

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA NO.6729/MUM/2016 (A.Y: 2012-13)

D.C.I.T Circle – 5(2)(2)
Room No. 571, 5th Floor
Aayakar Bhavan, M.K. Road,
Mumbai-400 020

v. M/s. Manish Flour Mills Pvt. Ltd.,
310, Panchratna, Opera House,
Mumbai – 400 004

PAN: AAFCM 2674 N

(Appellant)

(Respondent)

Assessee by	:	Shri Suchek Anchaliya
Department by	:	Shri Chowdhary Arunkumar Singh
Date of Hearing	:	06.09.2018
Date of Pronouncement	:	24.10.2018

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-10, Mumbai dated 26.08.2016 for the Assessment Year 2012-13.
2. The only issue in the appeal of the Revenue is Ld.CIT(A) erred in deleting the addition of ₹.1.40 Crores on account of unexplained credit u/s. 68 of the Act and consequently interest expenses of ₹.8,32,607/-.

3. Briefly stated the facts are that, the Assessing Officer noticed that assessee during the year under consideration received unsecured loan of ₹.40 lakhs from M/s. Meenaxi Diamonds Pvt. Ltd., ₹.25 lakhs from M/s. Roshan Gems Pvt. Ltd., and ₹.75 lakhs from M/s. Abhiman Gems Pvt. Ltd. A.O observed that there is a search and seizure operation in the case of Shri Bhanwarlal Jain Group by the Investigation wing of the Department and in the course of proceedings it was established that these persons are in the business of providing accommodation entries to various beneficiary companies. He observed that M/s. Meenaxi Diamonds Pvt. Ltd., M/s. Roshan Gems Pvt. Ltd, and M/s. Abhiman Gems Pvt. Ltd., have provided accommodation entries as these companies were managed by the Shri Bhanwarlal Jain Group. In order to verify the genuineness of the transactions Assessing Officer issued notices u/s.133(6) of the Act to the above parties and all the companies responded to the notices and filed necessary information regarding transactions made with the assessee. However, the Assessing Officer relying on the statements of Shri Bhanwarlal Jain Group concluded that the companies have provided only accommodation bills to the assessee and therefore the assessee has not proved the nature and source of the transactions. Accordingly, he made addition u/s. 68 of the Act treating them as unexplained credits. On appeal Ld.CIT(A) deleted the addition based on the submissions and information/

evidences furnished by the assessee against which the Revenue is in appeal before us.

4. Ld. DR strongly supported the orders of the Assessing Officer and submitted that transactions between the assessee and the companies operated by Shri Bhanwarlal Jain Group are all paper transactions and the transactions are non-genuine. In the statements recorded by the Investigation Department the persons of Shri Bhanwarlal Jain Group have categorically stated that they have provided only accommodation entries through various companies and these companies where the assessee has made transactions are all the companies which are run by Shri Bhanwarlal Jain Group and therefore the Assessing Officer has rightly treated the transaction as only accommodation entries and rightly made addition u/s.68 of the Act.

5. Ld. Counsel for the assessee strongly placed reliance on the orders of the Ld.CIT(A). He also submitted that the parties have responded to the notice issued u/s.133(6) of the Act they have filed the information called for, the assessee himself produced confirmations by the parties, assessee furnished income tax returns of the companies, bank statements of the parties showing the loan transactions, audited balance sheets of the creditors along with the schedule wherein the credit in the name of the assessee is outstanding in their books and the replies given

by the creditors to the notice issued by the Assessing Officer u/s. 133(6) of the Act confirming the transactions with the assessee, Payment of interest to creditors after subjecting to TDS. Therefore, it was submitted that all these evidences goes to show that the transactions are genuine. The identify and credit worthiness of the creditors are proved and therefore simply based on the statements given by the Shri Bhanwarlal Jain Group addition cannot be made treating them as mere accommodation entries. It was also further submitted that the statements given by Shri Bhanwarlal Jain Group have subsequently retracted by themselves. It was further submitted before us that the Assessing Officer has not provided the cross examination of the persons who gave statements. It was also submitted that in the statements given by Shri Bhanwarlal Jain Group they have never mentioned assessee's name as the beneficiary of the accommodation bills. Therefore, the Learned Counsel for the assessee submitted that the transactions are genuine, the identity and credit worthiness of the creditors have been proved and therefore no addition is warranted u/s. 68 of the Act.

6. Ld. Counsel for the assessee placed reliance on the following decisions in support of his submissions: -

- a. *ACIT vs. Sumit J. Jain (ITA No. 145/M/17)*
- b. *ACIT vs. Shri Vashu Bhagnani (ITA.No.5648/M/16)*
- c. *ITO vs. Gujarat Construction (ITA No. 7040/M/16)*
- d. *DCIT vs. M/s YRV International (ITA No. 1414/M/17)*
- e. *ACIT vs Shri Dilip Chimanlal Gandhi (ITA No. 7079/M/16)*

- f. *ACIT vs Rajesh M. Shah HUF (ITA No. 7079/M/16)*
- g. *DCIT vs Meridian Chem Bond P. Ltd (ITA No. 7385/M/16)*
- h. *M/s Reliance Corporation vs. ITO (ITA No. 1069 to 1071/M/17)*

7. We have heard the rival submissions, perused the orders of the authorities below. Assessing Officer made addition by placing reliance merely on the statements of Shri Bhanwarlal Jain Group which were recorded u/s. 132(4) of the Act. No independent enquiry was carried out by the Assessing Officer, he has not brought any corroborative evidence to substantiate that the transactions are non-genuine. Assessee provided various evidences to establish that the transactions are genuine, creditors are identifiable and credit worthiness is proved. Following information is furnished by the assessee.:

- (1) *Confirmation of A/c. by the parties.*
- (2) *Income tax returns of the parties for A.Y.2012-13.*
- (3) *Bank Statements of the parties showing the loan transactions.*
- (4) *Audited Balance sheet & P & L A/c of the creditors along with the schedule wherein credit in the name of the assessee is outstanding in their books.*
- (5) *Reply given by the parties to the notice issued by the AO u/s 133(6) confirming the transaction with the assessee.*
- (6) *Payment of interest to creditors after subjecting the amount to IDS.*

8. By providing all this information to the Assessing Officer the assessee has discharged the initial onus of proving genuineness of the transactions u/s. 68 of the Act. Even the creditors have responded to the notices issued u/s. 133(6) of the Act and confirmed the genuineness of the transactions with the assessee, therefore once the initial onus is discharged by the assessee the burden shifts to the Revenue to disprove the claim of the assessee. We notice that all the loans were taken through

banking channels and the repayments for the same was also made through banking channels. The loans were repaid after paying interest and deducting TDS. The Assessing Officer ignored the documentary evidences submitted by the assessee and has exclusively relied on statements of third party in making the addition. In spite of request by the assessee the Assessing Officer did not provide any cross-examination of the parties who have made the submissions. All these aspects have been considered by the Ld.CIT(A) and deleted the addition observing as under:

“4.2.2. In the instant case, however, as seen from the details filed before the AO, a set of which were also filed before me, I do not find any inconsistency or incoherence in the receipt of loans from the parties. Firstly, as regards the transaction, the same has routed through the banking channels and the source cannot be doubted. Secondly, as was held in several cases that whatever maybe the strength of presumption it cannot replace evidence. Even though, the transaction is from a tainted group, the AO has not gathered any additional/independent evidence to show that the transaction with the appellant company was sham, fictitious or artificial except believing the statements given by the entry operators. He has failed to gather evidence to show that the unaccounted cash of the appellant had changed hands subsequently replacing the cheque payments. Thirdly, he has also not answered several valid points raised by the appellant nor proved how the details like PAN, the IT returns, confirmation letters, bank statements of the creditors, audited balance sheet of the creditors cannot be taken note of. Fourthly, the ITAT Mumbai in the case of Anant Shelters P Ltd. (2012) 20 taxmann.com 153 has laid down certain principles with regard to section 68 which the AO is bound to follow. They are reproduced as under(para-7)-

(i) Section 68 can be invoked when following three conditions are satisfied

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(a) when there is credit of amounts in the books maintained by the assessee (b) such credit has to be a sum of money during the previous year (c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

(ii) The expression the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on

the record. The opinion of the AO is required to be formed objectively with reference to the material on record file. Once the explanation of the assessee is found unbelievable or false the AO is not required to bring positive evidence on record to treat amount in question as income of the assessee. While considering the explanation of the assessee, the AO has to act reasonably-application of mind is the sine qua non for forming the opinion.

(iii) Phrase appearing in the section - nature and sources of such credits - should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a causal manner. Assessee cannot be asked to prove impossible. Explanation about 'source of source' or 'origins of the origin' cannot and should not be called for while making inquiry under section.

(iv) In the matters related to section 68 burden of proof cannot be discharged to the hilt -such matters are decided on the particular facts of the case as well as on the basis of preponderance of probabilities. Credibility of the explanation, not the materiality of evidences, is the basis for deciding the cases falling under Section 68.

(v) Confirmatory letters or A/c payee cheques do not prove that the amount in question is properly explained for the purpose of section 68. Assessee has to establish identity and creditworthiness of the creditor as well as the genuineness of the transaction. All the three ingredients are cumulative and not exclusive.

(vi) In matters regarding cash credit the onus of proof is not a static one. As per the provisions of the section the initial burden of proof lies on the assessee. Amount appearing in the books of a/cs. Of the assessee is considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of the transaction can be proved by showing that the money was received by an account payee cheque or by draft. Credit worthiness of the lender can be established by attending circumstances. Once the assessee produces evidences about identity, genuineness and credit worthiness of the lender onus of proof shifts to the Revenue.

Fifthly, the Honorable Supreme Court in the case of Lovely Exports Private Limited, (2008) 216 CTR 195 (SC), has stated that the AO is at liberty to bring to tax the amounts in their respective hands of the creditors if their identity, genuineness and creditworthiness is not proved. The AO should have made efforts to assess the amounts in the hands of the creditors at least on protective basis. Lastly, even if the creditworthiness of the creditors is not proved it will not automatically give license to the AO to make additions in the hands of the assessee u/s 68 unless it is proved that it is the unexplained money of the assessee which has been introduced in its books of account in the names of bogus/non-existent entities. In the instant case the AO has not made any dent in these lines. On the other hand, the appellant has filed the following details in the case of all the three creditors to prove the identity, genuineness and creditworthiness of the creditors.

- (1) Confirmation of A/c. by the parties.*
- (2) Income tax returns of the parties for A.Y.2012-13.*
- (3) Bank Statements of the parties showing the loan transactions.*
- (4) Audited Balance sheet & P & L A/c of the creditors along with the schedule wherein credit in the name of the assessee is outstanding in their books.*

- (5) Reply given by the parties to the notice issued by the AO u/s 133(6) confirming the transaction with the assessee.
- (6) Payment of interest to creditors after subjecting the amount to IDS.

4.2.3 As seen from the above, the appellant has furnished all the details proving conclusively the three ingredients of identity and creditworthiness of the creditors and the genuineness of the transaction. The amounts were paid by the creditors from their running bank accounts which were accounted in the books of the appellant as well as the creditors as seen from the audited accounts filed. The transactions were also confirmed by all the creditors who are assessed to tax. Further, the appellant has paid interest through banks to the creditors by duly subjecting the interest amount to TDS as detailed in this order at para 5.2. I find that the AO was in possession of good information in the form of investigation report, to begin with, but he could neither succeed to repudiate the evidences filed by the appellant nor he could gather independent evidence even to establish the surrounding circumstances not to speak of leading evidence to prove his hypothesis. In view of the above discussion I hold that the loan taken by the appellant from the above three parties cannot be doubted and the addition made by the AO u/s 68 of the Act cannot survive the test of appeal. I therefore, direct the AO to withdraw the addition. The ground is allowed.

5. The second issue is with regard to addition of Rs.8,32,607/- on account of interest expenses u/s 69C of the Act. The AO has noticed payment of interest to the creditors from whom loan was taken. As the credits were disbelieved by the AO since the credits were given by the bogus concerns floated by Banwarlal Group who are the only entry operators, the AO has also disallowed interest claimed to have been paid to these creditors u/s 69C of the Act.

5.1 The appellant has objected for the disallowance of interest truly been paid to the creditors from whom loans were taken. He has further submitted that the payments were made through banking channel after making TDS applicable.

5.2 I have carefully considered the facts and submissions of the Id.AR. As seen from the details the appellant has borrowed money from four parties and paid interest after making TDS as under: -

Name of the lenders.	Capital borrowed.	Interest accrued.	IDS made	Net interest paid to lender.
Meenakshi Diamonds Pvt.Ltd.	40 lacs	7,24,657	72,466	6,52,191
Roshan Gems Pvt.Ltd.	25 lacs	12,705	1,270	11,435
Abhiman Gems Pvt.Ltd.	75 lacs	35,245	3,525	31,720
Madhur Gems Pvt.Ltd.	75 lacs cl.bal. (Outstanding amount-no borrowing during the year.)	60,000	6,000	54,000
Total		8,32,607/-		

Since the loan given by the above parties were treated as genuine, in this order earlier paragraphs, the interest paid to those parties is also treated as genuine. Accordingly, the interest paid is allowed as expenditure and AO is directed to withdraw the addition made u/s 69C of the Act. The ground is allowed."

9. On a careful reading of the order of the Ld.CIT(A), we do not find any infirmity in the order passed in deleting the addition made u/s. 68 of the Act and the consequential interest on the credits. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 24th October, 2018

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai / Dated 24/10/2018
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum