

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI PAWAN SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5562/MUM/2017
Assessment Year: 2012-13**

Asstt. Commissioner of
Income Tax-32(3), Mumbai
Room No. 108, 1st floor,
Bldg. No. C-11,
PratyakshakarBhavan,
BandraKurla Complex,
Bandra (E), Mumbai-
400051.

Shri Satyendra Kumar
Goyal, 1702, Pranay Nagar
Society, Ram MnadirExtn
Road, Vazira Naka, Borivali
(W), Mumbai-400092.

Appellant

**PAN No. AAEPG3578R
Respondent**

Revenue by : Mr. Satish Chandra Rajore, DR
Assessee by : Mr. Vimal Punmiya, AR

Date of Hearing : 13/03/2019
Date of pronouncement: 11/06/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax-44, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the revenue read as under:
- i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.3,54,13,062/- made u/s 68 of the I.T. Act on account of unexplained cash credit as the assessee failed to prove the identity and creditworthiness of the lender.
 - ii. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of the I.T. Act on account of unexplained cash credit despite the fact that the party from whom the alleged loan was received by the assessee was listed as hawala entry provider who indulged in providing accommodation entry of unsecured loans and related to Bhanwarlal Jain.
 - iii. On the facts and in the circumstances of the case the finding of the Ld. CIT(A) that the AO has only discussed the fact of Bhanwarlal Jain group and the AO has not appreciated the fact that he was not making the assessment of Bhanwarlal Jain. This finding is perverse on facts as the assessee has introduced the accommodation entries of loan from the group concerns controlled by Bhanwarlal Jain as such the AO's finding and reliance placed on the investigation made by the investigation wing was right.
 - iv. On the facts and in the circumstances of the case the finding of Ld. CIT(A) that the assessee has proved identity and creditworthiness of the creditor is perverse on facts as the assessee has not furnished any evidence to justify the creditworthiness and genuineness of the lender.
3. Briefly stated the facts are that the assessee filed his return of income for the assessment year (AY) 2012-13 on 31.08.2012 declaring total income of Rs.29,38,563/-. The assessee, proprietor of M/s Peerless Construction, is engaged in the business of building construction.

During the course of search and seizure action u/s 132 of the Act in the case of Bhanwarlal Jain Group, carried out by the Investigation Wing of the Income Tax Department, Mumbai on 03.10.2013, it was found out that the above group used to provide accommodation entries of bogus unsecured loans/bills advanced through various benami concerns. Further, the AO received information from the Investigation Wing that the assessee had obtained loans from the following parties, appearing in the list of beneficiaries of accommodation entries from Bhanwarlal Jain Group:

Sr. No.	Name	Amount
1.	Navkar India	Rs.16,62,000/-
2.	Rajan Diamond	Rs.1,23,02,340/-
3.	Mohit Enterprises	Rs.11,08,000/-
4.	Mukti Exports	Rs.22,16,000/-
5.	Pushpak Gems	Rs.32,22,668/-
6.	Navkar Diamonds	Rs.15,11,096/-
7.	Mehul Gems Pvt. Ltd.	Rs.20,89,358/-
8.	Daksh Diamonds	Rs.29,91,600/-
9.	Jewel Diam	Rs.11,08,000/-
10.	Kothari & Co.	Rs.11,08,000/-
11.	Minal Gems	Rs.33,24,000/-
12.	Rose Impex	Rs.27,70,000/-
	Total	Rs.3,54,13,062

During the course of assessment proceedings, the AO issued summons to the above parties *vide* notice dated 31.02.2015 to appear before him. However, no one appeared before him. Only confirmations, copy of bank statements were received by the AO through courier/post.

In response to a show cause along with questionnaire issued by the AO, the assessee submitted bank statements and confirmation of the loans from the above parties. However, the AO was not convinced with

the details filed by the assessee for the reason that (i) no stock of diamonds was found at any of the premises from where these concerns supposedly carry on their business; any genuine concern would have at least some stock of diamonds available, (ii) books of accounts are not maintained at respective registered offices but at undisclosed premises, unearthed during the course of search and (iii) it was established by examining various dummy directors/partners etc. and Bhanwarlal Jain and family under oath that these concerns are used for giving accommodation entries.

Then narrating the case of a beneficiary named Amba Corporation which had taken entry from a benami concern of Bhanwarlal Jain and Rajesh Bhanwarlal Jain in FY 2010-11 corresponding to the AY 2011-12, the AO held that the benami concerns of the above group had given accommodation entry of loans and advances to various beneficiaries, whose names are appearing in the regular books of account of the benami concerns managed and operated by them. Thus the AO made an addition of Rs.3,54,13,062/- u/s 68 of the Act.

4. In appeal, the Ld. CIT(A) observed that during the course of assessment proceedings, the assessee filed before the AO (i) loan confirmations from lenders, (ii) PAN of the lenders, (iii) copy of the return of income of lenders, who advanced the loan, (iv) copy of bank account of lenders (v) copy of bank account of the assessee and (vi) copy of balance sheet and P & L account of the lenders.

The Ld. CIT (A) found that the interest paid against such loan has been subject to TDS. As per him, the identity of the creditors has been

established as the concerned PAN has been filed and they are filing the return of income. The creditworthiness of the lenders can be established from the bank statements and balance sheet which were filed before the AO.

The Ld. CIT (A) observed that the entire focus of the AO was on the modus operandi adopted by Bhanwarlal Jain Group of cases to provide bogus accommodation entry ; while the information provided by the Investigation Wing can be the starting point of an enquiry, it cannot be a conclusion reached by the AO.

The Ld. CIT (A) referred to the judgment of the Hon'ble Bombay High Court in the case of *M/s Rushabh Enterprises vs. ACIT 24(3)* in WP No. 167 of 2015 dated 15.04.2015, wherein the assessee had taken loan from the concerns related to Bhanwarlal Jain Group of cases. The Hon'ble High Court in para 8 of its order stated as under:-

“..... according to her (AO) the revenue has received information from the DGIT (Inv) that the assessee has taken unsecured loans from the above parties by way of unaccounted cash/accommodation entries. We are unable to agree since the petitioner has clearly stated that all the payments were made by a/c payee cheques which were encashed in the bank account of the petitioner in the regular course of business. We find that the petitioner has also paid interest on this loans after deduction of tax at source and TDS returns are also accordingly filed. There is no dispute in regard to the above. We find nothing to support the said contentions of the revenue. The revenue's contention in the affidavit in reply has no merit. On the other hand, the loans appear to be taken in the regular course of business.....”

In view of the above facts and decision cited above, the Ld. CIT (A) deleted the addition of Rs. 3,54,13,062/- made by the AO u/s 68 of the Act.

5. Before us, the Ld. DR relies on the decision in *Pr. CIT vs. Bikram Singh* (2017) 85 taxmann.com 104 (Del) and *Pr. CIT vs. NRA Iron & Steel Pvt. Ltd.* 2019 (3) TMI 323 (SC).

6. On the other hand, the Ld. counsel for the assessee submits that in the following decisions, similar addition made by the AO in respect of loan from Bhanwarlal Group has been deleted by the Tribunal.

1	ITA No. 6099/Mum/2016 DCIT (CC)-1(3)vs. M/s Jainam Investments
2.	ITA No. 1414/Mum/2017 DCIT 25(1) vs. M/s YRV International
3.	ITA No. 2100/Mum/2016 and ITA No. 1645/Mum/2017 Shri Ashok Nagraj Mehta vs. ACIT Circle 19(1)
4.	ITA No. 7049/Mum/2016 Asst CIT-19(1) vs. Shri Dilip Chimanlal Gandhi
5.	ITA No. 7049 & 7050/Mum/2016 Jitendra M Kitawat vs. ITO 18(1)(5)
6.	ITA No. 7047/Mum/2016 Jitendra M Kitawat (HUF) vs. ITO 18(1)(5)
7.	ITA No. 3017/Mum/2018 Smt. Ritu Kamal Singal vs. ITO 24 (3)(4)

6.1 Also stated by the Ld. counsel that the loan received during the Financial Year (FY) 2011-12 comes to Rs. 90,00,000/- and not Rs. 3,54,13,062/- as mentioned by the AO, because the closing balances of all the parties have been added by the AO.

7. We have heard the rival submissions and perused the relevant material on record. The reasons for our decisions are given below.

In the case of *Bikram Singh* (supra), relied on by the Ld. DR, it is held that “where the AO made addition to assessee’s income u/s 68 in respect of loan taken from various parties, since the assessee failed to prove that any of those creditors had financial strength to lend such huge sums of money to assessee, that too without any collateral security, without interest and without a loan agreement, impugned addition deserves to be confirmed”.

In the case of *NRA Iron & Steel Pvt. Ltd.* (supra), relied on by the Ld. DR, the AO had issued summons to the representatives of the investor companies. Despite the summons having been served, nobody appeared on behalf of any of the investor companies. The Department only received submissions through dak, which created a doubt about the identity of the investor companies. Thereafter, the AO independently got field enquiries conducted with respect to the identity and creditworthiness of the investor companies and to examine the genuineness of the transaction. Enquiries were made at Mumbai, Kolkata and Guwahati, where these Companies were stated to be situated. On the basis of the detailed enquiries conducted, the AO held

that the assessee had failed to prove the existence of the identity of the investor companies and genuineness of the transaction.

As mentioned earlier, in the instant case the entire focus of the AO was on the modus operandi adopted by Bhanwarlal Jain Group of cases to provide bogus accommodation entries of loan. The main reason of the AO for making addition u/s 68 was on the basis of information provided by the Investigation Wing of the Department. No independent enquiry has been conducted by the AO as was done in *NRA Iron & Steel Pvt. Ltd.* (supra). In the case of *Bikram Singh* (supra), the assessee was unable to establish the identity, creditworthiness and genuineness of the said persons and transactions.

As recorded by the Ld. CIT (A), during the course of assessment proceedings, the assessee filed before the AO (i) loan confirmations from lenders, (ii) PAN of the lenders, (iii) copy of the return of income of lenders, who advanced the loan, (iv) copy of bank account of lenders (v) copy of bank account of the assessee and (vi) copy of balance sheet and P & L account of the lenders.

Therefore, the instant case is distinguishable from the above case laws relied on by the Ld. DR.

7.1 It is well settled that in order to discharge the onus u/s 68, the assessee must prove the following:

- (i) the identity of the creditor,
- (ii) the capacity of the creditor to advance money; and

(iii) the genuineness of the transaction.

After the assessee has adduced evidence to establish *prima facie* the aforesaid, the onus shifts to the department. In the instant case, though the onus shifted to the department, the AO has failed to make necessary enquiry to reject the contentions of the assessee.

In view of the above factual matrix and position of law, we uphold the order of the Ld. CIT (A).

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 11.06.2019

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai;

Dated: 11.06.2019

Alindra. P.S.

Copy of the Order forwarded to :

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

//True Copy//

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai