

**आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एन. के. प्रधान लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI NK PRADHAN, AM**

**आयकर अपील सं./ ITA No. 4388/Mum/2017**

**(निर्धारण वर्ष / Assessment Year 2011-12)**

The Dy. Commissioner of Income Tax, Circle-4(1)(2), Room No. 640, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. road, Mumbai-400 020	Vs.	Ashvira Fashions Limited Shop No. 54, Ground Floor, 343, Badamwadi, Kalbadevi Road, Mumbai-400 002
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AABCA3964B</b>		

**प्रत्याक्षेप सं./ CO No. 304/Mum/2018**

**(Arising in ITA No. 4388/Mum/2017 for AY 2011-12)**

Ashvira Fashions Limited Shop No. 54, Ground Floor, 343, Badamwadi, Kalbadevi Road, Mumbai-400 002	Vs.	The Dy. Commissioner of Income Tax, Circle-4(1)(2), Room No. 640, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. road, Mumbai-400 020
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Satischandra Rajore, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	S/Shri Dr. K Shivaram, & Rahul Hakani, ARs'

सुनवाई की तारीख / <b>Date of hearing:</b>	09-05-2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	21-05-2019



**आदेश / ORDER**

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

In these two appeals, one appeal filed by the Revenue and one Cross objections by the Assessee are arising out of the order of Commissioner of Income Tax (Appeals)-9, Mumbai [in short CIT(A)], in appeal No. CIT(A)-9/Cir.4/432/2015-16, dated 27.03.2017. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-4(1)(2), Mumbai (in short DCIT/ITO/ AO) for the A.Y. 2011-12 vide order dated 31.12.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO towards unexplained cash credit of ₹ 90 lacs under section 68 of the Act. For this Revenue has raised the following two grounds: -

*"1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing to AO to delete the addition made towards unexplained cash credit of ₹ 90,00.000/- u/s 68 of the Act.*

*2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the facts of the case that the assessee has failed to prove the identity, genuineness and creditworthiness of lender parties. invested as share application money in the assessee company."*



3. Briefly stated facts are that the assessee company filed its return of income for AY 2011-12 on 15.09.2011 and this return was processed under section 143(1) of the Act. Subsequently, the return was taken up for scrutiny assessment by issuing notice under section 143(2) of the Act and thereby completed the assessment under section 143(3) of the Act vide order dated 29.01.2014. Subsequently, a notice under section 148 of the act was issued dated 03.02.2015 and for that the following reasons were recorded: -

*“Shri Praveen Jain is one of the leading entry providers operating in Mumbai, indulging in providing accommodation entries like bogus purchases, sales, unsecured loans share capital etc. A search and seizure action in the case of Shri Praveen Kumar Jain group was therefore carried out on 01.10.2013. Evidences collected and the statements of various persons recorder including that of Shri Pravin Kumar Jain during search established the modus operandi and led to detection of accommodations entries approx. 8897 crores.*

*The accommodation entries so taken are in the nature of sales, unsecured loans and share application money. The entry wise data of beneficiaries pertaining to this charge was obtained in the office of the undersigned.*

*As per the information received from DGIT-Inv-II, Mumbai, the following transactions have been carried out by the assessee company during the AY 2011-12.*



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<i>Name of the Investor</i>	<i>Amount</i>	<i>Nature of Transaction.</i>
<i>Kush Hindustan Ent Ltd</i>	<i>25,00,000/-</i>	<i>Loans and Advances</i>
<i>Nakshatra Business P Ltd (Hema Trading Co. P. Ltd)</i>	<i>50,00,000/-</i>	<i>Loans and Advances</i>
<i>Casper Enterprises P Ltd (Ostwal Trading (I) P. Ltd.</i>	<i>15,00,000/-</i>	<i>Loans and Advances</i>

*The above named investor parties are entitled being operated by Shri Pravin Kumar Jain Group. Therefore the credits to the assessee shown above as unsecured loans have to be taxed, which have escaped assessment for AY 2011-12.*

*Hence, I have reasons to believe that income chargeable to tax has escaped assessment for the aforesaid AY and the same needs to be reassessed.”*

4. The assessee before AO filed the details of unsecured loan giving names, address, PAN Nos. of the parties along with confirmation and it was contended that on this loan interests were also paid and TDS was deducted. The assessee also furnished ledger accounts of these three parties, copies of balance sheets, income tax returns, bank statements of these parties. The assessee also submitted that the payments were made through bank challans, TDS was deducted on interest paid and subsequently these loans were repaid. It was also explained that since these parties had healthy net worth, taxable income and high bank balances. But the AO was not convinced and hence, merely on the basis of statement given by Shri Praveen Kumar Jain during the search under section 132 of the Act on his premises has carried out on 01.10.2013, even though the statement of Shri Praveen Kumar Jain was retracted by



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filing an affidavit, the AO added these loan entries treated the same as accommodation entries of unsecured loans amounting to ₹ 90 lacs. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) considered the facts of the case and net worth of these parties, deleted the addition by observing in Para 6.3.1 to 6.3.5 as under: -

*“6.3.1 I have considered the facts of the case as well as assessment order passed by the and the submissions made by the appellant. An analysis of the judicial precedents on this issue yields the following propositions of law in the context of s. 68 of the IT Act. The assessee has to prima facie prove (1) the identity of the creditor/ subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber; (4) if relevant details of confirmation, bank statement, copy of return of income filed, PAN card, Audited statement of accounts along with copies of share application forms, etc., it would constitute acceptable proof or acceptable explanation by the assessee; It has been judicial position that where assessee brought evidence on record establishing that share applicants were not fictitious persons and, moreover, they paid money by cheques, no addition could be made to assessee's income in respect of share application money.*

*The AO in this case has primarily placed reliance on the search conducted by the DDJT(Inv)-111(2)*



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*Mumbai in the case of Shri Praveen Kumar Jam. IA AO has made the addition u/s 68 towards Joan taken by the appellant from 3 parties of Rs 90 lakhs on the basis of this information received from Investigation wing from search conducted in the case of third party. However, AO has not made any further enquiry to corroborate his findings.*

*A perusal of the documentary evidences brought on record by the Appellant show that the onus of proving the genuineness of transaction, identity and capacity of the lenders has been discharged by the Appellant. The same is evident from the list of documents submitted by the Appellant with respect to the lenders of the unsecured loans. Appellant has place on the record of the AO copies of Annual audited reports, Directors report, PAN, Form 16A demonstrating TDS deducted on interest payments made to lenders, bank statements showing payments received and repayment of loan made by the Appellant loan confirmations etc. From the details submitted it can be seen that the parties ie. lenders have made payment from their accounts through account payee cheques, therefore these transactions cannot be treated as bogus. The AO has not been able bring on record any valid material or evidence to discredit the evidences and explanation given by the appellant other than merely relying on a bald statement by alleged Shri Pravin Kumar Jain as recorded by Investigation Department without himself making any efforts to*



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*bring on record any valid or corroborative evidence against the parties. The AO has been unable to demonstrate any relationship between PKJ and the lenders.*

*6.3.2 It is seen that the Id Assessing Officer has made addition of Rs 90 lakhs being unsecured loans received from the following parties:*

<i>Sr. No.</i>	<i>Name of Company</i>	<i>Amount Received (Rs.)</i>
<i>1.</i>	<i>M/s Nakshatra Businss Private Limited (Formerly Hema Trading Co. Pvt. Ltd.)</i>	<i>50,00,000</i>
<i>2.</i>	<i>M/s Kush Hindustan Entertainment Ltd.</i>	<i>25,00,000</i>
<i>3.</i>	<i>M/s Casper Enterprises Pvt. Ltd. (formerly Ostwal Trading Co. pvt. Ltd.)</i>	<i>15,00,000</i>
	<i>Total</i>	<i>90,00,000</i>

*6.3.3 The aforesaid addition was made by the AO because according to him, all the three companies were group entities of Mr. Praveen Jam. Mr Praveen Jain was found to be indulging in giving accommodation entries pursuant to a search conducted on 01.10.2013. In this case, the AO has relied on the information received from the OGIT (Inv) Mumbai in the case of Shri Praveen Jain group with regard to the statement made by Shri Pravin Jam. As against this, it has been submitted by the IA. AR that, the AO did not furnish the specific statements he was relying upon which allegedly contained the name of the appellant. Further, the AO did not provide a copy of the statement to the*



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*appellant. The AO has not done any independent enquiry but only relied on the evidence gathered by the Investigation Wing. If the AO had any reason to believe that the relevant concerns of Shri Jain were indulging in providing accommodation entries and had any specific information regarding providing any specific amount of entry by the above referred parties in this particular Financial relevant to the present assessment year, he could have issued notice u/s 133(6) of I T Act, 1961 and could have gathered specific material against the appellant and should have placed the on record and incorporated the relevant specific information in the assessment order but, this has not been done by the AO.*

*Therefore, the general statement cannot be utilized against a particular assessee in a particular assessment year.*

*6.3.4 As per Section 68 of the Act, for any addition to be made, the identity, creditworthiness and genuineness of the parties must be in doubt. I now proceed to examine whether each of these three limbs are satisfied.*

*6.3.4.1 As regards identity of the lender companies, all of them have a PAN and are assessed to tax. The addresses of the parties are on record. During the course of appellate proceedings, the Ld. AR reiterated that the relevant parties were very much genuine and were in existence as they were regularly assessed to income tax having*



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*independent PAN No and they were having own ON No. and were regularly filing Returns with the Registrar of Companies, which shows that they were having independent existence not only before income tax department but also before Registrar of Company which is another department. To substantiate this argument, the Ld. AR also filed a chart which is reproduced here under:*

Sr. No.	Name of party	PAN	CIN No.	Whether existing co with ROC/ latest annual return filed
1.	Nakshatra Business Pvt. Ltd	AABCH4279G	U51909MH2004PTC145254	31.03.2016
2.	Kush Hindustan Entertainment Ltd.	AACCK3597M	U51909MH2004PTC158499	31.03.2016
3.	Capser Enterprises P Ltd.	AAACO7955M	U92111MH2003PLC143690	31.03.2016

*6.3.4.2 As regards the creditworthiness of the parties, the bank statement shows that there were ample funds available. The net worth of the companies are sufficient to cover the loan given. A summary of the transactions, as provided by the appellant is as follows:*

Sr No.	Name of the party	Amount of loan (₹)	Cheque No.	Date	Bank details	How show in books of lender
1.	Nakshatra	25,00,000/-	285175	16.04.2010	Canara bank	Loans &



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	<i>Business Pvt. Ltd.</i>				<i>Khetwadi Branch current A/c No. 0144201002438</i>	<i>advances</i>
	<i>Nakshatra Business Pvt. Ltd.</i>	<i>25,00,000/-</i>	<i>285176</i>	<i>17.04.2010</i>	<i>Canara Bank Khetwadi Branch Current A/c No. 0144201002438</i>	<i>Loans &amp; Advances</i>
<i>2.</i>	<i>Kush Hindustan Entertainment Ltd</i>	<i>25,00,000/</i>	<i>715415</i>	<i>03.08.2010</i>	<i>Canara Bank Khetwadi Branch Current A/c No. 0144201002438</i>	<i>Loans &amp; Advances (Inter Corporate Deposit)</i>
<i>3.</i>	<i>Casper Enterprises P Ltd.</i>	<i>15,00,000/-</i>	<i>290793</i>	<i>19.05.2010</i>	<i>Canara Bank Khetwadi Branch Current a/c No. 0144201002438</i>	<i>Loans &amp; Advances (Inter Corporate Deposit)</i>

*In the case of M/s Nakshatra Business P Ltd, the return of income for A? 11-12 shows that it has offered an income of Rs 17,32,490/-. Further, the balance sheet for FY 10-11 shows networth of Rs 2.79 Crores.*

*In the case of M/s Kush Hindustan Entertainment Ltd, the return of income for AY 11-12 shows that it has offered an income of Rs 13,73,529/-. Further, the balance sheet for FY 10-11 shows networth of Rs 3.94 Crores.*

*In the case of MIs Casper Enterprises P Ltd, the return of income for A? 11-12 shows that it has offered an income of Rs 25,73,720/-. Further, the balance sheet for FY 10-11 shows networth of Rs. 1.79 Crores.*



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*6.3.4.3 As regards the genuineness of the transaction, all the loans were received through account payee cheque A perwial of the bank statement of the lenders shows that no cash was deposited prior to the loan given which proves that the transaction was not accommodation entry. The signed confirmations are on record. The TDS certificates an on record that TDS has been deducted @10% on interest. These facts have not beer appreciated by the AO. The Ld. AR further, clarified that even otherwise, the loans wen repaid in the financial year 2011-12.*

*6.3.5 Thus, the lenders have satisfied all the three tests of identity creditworthiness and genuineness. The lender companies' identity is not in doubt. The) have confirmed the transaction and the amounts are paid through cheque by way oi banking channels. The source of funds of the lenders have been seen from their audited accounts.”*

Aggrieved, now Revenue came in appeal before Tribunal.

5. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee before AO has filed complete details to prove the creditworthiness, identity and genuineness of transaction in regard to these loans. The assessee has filed the bank details depicting the entries from where the loans were given by these parties to the assessee. The assessee has also repaid these loans in subsequent years, the details were verified by the CIT(A) and recorded in the fact in the order as reproduced above. It is also a fact



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that the assessee has paid interest on above loans and also deducted TDS on the same. The AO has not carried out further enquiries to disprove that the loan is explained. Hence, we find no infirmity in the order of CIT(A) and CIT(A) has rightly deleted the addition. We confirm the same. The appeal of Revenue is dismissed.

6. As regards to the cross objection of the assessee arising out Cross Objection No. 304/Mum/2018 for AY 2011-12, wherein the assessee has raised the issue of reopening of assessment as bad in law. For this assessee has raised the following two grounds: -

*“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in upholding the action of the Assessing Officer in reopening the assessment despite the fact that the details of unsecured loans were already enquired into during the original scrutiny and the Assessing Officer did not any infirmity therein. Thus, the reopening is nothing but a change of opinion. The Id Assessing Officer had no reason to believe that income had escaped assessment and there was no independent application of mind.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CITCA) erred in upholding the action the Assessing Officer in reopening the assessment despite the fact that no new material received by the Id Assessing officer and he reopened the case based on the existing records.”*



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7. Since, we have adjudicated the issue on merits and allowed in favour of assessee, we need not to adjudicate the issue of reopening. Hence, the appeal of the Revenue is dismissed and that of the co is also dismissed as academic.

**8. In the result, the appeal of Revenue is dismissed and CO of assessee is also dismissed.**

Order pronounced in the open court on 21.05.2019.

Sd/-

(एन. के. प्रधान/ NK PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 21.05.2019.

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