

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

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

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 3488/Mum/2018

(निर्धारण वर्ष / Assessment Year 2007-08)

M/s Jaykala Exports B-9, Pravasi Industrial Estate, Off Aarey Road, Goregaon East, Mumbai-400 063	Vs.	The Income Tax Officer, 32(2)(1) C-11, 7 th Floor, Pratyakshakar Bhavan, BKC, Bandra-400 051
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAEFJ0752A		

अपीलार्थी की ओर से / Appellant by : Shri Haridas Bhatt, AR

प्रत्यर्थी की ओर से / Respondent by : Shri Satischandra Rajore,
DR

सुनवाई की तारीख / Date of hearing:	06.02.2019
घोषणा की तारीख / Date of pronouncement :	06.02.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-39, Mumbai [in short CIT(A)], in appeal No. CIT(A)-39/IT-10040/IT-10040/ITO-31(2)(1)/17-18 vide dated 22.03.2018. The Assessment was framed by the Income Tax Officer, Ward-31(2)(1) Mumbai (in short 'ITO/ AO') for the A.Y. 2007-08 vide dated nil under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the addition made by the AO on account of loan received from Hema Trading Company Pvt. Ltd. (Now known as Nakshtra Business Pvt. Ltd.) as bogus and unexplained cash credit under section 68 of the Act. For this assessee has raised the following two grounds: -

“1. On the facts and circumstances of the case, and in Law, the CIT(A) erred in confirming addition of Rs.10,00,000/- considering the Loan received from MIs Hema Trading Co. Pvt Ltd (Now known as Nakshatra Business Pvt Ltd.) as bogus and unexplained cash credit.

2. On the facts and circumstances of the case and in law the AO failed to appreciate that:

a) The said MIs Hema Trading Co. Pvt Ltd did not have any relation with Shri Pravin Jain Group, when the Loan was taken.

b) Shri Ashok R Soni, the then director of MIs Hema Trading Co. Pvt. Ltd has explained in the affidavit that Shri Pravin Jain was neither a director nor a Shareholder when the Loan was taken by the Assessee.

c) Shri Pravin Jain has retracted the statement of admitting the bogus Loan transactions.



d) Shri Pravin Jain has confirmed the genuinity of Loan in his statement recorded U/s 131 by the AO.

e) There was no evidence produced by the AO other than the alleged mention in the pen drive.

f) The Loan was taken through a broker and no background check was conducted by the Assessee since it has taken the Loan. Further Broker is since deceased, hence could not receive/answer the 133(6) notice.”

3. Briefly stated facts are that the AO received information from DGIT(Investigation) Wing, Mumbai that during the search and seizure action in the case of Shri Pravin Kumar Jain Group of cases on 01.10.2013, that the assessee is one of the beneficiaries who have taken entries in the nature of the bogus unsecured loan from Shri Pravin Kumar Jain. The AO noted that as per the list provided by the investigation wing that the assessee M/s Jaykala Exports has taken accommodation entries to the tune of ₹ 10 lac during the FY 2006-07 relevant to this AY 2007-08 from Hema Trading Company Pvt. Ltd.(now known as Nakshtra Business Pvt. Ltd). The AO noted that the assessee has taken a loan of ₹ 10 lacs from Hema Trading Company Pvt. Ltd. and in order to cross verify the transaction, notice under section 133(6) of the Act was issued to Hema Trading Company Pvt. Ltd., which was returned unserved with the remark not known. The AO also received information from Canara Bank, Khetwadi branch, Mumbai in response to AO's letter dated 09.02.2015 and from the statement of accounts of Jaykala Exports i.e. is the assessee for the period of 01.04.2006 to 31.01.2008, he noted that on 15.02.2007,



the amount of ₹ 10 lac was credited into assessee's account and on the same date the same amount was withdrawn. Hence, he presumed that this 10 lac credited in assessee's account on 15.02.2007 was just an accommodation entry from the reason that the same amount was withdrawn from the account on the same day. Therefore, the AO added this unsecured loan under section 68 of the Act. Aggrieved assessee preferred the appeal before CIT(A). The CIT(A) confirmed the action of the AO by noting in Para 5.5. as under: -

"5.5 Taking all the facts into consideration, I hold that the AO was justified in treating the of ₹ 10,00,000/- as unexplained cash credit. I, therefore, confirm the addition. Accordingly the ground of appeal number one is dismissed."

Aggrieved, now assessee is in appeal before Tribunal.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. I find from the documents that the assessee has filed following documents to AO, CIT(A) and even now before us: -

Sl. No .	Particulars
1.	Ledger confirmation of M/s Hema Trading Co. Pvt. Ltd
2.	Bank Statement of Hema Trading highlighting the loan given transaction.
3.	Bank statement of Jaykala Exports Highlighting the loan taken transaction.
4.	Income tax Return acknowledgement of M/s Hema Trading.
5.	Supporting towards change of name and ledger confirmation towards the change of name from Hema Trading Pvt. Ltd to Nakshatra Businss Pvt. Ltd
6.	Ledger Confirmation of M/s Nakshatra Business Ltd. of FY 2010-11 showing repayment of loan
7.	Bank statement of Jaykala Exports highlighting the repayment of loan transaction.
8.	Bank statement of Nakshatra Business highlighting the receipt repayment of loan transaction.
9.	Affidavit from Ashok Soni stating that he is the director of Hema Trading and Pravin Jain is not related to the company and the loan transaction is genuine.
10.	ROC records and Annual Return of Hema trading filed with ROC showing Pravin Jain was not a director in the said year
11.	Affidavit from Pravin jain stating that the loan transaction is genuine
12.	Statement records under section 131 of Praveen Jain confirming the genuiness of the transaction
13.	Statement records under section 131 of Dilip saraf (partner of appellat firm) confirming the genuiness of the transaction.



14.	Affidavit by Pravin Jain retreating the statement given during the search proceedings.
-----	--

5. I find that the addition is namely on the basis of the investigation of the department, that the Pravin Kumar Jain group of cases is providing accommodation entries to large number of concerns including assessee. It transpires from entire facts of the case that the Shri Pravin Kumar Jain retracted this statement during the course of search by filing affidavit dated 15.05.2014. Even the alleged broker who is arranged this loan namely Shri Dilip Soneta could not be produced because he expired before the proceedings. The assessee has filed complete confirmation, bank statement of Hema Trading Company and moreover, one crucial fact that at the time of giving of loan Shri Pravin Kumar Jain was in no way associated with the loan creditor namely Hema Trading Company Pvt. Ltd. This loan relates to FY 2006-07 relevant to AY 2007-08 but as per the form No. 32 filed with ROC relating to appointment of Shri Pravin Kumar Jain as director only on 19.02.2010. The assessee also submitted the form No. 20B which is annual return for the year ending 31.03.2007. As per form No. 20B total number of shareholder are 12, whereas neither Shri Pravin Kumar Jain nor Shri Pankaj Kumar Jain were shareholders in Hema Trading Company Pvt. Ltd. This fact was also confirmed by Shri Ashok Ratanlal Soni, who was director in Hema Trading Company Pvt. Ltd. from 23.03.2004, wherein in the affidavit he confirmed the same as under: -

"I do not agree with the statement given by Mr. Pravin Kumar Jain in connection with the loan transactions entered between M/s Hema Trading Co. Pvt. Ltd. and M/s Jayakala Exports. His statement may be in general but it is not at all binding on Hema Trading Co. Pvt. Ld. as he was neither the director nor the shareholder of that company during the FY 2006-07. Pravin



ITA no.3488/Mum/2018

Kumar Jain was appointed as director in the company w.e.f. 19.02.2010.”

6. In view of the above facts and circumstances, I am of the view that the AO has not concluded the investigation and without going into the documents furnished by assessee treated the unsecured loan as unexplained. From the documents and confirmation filed by the assessee contains that the transaction is through bank channels and even the entry in the account of Hema Trading Company Pvt. Ltd. is given through Bank channel hence this entry cannot be treated as unexplained in the given facts and circumstances of the case. Accordingly, I delete the addition and allow the appeal of the assessee.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 06.02.2019.

आदेश की घोषणा खुले मे दिनांक 06.02.2019 को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 06.02.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai