

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

**IN THE INCOME TAX APPELLATE TRIBUNAL,**

**INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.775 & 776/Ind/2016**

**Assessment Years: 2007-08 & 2008-09**

Shri Madanlal Gabbaji Banjara, Vill. Raikheda, Tehsil – Malhargarh, Dist. Mandsaur (M.P)	Vs.	Income Tax Officer, Neemuch
(Appellant)		(Revenue )
PAN No.AMFPB8239H		

Appellant by	Shri S.S. Deshpande, CA
Revenue by	Shri S.S. Mantri, CIT
Date of Hearing	05.03.2020
Date of Pronouncement	22.05.2020

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeals filed at the instance of assessee pertaining to Assessment Year 2007-08 and 2008-09 are directed against the orders of Commissioner of Income Tax (Appeals) (in short 'Ld.CIT'], Ujjain dated 23.3.2016 and 01.03.2016 respectively which are arising out of the order u/s 143(3)/147 of the Income Tax

Act 1961(In short the 'Act') dated 30.03.2013 and 28.03.2014 framed by ITO, Neemuch.

2. As the issues raised in these appeals belongs to the same assessee they are being heard together and disposed off for the sake of convenience and brevity.

3. Brief facts of the case as culled out from the records are that the assessee is an individual deriving income from the business of trading of poppy straw. Return of income were not filed for the above two assessment years. As per the information available with the Ld. A.O showing that there were huge cash deposit in the bank account held by the assessee, the cases were reopened u/s 147 of the Act by issuing notice u/s 148 of the Act. In reply there to return of income for Assessment Year 2007-08 was filed on 17.1.13 declaring loss of Rs.2,64,576/- and Return of income for A.Y 2008-09 showing income at Rs. NIL was filed on 29.8.2013.

4. During the course of assessment proceedings for Assessment Year 2007-08, Ld. A.O noticed that assessee had taken unsecured loans amounting to Rs. 6,19,49,750/- from 192 persons. He asked the assessee to prove the identity, genuineness and

creditworthiness of cash creditors. Assessee could only file the confirmation but was unable to produce the cash creditors. In view of the Ld. A.O assessee failed to prove the genuineness of the transaction and creditworthiness of the parties and therefore he made the addition u/s 68 of the Act at Rs. 6,19,49,750/-. For Assessment Year 2007-08 Ld. A.O also observed that there were cash deposits of Rs. 3,21,81,267/-. Assessee has claimed to have received cash from various parties against the advances given and were deposited in bank. Ld. A.O was not satisfied with the submissions of the assessee and made the addition for unexplained cash deposit at Rs.3,21,81,267/-. Few other additions were made relating to dishonour of cheques deposited at Rs.15,00,000/-, Unexplained Debtors of last year at Rs. 90,000/-, addition for refund of security deposit by District Excise Department at Rs. 2,59,400/- and addition of maturity value of FDR credited into bank account at Rs. 1,02,516/-. Assessee's claim for loss was denied and Income assessed at Rs.9,60,92,612/-.

5. Brief facts relating to assessment proceedings for Assessment Year 2008-09 are that for cash deposited at Rs.4,74,95,921/-

assessee's claim was that the source of the cash deposited were amount received out of the unsecured loan taken in the preceding year but the same was not accepted and addition u/s 68 of the Act was made. Minor additions for disallowance of bad debts at Rs.90,600/- and disallowance of set off loss of Rs. 57,080/- was made. Income assessed at Rs.4,76,43,600/-.

6. Aggrieved with the order of the Ld. A.O assessee went for appeal before Ld. CIT(A) for Assessment Year 2007-08 and 2008-09 and partly succeeded for Assessment Year 2007-08 but failed to succeed for Assessment Year 2008-09.

7. Now the assessee is in appeal before the Tribunal raising following grounds of appeal :-

ITA No.775/Ind/2016 Assessment Year 2007-08

*1. The Ld. AO has erred in making additions and Ld CIT(A) has erred in confirming the additions of unsecured loans taken from the Income-tax payer, having PAN NO , and filing their IT return regularly and deposits has been duly confirmed by the depositors and some of the depositors has been enquired by the Ld U/s. 131 of the Act, the Ld AO has made addition contending that none of the creditors is produced is not correct On the facts and records.*

*2. The Ld. AO has erred in not considering the cash deposits in the bank A/c out of regular books maintained and the Ld CIT(A) has erred in*

*confirming the addition without appreciating the facts of the case that cash deposits is out of regular books of accounts maintained by the appellant.*

*3. The Ld AO has not find any other business or investment of the appellant in which the cash drawn is invested and cash deposited in the Bank A/c is out of another sources.*

*4. The Ld AO has erred in making additions of Rs. 27,00,000/- for refund of advances made earlier by the AO and Ld CIT (A) has erred in confirming the same without appreciating the facts of the case that Advances were appearing in the Balance sheet of earlier years and the same is on record.*

*5. The Ld AO has further erred and Ld CIT (A) has also erred in confirming the additions of amount received from sundry debtors which is appearing in the balance sheet of earlier year and the same is on record.*

*6. Your appellant craves, leave to add, amend, modify or withdraw any of the grounds of appeal on or before or during the course of hearing.*

### ITA No.776/Ind/2016 Assessment Year 2008-09

*1. The Ld. AO has erred in making additions and Ld CIT(A) has erred in confirming the addition without appreciating the facts of the case that cash deposits is out of regular books of accounts maintained by the appellant and out of funds contributed with the Firm M/s. Roshanlal Deshraj & Party.*

*2. The Ld. AO has erred in not considering the copy of A/c of the firm M/s. Roshanlal Deshraj & Party filed during the course of assessment proceedings and cash deposit in the bank is reconciled with the same.*

3. *The Ld AO has not find any other business or investment of the appellant which the cash drawn is invested and cash deposited in the Bank A/c is out of another sources.*

4. *The Ld AO has erred in making additions of Rs. 4,74,95,921/- for refund of advances made earlier by the AO and Ld CIT (A) has erred in confirming the same without appreciating the facts of the case that Advances were appearing in the Balance sheet of earlier years and the same is on record.*

5. *Your appellant craves, leave to add, amend, modify or withdraw any of the grounds of appeal on or before or during the course of hearing.*

8. Ld. Counsel for the assessee referring to the paper book vehemently argued referring to the following written submissions :-

**Assessment Year 2007-08**

*The assessee had filled in the tender for getting a license for Poppy Straw (Doda Chura). Unfortunately the assessee was not awarded the contract. The said contract was awarded in the name of Shri Roshanlal son of Deshraj of Ganga Nagar. After the receipt of the said contract Shri Roshanlal approached the assessee as a local person to do the business in partnership. Accordingly the assessee joined hands with the said party. The deed of partnership is enclosed at Page 9 of PB for AY 2008-09. The said partnership is also assessed to tax and all these amounts have been added as the income of the partnership. For the purpose of doing the business there was a requirement of substantial funds. On the strength of the license the assessee raised loans from the market through Dalal from*

*nearly 192 parties. All the payments were received through account payee cheques from the local persons who were income tax assessee and were filling their regular returns.*

*While framing the assessment the Ld. AO observed that the assessee has deposited the requisite fees while applying for the tender for Poppy Straw (doda chura). But unfortunately the draw was not opened in his name. He further observed that the sundry debtors have been disclosed in the Balance Sheet to the tune of 4,10,47,937/- representing the advance to M/s Roshanlal Deshraj & Party. The assessee has further shown the unsecured loan of Rs.6,27,56,000/- and the advances are shown at Rs. 2,14,53,330/-. The Ld. A.O during the course of various hearings asked the assessee to file the confirmations of all the parties along with the bank statement. Accordingly the assessee filed all the confirmations showing the permanent account number of various creditors. In majority of the cases the bank statement were also filed. During the last hearing the Ld. A.O asked the assessee to produce 75 creditors within a week's time. Numbers of creditors were taken to the Income Tax Office but the statement of only 17 persons could be recorded. All of them confirmed the transaction with the assessee. Copies of their Bank accounts and Income Tax Returns were filed.*

*It was submitted before the Ld. AO that these loans were genuine. The necessary confirmations from all the parties were obtained and were placed on records. During the course of the assessment proceedings some of the creditors appeared before the Ld. AO and confirmed the loans being advanced to the assessee. The copies of the statements and their bank account with Income Tax Returns are attached in PB from page 193 to 311. It was submitted that all the credits were received through the banking channel and the repayments of these loans were also made through banking channel. In spite of these facts the Ld. AO made the*

*additions U/s. 68 on the ground that these loans are not genuine.*

*The Ld AO further observed that the loans borrowed by the assessee were temporarily advanced to small parties. The said advances have not been proved by the assessee. It was submitted before the Ld. A.O that the surplus fund has been advanced to small parties for a shorter period and after recovery of the same it has been deposited in the bank. The Ld. AO did not accept the sundry advances given by the assessee and did not accept the theory of Peak Credit for the amounts deposited in the bank. At Page 11 Para 8 he has mentioned that the cheques have been deposited in the bank and immediately thereafter the amounts had been withdrawn in cash. The Ld. AO did not consider the availability of the cash withdrawals from the bank and did not allow the telescopic benefit for the cash availability. Thus the same amount has been taxed twice.*

*The Ld. AO did not consider the confirmations filed by all the creditors. It is submitted that all the creditors are assessed to tax and have quoted their PAN, permanent address and in some cases copies of ITR V have also been filed. The Ld. AO has wrongly mentioned that none of the creditors were produced for confirming the transactions.*

*An appeal was taken before the Ld. CIT CA) who confirmed the addition of Rs. 6,19,49,750/- being the loans taken from 192 creditors with the short observation that the assessee has failed to produce the above parties for examination before the A.O and as such the assessee has failed to discharge the burden of proof for establishing the genuineness of the transaction. He further upheld the addition of Rs.3,21,81,267/- being the cash deposit with the wrong observation that the appellant has given advances through cheque and it is highly unlikely that the appellant has received cash from these persons for repayment of loans. It is submitted that small advances were given in cash after withdrawing the same from*

*the bank. The Ld. CIT CA) did not consider the cash withdrawn from the bank, and did not allow the telescopic benefit for the cash availability.*

*It is humbly submitted that the assessee has borrowed the funds for the purpose of the business. All the amounts have been received by account payee cheque and practically all the creditors are assessed to tax having PAN. All the creditors are from the same area and the Ld. A.O could have ascertain the fact of advancing the money from their respective Income Tax Returns. Without doing so he has merely added the amount as the income of the assessee on pure surmises and conjectures with the wrong observation that all the creditors were not produced for examination. The said approach is unjudicious. The assessee has filed all the confirmations with their PAN and in majority of cases the bank statements have been filled. All the payments have been received through banking channel and the repayments have also been made through banking channel. Under these circumstances the transaction cannot be treated as ungenue. For the purpose of business and Short advances the assessee has withdrawn the cash from the bank. Thus the cash was available for depositing the same in the bank. No cognizance has been given for the cash book produced before the Ld. A.O and the Ld. CIT(A). Under these circumstances the additions made deserves to be deleted. In this connection we would like to draw your honour's kind attention to the following cases.*

- 1. CIT V/s. Metachem - 245 ITR p.160 (M.P.)*
- 11. CIT V/s. Pithampur Coetza - 244 ITR p.442 (M.P.)*
- 111. CIT v/s Tanya Industries 322 ITR 394 (Born)*
- IV. CIT v/s Jai Kumar Bakliwal 366 ITR 217 (Raj) & P 232*
- v. CIT v/s Dharam Dev Finance 43 Taxmann.com 395 (Guj.)*
- VI. CIT v/s Varinder Rawlley 366 ITR 232 (P&H)*

V11. *CIT v/s Deendayal Choudhary 293 CTR P. 468 (Raj.)*

VIII. *CIT v/s Haresh D Mehta 86 Taxman.com P. 22*

*In view of the above it is humbly prayed that the additions made by the Ld. A.O may please be deleted.*

**Assessment Year 2008-09**

*The Ld AO has made the addition of Rs. 4,74,95,921/- being the amount deposited in the bank. It was submitted before the Ld AO that the assessee had advanced a sum of Rs. 3,90,22,670/- to M/s Roshanlal Deshraj & Party and the miscellaneous advances to the tune of Rs. 2,14,53,230/-. These advances have been shown in the Balance Sheet for the A.Y. 2007-08. These advances were received during the year under consideration and have been deposited in the bank and the payments were made to the loan creditors. The Ld AO has made these additions on merely hypothetical ground that the debtors were not produced and the transaction is not verifiable . It is humbly submitted that the Balance Sheet clearly showed the sundry debtors. In the earlier year, the creditors and cash deposits in the bank have already been taxed. Under these circumstances it is a double taxation, once on account of sundry creditors and secondly on account of the recoveries of the same amount from the sundry debtors. If it is presumed that there were no advances, the amount was available in cash with the assessee for depositing the same in the bank. Here it is pointed out that the amount received from Roshanlal Deshraj includes an amount of Rs. 1,35,00,000/- by way of a cheque. (Page 8 of PB) The Ld AO has already taxed all the amounts in the .hands of Roshanlal Deshraj & Co. and all the transactions are verifiable from their books. In view of this it is I humbly prayed that the additions made may please be deleted.*

9. Ld. Counsel for the assessee submitted commonly for both the assessment years that assessee was not provided reasonable opportunity of being heard. Ld. A.O have made additions for cash credits even when all confirmation were filed for and many of them were produced but the same seems to have been over looked by both lower authorities. He also contended that double addition have been made. When the Ld. Counsel for the assessee was asked whether the assessee is prepared to go before Ld. A.O once again with necessary details to substantiate to its grounds and to content that the additions were wrongly made then the Ld. Counsel for the assessee raised no objection.

10. Per contra Ld. Departmental Representative vehemently argued supporting orders of both the lower authorities but had no objection if the issues raised in both the appeals are restored to the file of Ld. A.O for afresh adjudication.

11. We have heard rival contentions and perused the records placed before us. The assessee has raised various grounds of appeal for Assessment Year 2007-08 and 2008-09 which majorly challenges addition for unexplained cash credits and unexplained cash deposits. On perusal of records including assessment order,

order of Ld. CIT(A), submissions made by the assessee at various stages shows that the assessee is in the business of trading of poppy straw. In order to apply for tender for “poppy straw” in the State Excise Department he needed the funds during the Financial Year 2006-07 relevant to Assessment Year 2007-08. Assessee took unsecured loans from 192 persons totaling to Rs. 6,27,56,000/-. In the very same year assessee has claimed that out of the total cash credits he advanced loan to M/s Roshanlal Deshraj & Party at Rs. 4,10,47,931/-. During Financial Year 2006-07 assessee deposited cash of Rs. 3,21,81,267/- for which it has claimed that out of the unsecured loan received during the year some amount was given as advance to other parties and when the money was needed the assessee received the cash from the advances so given and deposited in the bank. But in the view of the Ld. A.O the explanation given by the assessee were not sufficient to explain the source of cash credit and cash deposited and both the amounts of Rs. 6,19,49,750/- and Rs. 3,21,81,267/- were added to the income.

12. Moving to Assessment Year 2007-08 where the assessee has challenged the addition of Rs. 4,74,95,921/- made by the Ld. A.O for unexplained cash deposited in the bank account, Ld. Counsel

for the assessee has contended that source of cash deposited is from the cash of Rs. 2,52,50,000/- and cheque of Rs. 1,35,00,000/- received from M/s. Roshanlal Deshraj & Party to whom the assessee had advanced the money in the preceding financial year thereby totalling to Rs. 3,87,50,000/- and the remaining amount is also out of the advance given in the preceding year. On the other hand the Ld. A.O did not accepted the explanation of the assessee, confirmations filed for the unsecured cash credits were also not found sufficient to prove the genuineness and creditworthiness. Ld. A.O also seeked personal attendance of each of the cash creditors. Ld. CIT(A) had confirmed the finding of Ld. A.O without making any further enquiry.

13. Ld. Counsel for the assessee has contended that double additions have been made during both the Assessment Years. For Assessment Year 2007-08 addition for unexplained cash deposited has been made by completely ignoring the fact that the source of cash deposit is from the unsecured loan from 192 parties and therefore the addition for unexplained cash credit for 2007-08 is a double addition. Ld. Counsel for the assessee also submitted that apart from confirmations, few of the cash creditors as required by

the Ld. A.O were also produced for the statements. Some of the additions for Assessment Year 2008-09 are having direct nexus with the loans given to M/s. Roshanlal Deshraj & Party of which confirmation of account have been filed and most of the entries are through account payee cheque but still no cognizance have been given by both the lower authorities. Sufficient opportunity of being heard have also not been provided to the assessee thereby denying the right of natural justice.

14. In these given facts and circumstances of the case, the submissions made by the Ld. Counsel for the assessee and the issue being of double additions and in some case proper opportunity of being heard have not been provided during the course of assessment and appellate proceedings, we in the interest of justice and fair to both the parties are of the considered view that all the issues raised in these appeals for Assessment Year 2007-08 and 2008-09 by the assessee needs to be restored to the file of Ld. A.O for *denovo* adjudication. Ld. A.O is directed to accept all the details and material evidence brought on record by the assessee in support of his contention that double additions should not have been made, telescoping benefit of cash deposits out of the funds

received from cash creditors should be provided and proper opportunity of being heard should also to be given to the assessee to produce the cash creditors if needed by the Ld. A.O so as to prove the genuineness and creditworthiness of the cash creditors. Ld. A.O is also directed to examine the genuineness of loan given to M/s Roshanlal Deshraj & Party and if satisfied with the transactions then necessary relief, if any, available to assessee may be given as per the provisions of Income Tax Act. Needless to mention that proper opportunity of being heard should be provided to the assessee.

15. In the result both the appeals for Assessment Years vide 2007-08 & 2008-09 ITA No.775 & 776/Ind/2016 are hereby allowed for statistical purpose as per the terms indicated above.

The order pronounced in the open Court on 22.05.2020.

Sd/-  
**( KUL BHARAT )**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

नांक /Dated : 22<sup>nd</sup> May, 2020

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,

ITA No.775 & 776/Ind/2016  
Madanlal Gabbaji Banjara

Asstt.Registrar, I.T.A.T., Indore