

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI AMIT SHUKLA, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No. 914/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

ACIT-21(2), R.No.508 C-10, 5 th floor, B.K.C, Bndra (E), Mumbai-51.	<u>बनाम/</u> Vs.	Shri. Michael X Raja Nadar Flat No.104, Emerald, Bhakti Park, Anik Wadala Link Road, Wadala (East) Mumbai-400 022.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAASF 3316B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No. 64/Mum/2014

(Arising Out of I.T.A. No. 914/Mum/2013)

(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri. Michael X Raja Nadar Flat No.104, Emerald, Bhakti Park, Anik Wadala Link Road, Wadala (East) Mumbai-400 022.	<u>बनाम/</u> Vs.	ACIT-21(2), R.No.508 C-10, 5 th floor, B.K.C, Bndra (E), Mumbai-51.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAASF 3316B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Naveen Gupta
प्रत्यर्थी की ओर से/Respondent by	:	None

सुनवाई की तारीख / Date of Hearing	:	12/01/2016
घोषणा की तारीख / Date of Pronouncement	:	22/01/2016

आदेश / ORDERPER RAJESH KUMAR, A. M:

This appeal by the revenue is directed against the order dated 06.11.2012 of Commissioner of Income Tax (Appeals)-32, Mumbai (hereinafter called as the CIT(A)) for assessment year 2009-10. The revenue has raised following grounds of appeal in ITA No.914/M/2013 are as under.

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of unsecured loans of Rs.10,00,000/-.”*
2. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that the assessee had failed to prove the genuineness of loan transaction with documentary evidences.”*
3. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering that so called loan amount was directly deposited in the account of private limited company instead of routing through bank account.”*

2. At the outset the ld. AR of the assessee pointed out that the tax effect in this appeal is below Rs.10.00 lakhs and further submitted that in view of the **CBDT Circular No.21/2015, dated 10.12.2015** brought out by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India,

the appeal was not maintainable and be dismissed. The Id. DR also agreed to the submission of the Id. AR.

3. We have heard the rival submissions and perused the material on record.

We find from the records before us that the tax involved in the disputed issue is below Rs.10 Lacs and therefore, in view of the circular no 21/2015 dated 10th December, 2015 no appeals should be filed by the Revenue before the Tribunal which has tax effect of Rs. 10.00 lacs or less and this circular is also applicable retrospectively to all pending appeals.

The relevant extract the said CBDT Circular (Supra) is as under:-

“This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/Tribunals. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.”

4. Considering the above, the appeal filed by the Revenue, is therefore dismissed.

ITA NO.64/Mum/2012 (A.Y.2009-10)

The assessee has raised following grounds of appeal in ITA No.64/M/2012 are as under.

GROUND OF CROSS-OBJECTIONS

That the Appellant, however they have raised three grounds in their appeal act all the grounds/points are one and the same i.e., disallowance of Rs.10,00,000/- (Rupees Ten Lakh Only) in the Order passed by the Ld. C.I.T and hence the intervention in the said order is not warranted at this stage and the above said appeal to be dismissed with const on the following amongst other grounds:

- a. that the Ld. C.I.T (A) pleased to consider all the points raised in the appeal filed by the respondent herein as the said amount was taken by way of cheque for which the present respondent having books of accounts which was duly accounted and continuously reflected in the balance sheet since financial year 2006-2007 onwards and hence, the learned Commissioner of Income Tax (Appeals) have considered all the points and hence the proper and fair order came to delivered by deleting addition to the total income of Rs.10,00,000/- which was claimed as unsecured loan by the respondent on the contrary the appellant treated the said amount as income of the respondent and accordingly the respondent directed to pay tax.*
- b. The Appellant miserably failed to mention under which section of Income Tax Law/Provision or rules there under, the addition of Rs. 10,00,000/- can be sustained against the respondent.*

The Observation of the CIT (A) while passing the Order deleting the above aid addition of Rs.10.00,000 as follows:-

“Because the following observations of learned CIT(Appeal) in the order dated 6/11/2012 para 3.3.....”I have considered the arguments of the Ld. AR and perused the assessment order. There is nothing brought on record by the AO to suggest the conditions of section 41(1) was satisfied in this case in order to make the addition on the grounds of cessation of liability u/s 41 (1). Since for the amount of unsecured loan no deduction has been claimed in earlier years, sec. 41(1) cannot be invoked as the amount has been received as a loan and not during the course of carrying out the regular business transaction. The amounts were not the revenue receipts at the time of receipt in AY 2007-08 and hence the amount remained being capital receipt only in current AY also. Though there is nothing specific brought by the AO for cessation of such unsecured loan liability but in view of the decision of Bombay in the case of Xylon Holdings Pvt.Ltd. 26 Taxmann 333(Bombay) and Mahindra & Mahindra 261 ITR 5 01(B om), such. loan liability of cessation cannot be taxed as income u/s.28(iv) also. So far as the question of making addition u/s.68 is concerned, since the loan of Rs.10,00,000/- have been received in FY 2006-07 and appearing in the balance sheet

in earlier years also, the same cannot be added in the current year, for whatever reasons. Thus there is no justification to sustain the addition of Rs.10,00,000/- under any provisions of the I.T.Act, 1961 and hence the same is directed to be deleted".

Section 68 cannot be invoked since the loan of Rs.10,00,000/- has been received in the financial year 2006-2007 and continuous to be appearing in' the Balance Sheet".

With reference to the Point No.2 of Grounds of Appeal is not correct in law and in fact as the respondent is having all the documentary proof that the unsecured loan was received by cheque and the same is reflected from year to a stated above elaborately and hence the question of documentary evidence does not arise and hence the same be deleted/ rejected.

By considering the above said reflection/points the Ld. CIT (A) observed as under:

"Because the following observations of learned CIT (Appeal) in the order dated 6/11/2012 para 3.2 "Before me it has been claimed by the Ld. AR that all the details including cheque number was given before the \AD. It was also explained that the assessee had taken loan for enhancing share in the company and therefore the cheque of unsecured loan was straight away deposited in the company's account instead of routing through his own bank account but the necessary entries were made in the books of account of the assessee and company. These loans were taken in FY 2006-07 and they are being reflected in 31/03/2007 onwards. These loans are still appearing in the balance sheet as on 31/03/2009 also. It is also contended that the assessee is paying interest on these loans which are debited directly in the capital account of the assessee and not being claimed as deduction in the P&L a/c. The necessary copies of the balance sheet of the last 3 years have been enclosed in support of the above contention. It has been contended that once the assessee showing the liability in its books of account and interest also being paid on such loan liability, there can be no presumption for cessation of such liability just because the assessee could not be furnish the confirmation at the given point of time. The AD made the addition on the grounds that the liability has ceased to exist. Though the AD has not mentioned the section but an addition on account of cessation of liability can be made u/s41 (1) but since these liabilities are in respect of unsecured loan and no deduction has been taken in earlier years the provisions of sec.41(1) cannot be applied. The provisions of sec. 28(iv) also cannot be applies as these are capital receipts taken as unsecured loan. The appellant has relied on the decision in the case of Xylon Holdings Pvt. Ltd. 26 Taxmann 333(Bombay) wherein liability has been held to be not added u/s.28(iv) or 41(1). It has also been contended that the AD not disputed the receipt of the unsecured loan in FY 006-0 by way of cheque which were already

appearing in the balance sheet of the earlier years. Hence even if the assessee could not produce confirmation or address no addition can be made even u/s.68 as the loan has not been taken during the year”.

- 3) *With reference to Para No.3 of the Grounds of Appeal the appellant have stated that the amount is routed through a Private Limited Company but the Ld. A.O. utterly failed to appreciate the fact the respondent is one of the Director of the said Private Limited Company having 20% share holding which was clearly mentioned/informed to the Ld. A.O. and the same is informed/submitted to the Ld. CIT (A) who have considered all point and observed correctly.*

The respondent state that it is crystal clear from the facts and circumstances, given above, the respondent proved all the facts before the Ld. CIT (A) who have also considered elaborately all the issued and correctly observed through his observations in the Order passed by him.

Under the above said facts and circumstances it is humbly prayed that :-

- a) That the Appeal filed by the present appellant be dismissed with costs to the respondent*
- b) The Order Passed by the Ld. CIT (A) be confirmed*
- c) Any other relief as this Hon'ble Tribunal deem fit and proper.*

5. In view of dismissal of ITA No. 914/Mum/2013 the cross objection filed by the assessee has become infructuous.

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

Order pronounced in the open court on 22nd January, 2016

Sd/-
(Amit Shukla)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :22 .01.2016
Ps. Ashwini Gajakosh

Sd/-
(Rajesh Kumar)

लेखा सदस्य / Accountant Member

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)
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