

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**  
**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. 1219/Mum/2013  
Assessment Year: 2005-06**

Rita Stephen Pinto J-10 Golden Pebles, Sunder Nar Santacruz (E) Mumbai 400 098 <b>PAN:-AKUPP 3007 E</b>	Vs.	ITO 19(2)(2) Piramal Chamber, Parel Mumbai 400 012
(Appellant)		(Respondent)

Assessee by : Shri A.K. Lal  
Revenue by : Shri Love Kumar

Date of hearing : 17.03.2015  
Date of Order : 25.03.2015

**ORDER**

**PER AMIT SHUKLA, JM:**

This appeal has been filed by the Assessee against order dated 29.11.2012 passed by Ld. CIT(A) Mumbai in relation to the order passed u/s 154 for the A.Y. 2005-06.

2. The brief facts are that the, assessee is an individual running a communication center and Cyber Café. Return of income was filed on 28.03.2006 declaring total income of Rs.1,03,229/- on a gross receipts of Rs.12,44,120/-. The Assessing Officer in the course of the assessment proceedings noted that, the assessee had received unsecured loans of Rs.1,31,000/- and Rs.1,94,000/- from her brother and her sister respectively. The assessee had stated that both of them were NRI and

in service for very long time in U.A.E. Assessing Officer observed that, assessee has failed to produce any evidence to prove the identity, capacity and credit worthiness of the loan creditors. Accordingly, he added the said loan amount credit Rs.3,25,000/- u/s 60A. Against the said assessment order dated 28.12.2007, assessee did not file any appeal before the first appellate authority. Instead the assessee filed a petition for rectification u/s 154 dated 05.02.2008 stating that the said loan has wrongly been added in this year because, said loan was taken from the brother and sister prior to A.Y. 1997-98, which is also reflected in the balance sheet and return of income filed from time to time, right from the A.Y. 1997-98 onwards. The copy of balance sheet return of income from the A.Y. 2003-04 onwards were also filed. It was also stated that during the course of the assessment proceedings loan confirmation was not required by the AO, therefore, there was no occasion to file the same. The assessing officer however rejected the assessee's application on the ground that, there is no mistake apparent on the record within section 154, in the assessment order dated 28.12.2007.

3. Before the Ld.CIT(A), the assessee submitted that, during the course of the assessment proceedings, the assessee had submitted all details of the loan taken from the brother and her sister along with the address however, the assessing officer did not raise further query or called for loan confirmation. In any case, both the loans were taken in much earlier years and were duly reflected in the balance sheet of the earlier years. Therefore, same cannot be added in this year u/s 68. However, the Ld.CIT(A) uphold the action of the AO on the ground that

there is no mistake apparent from record within the meaning of section 154.

4. After hearing both the parties and on perusal of the material placed on record, it is noticed that the assessee was required to furnish the details of unsecured loan, in response, the assessee had stated as under:-

*"Temporary loan from brother Mr. Jerald Lawrence Coutinho who is in service at Abroad, his present address is Post Box No. 46086, Abu Dhabi (U.A.E.) the balance loan payable to him is Rs.1,31,000/- and from sister Mrs. Nancy D'Souza Nee Nancy Lawrence Coutinho who is in service at abroad and her present address is Post Box No. 3740, Accident Unit, Zyed Millitary Hospital Abu Dhabi (U.A.E.) the balance loan payable to her is Rs.1,94,000/-."*

However, no confirmation or other details were filed. The Assessing Officer, thus added the said loan amount under the deeming provisions of section 68. Instead of filing appeal before the first appellate authority, the assessee filed petition for rectification u/s 154, on the ground that loan has wrongly been added in this year as it was an old loan duly reflected in the income tax records of the earlier years as the loan was taken in the year 1997, for the amount aggregating to Rs.3,25,000/-. Section 68 stipulates that any unexplained sum found credited in the books of the assessee for any previous year, then the same may be taxed as income of the assessee for that previous year. Thus, section 68 can only be invoked if the loan has been taken or the sums have been credited in the books in the relevant previous year for which assessment is being made and not the loans taken in the earlier years. From the income tax records, it is evident that this loan is coming forward from last several years and is reflected in the balance sheet of the assessee

filed for the earlier years along with the return of income. All these records are available with the assessing officer. The mistake apparent from record does not mean the assessment order itself but the records which are available with the assessing officer. Though the assessee could not furnish the confirmation of the loan and other evidences but such a loan could not have been added in the A.Y. 2005-06 as the same was taken in the earlier years and is being carried forward. In this year it is appearing balance of the current year. Thus, legally such an addition could not sustained in this year and therefore addition made by AO u/s 68 is a legal mistake, which can be rectified within the ambit and provisions of section 154. Accordingly the grounds raised by the assessee is treated as allowed.

5. In the result, the appeal filed by the **Assessee is treated as allowed.**

**Order pronounced in the open court on this 25<sup>th</sup> day of March, 2015.**

**Sd/-  
(B. R. BASKARAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

Mumbai, Dated: 25.03.2015  
\*Srivastava

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT(A) Concerned, Mumbai  
The DR "D" Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.