

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER  
AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.2262/Mum/2014  
(Assessment Year 2009-10)

The ACIT 21(1),  
6<sup>th</sup> Floor, C-10, Pratyaksh Kar Bhavan,  
Bandra Kurla Complex, Bandra (E),  
Mumbai 40051

..... Appellant

Vs.

M/s. Aarhat Investments,  
402, Asha Niketan, 45, Baptista Road,  
Vile Parle(W), Mumbai 400 056  
PAN:AALFA 4557F

.... Respondent

ITA No.2013/Mum/2014  
(Assessment Year 2009-10)

M/s. Aarhat Investments,  
402, Asha Niketan, 45, Baptista Road,  
Vile Parle(W), Mumbai 400 056  
PAN:AALFA 4557F

.... Appellant

Vs.

The ACIT 21(1),  
6<sup>th</sup> Floor, C-10, Pratyaksh Kar Bhavan,  
Bandra Kurla Complex, Bandra (E),  
Mumbai 40051

..... Respondent

Revenue by : Shri Mohhamed Rizwan  
Assessee by : Shri Vijay Mehta

Date of hearing : 21 /10/2016  
Date of pronouncement : 30/11/2016

**ORDER**

PER G.S.PANNU,A.M:

These are cross-appeals filed by the Revenue and the assessee against the order of CIT(A)-32, Mumbai dated 21/01/2014, pertaining to the Assessment Year 2009-10, which in turn, has arisen from the order passed by the Assessing Officer dated 30/12/2011 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In both the appeals, the substantive dispute arises from an addition of Rs.18,57,68,100/- made by the Assessing Officer as unexplained cash credits under section 68 of the Act. Notably, the Assessing Officer treated the credits in the account of three parties as unexplained namely, M/s. Wall Street Capital Markets P. Ltd. (hereinafter referred in short M/s.Wall Street) – Rs.7,00,00,000/- crores, M/s. Ganesh Barter P. Ltd. ( in short M/s. Ganesh) – Rs.5,07,68,100/- and M/s. Novel Finvest P. Ltd. ( in short M/s. Novel) – Rs.6,50,00,000/-, totalling to Rs.18,57,68,100/-. The CIT(A) has deleted the addition so far as it relate to M/s. Wall Street and M/s. Novel amounting to Rs.13,50,00,000/- and sustained the addition of Rs. 5,07,68,100/- pertaining to M/s. Ganesh. As a consequence, Revenue is in appeal challenging the action of the CIT(A) in deleting the disallowance of Rs.13,50,00,000/-, whereas assessee in its cross-appeal has assailed the decision of the CIT(A) in sustaining the disallowance to the extent of Rs.5,07,68,100/-. Since the cross-disputes arise from the common action of the Assessing Officer in invoking section 68 of the Act, they are being taken-up together.

3. In brief, the relevant facts are that the assessee before us is a partnership firm, which is, inter-alia, engaged in the business of trading in shares, F&O activities, etc. For the assessment year under consideration, it filed a return of income declaring a loss of Rs.22,39,492/-, which was subject to a scrutiny assessment. In the course of assessment proceedings, the Assessing Officer noted that assessee has shown certain unsecured loans from four concerns, as per details in para 8.1 of the assessment order. Firstly, in relation to M/s. Wall Street, the Assessing Officer has noted that a sum of Rs.7,00,00,000/- was received and repaid in the instant year itself and the closing balance was nil. Secondly, in case of M/s. Novel, assessee had received a sum of Rs.6,50,00,000/-, which was also repaid in the instant year itself and the closing balance outstanding was nil. Thirdly, in the case of M/s. Ganesh, assessee had received a sum of Rs.5,07,68,100/- during the year, which was outstanding as at the close of the year. Fourthly, in relation to one M/s. Asian Finance Services, the Assessing Officer noted that there was an opening balance of Rs.13,50,00,000/-, which was repaid in the instant year and the balance at the end of the year was nil. Considering that the aforesaid amounts were received by the assessee without charging of any interest, the Assessing Officer called for various details. In response, the assessee furnished various details viz. names and addresses of the parties, their PAN, etc. and also explained that the transactions with the said parties were not in the nature of any loans but were advances received through banking channels for making investments in Government bonds/securities/mutual funds. The assessee also explained that in the case of M/s. Wall Street, M/s. Novel and M/s. Asian Finance Services, the amounts were repaid as the right kind of investments could not be identified. The assessment order also reveals that in the course

of the verification exercise, the Assessing Officer called for information by issuing notices under section 133(6) of the Act to the creditors and also issued commission under section 131(1)(d) of the Act to his counterpart authorities at Kolkatta, who were having jurisdiction over the respective creditors. Notably, apart from referring to such proceedings and the receipt of material, the Assessing Officer has not made any specific adverse comment as to the denial of transaction by any of the parties. Be that as it may, the Assessing Officer held that the transaction of loans received to the extent of Rs.18,57,68,100/- from three concerns was unexplained within the meaning of section 68 of the Act. The Assessing Officer did not doubt the identity of the creditors but was not satisfied with the capacity of the creditors to advance money to the assessee and he has also doubted the genuineness of the transactions. In coming to such conclusion, Assessing Officer noted that the advances were made free of interest and that the income for year returned by the creditors was meagre and that the claim of the assessee that the transactions were not in the nature of loans but in the nature of advances for investments was not acceptable as it was an afterthought. In so far as the afore-stated three concerns are concerned, the Assessing Officer treated the credits as unexplained and also held that *'assessee had introduced its own unaccounted money in the books of account in the garb of loans/advances'*. The assessee carried the aforesaid addition in appeal before the CIT(A) by challenging it on facts and in law. From a perusal of the order of the CIT(A), it transpires that even during the pendency of appeal before CIT(A), the Assessing Officer caused further enquires to be made with respect to the aforesaid parties through Investigation Wing of the Department at Kolkatta by issuance of commissions under section 131(1)(d) of the Act dated 04/07/2012

to the DDIT(Inv) Unit 1(3), Kolkatta. It is emerging from record that the report of the Investigation Wing was forwarded by the Assessing Officer to the CIT(A), which has also been considered by the CIT(A) to adjudicate the controversy, of course after allowing the assessee an opportunity of furnishing its comments on the report of the Investigation Wing of the Department at Kolkatta. With respect to the credits in the name of M/s. Wall Street and M/s. Novel, the CIT(A) was satisfied that the assessee has discharged the onus cast upon it under section 68 of the Act by establishing the identity and creditworthiness of the creditors as well as the genuineness of the transactions, and thus deleted the addition to that extent. In so far as the credit appearing in the name M/s. Ganesh is concerned, the CIT(A) was satisfied with the identity and creditworthiness of the creditor but was not satisfied with the genuineness of the transaction and, therefore, he has upheld the addition under section 68 of the Act.

4. Against the aforesaid background, both the parties have made their respective submissions. The Ld. Departmental Representative has primarily reiterated the arguments of the Assessing Officer and pointed out that the advances were given without interest and that the explanation of the assessee that transactions were in the nature of advance for investments in mutual funds was only an afterthought because amounts received in the case of M/s. Wall Street and M/s. Novel were not used for the stated purpose of investment in mutual funds, etc. The Ld. Departmental Representative has also pointed out that all the transactions in question have been undertaken by the three creditors only on receipt of funds in their respective bank accounts on the very same day and otherwise the balance in such bank accounts was meagre.

5. On the other hand, in so far as the Departmental appeal is concerned, Ld. Representative for the assessee pointed out that the Assessing Officer has made the addition on mere suspicion although none of the enquiries revealed anything adverse, qua the nature of the amounts received from either M/s. Wall Street or M/s. Novel. In this context, our attention has been drawn to the specific findings recorded by the CIT(A) in sub-paras (xii) to (xxiv) of para 5.7 of his order, which categorically brings out that no addition was maintainable in terms of section 68 of the Act.

6. In so far as the appeal of the Revenue is concerned, the same relates to the credits of Rs.7,00,00,000/- and Rs.6,50,00,000/- appearing in the accounts of M/s. Wall Street and M/s. Novel. In both the cases, the amounts have been received and repaid during the year itself. It is also not in dispute that the transactions are through banking channels and both the concerns are income tax assessees. In any case, so far as the identity of these concerns are concerned there is no dispute. Section 68 of the Act casts an onus on the assessee to explain the nature and source of the credit appearing in the books of account. It is a trite law that section 68 of the Act is a rule of evidence and the onus cast on the assessee can be said to be discharged if the assessee is able to establish the identity and creditworthiness of the creditors and the genuineness of the transaction. In the present case, the Assessing Officer has made independent enquiries not only by issuing notice under section 133(6) of the Act to the creditors, but also by issuing commissions of enquiry under section 131(1)(d) of the Act to the Investigation Wing at Kolkatta and the jurisdictional assessing authorities of the creditors in Kolkatta. In the Paper Book filed before us, we find copies of the report received from the Kolkatta

assessing authorities in this regard including the statement of the directors of the creditors recorded in the course of the enquiries. A perusal of the said material clearly points out that the explanation rendered by the assessee with regard to the nature of the transactions has not been disputed by the creditors. As per the assessee, transactions were not in the nature of loans per-se but they were in the nature of advances received for investments in mutual funds, etc. The charge made by the Assessing Officer that the said explanation was only an afterthought remains a bald assertion without any corroborative evidence with the Assessing Officer. Even with regard to the capacity of the said creditors to advance such sums, the CIT(A) in sub-para (xiii) of para 5.7 has tabulated figures of Share capital, Turnover and Reserves and surplus of such concerns appearing in the Balance sheet for the period ending 31/03/2009. After considering the figures of Reserve & surplus, Share capital, etc. the CIT(A) came to conclude that there was a bona-fide availability of funds in the bank accounts of the creditors, out of which monies have been advanced to the assessee. In our considered opinion, the reasonability and plausibility of the inference drawn by the CIT(A) cannot be doubted. For instance, in the case of M/s. Wall Street, where assessee had received a sum of Rs.7,00,00,000/- , the charge of the Assessing Officer is that the said concern has not declared any income in its return of income. However, the CIT(A) took note of the fact that the said concern has share holder funds of Rs.2,62,08,000/-, Reserve and Surplus at the beginning of the year at Rs.10,53,53,807/- and Rs.10,56,23,978/- at the close of the year and, therefore, he held that there was creditworthiness available to advance a sum of Rs.7,00,00,000/- to the assessee. In fact, the CIT(A) also took note of the source of the funds out of which advances were made to the assessee

which according to him were raised in the routine course of the activities of the creditors. We find that the Assessing Officer has raised a point that amounts have been advanced to the assessee just after receipt of funds by the creditors in their bank accounts. In this context, the Ld. Representative for the assessee made a specific plea that there was no cash deposits in the bank account of the creditors before the amount was advanced to the assessee. The aforesaid plea of the assessee is not controverted by the Revenue and, in any case, the same is also emerging from the material on record. The CIT(A) has taken note of the fact that M/s. Wall Street is a NBFC registered with RBI and the monies advanced to the assessee were out of receipts on account of refund of loans/advances, from their own funds, sale proceeds received from sale of shares, etc. In our considered opinion, considering the material available on record, the CIT(A) made no mistake in setting-aside the action of the Assessing Officer in invoking section 68 of the Act because the Assessing Officer has merely sought to disbelieve the stand of the assessee without any clinching adverse material.

6.1 Now in so far as the credit of Rs.6,50,00,000/- appearing in the account of M/s. Novel is concerned, herein also the finding of the CIT(A) are *pari-materia* to those in the case of M/s. Wall Street, though the figures of Share capital, Reserve and Surplus and Turnover ,etc. are different. Be that as it may, in our view, the discussion in the aforesaid paras made by us in relation to the credit appearing in the case of M/s. Wall Street is equally applicable in the case of M/s. Novel also and, therefore, on this aspect also we affirm the order of the CIT(A). Therefore, in so far as the appeal of the Revenue relating to the credits in the account of M/s.Wall Street and M/s.Novel is concerned,

we concur with the findings of the CIT(A) having regard to the material and evidence on record and accordingly Revenue fails in its appeal.

7. Now, we may take up the appeal of the assessee in ITA No.2013/Mum/2014, wherein the credit balance outstanding as on 31/03/2009 in the case of M/s. Ganesh has been treated to be an unexplained cash credit within the meaning of section 68 of the Act by the Assessing Officer as well as by the CIT(A). In so far as the Assessing Officer was concerned, he accepted the identity of the creditor but was not satisfied with the creditworthiness of the creditor and the genuineness of the transaction. The CIT(A), on the other hand, not only accepted the identity but also accepted the credit worthiness of the creditor to advance such money to the assessee but was not satisfied with the genuineness of the transaction and hence he sustained the ultimate decision of the Assessing Officer to invoke section 68 of the Act. In so far as the finding of the CIT(A) with regard to the identity and capacity of the creditor M/s. Ganesh is concerned, Revenue is not in appeal and, therefore, the only issue before us is as to whether the transaction can be considered as genuine so far as requirements of section 68 of the Act are concerned.

7.1 The relevant findings of the CIT(A) in this regard are contained in sub-para (xxv) to (xxxii) of para 5.7 of his order. The CIT(A) has noted the explanation of the assessee that the money was given to the assessee for investment in bonds and mutual funds by the creditor. The Assessing Officer has noted that subsequent to the receipt of such funds from the creditor, the amount was invested by the assessee in its own name in mutual funds, short term income bonds, etc. The CIT(A) also notes that during the subsequent

period it has not been shown whether any profit or loss in respect of investments made by using the funds received from M/s. Ganesh was ultimately passed on to the creditor or not. For this reason, the CIT(A) has doubted the genuineness of the transaction, thereby upholding the addition made by the Assessing Officer u/s. 68 of the Act.

8. In this regard, the Ld. Representative for the assessee has made varied submissions. Firstly, it was submitted that the CIT(A) having accepted the bona-fides of the advances received from M/s. Wall Street and M/s. Novel ought not to have rejected the bona-fides of the advance received from M/s. Ganesh because the enquiries and the evidences gathered in respect of all the three parties were similar. Secondly, it is pointed out that in all the enquiries made by the Revenue, the results were coherent and consistent with the explanations rendered by the assessee and, therefore, the CIT(A) ought not to have doubted the genuineness of the transactions with M/s. Ganesh in isolation. With regard to M/s. Ganesh, the Ld. Representative for the assessee pointed out that the said concern had furnished its books of account, details of payments and receipts, return of income, balance sheet and profits and loss account, PAN and also confirmation of the transactions with the assessee. It was also pointed out that in response to the commission issued by the Assessing Officer to his counterpart at Kolkatta u/s. 131(1)(d) of the Act, the statement of the director of M/s. Ganesh was recorded, who has also confirmed the nature of transactions. In this context, reference has been made to pages 2 to 30 of the Paper Book, where a copy of the entire proceedings u/s. 131(1)(d) of the Act have been placed. It has been pointed out, with reference to the statement of the Director, that the nature of the transaction being advances made to the assessee out of business

consideration stood corroborated. Ld. Representative for the assessee vehemently argued that not only in the course of assessment proceedings, but also in the course of appellate proceedings, adequate enquiries were made by the Assessing Officer but no inconsistencies were found with the explanations furnished by the assessee and, therefore, the transactions have been unfairly doubted by the CIT(A).

9. On the other hand, Ld. Departmental Representative appearing for the Revenue has reiterated the stand of the CIT(A) in holding that the genuineness of the purpose of advancing money by M/s. Ganesh to assessee could not be established.

10. We have considered the rival submissions. So far as the issue of credit of Rs.5,07,68,100/- appearing in the account of M/s. Ganesh is concerned, the only point of dispute before us is as to whether such transaction is genuine, qua the requirements of section 68 of the Act. The CIT(A) has doubted the genuineness for the reason that the assessee had made use of the funds received from M/s. Ganesh in making investment in bonds, etc. in its own name and not in the name of the creditor and that there is nothing to suggest that any profit or loss on such investments have been passed on to the creditor. In our considered opinion, the approach of the CIT(A) in dissecting the transaction and holding it to be ingenuine is quite straight jacketed and myopic. The CIT(A) impliedly suggests that a transaction is to be held as ingenuine, if the money is not returned back when the purpose for which it was given was not achieved. In our considered opinion, the aforesaid approach of the CIT(A) would give weightage to suspicion than the evidence available in order to evaluate the genuineness of a transaction. It is quite well

understood in the day-to-day business environment that an advance given to a businessman for the purpose of making investment in shares, etc. may not yield expected results because of unforeseen circumstances, but such an eventuality by itself, would not enable the Revenue to treat the related amount as an unexplained cash credit within the meaning of section 68 of the Act. More importantly, the genuineness of the transaction has to be evaluated at the time when the transaction was carried out. We may hasten to add here that we are not professing that the post-transaction events are not relevant to evaluate the genuineness but what we are only trying to emphasize is that the imponderables of the business cannot be the sole basis to defeat the genuineness of a transaction, which the CIT(A) has sought to do in the present case. Therefore, considering the entirety of circumstances and the material on record, especially the fact that the explanations rendered by the assessee have not been found to be false, we find no reason for the CIT(A) to uphold the addition u/s. 68 of the Act in relation to the credit of Rs.5,07,68,100/- appearing in the name of M/s. Ganesh. Thus, on this aspect also assessee succeeds.

10.1 Before concluding, we may also refer to an observation made by the Assessing Officer in para 8.14 of his order whereby he has observed that “ *the assessee has introduced its own unaccounted money in its books of account in the garb of loans/advances*” Though the said charge has made by the Assessing Officer but we find that neither in the orders of the authorities below and nor in the result of enquiries conducted by the Revenue, there is any material to support the aforesaid charge made by the Assessing Officer while invoking section 68 of the Act, qua the three creditors in question. In any

case, we do not find any necessity to dwell further on this aspect in view of our earlier discussion.

11. Resultantly, whereas the appeal of the Revenue is dismissed, that of the assessee is allowed.

Order pronounced in the open court on 30/11/2016

Sd/-  
( RAM LAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(G.S. PANNU)  
ACCOCUNTANT MEMBER

Mumbai, Dated /11/2016

Vm, Sr. PS

**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,

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