

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 4220/Mum/2023  
(Assessment Year: 2012-13)**

<b>Parag Motilal Savla</b> B/1/242, Rajawadi Colony, Rajawadi, Ghatkopar (E), Mumbai-400077. <b>PAN : AGLPS7769R</b>	Vs.	<b>ITO, Ward-27(2)(5)</b> Room No. 561, Tower No.6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai-400703.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Shri Subodh Ratnaparkhi, CA  
**Revenue/Respondent by** : Shri R.R. Makwana, JCIT

**Date of Hearing** : 25.04.2024  
**Date of Pronouncement** : 29.04.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal is against the order of the Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 20.10.2023 for the AY 2012-13.

2. The assessee is an individual engaged in the business of professional photography. The assessee filed the return of income for AY 2012-13 on 17.09.2012 declaring a total income of Rs. 9,68,017/-. There was a search and survey action in the case of M/s Evergreen Enterprises and during the course of search, statement from one the partners Shri Nilesh Bharana was recorded under

section 132(4) of the Income Tax Act, 1961 ('the Act'). Based on the material seized and the statement recorded an information was received by the assessee's AO that a cash loan of Rs. 21,50,000/- given by the assessee as detailed below –

Amount	Code		Name	F.Y.	Name	Contact person	PAN	Full Name
450	P/38/P	Given	B.B	05.05.2011	Parag	Parag Savla	AGLPS7769R	Shri Parag Motilal Savla
500	P/38/P	Given	B.B	05.05.2011	Parag	Parag Savla	AGLPS7769R	Shri Parag Motilal Savla
700	P/38/P	Given	Prakash Fabcon	17.10.2011	Parag	Parag Savla	AGLPS7769R	Shri Parag Motilal Savla
500	P/38/P	Given	Prakash Fabcon	17.10.2011	Parag	Parag Savla	AGLPS7769R	Shri Parag Motilal Savla

3. Accordingly, the AO issued a notice under section 148 in response to which the assessee filed the return of income on 09.05.2019 declaring total income of Rs. 9,64,678/-. The AO further issued notice calling on the assessee to file further details pertaining to the impugned loan transactions. The assessee submitted before the AO that no such loan transaction was carried out by him and that nothing in the seized material or the statement recorded links the assessee to the impugned transaction. The assessee also requested the AO to provide opportunity cross examine Shri Nilesh Bharani. The AO however, did not accept the submissions of the assessee and proceeded to make the addition under section 68 of the Act treating the entire loan as unexplained. The relevant findings of the AO in this regard are extracted below:

*“18. The assessee during the course of assessment proceedings, inspite of it being provided with number of opportunities had failed to explain the cash loan transaction to M/s Evergreen Enterprises.*

19. *All the ledgers and entries have been carefully examined, indexed, confronted to the partner/employee and recorded on oath. The codes used by Shri Nilesh Bharani Partner of M/s Evergreen Enterprises for recording the transactions have been properly explained in his statements which clearly point out that Shri Parag Motilal Savla was the contact person who has dealt with Shri Nilesh Bharani, Partner of M/s Evergreen Enterprises, for these cash transactions.*

20. *The genuineness of such unaccounted cash transactions cannot be ignored in the face of conclusive documentary evidences gathered first hand through search action to prove the same. Hence, the entire amount of cash loans of Rs.21,50,000/- are added back to the income as unexplained money u/s 69A of the IT Act, 1961. As the assessee has deliberately concealed the particulars of his income penalty proceedings u/s 271(1)(c) are separately initiated for concealment of income.”*

4. Aggrieved the assessee filed appeal before the CIT(A). The assessee raised a legal contention before the CIT(A), that in the reasons recorded, the AO has stated that the assessee has "borrowed" loan to the tune of Rs.21,50,000 whereas while concluding the assessment under section 147, the addition was made stating that the assessee failed to provide details of loans "given" to Shri Nilesh Bharani. Therefore the assessee contented that the assessment framed under section 147 is bad in law. On merits the assessee submitted that the AO has made the addition without any concrete evidence incriminating the assessee. The CIT(A), did not accept both the contentions of the assessee and upheld the addition made by the assessing officer. The assessee is in appeal before the Tribunal against the order of the CIT(A) raising the following grounds of appeal  
(Please copy grounds of appeal)

5. The assessee also filed an additional ground before us contending that the assessment ought to have been done under section 153C and not under section 147

since the addition is based on alleged incriminating materials found during the course of search proceedings in the case of a third party and that the notice under section 148 does not bear the signature of the AO. However, during the course of hearing the ld AR submitted that the grounds raised regarding the legal issues including the additional ground will not be pressed in case the appeal is allowed in favour of the assessee on merits. Therefore we will first consider the issue on merits contended through **Ground No.3** above.

6. The ld AR submitted that there is nothing incriminating the assessee found in the seized materials to support the allegation that the assessee has given cash loans. In this regard the ld AR drew our attention to the seized materials in page 14 and 15 of paper book containing coded certain entries. The ld AR further submitted that even in the statement recorded from the accountant of M/S. Evergreen Enterprises, there is no mention of assessee's name and what was explained was details of how the entries found in the seized documents need to be decoded. The ld AR in this regard drew our attention to the queries and the replies from the statement recorded as has been reproduced in the assessment order. The ld AR also submitted that the AO has made the entire addition based on the statement recorded during the search with bringing any other evidence to support that the assessee has given the cash to Shri Nilesh Bahrani. The ld AR also argued that the assessee has while filing the response to the notice issued by the AO clearly stated that no such loans are given by the assessee and had requested for cross examining the persons from whom the statements were recorded. The ld AR further argued that the AO has denied any such opportunity to the assessee and has proceeded to make the addition merely based on the statements recorded. Therefore it was submitted that the addition made without any material to substantiate the allegation is not valid and liable to be quashed.

7. The Id DR on the other hand submitted that the AO had valid evidences to prove that the assessee has given cash loans and based on the same the additions have been made. The Id DR further submitted that though assessee's name is not specifically mentioned in the statements recorded, the decoding of entries as explained by the Accountant have been applied to identify that the assessee is also one of the lender of cash loans to Shri Nilesh Bharani. The Id DR also submitted that AO has linked the assessee with the impugned transactions by decoding the entries in the seized materials and therefore the claim that the addition is made without any basis is not correct. Accordingly the Id DR supported the orders of the lower authorities.

8. We heard the parties and perused the material on record. There was a search and seizure operations in M/s. Evergreen Enterprises and during the course of search certain documents were seized and statements were recorded. In the documents seized there were entries in a certain format and in the statement recorded the accountant has explained the way in which the entries were to be read. The AO based on the above information was of the view that the entries as tabulated in the earlier part of this order pertains to the cash loans given by the assessee to Shri Nilesh Bharani and accordingly issued notice reopening the assessment. The assessee submitted before the AO that the cash loans as alleged by the AO do not pertain to the assessee and that the assessee has not entered into any such transactions. The assessee has also requested for cross examining the parties from whom statements were recorded. However the AO has relied on the statements recorded proceeded to make addition towards the alleged cash loans given by the assessee as unexplained under section 69A of the Act. Before the CIT(A), the assessee raised legal issued with regard to the addition and also contended the issue on merits stating that the AO has not brought anything

incriminating the assessee to substantiate the addition. We in this regard notice that the CIT(A) has not given any specific findings regarding the contentions on merits while dismissing the appeal.

9. From the perusal of seized material and the statements recorded, we notice that the accountant in the statements recorded has explained how the entries are to be decoded for understanding what each entry means really. A sample entry has been considered and explained i.e. how to read the alphabets and the number in the entry. The AO based on the said explanation proceeded to interpret the impugned entries as pertaining to the assessee. However we notice from the assessment order that the AO has not brought out any specific finding on how the impugned entries are linked to the assessee and whether any other seized material other than what is shared with the assessee have been used to aid the interpretation. We further notice that other than decoding the entries as pertaining to the assessee the AO has not brought any other material on record to substantiate that the assessee has given the cash loans to Shri Nilesh Bharani. We also notice that the assessee has furnished the audited financial statements for the year ended 31.03.2012 before the AO during assessment proceedings and that the AO has not recorded any adverse findings with regard to the same. From the perusal of the findings of the CIT(A), we notice that the CIT(A) has not gone into the merits of the issue and has merely confirmed the addition relying on AO's findings. In this regard, it is relevant to note here that the coordinate bench while considering the issue of addition made based on similar entries found during the search of M/s Evergreen Enterprises pertaining to another assessee namely Mayur Kanjibhai Shah (ITA No.3243/Mum/2023 dated 31.01.2024) has held that –

*9. Heard the parties and perused the material available on record and given thoughtful consideration to the rival claims of the parties and peculiar facts and*

*circumstances of the case. It is very much clear from the impugned order that the same is an un-reasonable order and passed in cryptic manner, therefore, on this aspect itself, the impugned order is liable to be set aside. However still we want to go to the merits of the case. We observe that the Assessing Officer made the additions mainly on the ground that Shri Nilesh Bharani in his statement recorded under section 132(4) of the Act has admitted that he was in the business of lending / borrowing money in cash (unaccounted and undisclosed business). Further, in the course of search, a diary has been seized wherein inter-alia following entries have been recorded and the Assessee's name is also appearing in the same diary in coded word. For clarity ready reference, we are again reproducing the entries relied upon by the Assessing Officer:-*

- “i) Code 'E/11/N'-*
- ii) Name as per Ledger 'NENSIBHI ELLA'*
- iii) Coded Amount (in '000) – 32500*
- iv) Contact person 'NANCYBHAI –*
- v) F.Y. 2011-12*

*10. It is an admitted fact that the Assessing Officer has not entertained the Assessee's request for cross examination of Shri Nilesh Bharani / M/s Evergreen Enterprises and also it is a fact that Shri Nilesh Bharani subsequently retracted his statement. Therefore, his statement made earlier become doubtful as claimed by the Assessee and cannot be relied as substantive evidence. Even otherwise, we have failed to understand that how the name as mentioned in the said diary, as 'NENSIBHI ELLA' can be attributed to the Assessee's name. Further, how the coded amount of Rs.32,500 can be construed as Rs.3,25,000,00/-. Further, how the Assessee is connected with the said narration of entries written in diary. Further, as per Assessee's claim, the mobile number noted in said diary is even otherwise do not belong to the Assessee and the Assessing Officer also failed to verify the owner of the said number to connect with the Assessee.*

*11. We by giving thoughtful consideration to specific facts and circumstances of the case, are of the considered view, that retracted statement of Shri Nilesh Bharani/ M/s Evergreen Enterprises who otherwise neither named nor specified the role and also not connected the Assessee specifically and the aforesaid facts/entries made in the diary as noted above by us, in fact, is not at all substantive material to make and sustain the addition as done by the authorities below in this case and, therefore, we are inclined to delete the addition. Consequently, the addition under consideration stands deleted.*

10. The facts and circumstances of assessee's case is identical, where the AO has interpreted the alphabets and the figures in the similar manner to hold that the

assessee has given cash loans to Shri Nilesh Bharani. Further in assessee's case nothing has been brought on record by the AO to substantiate the allegation that the assessee has entered into the impugned transactions. In view of the above discussion and considering the facts and circumstances of the present case, we are of the view that the addition made by the AO without bringing any concrete evidence on record incriminating the assessee is not sustainable. Accordingly we hold that the addition of Rs.21,50,000 made by the AO is hereby deleted.

11. Considering that the issue contended has been adjudicated in favour of the assessee based on the merits of the case, the legal contentions raised through main and addition grounds does not warrant separate adjudication.

12. In the result, the appeal is allowed.

*Order pronounced in the open court on 29-04-2024.*

**Sd/-**  
**(ANIKESH BANERJEE)**  
**Judicial Member**  
*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**