

IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 1236/Mum/2017 (Assessment Year 2010-11)

Shri Naresh Hiran C-103, Vastu Park Evershine Nagar Malad West Mumbai-400 064. PAN : ABJPH8838H (Appellant)	Vs.	ITO 30(2)(4) C-13, Room No. 609 Bandra Kurla Compex Bandra East Mumbai-400 051. (Respondent)
---	-----	--

Assessee by	Shri Nishit Gandhi
Department by	Ms. Pooja Swaroop
Date of Hearing	28.02.2018
Date of Pronouncement	20.04.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 20.12.2016 passed by the learned CIT(A)-41, Mumbai and it relates to A.Y. 2010-11. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of ₹ 25 lakhs made u/s. 68 of the Act and also in confirming the disallowance of interest paid on above said loan.

2. The Assessing Officer received information from DGIT(Inv), Mumbai that search and seizure action u/s. 132 of the Act was carried out in the case of Bhanwarlal Jain Group concern on 3.10.2013, wherein it was found that Mr. Bhanwarlal Jain and his son Mr. Rajesh Jain have floated various concerns and have provided accommodation entries in the form of bogus unsecured loan, bogus capital gains etc. The Assessing Officer noticed that the assessee has taken loan of ₹ 25 lakhs from a concern M/s. Rose Impex, which belonged to Mr. Bhanwarlal Jain group. Accordingly, the Assessing Officer reopened the assessment of the year under consideration by issuing notice u/s. 148 of the Act. The Assessing Officer also noticed that Mr. Bhanwarlal Jain has admitted in the statement taken from him u/s. 132(4) of the Act that he did not carry on

any genuine business activity. It was also noticed that the employees of Mr. Bhanwarlal Jain have also accepted and admitted that they are merely dummy director/partner/proprietor of various concerns.

3. In the reopened assessment, the Assessing Officer asked the assessee to prove the loan taken from Rose Impex. In response thereto, the assessee filed its submissions on 26.11.2015 and furnished copies of bank statement showing loan entries, confirmation from the party Rose Impex along with balance sheet, ITR, computation of income, profit and loss account and ledger account of Rose Impex. Subsequently, the Assessing Officer asked the assessee to produce proprietor/partner of Rose Impex but the assessee failed to produce them. Accordingly, the Assessing Officer by placing reliance on the statement given by Mr. Bhanwarlal Jain, held that the assessee has failed to prove genuineness of loan of ₹ 25 lakhs and accordingly added the same u/s. 68 of the Act. The assessee had paid interest of ₹ 22,192/- on the above said loan and the Assessing Officer disallowed the same also. The learned CIT(A) also confirmed the addition made by the Assessing Officer and hence the assessee has filed this appeal before us.

4. Learned AR submitted that the Assessing Officer has mainly placed reliance on the statement given by Mr. Bhanwarlal Jain, but Mr. Bhanwarlal Jain has already retracted his statement and hence the Assessing Officer could not have taken support of the statement given by Mr. Bhanwarlal Jain. The Learned AR further submitted that the assessee is required to discharge initial onus placed upon it u/s. 68 of the Act i.e. the assessee is required to prove three main ingredients viz., identity of creditor, creditworthiness of creditor and genuineness of the transaction. He submitted that the assessee has furnished confirmation of loan obtained from Rose Impex, PAN of Rose Impex which proves the identity of creditor. The assessee has also furnished bank statement of creditor as well as assessee in order to show that the transactions were carried out through banking channels. From the bank statement of Rose Impex, it can be noticed that there was no cash deposit before issuing cheques

to the assessee. Accordingly, genuineness of the transaction was also proved by the assessee. He further submitted that the assessee has furnished financial statement of Rose Impex, which shows that the Rose Impex had sufficient sources to lend impugned amount of ₹ 25 lakhs to the assessee. Besides that, the assessee has also furnished copies of return of income filed by the assessee. Accordingly, he submitted that the creditworthiness of creditor has also been proved by the assessee. The Learned AR further submitted that the assessee has repaid the above said loan of ₹ 25 lakhs on 25.3.2013 through banking channel and the same confirms the fact that the loan was genuine.

5. Learned AR further submitted that the Assessing Officer has failed to show that the documents furnished by the assessee are not reliable. Accordingly, learned AR submitted that the Assessing Officer has failed to discharge burden of prove shifted on his shoulder. Accordingly, he submitted that the learned CIT(A) was not justified in confirming the addition of ₹ 25 lakhs and also confirmed the disallowance of interest expenditure. Learned AR placed reliance on the decision rendered by the coordinate bench of Mumbai in the case of Reliance Corporation (ITA Nos. 1069 to 1071/Mum/2017 dated 12.4.2017) and decision rendered in the case of M/s. Komal Agrotech P. Ltd. (ITA No. 437/Hyd/2016 dated 25.11.2016) and other case laws.

6. On the contrary, learned DR submitted that the employees of Mr. Bhanwarlal Jain have not retracted the statement given by them. He submitted that one of the employees Mr. Lunkaran Parasmal Kothari has explained the modus operandi as to how cash is received against accommodation entries given by way of unsecured loans. He submitted that the learned CIT(A) has pointed that the huge fund have been transferred in the bank account of Rose Impex before giving loan to the assessee. Further it was noticed that lender did not have own funds for giving loans to the assessee. The Learned DR placed reliance on the decision rendered by Mumbai Bench of ITAT in the case of Shri Suresh L. Satyani (ITA No. 3452/Mum/2016 dated 25.4.2017), wherein

addition made on account of bogus purchase made from Mr. Bhanwarlal Jain has been confirmed. Accordingly, learned DR submitted that the order passed by the learned CIT(A) should be upheld.

7. We have heard the rival contentions, and perused the record. The Assessing Officer has made impugned addition u/s. 68 of the Act on the ground that loan of ₹ 25 lakhs taken from Rose Impex was bogus since Rose Impex belonged to Mr. Bhanwarlal Jain group and Mr. Bhanwarlal Jain has accepted that his group was providing only accommodation entries. On the contrary, we noticed that the assessee has furnished all documents necessary to discharge burden of prove placed upon it u/s. 68 of the Act. It is well settled proposition of law that the assessee has to prove three main ingredients in order to discharge burden of proof placed upon him u/s. 68 of the Act i.e., the assessee has to prove the identity of creditor, creditworthiness of the creditor and genuineness of the transactions. In the instant case, the assessee has furnished confirmation obtained from Rose Impex, which contained PAN and address of the creditor. The assessee has also furnished copies of return of income filed by the creditor. These documents prove the identity of creditor. The assessee has also furnished bank account of Rose Impex and also its own bank account in order to show that the loan transaction has been carried out through banking channel. Though, the learned CIT(A) has observed that there was huge transfer of fund before giving loan to the assessee, perusal of the bank account of Rose Impex would show that the funds have been transferred were through banking channels only and not by way of depositing cash. The assessee has also furnished bank statement to show that the above said loans have been repaid on 25.3.2013. Since transactions of taking loan and repayment of loan have taken place through banking channel, in our view, the genuineness of transaction also stands proved. The assessee has furnished financial statement of Rose Impex. Perusal of the balance sheet would show that the loan of ₹ 25 lakhs given to the assessee is duly reflected in the balance sheet of the assessee. Further, it can be noticed that Rose Impex has taken loans from various persons, which formed source for giving loan to the

assessee. Hence, it cannot be said the Rose Impex was not having funds for giving loan to the assessee, meaning thereby, creditworthiness of the creditor also stands proved. Hence, there is merit in the contention of the learned AR that the assessee has discharged primary onus placed upon it u/s. 68 of the Act. The Hon'ble Gujarat High Court has held in the case of Sachital Communications (2014) 227 Taxman 219, that if identity of creditor and capacity of the creditor is proved and the transactions have been carried out through banking channel, then no addition could be made on account of unsecured loan. Identical view was expressed by Hon'ble Gujarat High Court in the case of Patel Ramniklal Hirji (2004) 222 Taxamn 15.

8. We noticed that the Assessing Officer did not examine various documents furnished by the assessee and did not show that the said documents are not reliable. Instead the Assessing Officer has totally placed reliance on the statement given by Mr. Bhanwarlal Jain, which is claimed to have been retracted. Since the addition has been made u/s. 68 of the Act and since we have noticed that the assessee has discharged burden of proof placed upon its shoulders u/s. 68 of the Act, we are of the view that the learned CIT(A) was not justified in confirming the addition by simply placing reliance on the statement given by Mr. Bhanwarlal Jain. The various documents furnished by the assessee, in fact, militate against the statement given by Shri Bhanwarlal Jain. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the addition of ₹ 25 lakhs and also disallowance of interest of ₹ 22,192/-

9. The assessee has also challenged the validity of reopening of assessment. Since we have decided the issues urged on their merits in favour of the assessee, we do not find it necessary to adjudicate the legal ground.

10. In the result, appeal filed by the assessee is treated as allowed.

Order has been pronounced in the Court on 20.04.2018.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

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

Mumbai; Dated : 20/04/2018

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,

Senior Private Secretary  
ITAT, Mumbai

PS