

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

Before Shri G Manjunatha (ACCOUNTANT MEMBER)

AND

Shri Ravish Sood (JUDICIAL MEMBER)

ITA No.2813/Mum/2018           -       AY 2013-14  
ITA No.2814/Mum/2018           -       AY 2014-15

M/s Opulent Trading & Investment Pvt Ltd, 138-A, Chandawadi, 2 <sup>nd</sup> Floor, Flat No.15, C.P. Tank Road, Mumbai 400 004 PAN : AAACO2872M	vs	ITO-10(3)(2), Mumbai
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Shri Bhupendra Shah
Respondent by	Smt. R Sindhu

Date of hearing	06-02-2019
Date of pronouncement	29-03-2019

**ORDER**

Per G Manjunatha, AM :

These two appeals filed by the assessee are directed against the common order of the CIT(A)-17, Mumbai dated 28-03-2018 and they pertain to AYs 2013-14 & 2014-15. Since facts are identical and issues are common and

inter-related, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2. The assessee has raised the following grounds of appeal, for the respective assessment years:-

**ITA No.2813/Mum/2018 (AY 2013-14)**

“1) In the facts and circumstances of the case and in law, the Ld. CIT-(A) erred in treating receipt of unsecured loan amounting to Rs.50,00,000/- as accommodation entry (unexplained cash credit) u/s. 68 of the Income Tax Act, 1961. Though the said loan has also been repaid by the appellant in subsequent years.

2) The Ld. CIT-(A) erred in disallowing the interest amount of Rs.2,38,561/- on aforesaid loan treating the same as bogus.

3) The Ld. CIT-(A) erred in making addition on account of commission on sham transaction of loan @ 0.2 % being Rs. 10,000/-“

**ITA No.2814/Mum/2018 (AY 2014-15)**

“1) The Ld. CIT-(A) erred in disallowing the Interest Expenditure of Rs.4,50,000/- incurred on raising Interest bearing unsecured loan from Meenakshi Diamond Private Limited treating the same as bogus.”

3. The brief facts of the case extracted from ITA No.2813/Mum/2018 for AY 2013-14 are that the assessee company is engaged in the business of distributors, merchant traders, importers, exporters and to buy and sell, distribute materials, filed its return of income at Nil. The case has been selected for scrutiny and notices u/s 143(2) and 142(1) of the Income-tax Act, 1961 were issued. In response to the notices, the authorised representative of the assessee appeared from time to time and filed various details, as called for.

During the course of assessment proceedings, the AO noticed that the assessee has obtained unsecured loans from various parties. Therefore, in order to verify nature and source of credits, called upon the assessee to file complete details including confirmations from the parties. In response, vide letter dated 29-01-2016, the assessee has furnished party-wise details of the loan. The assessee also filed details of interest paid on such loans including compliance with TDS provisions. The AO, during the course of assessment proceedings, further noticed that information was received from Investigation Wing of the department, as per which the assessee was one of the beneficiaries of accommodation entries provided by Shri Bhanwarlal Jain through web of companies. On verification of details of unsecured loans filed by the assessee it was noticed that the information received from Investigation Wing and contents of such information was matched with the information furnished by the assessee. Therefore, called upon the assessee to file complete details of loan taken from M/s Meenakshi Diamonds Pvt Ltd, in view of information received from Investigation Wing. A notice u/s 133(6) was also issued to the Principal Officer of M/s Meenakshi Diamonds Pvt Ltd. In response, M/s Meenakshi Diamonds Pvt Ltd, filed letter on 16-02-2016 alongwith copy of ledger account, copy of PAN card, copy of ITR alongwith copy of bank statement. The AO, in order to ascertain correctness of details

filed by the party, issued summons u/s 131 to attend personally to justify information furnished in response to notice u/s 133(6). But, nobody appeared before the AO. The party, however, filed same details once again alongwith letter dated 08-03-2016. The AO, based on the information furnished by the assessee coupled with further enquiries conducted during the course of assessment proceedings in light of information received from DGIT(Inv), came to the conclusion that the assessee has failed to prove primary onus to establish genuineness of transaction recorded in its books of account. Since the primary facts were in the knowledge of the assessee, it was the duty of the assessee to provide correct and complete details with regard to the impugned transactions. Although assessee has filed details about loans including confirmation letters, but when summons were issued to the party, nobody appeared. Therefore, he came to the conclusion that unsecured loan received from M/s Meenakshi Diamonds Pvt Ltd which is one of the benami concern of Bhanwarlal Jain is a sham transaction used to re-route assessee's own funds in form of unsecured loan and accordingly made addition of Rs.50 lakhs u/s 68 of the I.T. Act, 1961. Similarly, the AO also made addition towards purported interest payment to such unsecured loan alongwith probable commission paid to the concerns controlled by Shri Bhanwarlal Jain @0.25% which amounted to Rs.10,000.

4. Aggrieved by the assessment order, assessee preferred appeal before the CIT(A). Before the CIT(A), assessee has filed elaborate written submissions alongwith certain judicial precedents which have been reproduced at para 3 on pages 3 to 5 of CIT(A)'s order. The sum and substance of arguments of the assessee before the CIT(A) were that when necessary evidences were filed before the AO to prove identity, genuineness of transactions and creditworthiness of the parties, merely for the reason of non-appearance of parties in response to summons u/s 131, no adverse inference can be drawn against the assessee to hold that unsecured loan taken from the above party is a sham transaction which was used to convert assessee's own unaccounted income. The Ld.CIT(A), after considering submissions of the assessee and also by relying upon various judicial precedents, held that the lender company was a shell company and had neither any financial worth nor source to advance Rs.50 lakhs in the form of loan. The facts brought out by the AO in light of information received from DGIT (Inv) has already confirmed the modus operandi of M/s Bhanwarilal Jain, who used to give accommodation entries of unsecured loans to various parties for a commission. Although the assessee has filed confirmation letter alongwith ITR copies of the party, but when summons were issued to the Principal Officer of the company, nobody attended before the AO to justify documents submitted in support of loan. No

doubt, the amount has been received through banking channel. The assessee also paid interest and complied with TDS provisions. But that itself would not be sufficient enough to prove genuineness of transactions, when the investigation conducted during the course of search in case of Bhanwarlal Jain proved the fact that he was involved in providing accommodation entries. Therefore, the Ld.CIT(A) came to the conclusion that the AO was right in making addition towards unsecured loan alongwith interest and commission u/s 68 of the I.T. Act and hence, there is no reason to interfere with the order of the AO. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

6. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in confirming addition made by the AO towards unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd without appreciating fact that the assessee has discharged the identity, genuineness of transactions and creditworthiness of the parties. Once, the initial burden cast upon the assessee has been discharged by filing necessary evidence, the onus shifts to the revenue to prove otherwise. The AO, ignoring all evidences filed by the assessee, made addition towards unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd only for the reason that the company belonged to Shri Bhanwarlal Jain group of companies and during the course of search proceedings Shri Bhanwarlal Jain

admitted of issuing accommodation entries in form of unsecured loans. The Ld.AR further submitted that as per the provisions of section 68, the assessee, at the best, can file details of loans taken from the parties. In any event, the parties did not appear before the AO in response to summons u/s 131, the assessee cannot be held responsible for non appearance because non appearance before the AO by the parties is not within the control and knowledge of the assessee. In this case, the parties have filed complete details in response to notice u/s 133(6). The assessee also filed similar details before the AO. The AO, without bringing on record any adverse comments on the documents filed by the assessee as well as the creditor made additions for the simple reason that party never appeared before AO in response to summons u/s 131. In this regard, he relied upon following judicial precedents:-

1. Reliance Corporation – ITA No.4946/Mum/2016
2. Komal Agrotech Pvt Ltd – ITA No.437/HYD/2016
3. Superline Construction Pvt Ltd and Sitara Properties Pvt Ltd  
ITA No.3645/MUM/2014
4. Supertech Diamond Tools (P) Ltd ITA No.74/2012 (2014) 45 taxmann.com 204
5. Vacmet Packaging (India) Pvt Ltd (2014) 45 taxmann.com 473
6. Apex Therm Packaging (P) Ltd (2014) 42 taxmann.com 473
7. Orchid Industries Pvt Ltd ITA No.1433/2014

8. KSS Petron Pvt Ltd ITA No.224/2014

9. Arceli Realty Ltd 6492/Mum/2016

10. Shreedham Builders ITA No.5589/Mum/2017

7. The Ld.DR, on the other hand, strongly supported order of the Ld.CIT(A). The Ld.DR further submitted that the AO has brought out modus operandi of Shri Bhanwarlal Jain and his associates which is further supported by the report of Investigation Wing where it was categorically proved that Shri Bhanwarlal Jain was involved in providing accommodation entries of unsecured loans to various beneficiaries for commission. In fact, Shri Bhanwarlal Jain himself had admitted in his statement recorded u/s 132(4) of the Income-tax Act, 1961. Therefore, merely for the reason that the assessee has filed confirmation from the party alongwith other details, the sham transaction between the parties cannot be considered as genuine loan transactions undertaken in normal course of business, more particularly, when the information gathered during the course of assessment is proved otherwise. In this regard, he relied upon the decision of Hon'ble Gujarat High Court in the case of Pawankumar Sanghvi vs ITO Income Tax Appeal No.1037 of 2017 and also the decision of Hon'ble Supreme Court in the case of Pawankumar Sanghvi vs ITO in SLP No.10250 of 2018 dated 01-05-2018.

8. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. The AO has made addition towards unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd, which is one of the associate concern of M/s Bhanwarlal Jain on the ground that the transactions between the assessee and the company is a sham transaction which was used to re-route assessee's own unaccounted income in form of unsecured loan. The AO came to the conclusion on the basis of enquiries conducted during the course of search coupled with report of DGIT(Inv), as per which during the course of search in the case of Shri Bhanwarlal Jain, he has admitted the fact of involvement in providing bogus unsecured loan for various beneficiaries for commission. The provisions of section 68 deals with a case where any sum found credited in the books of account of the assessee for which the assessee offers no explanation or explanation offered by the assessee is not satisfactory to the AO, then, the sum found credited may be treated as income of the assessee for that year. If we go through the facts brought out by the AO in light of provisions of section 68, whether the assessee has discharged its onus cast upon u/s 68 of the Act or not, has to be examined. No doubt, the assessee has filed various details in respect of unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd including confirmation from the party, PAN, ITR acknowledgment copy and

bank statement. In fact, the creditors, M/s Meenakshi Diamonds Pvt Ltd had filed similar details to the AO when notice u/s 133(6) was issued. But, when summons u/s 131 was issued to the Principal Officer of M/s Meenakshi Diamonds Pvt Ltd, nobody attended before the AO, but same documents which were filed in response to notice u/s 133(6) filed once again before the AO. Under these facts, when we examine the credits found in the form of unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd, can we say the assessee has discharged identity, genuineness of transaction and creditworthiness of the parties. The assessee has filed complete details including confirmation. When we go by the list of documents filed by the assessee, there is no doubt, the assessee has filed necessary details to prove the identity of the parties. When we go by the findings recorded by the AO in light of enquiries conducted during the course of assessment, it is difficult to say that the assessee has proved identity of the parties because when summons u/s 131 was issued, nobody appeared before the AO. Therefore, there is suspicion about the identity of the party.

9. Coming to genuineness of transactions. No doubt, the assessee has filed details of PAN, ITR acknowledgement and bank statement of the party. When we go by the documents filed by the assessee, no doubt, unsecured loan has been taken through proper banking channel. Interest has been paid and TDS

provisions have been complied with. But when we consider the facts brought out by the AO in light of report of DGIT(Inv), it is very difficult to accept the arguments of the assessee that the transactions are genuine because, Shri Bhanwarlal Jain during the course of search has admitted that he had issued bogus unsecured loan entries. This fact is further strengthened by the financial statement of the creditor, where the company does not have sufficient source of income to explain such a huge amount of unsecured loan given to the assessee. When we analyse all these aspects in the light of claim of the assessee with the unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd, a strong suspicion arises about the identity and genuineness of transactions, more particularly, when nobody appeared in response to summons u/s 131. Therefore, we are of the considered view that there is no merit in the arguments of the assessee that unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd is a genuine transaction merely for the reason that such loan has been taken through proper banking channel and also interest has been paid after deducting necessary TDS.

10. Coming to the case laws relied upon by the assessee. The assessee has relied upon plethora of judicial precedents including the decision of Hon'ble Bombay High Court in the case of Orchid Industries Pvt Ltd (supra). We have gone through the case laws relied upon by the assessee in light of facts

brought out by the AO during assessment proceedings and find that although some of the case laws referred to by the assessee has considered the credits in light of evidence filed by the assessee to come to the conclusion that once primary evidence has been filed to prove identity, then there is no reason for the AO to make addition in respect of loans or share capital in the hands of the assessee, but the department is free to proceed to reopen the assessment of individual creditors. In this case, the facts are slightly different from the facts of those case laws considered by Hon'ble Bombay High Court inasmuch as the AO has carried out further enquiries by issuing summons u/s 131 for which no compliance was made by the creditor. Therefore, the case laws relied upon by the assessee have not been considered as applicable to the facts of the assessee's case.

11. Similarly, the Ld.DR has relied upon the decision of Hon'ble Gujarat High Court in the case of Pawankumar Sanghvi vs ITO (supra), where the Hon'ble High Court has considered the issue in light of facts brought out by the AO in case of unsecured loans taken from M/s Bhanwarlal Jain group of companies. The Hon'ble High Court, after considering relevant facts held that on perusal of the orders on record and in particular the order of the Tribunal would make it clear that the entire issue is based on appreciation of evidence on record and thus factual in nature. The Tribunal has given elaborate reasons to come to

the conclusion that the entire transaction was not genuine. In absence of any perversity, we do not see any reason to interfere with the order of the Tribunal.

12. In this view of the matter and having considered the case laws discussed hereinabove, we are of the considered view that it is difficult to accept the arguments of the assessee that unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd is a genuine transaction firstly for the reason that such loan has been taken through proper banking channel and interest has been paid on such loan in compliance with TDS provisions, more particularly, when the facts gathered during assessment proceedings prove otherwise. At the same time, the AO has also not completed his investigation to reach to a conclusion that it is a sham transaction because the AO has heavily relied upon non appearance of the assessee in response to summons u/s 131. Therefore, we are of the considered view that the issue needs to be re-examined by the AO in the light of the claim of the assessee that transaction between parties are genuine transaction and that the identity of the party has not been disputed. Hence, we set aside the issue to the file of the AO and direct him to cause necessary enquiries in the light of our discussion hereinabove with a reasonable opportunity of hearing to the assessee.

13. In the result, appeal filed by the assessee is treated as allowed, for statistical purpose.

**ITA No.2814/Mum/2018 (AY 2014-15)**

14. In this appeal, the issue is inter-connected to the issue which we have already discussed and decided in ITA No.2813/Mum/2018. In this case, the AO has made addition towards interest paid on unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd on the ground that the transaction between the parties is a sham transaction. Since we have set aside the issue of unsecured loan taken from M/s Meenakshi Diamonds Pvt Ltd in earlier year, this issue also needs to go back to the AO to decide afresh in light of our findings given hereinabove in preceding paragraphs in ITA No.2813/Mum/2018. Therefore, we set aside the issue to the file of the AO for de novo decision.

15. In the result, appeal filed by the assessee is treated as allowed, for statistical purpose.

16. As a result, both the appeals filed by the assessee are treated as allowed, for statistical purpose.

Order pronounced in the open court on 29 -03-2019.

Sd/-

sd/-

(Ravish Sood)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 29<sup>th</sup> March, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai