

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2032/Ahd/2015

(निर्धारण वर्ष / Assessment Year :2010-11)

ITO Wd-1(1)(2), Ahmedabad	बनाम/ Vs.	M/s. Anubhuti Ornaments Pvt. Ltd. 1A, Dipawali Center, Opp. Old High Court, Income-tax, Ahmedabad
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AAF CA3 181 J		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Mudit Nagpal, Sr. DR
प्रत्यर्थी की ओर से / Respondent by:	Aseem L. Thakkar, AR

सुनवाई की तारीख /Date of Hearing	04/04/2019
घोषणा की तारीख /Date of Pronouncement	27/05/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal has been filed by the Revenue for A.Y. 2010-11, arise from order of the CIT(A)-1, Ahmedabad dated 06.04.2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The Revenue has filed two grounds of appeal deleting the addition u/s. 68 of the Act amounting to Rs. 2,08,43,471/- and deleting inflated purchases from Metals and Minerals Trading Corporation Ltd. (MMTC) amounting to Rs. 2,33,22,207/- against the order of Ld. CIT(A), Ahmedabad. The fact in brief is that the assessee company has filed return of income on 13.10.2010 declaring total income at Rs. 18,58,460/-. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the Act on 29.08.2011. During the year under

consideration the assessee was engaged in the business of trading in jewellery. However, facts of the case are discussed while adjudicating ground of appeal of the assessee as under:-

“1. The ld. CIT(A) has erred in law and on facts in deleting the addition u/s. 68 of the Act amounting to Rs. 2,08,43,417/- without appreciating the fact that the assessee has failed to prove the creditworthiness and genuineness of the transaction.

2. The ld. CIT(A) has erred in law and on facts in deleting the inflated purchases from MMTC Ltd. amounting to Rs. 2,33,22,207/-.”

Ground No. 1:-

Addition Deleting u/s. 68 of the Act:-

3. During assessment on verification of balance sheet as on 31.03.2010 the AO has noticed that assessee has obtained unsecured loan of Rs. 2,08,43,471/- during the year under consideration. As asked by the AO the assessee has given the detail of unsecured loan shown in the balance sheet as under:

Sr. No.	Name of the person	Loan accepted during the year (Amount in Rupee)
1.	Baldevbhai Patel	1583200
2.	Aadinath Impex	19260271
	Total	20843471

The AO has stated that assessee has only provided part of the information i.e. name and address of the parties, PAN of the parties. However, the assessee has not proved the source of funding and the creditworthiness of the parties. In respect of loan party in the name of Baldevbhai Patel the assessee has stated that it has furnished PAN of the said parties and it was not possible to get copy of his income tax return and bank statement as it was not having further dealing with the aforesaid party. Therefore, assessee has requested the AO that the desired information may be directly obtained from the said party. In respect of other party

name Adinath Impex, the assessee has furnished copy of return of income for A.Y. 2010-11 PAN No. and confirmation of account by the same parties. The AO has issued notice u/s. 133 sub section 6 of the Act to the aforesaid parties which were return unserved with comment 'does not exist', therefore, the AO has stated that the assessee has failed to explain the source, genuineness and creditworthiness of the parties from whom the aforesaid loan was received by the assessee. Consequently, an amount of Rs. 2,08,43,471/- was added to the total income of the assessee.

4. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. CIT(A) has allowed the appeal of the assessee the relevant part of the decision of the CIT(A) is reproduced as under:-

"... (B) Ground No. 2 is against the addition of Rs. 2,08,43,471/- u/s. 68 of the Act. As discussed at para 4A above, the A.O. called for complete details including contra account and confirmation in respect of parties from whom loans accepted by appellant during previous year. The A.O. contended that appellant submitted only ledger account, address and PAN which can prove the identity part but not the creditworthiness. The A.O. in response to specific show cause considered appellant's reply dt. 24/03/2012 and 21/12/2012. These letter reflect that appellant submitted contra account & confirmation from the parties (two parties i.e. Shri Baldev Patel PAN: ABNPP8633L and Shri Kamlesh Zaveri prop. of M/s Adinath Impex). The appellant failed to submit copy of bank account and I.T. return detail of Shri Baldevbhai because of no further dealing with the said party, while failed to submit bank statement of M/s Adinath Impex. The appellant requested A.O. to call for such information from party directly. The A.O. called for such information u/s 133(6) of the Act but such letters returned back unserved with remarks 'Does not Exist'. The A.O. after relying on legal proposition made the addition of Rs.20843471(19260721+1583200). The appellant in appeal (as discussed above at para 4B) contended that A.O. made the addition of Rs. 15,83,2007- in the name of Shri Baldev Patel, which is a closing balance in the balance sheet of appellant for impugned previous year. In fact, there was are opening balance of Rs. 28,00,000/- and appellant repaid Rs. 13,90,000/- out of it, credited interest of Rs. 1,68,111/- and during the previous year only Rs. 21,900/- accepted from this party. In reference to M/s Adinath Impex, a prop. concern of ShriKamlesh Jayantilal Jhaveri, appellant submitted contra account and confirmation with PAN, bank account details, details of I.T. return filed by him before the A.O., hence it is contended that the primary onus as casted on appellant is discharged. The appellant relied on Hon'ble Gujarat High Court order in the case of Jagat Sathshbhai Patel (supra) to contend that addition u/s 68 of the Act can only be made in respect of loan / credits appearing / accepted during previous year only. In reference to M/s Adinath Impex, appellant further filed copy of bank it of M/s Adinath Impex as additional evidence to substantiate credit worthiness of the said party. The A.O. in the remand report(as discussed above at para 4C) contended that appellant filed only the confirmation from Shri Baldev Patel

hence failed to establish creditworthiness. In the case of Shri Kamlesh Jhaveri Prop. Of M/s. Adinath Impex, the A.O. contended that Axis Bank statement is incomplete. The appellant in rejoinder (as discussed above at para 4D) contended that A.O. despite being details available on record, not considered the issue of opening balance in the case of Shri Baldevbhai Patel. The Axis Bank account statement clearly reflect all the entries of loan accepted by appellant with due source of such amount to M/s. Adinath Impex.

During the appeal, the A.O. was called with case record and this issue was examined. It is in the tax audit report dt. 10.06.2010 by Shri A.K. Shah Assocaites filed by appellant in compliance of section 44AB of the Act in Form 3CB and 3CD that it has details about all the unsecured loans accepted and repaid during the previous year as per annexure-3 of such report reflecting Name of Party, PAN of party, Amount of loan accepted as follows:

(i)	M/s. Adinath Impex	AETPJ5973L	Rs. 1,80,00,000 loan accepted.
(ii)	Baldevbhai Patel	ABNPP8633L	21900 loan accepted.

The audited balance sheet reflect the final balance as on 31.03.2009 as well as on 31.03.2010 as follows:-

		As on 31.03.2010	As on 13.03.2009
(i)	M/s. Adinath Impex	19260271	NIL
(ii)	Baldevbhai Patel	1583200	2800000

It is therefore, I am inclined with appellant that, once such details were available reflecting opening balance of Rs. 28,00,000/- in the case of Baldevbhai with only Rs. 21,900/- being accepted during previous year, then A.O.'s addition of Rs. 15,83,200/- being final balance as on 31/03/2010 cannot be justified and sustainable as per provision of section 68 of the Act and legal proposition as relied on by appellant of Jurisdictional high court. Further, I am inclined with appellant that once name, address, PAN and confirmation is filed from both the parties and when transaction is through banking channels, then A.O.'s not justified in making addition u/s 68 of the Act. unless and until there is adverse report from A.O. of those parties. Hon'ble Gujarat High Court in the case of CIT vs Ranchod Jivabhai Nokhva (2012) 21 taxmann.com 159 (Gujarat) held that –

"Section 68 of the income tax Act, 1961-cash credits asstt. year 06-07 whether once assessee has established that he was taken money by way of account payee cheques from lender who are all income tax assessee whose PAN have been disclosed initial burden u/s 68 is discharged and then, it is Assessing officer's duty to ascertain from Assessing officer of those lenders, whether in their respective returns they have shown existence of such amount of money and have further shown that those amount of money had been lent to assessee - Held yes - whether if A.O. of those creditors are satisfied with explanation given by creditors as regards those transactions reflected in account of creditors - Held yes -whether if before verifying such fact from A.O. of lenders of assessee, A.O. decides to examine lenders and ask assessee to further prove genuineness and creditworthiness of transaction, it would be against principles laid down u/s 68 - Held yes." The ratio of this judgment of Jurisdictional high court is very clear and if applied to the facts of the appellant. Then the conclusion arrived at by A.O. will be unsustainable and addition so made will become unwarranted.

Further Hon'ble Gujarat High Court in the case of Dy. C.I.T. vs Rohini builders 256 ITR 360 held that "Section 68 of the Income-tax Act, 1961 - Cash credits - Assessing Officer made addition of Rs. 12,85,000 as unexplained cash credits in respect of loans taken by assessee from 21 parties - Assessee had discharged initial onus by providing identity of all creditors by giving their complete addresses, GIR numbers/permanent account numbers and copies of assessment orders wherever readily available - Assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques drawn from bank accounts of creditors - Repayment of loans and interest thereon was also made by account payee cheques by assessee and tax also had been deducted at source on interest payments and remitted - Whether assessee was not expected to prove genuineness of cash deposited in bank accounts of creditors, because under law, assessee can be asked to prove source of credits in its books of account but not source of source - Held, yes - Whether merely because summons issued to some of creditors could not be served or they failed to appear before Assessing Officer, could not be ground to treat those credits as non-genuine - Held, yes - Whether considering totality of facts and circumstances of case, especially fact that Assessing Officer had not disallowed interest claimed/paid in relation to those credits in assessment year under consideration or even in subsequent assessment years, and tax at source had been deducted out of interest paid/credited to creditors, Tribunal was justified in deleting addition made - Held, yes - Whether as there was no substance in appeal and no substantial question of law arose, appeal was liable to be dismissed - Held, yes"

As discussed above, the appellant submitted contra account and confirmation from both the parties. In the case of M/s Adhinath Impex, the appellant submitted details of return of income (A.Y. 2010-11) filed with copy of Bank account (Axis Bank account) reflecting transaction through bank and sourced with further amount received through bank. The appellant credited interest to both the parties and deducted IDS out of it. The A.O. has not disallowed any of such interest but disallowed the amount as on 31/03/2010 which included interest, repayment and exclude TDS. As evident from tax audit report that only Rs. 21,900/- was accepted from Shri Baldevbhai during impugned previous year but addition is made of Rs. 15,83,200/- while in the case of M/s Adinath Impex loan of Rs. 1.80 cr. was accepted during previous year but addition is made of Rs. 1,92,60,271/-, It is therefore the addition so made by A.O. are neither factual nor sustainable in law. As per the ratio of Hon'ble Jurisdictional High Court when appellant furnished contra account & confirmation, then in the absence of any adverse report from the A.O. of such parties, no such additions can be made. The A.O. issued inquiry letter u/s. 133(6) of the Act which were returned back by Post. But, A.O. has not made any inquiry from the department's record about whether such PAN are correct or whether such person filed the Return of income. In the case of M/s. Adinath Impex, the position is clear i.e. Return of income. In the case of M/s Adinath Impex, the position is clear i.e. Return of income is filed, M/s. Adinath Impex bank account with Axis Bank reflect such amount issued through cheque as loan. In the case of Shri Baldevbhai Patel PAN ABNPP6633L, the department record reflect that return of income for A.Y. 10-11 is filed on 14.11.2011 declaring there in total income of Rs. 1,21,790/-. The present jurisdiction of Shri Baldev Patel is with ITO wd 5 Patan Gujarat. It is therefore, the A.O. is not justified in making such addition merely on the fact that the letter issued u/s. 133(6) of the act were returned back. The A.O. is directed to delete the addition so made of Rs. 2,08,43,471/-. The appellant gets relief accordingly. This ground is allowed."

Ground No. 2:-**Transaction with MMTC:-**

5. During the course of assessment on verification of the detail filed by the assessee the AO has noticed that MMTC was one of the sundry creditors of goods and closing balance of MMTC was Rs. 1,76,10,919/-. From the copy of the account submitted by the assessee the AO has noticed that assessee has purchased goods worth Rs. 2,12,68,409/- from MMTC Ltd. Against this purchased the assessee has made payment of Rs. 19,50,73,140/- and shown a credit balance of Rs. 1,76,10,919/-. The AO has also obtained copy of account of the assessee in the books of account of MMTC by issuing notice u/s. 133(6) of the Act. He has noticed that as per MMTC it had made sale to the amount of Rs. 18,93,61,852/- against which the MMTC has received amount of Rs. 19,50,73,140/- from the assessee during the year under consideration. The closing balance as on 31.03.2010 in the books of account of the MMTC was at Rs. 3,89,081/-. In view of the discrepancy in the accounts of the assessee with the account of the MMTC an amount of Rs. 23,22,207/- on account of inflated purchases was added to the total income of the assessee.

6. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. CIT(A) has allowed the appeal of the assessee . The relevant part of the decision of CIT(A) is reproduced as under:-

“I am inclined with appellant that as per the system of accounting followed by appellant for which a reconciliation was submitted to A.O. by appellant vide letter dt. 21.12.2012, there were only two discrepancies i.e. of Rs. 1.8 cr. and of Rs. 5322207/-. The AO duly verified the system and the ledger account for impugned previous year as well as of subsequent year.

The A.O. verified that entry of Rs. 1.8 cr. was reversed and actual purchase bills or invoice are debited. The system of supply of gold against ad hoc bank guarantee amount by MMTC is a valid and undisputed method. The appellant submitted copy of invoices dt. 29.04.2010 to substantiate its contention, hence the discrepancy is duly explained. In reference to discrepancy of Rs. 5322207/- claimed to be of refund being excess payment, the same is duly supported by MMTC letter dt. 08.01.2013 where they certified total sale of Rs. 189361852/- only. The appellant on other side submitted the figures & entry of excess payment and its return. It is therefore A.O.’s

doubt that this refund is on account of difference in sale by MMTC i.e. purchases made by appellant in unfounded. The appellant also submitted clarification in this regard. I am inclined to accept such clarification. It is verifiable from the ledger account submitted by MMTC that there is no opening balance as on 01.04.09 and transactions started from 04.06.2009, therefore, where MMTC certify that total sale during the impugned previous years of Rs. 189361852/- i.e. below Rs. 194684059/- then it is beyond doubt that refund of Rs. 5322207/- is on account of excess payment. The MMTC duly objected in the letter dt. 08.01.2013 about inclusion of this refund as purchases by appellant. It is therefore there is no controversy of any amount and all the transaction of appellant with MMTC are duly reconciled. The A.O. is directed to delete the addition so made of Rs. 2322207/- though incorrectly. The appellant gets relief accordingly. This ground is allowed.”

7. During the course of appellate proceeding before us the Ld. Counsel has filed paper book comprising detail of submission made before the AO and CIT(A) during the course of assessment and appellate proceedings. The Ld. Counsel has also filed copy of income tax return for A.Y. 2010-11 along with audit report and accounts of transaction made with the loan parties. The Ld. Counsel has supported the order of Ld. CIT(A).

8. On the other hand, the Ld. DR has placed reliance on the order of AO.

9. We have heard both the sides and perused the material on record. In respect of first ground of appeal of the Revenue relating to deleting of addition made u/s. 68 of the Act the AO has made addition of Rs. 2,08,43,471/- stating that assessee has failed to explain the source of the loan, genuineness of the transaction and credit worthiness of the party. With the assistance of Ld. Representative we have gone through the material on record and noticed that AO has made addition of Rs. 15,83,200/- as unsecured loan obtained from Shri Baldev Patel. On perusal of the material on record, it is noticed that the aforesaid loan amount of Rs. 15,83,200/- was appearing as closing balance in the balance sheet for the year under consideration. On further examination it is noticed that there was opening balance of Rs. 28,00,000/- in respect of unsecured loan pertaining to Shri Baldev Patel and during the year under consideration the assessee has repaid an amount of Rs. 13,90,000/-. There was interest credited of Rs. 6,16,811/- and only of Rs. 21,900/- was accepted from the said party during the year under consideration. It is demonstrated from the above material that assessee has obtained only loan of Rs.

21,900/- from Shri Baldev Patel during the year therefore AO has incorrectly made addition of loan amount received in the earlier assessment year. Therefore, action of the AO was not justified. The assessee has also given name, address, PAN and confirmation along with the audit report and accounts of the party which was not verified by the AO to disprove the genuineness of loan of Rs. 21,900/-. In respect of other loan of Rs. 1,92,60,271/- obtained from Adinath Impex, it is noticed that the assessee has submitted detail of return of income for A.Y. 2010-11 along with the copy of bank account (Axis Bank Account) reflecting transaction of loan provided by cheque to the assessee. After taking into consideration the volume of detail i.e. contra account and confirmation, return of income, bank account as elaborated in the findings of the Ld. CIT(A) as supra in this order we observe that AO has not made further investigation to contravened the supporting documents furnished by the assessee. Therefore, considering the detail finding of the Ld. CIT(A) we do not find any infirmity in the decision of Ld. CIT(A) therefore, this appeal of the Revenue is dismissed.

Regarding second ground of appeal pertaining to addition of Rs. 23,22,207/- as inflated purchases from MMTC, it is noticed that the assessee has submitted detail from its books of account showing purchase of goods of Rs. 2,12,68,409/- was made from MMTC during the year under consideration. It is also shown from the account that payment of Rs. 19,50,73,140/- was made to the MMTC during the year and there was outstanding credit balance of Rs. 1,76,10,919/-. The AO on the basis of detail received from MMTC stated that MMTC has made sale of bullion to the amount of Rs. 18,93,61,852/- to the assessee and the net credit balance as on 31.03.2010 was shown at Rs. 3,89,081/- in the books of MMTC. The assessee has pointed out that AO has not given adequate opportunity to the assessee to reconcile the discrepancy occurring in the accounts of the assessee and MMTC as the AO has directed the assessee to explain the difference within one day of issuing of show-cause notice. It is also contended that AO has wrongly considered the difference in the account at Rs. 23,22,207/- instead of actual difference of Rs. 2,33,22,207/-. Further the assessee has reconciled the discrepancies occurred in

the accounts of the assessee with the accounts maintained by the MMTC. It is explained that that goods were purchased against bank guarantee which was recorded in the books of account as Gold purchased under loan scheme however final settlement was made on the basis of actual bills/invoices raised. It has also been explained that the other discrepancy was on account of refund amount because of excess payment made to MMTC. With the assistance of the Ld. Representative we have gone through the material on record and observed that reconciliation of the discrepancies have been duly elaborated in the findings of the Ld. CIT(A) with supporting material. In the light of the above we do not find any infirmity in the decision of Ld. CIT(A), therefore, the appeal of the Revenue is dismissed.

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

This Order pronounced in Open Court on 27/05/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad: Dated 27/05/2019

TANMAY

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3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।