	*R.M. Somwanshi*	*Rs.1,51,000/-*
2.	*Amrutkumar Shashikant W.*	*Rs.1,00,000/-*
3.	*Chaudhari C.G.*	*Rs.24,000/-*
4.	*Kulkarni Yeshwant V.*	*Rs.1,16,250/-*
5.	*Metkar Sandeep Balkrishna*	*Rs.15,000/-*
6.	*Bedse Shivaji Shankar*	*Rs.7,500/-*
7.	*Kiran Dhave*	*Rs.80,000/-*
8.	*Kathe Sushma Dattatraya*	*Rs.50,000/-*
9.	*Meenakumari Sharma*	*Rs.1,70,000/-*
10.	*Phule V.M.*	*Rs.1,000/-*
11.	*Birad Krishna Dattatraya*	*Rs.81,000/-*
12.	*Mrs. V.M. Dhake*	*Rs.50,000/-*
13.	*D.B. Katary*	*Rs.40,500/-*
14.	*M.T.Patel*	*Rs.3,001/-*
15.	*Smt. Meena B. Vispute*	*Rs.15,000/-*
16.	*Details not available*	*Rs.901/-*
	Total	***Rs. 9,05,152/-***

15. In so far as the amounts standing in the names of D.B.Katary- Rs.40,500/-, M.T. Patel - Rs.3,001/-, Smt. Meena B. Vispute - Rs.15,000/- and the other balance Rs.901/- is concerned, in our view, the same have been rightly confirmed by the CIT(A). As per the discussion contained in paras 7.3, 7.4 and 7.5 it is seen that the aforesaid amounts stood unconfirmed and unproved. In the case of Shri D.B. Katary, the Assessing Officer submitted in the remand report that in response to summons issued to the said person, he denied having paid any advance for purchase of plot from the assessee. In respect of advance claimed to have received from Shri M.T. Patel there was no material to substantiate the same and it was also claimed to have been received in cash. Similarly, with regard to Smt. Meena B. Vispute, it is noticed that the total amount received was Rs.1,65,000/- out of which the creditor confirmed to the extent of Rs.1,50,000/- and the balance of Rs.15,000 has been held to be unexplained by the CIT(A). We have no reason to differ from the conclusion of the CIT(A) as no new material has been furnished before us. Similar is the position with regard to sum of Rs.901/- added by the CIT(A).

16. Now, we may consider the amount of advance of Rs.8,45,750/- claimed to have received from 12 persons stated as Item No. 1 to 12 in the above tabulation. The said amount have been treated an unexplained by the CIT(A) in the absence of the requisite confirmation letters or other details furnished by the assessee. On this issue, the learned counsel for the assessee has vehemently argued that the said sums have been received by the assessee in the course of his business activity of selling plots of land and that since the assessee was going through business crisis at the time of proceedings before the lower authorities, he was not able to get appropriate confirmation from the customers. In this context, the learned counsel furnished a compilation of 18 pages comprising of copies of proposed agreements to sell plots with such customers. On this basis, it is sought to be made out that the amounts have been received in the course of normal business activity, and the assessee be

allowed an opportunity to produce requisite evidence with respect to the aforesaid sums since the assessee is now in a position to furnish the requisite details.

17. On the other hand, the learned Departmental Representative has contended that the lower authorities have adjudicated the matter after allowing requisite opportunities to the assessee to produce the relevant material and the assessee had failed to furnish the same and thus no further opportunity be allowed at the present stage.

18. We have carefully considered the rival submissions. Ostensibly, the orders of the lower authorities do suggest that there was laxity on the part of the assessee in furnishing the requisite material in support of the credits in question. Further, it is also emerging from the orders of the authorities below that most of the payments have been received by Cheques/DDs and the same were found noted by the Assessing Officer in the bank statements obtained directly from the banks. Therefore, it is not a case where any falsity has been established on the basis of the material on record but it is a case where the assessee has not been able to produce the requisite material to support the credits in question. Considering the entirety of circumstances, in our view, the assessee be allowed an opportunity to discharge the onus cast on him to explain the nature and source of the impugned creditors to the satisfaction of the Assessing Officer. With the said purpose, we deem it fit and proper to remand the matter back to the file of the Assessing Officer with respect to the impugned credits of Rs.8,45,750/-, as detailed above. Needless to say, the Assessing Officer shall allow the assessee a reasonable opportunity to prove the nature and source of the aforesaid credits to the satisfaction of the Assessing Officer and therefore, the Assessing Officer shall pass an order afresh on this limited aspect as per law. Thus, on this aspect, assessee succeeds for statistical purposes.

19. Resultantly, whereas the appeal of the Revenue is dismissed that of the assessee is partly allowed.

Order pronounced in the open Court on 28th August, 2013.

Sd/-	**Sd/-**
(R.S. PADVEKAR)	**(G.S. PANNU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Pune, Dated: 28th August, 2013

Sujeet

Copy of the order is forwarded to: -

1) The Assessee;
2) The Department;
3) The CIT(A)-I, Nashik;
4) The CIT-I, Nashik;
5) The DR, "B" Bench, I.T.A.T., Pune;
6) Guard File.

By Order

//True Copy//

Sr. Private Secretary
I.T.A.T., Pune