

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ ITA No.545/JP/2019  
निर्धारण वर्ष / Assessment Year :2014-15

Income Tax Officer, Ward 6(2), Jaipur.	बनाम Vs.	Mahesh Mordia, Flat No. 301, House No. B-2, Anukampa Atlantis, Bhawani Singh Road, Near 22 Godown, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No. AINPM 0101 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri K.C. Meena (Addl.CIT)  
निर्धारिती की ओर से / Assessee by: Shri Rajeev Sogani (CA)

सुनवाई की तारीख / Date of Hearing : 02/07/2019  
उदघोषणा की तारीख / Date of Pronouncement :12/07/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the revenue against the order of Id. CIT(A)-IV, Jaipur dated 04/02/2019 for the A.Y. 2014-15 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

Following grounds have been taken by the revenue:

- “(i) Whether in the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 2,08,45,000/- on account of unsecured loan received from Shri Anand Agarwal as the assessee has failed to discharge the onus of proving the genuineness of the transaction and creditworthiness of the creditor as required/s 68 of the IT Act, 1961.

- (ii) *Whether the Id. CIT(A) is justified in facts and in law in holding that as the assessee is a director in several companies having substantial share capital, the creditworthiness of the cash creditor is established.*
- (iii) *The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."*

2. Rival contentions have been heard and record perused. Facts in brief are that in the present case, that the assessee derived his income from carrying on mining and stone crushing business and also have income from salary and capital gain and other sources. For the relevant previous year, the assessee filed his return of income on 31/3/2015, declaring total income of Rs. 9,06,330/-. Assessment U/s 143(3) was completed vide order dated 28/12/2016, wherein, income assessed was Rs. 2,17,51,330/-, resulting into addition of Rs. 2,08,45,000/-.

3. During the course of scrutiny assessment, the A.O. observed that during the relevant previous year, the assessee received Rs.2,08,45,000/- from Shri Anand Kumar Agarwal. The AO required the assessee to establish the identity, creditworthiness of Shri Anand Kumar Agarwal and also the genuineness of the amount received from him. To satisfy the above-mentioned requirements of the AO, following documents were submitted, before him, by the assessee:

S. No.	Documents Submitted	PB Page	AO Order Page
1.	Copy of PAN card of Shri Anand Kumar Agarwal	2	3

2.	Copy of Aadhar card of Shri Anand Kumar Agarwal	3	3
3.	Copy of Income Tax Return of Shri Anand Kumar Agarwal for AY 2014-15	4-5	3
4.	Details of companies owned by Shri Anand Kumar Agarwal	6-25	4
5.	Copy of Affidavit of Shri Anand Kumar Agarwal, confirming having given amount to the assessee	26	6
6.	Copy of Confirmation of Account signed by Shri Anand Kumar Agarwal	27	6
7.	Copy of Letter received from Shri Anand Kumar Agarwal stating his bank details from where the sums were transferred to the assessee's Bank Account	1	3

The AO, disregarding the above-mentioned documents, made addition, under section 68, of the entire amount of Rs.2,08,45,000/-, received by the assessee from Shri Anand Kumar Agarwal.

4. By the impugned order, the Id. CIT(A) deleted the addition after observing as under:

*“7.2 I have carefully perused the AO order and I am not in agreement with the AO for the following reasons”*

- 1) *That identity of lender is established beyond doubt by filing of PAN Card, Aadhar Card, TT return, affidavit confirming the transaction, loan confirmation duly signed by both the parties. In my view enough evidences are filed before the AO to establish the identity.*
- 2) *That the genuineness of transaction is also proved as the loan amount is routed from lender's bank account to the appellant through RTGS- as submitted by the learned A/R and also noted by the AO himself. Thus, the loan transaction is through normal banking channels is a genuine transactions.*

- 3) *That AO view that since returned income is about 5.84 lakhs the lender is not credit worthy is totally erroneous. The lender is director of many companies details of which are in written submissions by the learned A/R. those companies have substantial paid up capital (about 28.87 Crores) and have raised substantial funds as is evident from the document filed in the APB.*
- 4) *That if the AO's requirement of personal attendance was not feasible (as is pointed out by the learned A/R) then AO has all the power to issue notice u/s 131 of the act or issue commission u/s 131(1) (d) of the act. Mere fact that lender was not produced for examination is not enough for invoking section 68 adversely.*
- 5) *That even perusal of bank statement indicates nothing incriminating except for the lame observation that there were certain deposits in the bank statement prior to the issue of loan amounts on different dates. Noticeably such deposits are bank transfer or made by cheques.*

7.3 *There are umpteen judgments where in it is held that once name, address, PAN and ITR details are provided then addition u/s 68 cannot be invoked unless AO brings some adverse material on record which is in contrary to evidences filed by the lender. Whatever action is to be taken can only be taken in the hands of lender, the person who has given loan*

*Some of the judgments supporting this view are:*

*Hon'ble Supreme Court in the case of CIT v. Lovely Exports (P.) Ltd. [2008] 216 CTR 195, found the additions unsustainable; and proceeded to delete the same. He Hon'ble court observed as under:*

*Section 68 of the Income-tax Act, 1961 - Cash credit - If share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Assessing Officer, then Department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of assessee-company*

*CIT Vs. Morani Automotives P Ltd. (2014) 51 (Tax world) 5*

*the Hon'ble Rajasthan High Court held that when the shareholders have submitted confirmation, made payment by cheque, having their PANs, filling their returns of income and furnished copies of returns of income then there is no question of addition on account of share capital.*

*CIT v. Steller Investment Ltd (1991) 192 ITR 287 Affirmed by Hon'ble Supreme Court (2001) 251 ITR 253. In this case it was held that even if it is assumed that subscriber to the increased capital were not genuine, under no circumstances that amount of share capital regarded as undisclosed income.*

*Barkha Synthetic Ltd. v. ACIT (2003) 270 CTR 477 Rajasthan. It was held that where the share application money is received through banking channel the assessee has only to prove the existence of the person in whose name share application is received.*

*Rajasthan Tube Mf. Co. Ltd v. DCIT TW May 2003 part-5 The Hon'ble Court held same views as held in above cases.*

*In the case of C.I.T. Vs. Sophia Finance Ltd. (1994/205 ITR 98 (Delhi F.B.) it was held that if the shareholders are identified and it is established that they have invested money in purchase of share then the amount received by the company would be regarded as a capital receipt and cannot be treated as unexplained credits as company's income. The similar view was taken in case of CIT Vs Stellar Investment Ltd. (1991) 192 ITR 287 duly affirmed by Supreme Court in (2001) 251 ITR 263 (SC). It is also held in case of CIT vs. Sophia Finance Ltd. that only transactions which are not genuine can only be regarded as undisclosed income of the company. In the case it is provided that the shareholders are identified, transaction is genuine and amount was received by the company from them.*

7.4 The following judgments Hon'ble ITAT's on this issue can also be referred:

- a. *DCIT v. Misty Meadows P. Ltd.- ITA No. 422/JP/2012*
- b. *I.T.O. Vs. Bell Paper Board P. Ltd.- ITA No. 575/JP/2011*
- c. *DCIT Vs. Ansh Intermediate Service P. Ltd.-ITA No. 243/LKW/2015*
- d. *I.T.O. Vs. Superline Construction P. Ltd.-ITA No. 3645/Mum/2014*

- e. *Lotus Integrated Tax Port Ltd. Vs. DCIT-ITA No. 1138/CHD/2014*
- f. *ACTT Vs. Shyam Indus Power Solutions -ITA No. 3223-24 2016*

7.5 *Considering the above I am of the view that appellant has discharged his onus to fulfill all the ingredient of section 68 and as there is no adverse material/ evidence on record brought by the AO. The addition made by the AO is untenable. On the facts and in the circumstances of the case, the addition of Rs.2,08,45,000/- is directed to be deleted. Appellant gets a relief in Ground No.1."*

5. Against the above order of the Id. CIT(A), the revenue is in further appeal before the ITAT.

6. It was argued by the Id DR that the assessee was unable to prove the genuineness of loan transaction and creditworthiness of the loan creditor, therefore, the A.O. has correctly added the same. He relied on the order of the A.O.

7. On the other hand, the Id AR of the assessee has submitted that the assessee has established not only identity of the loan creditor but also genuineness of loan transactions as well as his creditworthiness. Our attention was invited to the various documents filed by the assessee before the A.O. which includes PAN card, Aadhar Card, Income Tax Return of loan creditor, details of companies owned by loan creditor, affidavit of loan creditor filed before the A.O. confirming the amount given to the assessee, letter received from loan creditor stating his bank details from where the sums were transferred to the assessee's bank

account. He has further contended that while holding that the loan creditor was not having sufficient creditworthiness, the AO ignored the fact that, Shri Anand Kumar Agarwal was Director in many companies to whom even established financial institutions had given loans of more than Rs. 750 crores. While determining the ability of Shri Anand Kumar Agarwal, in providing loan of Rs.2.08 Crores to assessee, the AO should have considered the credit worthiness, funds availability of the companies in which Shri Anand Kumar Agarwal was a Director. The AO should not have considered the return of income filed by Shri Anand Kumar Agarwal alone, for the relevant previous year, in isolation. He further argued that a group which can raise an amount of Rs. 818.14 crores (789.27 cr. +28.87 cr.) in the form of Share Capital and Loans from the Financial Institutions, can be considered to have capacity to provide loan to any person at least to the extent of Rs. 2.08 crore. Reliance was placed on the decision of the Hon'ble Jurisdictional High Court in the case of Kanhaiala Jangid Vs ACIY (2008) 217 CTR 354 (Raj) and Labh Chand Bohra Vs ITO (2008) 219 CTR 571 (Raj). As per the Id AR, it was not a case of the A.O. that the loan creditor has deposited cash in his bank account before issuing of cheque. There was credit in his bank account through transfer entries and only through banking transaction. The bank statement was also procured by the A.O.

directly from the bank wherein no any consistency or infirmity was pointed out so as to raise doubt that the transaction was not genuine.

8. We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by the Id. AR and Id. DR during the course of hearing before us as well as judicial pronouncements discussed by the A.O. and the Id. CIT(A) in their respective orders in the context of factual matrix of the case. From the record we found that the assessee since 2004 is engaged in the business of Mining and Stone Crushing, and carried out business as a proprietor in the name and style of M/s Bhagwati Stone Crusher. Thereafter, in the year 2011, assessee started business of mining and stone crushing, in partnership with Shri Raj Kumar Bafna, in the name of M/s RR Minerals, a partnership firm. M/s RR Minerals, the partnership firm was created vide partnership deed dated 4.07.2011. Such partnership firm took over the running unit of stone crusher, owned by M/s Bhagwati Stone Crusher. Shri Raj Kumar Bafna, partner of the assessee in M/s RR Minerals, was also engaged in mining business and originally had his workings based in Kolkata. Shri Anand Kumar Agarwal was a businessman based in Kolkata and was Director in number of companies having operations in different sectors. As Shri Raj Kumar

Bafna and Shri Anand Kumar Agarwal were both based in Kolkata, they had developed acquaintances. Since, Shri Raj Kumar Bafna and Shri Anand Kumar Agarwal were close business associates, as a result Shri Anand Kumar Agarwal, even gave Shri Raj Kumar Bafna, general Power of Attorney to deal with all the business issues related to mining or otherwise, in Rajasthan. This was so done by him as he was based in Kolkata and wanted a representative for his possible business ventures in Rajasthan. Due to the acquaintances existent between Shri Anand Kumar Agarwal and Shri Raj Kumar Bafna, Shri Anand Kumar Agarwal even provided loan of Rs. 75,00,000 to M/s RR Minerals through M/s SAV Wires Pvt. Ltd., a company in which he was a Director. Such loan was received through proper banking channel in the year 2012 which was even subsequently returned by M/s RR Minerals in the year 2013.

9. During the year under consideration, M/s RR Minerals was taken over by a company called M/s Finest Minerals Pvt. Ltd., in which the assessee and Shri Raj Kumar Bafna were shareholders. As the assessee already had knowledge and experience in the field of mining, had political connections and was working with Raj Kumar Bafna to expand his business, the assessee was approached by Shri Anand Kumar Agarwal for possibility of any kind of business opportunity. Shri Anand Kumar Agarwal was very much interested in establishing his business in

Rajasthan. Through Shri Raj Kumar Bafna, he came in contact with the assessee. Relying on the past business association with Shri Raj Kumar Bafna and long experience of the assessee in the mining field and also his political connections, Shri Anand Kumar Agarwal insisted the assessee to make him as an associate in any of his upcoming venture or in the existing business. To show his genuineness of interest in the business of assessee, Shri Anand Kumar Agarwal transferred Rs.2,08,45,000/- during the relevant previous year, to the assessee. In order to establish the identity of Shri Anand Kumar Agarwal, the assessee has submitted his PAN card, Aadhar Card, ITR returns, details of the companies owned by him, his affidavit confirming the loan transactions etc. From the record we found that Shri Anand Kumar Agarwal was Director in many companies, having consolidated amount invested in Share Capital Rs. 28.87 crores (AO Order Page 4). Such companies had also taken loans from various Financial Institutions ("FI) to the tune of Rs.789.27 crores. Thus, Shri Anand Kumar Agarwal, himself was engaged in lot of business and had active role in various companies. The AO, during the course of assessment proceedings observed that Shri Anand Kumar Agarwal declared income in his return of Rs. 5,84,670/-, then he cannot be considered to have the creditworthiness of giving loan of Rs. 2.08 crore to the assessee. However, the AO ignored the fact that, Shri Anand

Kumar Agarwal was Director in many companies to whom even established financial institutions had given loans of more than Rs. 750 crores. While determining the ability of Shri Anand Kumar Agarwal, in providing loan of Rs.2.08 Crores to assessee, the AO should have considered the credit worthiness, funds availability of the companies in which Shri Anand Kumar Agarwal was a Director. The AO should not have considered the return of income filed by Shri Anand Kumar Agarwal alone, for the relevant previous year, in isolation. A group which can raise an amount of Rs. 818.14 crores (789.27 cr. +28.87 cr.) in the form of Share Capital and Loans from the Financial Institutions, can be considered to have capacity to provide loan to any person at least to the extent of Rs. 2.08 crore. Furthermore, it is not the case of the AO that in the Bank Statement, of Shri Anand Kumar Agarwal, for the relevant previous year, filed before him, cash deposits were made, at different intervals, just before when the amount was transferred to the assessee. The amounts were clearly received even by Shri Anand Kumar Agarwal through proper banking channel from his various group companies/entities within his group. It has also been observed by the AO, that money transferred to assessee by Shri Anand Kumar Agarwal was received from other sources and not through his existing bank balances. This was due to the assessee's

group's internal financial arrangement, for undertaking business venture in mining, in Rajasthan.

10. All these clearly established the creditworthiness of Shri Anand Kumar Agarwal. Money received, by the assessee, from the Shri Anand Kumar Agarwal was for establishing the business in Rajasthan and cannot be treated as a non-genuine transaction. It is not the case that the assessee received money from an unknown person or any person of no means. Merely because, Shri Anand Kumar Agarwal could not produce during the course of assessment proceedings because of the genuine reasons being litigation going on with the financial institution from which he has taken the loan, it cannot be made a basis for considering loan received from him to be not genuine. Nowhere the AO has suggested that the money given by Shri Anand Kumar Agarwal had actually flown from the assessee. In absence of any such cogent evidence on record, no addition can be made to the income of the assessee merely on suspicion. Similar ratio was laid down by the Hon'ble Rajasthan High Court in the case of Shubh Mines Private Limited (Income Tax Appeal No. 96/15), wherein it was held that:-

*"...in the considered opinion of this court, in absence of any cogent evidence on record establishing that the money shown to have received as share application money, was as a matter of fact, unaccounted money belonging to the assessee company, the finding arrived at by the AO, which is based on suspicion, has rightly been*

*held not sustainable in the eyes of law. Suffice it to say that the finding arrived at by the CIT (A), affirmed by the (TAT, which remains a finding of fact, cannot be said to be capricious or perverse..."*

We found that the Id. CIT(A) has contraverted all the objections of the A.O. and after considering various documents placed on record before the A.O., the Id. CIT(A) recorded a finding to the effect that identity of lender is established beyond doubt by filing of PAN Card, Aadhar Card, TT return, affidavit confirming the transaction, loan confirmation duly signed by both the parties. The Id. CIT(A) also recorded finding to the effect that the genuineness of transaction is also proved as the loan amount is routed from lender's bank account to the assessee through RTGS noted by the AO himself. Thus, the loan transaction is through normal banking channels is a genuine transaction. After recording detailed findings with respect to the lender being Director in many companies, details of which were submitted before the A.O., which companies have substantial paid up capital and have also raised substantial funds, the Id. CIT(A) concluded that the creditworthiness of the lender was also established. With regard to the A.O's contention that the loan creditor was not produced before him, the Id. CIT(A) categorically observed that the A.O. has sufficient power U/s 131 of the Act or to issue commission U/s 131(1)(d) of the Act, which the A.O. completely failed. The Id. CIT(A) also observed that even the bank

statement which was called by the A.O. directly from the bank clearly indicate that there was sufficient credit balance in the bank account of the lender. Thereafter the Id. CIT(A) considered various judicial pronouncements and after applying the ratio of these judicial pronouncements to the facts of the instant case recorded finding to the effect that the assessee has discharged his onus to fulfill all the three ingredient of loan creditor i.e. identity, genuineness and creditworthiness. The detailed finding so recorded by the Id. CIT(A) are as per the material on record and it has not been controverted by the Id. DR by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings recorded by the Id. CIT(A) resulting into deletion of addition of Rs. 2,08,45,000/- made by the A.O. U/s 68 of the Act.

11. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 12<sup>th</sup> July, 2019.

Sd/-

(विजय पाल राव)

(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12<sup>th</sup> July, 2019

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-The ITO, Ward 6(2), Jaipur.
2. प्रत्यर्थी / The Respondent- Mahesh Mordia, Jaipur.
3. आयकर आयुक्त / CIT

Sd/-

(रमेश सी शर्मा)

(RAMESH C SHARMA)

लेखा सदस्य / Accountant Member

4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 545/JP/2019)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar