

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1708/MUM/2021
Assessment Year: 2012-13**

M/s M.D. Noorudin Zariwala
(Prop. Mohd Noorudin Mondal)
F Sector H-2 Line, Room No. 1,
Cheeta Camp, Trombay,
Near Jama Masjid,
Mumbai-400088.

PAN No. AFEPG 6380 F

Appellant

The Commissioner of Income Tax
(Appeals)-NFAC,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. Navin B. Gandhi, AR
Revenue by : Mr. Tejinder Pal Singh Anand, DR

Date of Hearing : 12/04/2022
Date of pronouncement : 11/05/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred against the order dated 29.07.2021 passed by the Ld. Commissioner of Income-Tax (Appeals) (National Faceless Appeal Centre, Delhi) [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising the following grounds:

“Ground 1

The Hon'ble CIT(A)-NFAC has erred in confirming addition u/s 68 of unsecured loan received from the appellant's wife Mrs Firdos Mondal on the basis of peak credit as against the addition of closing balance of Rs 5,21,351/- by the AO.

The Hon"ble CIT(A)-NFAC did not consider the following facts,

1) The appellant has divorced his wife Mrs Firdos Mondal on 14-10-2016 and since the divorce he know nothing about her divorced wife.

2) The divorced letter/dissolution of marriage was submitted to hon""ble CIT (A)-NFAC online vide ack no 157094211150721 (Refer Annexure I) but was neither mentioned nor considered in his appeal order

Relief Claimed

The appellant did file confirmation letter and ledgers during the assessment proceedings but could not give present address for reason beyond his control . Hence the addition is unjustified and may please be deleted

Ground 2

The Hon'ble CIT(A)-NFAC has erred in confirming disallowance of Rs 1,00,000/- paid to mosque for providing free lunch to appellant's karagirs on the ground that no further evidences to substantiate the ground was submitted during the appeal proceedings even though the appellant did submit the same online vide ack no's 157094211150721/19042114692409/23042114712298. (Refer Annexure II)

Relief Claimed

The payment of Rs 1,00,000/- to mosque (wrongly debited as donation in books) were incurred exclusively as staff welfare and are allowable as business expense u/s 37(1) of the Act.

Ground 3

The Hon'ble CIT(A)-NFAC has erred in confirming disallowance of Rs 32,386/- being 20% of travelling expense of Rs 1,61,934/- on ground of personal use.

Relief Claimed

The appellant humbly submits that the travelling expenses of Rs 1,61,934/- are towards the air travel expenses for purchase and seeking orders for its embroidery and zari work business and not for any personal trips. Hence the addition made may please be deleted.”

2. Briefly stated, the facts of the case are that the assessee was running a proprietorship business named and styled as M/s 'M.D. Nooruddin Zariwala' and was engaged in the business of Zari (embroidery) and hand embroidery. For the year under consideration, the assessee filed return of income on 29.09.2012 declaring total income of Rs.14,87,140/-. The return of income filed by the assessee was selected for scrutiny and scrutiny assessment

u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act') was completed by the Assessing Officer on 24.03.2015 at total income of Rs.74,62,320/- after making certain additions/disallowances.

3. Aggrieved, the assessee preferred appeal before the Ld. First Appellate Authority [i.e. the Ld. CIT(A)], who allowed part relief to the assessee. Aggrieved additions/disallowance sustained by the Ld. CIT(A), the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

4. Before us, the Ld. counsel of the assessee filed a Paper Book containing pages 1 to 29.

5. We have heard rival submissions of the parties on the issue-in-dispute raised and perused the relevant material on record. As far as Ground No. 1 of the appeal is concerned the Ld. counsel of the assessee reiterated the submissions made before the Ld. CIT(A) and submitted that whereabouts of divorced wife Mrs. Firdos Mondal were not available with the assessee and therefore she could not be

produced before the Assessing Officer. He further submitted that divorced letter/dissolution of marriage was already submitted before the Ld. CIT(A) and therefore he had discharged his onus of establishing identity, creditworthiness and genuineness of the transaction and therefore no addition u/s 68 of the of the Act is justified. He further submitted that the Assessing Officer made addition for the closing balance in the ledger account of M/s Firdos Mondal whereas Ld. CIT(A) has directed to take peak credit in the said ledger account which is not justified on the part of Ld. CIT(A).

5.1 Per contra, the Ld. Departmental Representative (DR) relied on the order of Ld. CIT(A) and the Assessing Officer.

5.2 We find that the Assessing Officer made addition of Rs.52,66,833/- representing unsecured loans as unexplained cash credit u/s 68 of the Act. However, after verification of the documentary evidence filed during the course of appellate proceedings before the Ld. CIT(A), the addition has been restricted

in case of loan received from M/s Firdos Mondal only, due to failure on the part of assessee to furnish her address to the Assessing Officer in remand proceedings. The relevant finding of the Ld. CIT(A) is reproduced as under :

“4.2.3 From the remand report, it is clear that the appellant has furnished necessary evidences to substantiate the creditworthiness of the creditors in respect of two loan creditors namely Ms Fatima B. Shaikh, proprietor of M/s B K Art and Sri Bablu N. Shaikh, proprietor of M/s Karisma Art. Further these two creditors were also summoned in course of the remand proceedings and their statement was recorded wherein they both accepted to have advanced unsecured loans to Mr. M D Nooruddin Mondal. In view of this the loan amounts outstanding to these two parties (i.e. Rs. 13,71,596/- in respect of B K Art, and Rs. 33,74,886/- in respect of Karishma Art) cannot be held to be unexplained and hence directed to be deleted.

4.2.4 However in respect of the loan creditor Mrs. Firdos Mondal, against whom an outstanding credit of Rs.5,21,351/ is reflected in the accounts of the appellant, the appellant has not been able to furnish the address to the assessing officer even in course of the remand proceedings, as a result of which this creditor could not be examined.

4.2.5 In its response to the remand report, the appellant in its letter dated 7 September 2020 has further contended as under :

My relations with my wife gradually deteriorated and finally were totally shattered as a result I have no option but to divorce.

Hence I have no contacts after divorce and do not know anything about her. As a result I was unable to give present address to the Ld. AO simply because I honestly know nothing.

However her loan confirmation, copy of acknowledgement of return of income filed on 29. 09. 2012, her balance sheet as on 31.03. 2012, clearly shows Rs.5,21,350/-due to her by me as on 31.03.2012. I have submitted her bank statement which clearly shows that all the transactions in the loan account were through banking channels and not a single transaction is in cash.

Only because summons issued in April 2019 could not be solved and due to divorce I could not provide her present address does not make the loan transactions in genuine

4.2.6 I have given careful consideration to the contentions made on behalf of the appellant. It is settled law that in respect of a creditor, the onus lies on the party to prove three ingredients namely identity of the creditor, capacity of the creditor and the genuineness of the transaction. In landmark cases like Kale Khan Mohammad Hanif v CIT[1963] 50 ITR 1 (SC), Roshan Di Hatti v CIT (1977) 107 TR 938 (SC) it has been held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee, is on him. Where the nature and source thereof cannot be explained satisfactorily, it is open to the Assessing Officer to hold that it is the income of the appellant and no further burden is on the AO to show that the income is from any particular source. By submission of the copy of

the income tax return, the bank account transactions etc. the appellant has merely tried to substantiate the identity and the capacity of the creditor. But by its failure to facilitate the examination of the said creditor, the appellant has prevented the assessing officer to verify the genuineness of the transactions. Accordingly it cannot be held that the appellant has discharged the onus cast upon it to prove the genuineness of the transactions. Hence in my considered view the genuineness of the loan transaction alleged to have been entered with Mrs Firdos Mondal is not substantiated. However from the ledger account of this creditor as appearing in the books of the appellant, it is noticed that as on 01/04/2011 there is a opening debit balance of Rs. 8, 18,178/- against this party. An aggregate amount of Rs.18,55,678/- has been received from this party on various dates and an aggregate amount of Rs.5,16,150/- has been repaid to the party during the year leaving an outstanding credit balance of Rs.5,21,351/. Since the genuineness of these transactions have not been established by the appellant, the assessing officer is directed to work out the peak credit in the account of the alleged loan creditor during the assessment year in question and treat the, same as unexplained cash credit.”

5.3 Before us, also the assessee has not provided new address of M/s Firdos Mondal or filed documentary evidence in support of identity, creditworthiness or genuineness of the transaction in respect of loans received from M/s Firdos Mondal. Further, the Ld. CIT(A) has on perusal of the ledger account of M/s Firdos Mondal in

the books of the assessee has directed to take peak credit for addition. In our opinion, the Ld. CIT(A) is justified in treating peak credit and unexplained cash credit as the assessee is liable to discharge his onus in terms of section 68 of the Act for all the credit money which is received from M/s Firdos Mondal during the year under consideration. The Ld. CIT(A) has treated the peak of all credits after adjusting the money returned to her. We do not find any error or perversity in the order of Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The ground No. 1 of the assessee is dismissed.

5.4 In ground No. 2, the assessee has challenged disallowance of Rs.1,00,000/- paid to mosque for providing free lunch to the assessee's employees.

5.5 Before us, the Ld. counsel of the assessee submitter a letter from mosque which is available on page 28 of the Paper Book and submitted that the payment of Rs.1,00,000/- was towards staff

welfare of the employees and therefore, it should be allowed u/s 37(1) of the Act.

5.6 The Ld. DR on the other hand submitted that mosque has provided free lunch to the employees of the assessee along with other persons of that area and therefore, it could not be said that Rs.1,00,000/- paid by the assessee was for free lunch provided by the mosque to the employees of the assessee. He submitted that no bill has been raised by the mosque on the assessee and it was the assessee who has voluntarily paid donation to the mosque and which can only be considered u/s 80G of the Act and not in terms of section 37(1) of the Act.

5.7 We have heard rival submissions and perused the relevant material on record. The Ld. CIT(A) dismissed this ground of the assessee observing as under :

“4.3 The third The next ground of appeal relates to disallowance of an amount of Rs.1,00,500/- paid to Mosque and debited as donation. The above amount was disallowed by the AO

as the appellant failed to furnish any documentary evidence in support of the same. In course of the appellate proceedings it was contended as under:

The appellant humbly submits that the said amount though debited to P/L A/c as donation, it is paid to the mosque which is near to its business premises which provides free lunch to the majority labourers of the appellant.

Therefore, the said payment of Rs.1,00,000 is in the nature of staff welfare incurred exclusively and necessarily for business and is allowable under section 37 (1) of the income tax act, 1961.

4.3.1 However it is seen from the remand report of the assessing officer that no corroborating evidence relating to this expenditure was furnished by the appellant even in course of the remand proceedings. During the appellate proceedings also no further substantiate on the above claim has been offered. Therefore, I find no reason to interfere with the conclusions of the assessing officer. Accordingly, this ground is dismissed”.

5.8. It is evident from the letter of mosque produced by the assessee that the free lunch used to be provided by the mosque labourers/artisan etc. in that area. The facility of the assessee happened to be in vicinity of mosque so those employees were availing free lunch provided irrespective whether those were employed in the facility of the assessee or not. By way of making

payment of Rs.1,00,000/- by the assessee to the mosque it could not be established that the payment was a *quid pro quo* for the free lunch facility extended to the labourers/Karagirs of the assessee. The mosque was not under control of the assessee and free lunch was provided to the other persons and not exclusively to the labourers of the assessee. Therefore, in such circumstances, it could not be treated that the payment made by the assessee was wholly and exclusively for the purpose of the business of the assessee and accordingly the action of the Ld. CIT(A) in disallowing the ground is upheld. The ground No. 2 of the appeal of the assessee is accordingly dismissed.

5.9 In ground No. 3, the assessee has contested disallowance of Rs.32,386/- out of travelling expenses being 20% of Rs.1,61,934/- on the ground of personal use.

5.10 Before us, the Ld. counsel of the assessee submitted that travelling expenses were incurred towards air travel expenses for

purchase or seeking orders for its embroidery and zari work business and not for any personal trips.

5.11 The Ld. DR on the other hand relied on the order of the lower authorities.

5.12 We find that the Ld. CIT(A) has sustained the disallowance in view of the personal use of the assessee. The relevant para of the order of the Ld. CIT(A) is reproduced as under :

“4.4.3 However, in respect of the travelling expenses and petrol expenses debited to the profit and loss account, element of personal user cannot be ruled out. Hence, the disallowance of 20% of such expenditure towards personal user is sustained.”

5.13 Before us, the Ld. counsel of the assessee failed to substantiate that there was no personal use in travelling and petrol expenses by the assessee. Therefore, we do not find any error in the order of Ld. CIT(A) in upholding 20% of travelling expenses for personal use disallowed in terms of section 37(1) of the Act. The ground of the appeal is accordingly dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 11/05/2022.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 11/05/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai