

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 1725/Mum/2018
(Assessment Year: 2011-12)**

Income Tax Officer-24(1)(5),
R. No. 523, 5th Floor,
Piramal Chambers,
Lalbaug, Parel,
Mumbai – 400 012

Vs

Shri Dhansukh D. Mehta
201, Madhu Industrial Park
Avadh Narayan Tiwari Marg,
Andheri (East)
Mumbai – 400 069

PAN – AAEPM1497K

(Appellant)

(Respondent)

Appellant by: Shri D.G. Pansari, D.R

Respondent by: None

Date of Hearing: 24.06.2019

Date of Pronouncement: 12.07.2019

ORDER

FERRAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-36, Mumbai, dated 20.12.2017, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s 147 of the Income Tax Act, 1961 (for short ‘Act’), dated 26.02.2016. The revenue has assailed the order of the CIT(A) by raising before us the following grounds of appeal:

- “1. Whether on the facts and in the circumstances of the case and in law the Hon’ble CIT(A) erred in deleting the addition of Rs.70,00,000/- on account of bogus unsecured loan availed from M/s. Meenakshi Exports and M/s Pushpak Gems which were controlled by the Bhanwarilal Jain Group.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing of Rs.5,69,250/- on account of interest expenditure which stemmed from such bogus unsecured loan.
3. The appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored.
4. The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary.”

2. Briefly stated, the assessee who is a civil contractor had filed his return of income for A.Y. 2011-12 on 28.09.2011, declaring a loss of (-) Rs.8,43,431/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, on the basis of information received from the office of the Director of Income Tax (Inv.), Mumbai, that the assessee as a beneficiary had obtained accommodation entries from M/s Marvin Enterprises which was a group entity belonging to Shri Bhanwarlal Jain, an infamous accommodation entry provider, the case of the assessee was reopened under Sec. 147 of the Act. In compliance to the notice issued under Sec.148, the assessee requested that his original return of income may be treated as a return filed in compliance to the aforesaid notice.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have obtained loans from the following three parties:

Entry Provider Name	PAN	F.Y.	Amount
Meenakshi Exports	AAOFM3213F	2010-11	50,00,000/-
Suman Exports	AKNPC1507H	2010-11	30,00,000/-
Pushpak Gems	AADFP2673D	2010-11	20,00,000/-

In order to fortify the authenticity of the aforesaid loan transactions, the A.O directed the assessee to place on record supporting documentary evidence viz. bank statements of all transactions of the assessee, loan confirmations, bank statements of the aforementioned lenders, creditworthiness of the said parties, and also a note on the

nature of the aforesaid transactions. Also, notices under Sec. 133(6) were issued by the A.O to the abovementioned parties. In compliance to the aforesaid directions of the A.O, it was submitted by the assessee that no fresh loan was raised by him from M/s Suman Exports during the year under consideration. As regards the loans raised by the assessee from the remaining two parties viz. (i) M/s Minakshi Exports; and (ii) M/s Puspak Gems, it was submitted by the assessee that the said loans were raised through account payee cheques. Apart there from, it was submitted by him that interest on the aforesaid loans was paid by the assessee after deducting the applicable TDS on the same. In the mean time, the aforesaid parties viz. M/s Minakshi Exports; (ii) M/s Puspak Gems; and (iii) M/s Suman Exports, in response to notices issued to them under Sec.133(6) filed their replies with the A.O. Further, the assessee in order to substantiate the genuineness of the aforesaid loan transactions filed the affidavits of the proprietor/partners of the aforementioned concerns viz. (i) Shri Abhishek Lodha, partner of M/s Minakshi Exports; (ii) Shri Gautam Kumat, partner of M/s Puspak Gems; & (iii) Sh. Ramnivas Jairam Choyal, proprietor of M/s Suman Exports. Insofar the loan transaction of the assessee with M/s Suman Exports was concerned, the A.O finding favour with the claim of the assessee that no fresh loan was raised by him from the said concern during the year under consideration, thus did not draw any adverse inferences as regards the same. In fact, it was observed by the A.O that the loan of Rs. 30 lac that was claimed by the assessee to have been raised from the said party viz. M/s Suman Exports in the preceding year i.e A.Y 2010-11, was added as an unexplained cash credit u/s 68 while framing the assessment for the said year. However, the A.O was not persuaded to subscribe to the claim of the assessee that he had raised genuine loans from the remaining two parties, viz. (i) M/s Minakshi Exports;

and (ii) M/s Puspak Gems. It was observed by the A.O that the assessee had failed to produce the aforementioned parties for cross examination before him. Apart there from, it was noticed by the A.O that the said parties had also failed to comply with the summons issued to them under Sec.131, and had not appeared before him. The A.O holding a conviction that the affidavits of the aforesaid parties did not have any evidentiary value, thus declined to accept the genuineness of the loan transactions in the backdrop of the depositions made by the parties in the said affidavits. The A.O after dwelling at length on the facts that were unearthed in the course of the search proceedings conducted on Shri. Bhanwarlal Jain, an infamous accommodation entry provider, and taking cognizance of the facts that were admitted by him in his statements recorded under Sec. 132(4)/131 of the Act, therein observed that the same sufficed to prove that the assessee had only obtained accommodation entries in the garb of unsecured loans from the aforementioned parties. Accordingly, on the basis of his aforesaid observations the A.O added the loans aggregating to Rs.70,00,000/- viz. (i) loan raised from M/s Minakshi Exports: Rs.50 lac; and (ii) loan raised from M/s Puspak Gems: Rs.20 lac, as unexplained cash credits in the hands of the assessee. Apart there from, the interest payment made by the assessee to the aforementioned parties viz. M/s Minakshi Exports: Rs.1,75,000/-; (ii) M/s Suman Exports: Rs.3,40,250/-; and (iii) M/s Puspak Gems: Rs. 54,000/- was also disallowed and added back to the total income of the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating at length on the contentions advanced by the assessee observed, that as the assessee had duly substantiated the 'nature' and 'source' of the amount of

Rs.70,00,000/- received by way of loan from the aforementioned parties viz. (i).M/s Minakshi Exports: Rs. 50 lac; and (ii) M/s Puspak Gems: Rs.20 lac, therefore, the addition made by the A.O by treating the same as unexplained cash credits under Sec. 68 could not be sustained. Further, the disallowance of the interest payment of Rs.5,69,250/- made by the assessee to the lender parties was also vacated by the CIT(A).

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that the respondent assessee despite having been put to notice as regards the hearing of the appeal, has however, failed to appear before us. Accordingly, in the backdrop of the aforesaid fact we are constrained to dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963, after hearing the appellant revenue.

6. As is discernible from the orders of the lower authorities, the case of the assessee was reopened by the A.O on the basis of the information that the assessee during the year under consideration had obtained accommodation entries from the following parties:

Entry Provider Name	PAN	F.Y.	Amount
Meenakshi Exports	AAOFM3213F	2010-11	50,00,000/-
Suman Exports	AKNPC1507H	2010-11	30,00,000/-
Pushpak Gems	AADFP2673D	2010-11	20,00,000/-

Observing, that the assessee had not raised any fresh loan from M/s Suman Exports during the year under consideration, therefore, no adverse inference insofar the said party was concerned was drawn by the A.O in the hands of the assessee. In fact, it was observed by the A.O that a loan of Rs.30 lac that was received by the assessee from M/s Suman Exports during the immediately preceding year viz. AY.

2010-11 was treated as an unexplained cash credit in the hands of the assessee while framing the assessment for the said preceding year. Accordingly, the A.O not finding favour with the claim of the assessee that he had raised genuine loans from the remaining two parties viz. (i). M/s Minakshi Exports : Rs.50 lac; and (ii) M/s Puspak Gems : Rs.20 lac, therefore, added the same as an unexplained cash credit in the hands of the assessee. As observed by us hereinabove, the interest paid by the assessee on the loans raised from all the aforementioned three parties, viz. (i) M/s Minakshi Exports; (ii) M/s Suman Exports; and (iii) M/s Puspak Gems, therein aggregating to Rs.5,09,250/- was also disallowed by the A.O.

7. We have perused at length the orders of the lower authorities. As is discernible from the assessment order, the assessee in compliance to the directions of the A.O had placed on his record sufficient documentary evidence to substantiate the authenticity of the loans raised from the aforementioned parties, viz. (i) bank statements of the assessee; (ii) loan confirmations of the lenders; (iii) bank statements of the aforementioned parties; (iv) PAN No. of the lenders alongwith their complete addresses; and (v) copies of the income tax returns of the loan creditors along with their balance sheets and capital accounts. Apart there from, we find that the notices issued by the A.O under Sec. 133(6) to the aforementioned parties were duly complied with by them and the requisite information was filed with the A.O. Also, the assessee in order to substantiate the authenticity of the loan transactions had placed on record the affidavits of the partners of the aforementioned concerns viz. (i) Shri Abhishek Lodha S/o Shri Jeevraj Lodha, Partner of M/s Minakshi Exports, Office: 3-M, Ambika Darshan, Moti Kadia, Sheri, Saiyad Pura, Surat, Gujarat, had filed an affidavit with the A.O confirming the transaction of advancing of a

loan of Rs. 50 lac by the firm viz. M/s Minakshi Exports (PAN No. AAOFM3213F), which was engaged in the business of trading and exports of diamonds at Surat & Mumbai. Further, it was deposed by him that the said loan was returned on 21.03.2012 and 16.05.2012, and that the said concern was being assessed to Income Tax at Surat; and (ii) Shri Gautam Kumat S/o Noratmal Kumat, Partner of M/s Puspak Gems, Office : 407, Devratna Apartment, Rampura Main Road, Surat, Gujarat, had filed an affidavit confirming that the aforesaid firm viz. M/s Pushpak Gems (PAN No. AADFP2673D), which was engaged in the business of trading in export of diamonds at Surat & Mumbai had advanced a loan of Rs.20 lac to the assessee, which was returned by the latter on 11.07.2011. On the basis of the aforesaid facts, we find that the assessee by placing on record the supporting documentary evidence had duly discharged the onus that was cast upon him to substantiate the identity of the loan creditors, genuineness of the transactions and also the creditworthiness of the parties. As is discernible from the orders of the lower authorities, the assessee by placing on record the PAN details and the copies of the returns of income along with the complete addresses of the aforementioned lenders had substantiated the identity of the aforesaid parties. Insofar the genuineness of the loan transactions is concerned, we find, that the same stood duly substantiated from the fact that both the acceptances and repayments of the loans were made through banking channels. Apart there from, the fact that the aforesaid parties had duly responded to the notices issued to them under Sec. 133(6) and confirmed the respective loan transactions also adduces the genuineness of the said loan transactions. As regards the creditworthiness of the lenders, we find that the assessee by placing on record the copies of the bank statements of the creditors out of which the loans were advanced to the assessee, alongwith the copies

of their Income Tax returns, balance sheets and capital accounts, had duly substantiated the same. Accordingly, in the backdrop of our aforesaid observations, we are of the considered view that now when the assessee had duly discharged the onus that was cast upon him, and had substantiated the 'nature' and 'source' of the aforesaid credits appearing in his books of accounts, therefore, there was no justification on the part of the A.O to have characterised the same as unexplained cash credits in the hands of the assessee. We thus not finding any infirmity in the deletion of the addition of Rs.70 lac by the CIT(A), uphold his order to the said extent. The **Ground of appeal No. 1** filed by the revenue is dismissed.

8. We shall now advert to the disallowance of the interest of Rs.5,69,250/- paid by the assessee to the aforesaid lenders viz. (i) M/s Minakshi Exports: Rs.1,75,000/-; (ii) M/s Puspak Gems: Rs.54,000/-; and (iii) M/s Suman Exports: Rs.3,40,250/-. As is discernible from the order of the CIT(A), the aforesaid interest was paid by the assessee through account payee cheques after deducting the applicable TDS on the same. Further, the aforesaid parties had filed their returns of income, and had after offering the aforesaid interest income had claimed credit of the TDS in their respective returns of income. As the genuineness of the loan transactions advanced by the assessee to the aforesaid parties viz. (i) M/s Minakshi Exports; and (ii) M/s Puspak Gems have been upheld by us, therefore, the disallowance of interest paid by the assessee cannot be sustained. Insofar, the interest paid by the assessee to M/s Suman Exports is concerned, we find that as observed by the CIT(A), the loan of Rs.30 lac that was raised by the assessee from M/s Suman Exports was held by him to be genuine while disposing off the appeal of the assessee for A.Y. 2010-11, vide his order dated 18.12.2017. Accordingly, there would be no

justification for disallowing the interest paid by the assessee on the said loan. We thus in terms of our aforesaid observations uphold the order of the CIT(A) as regards the deletion of the addition of interest that of Rs.5,69,250/- that was paid by the assessee on the loans raised from the aforementioned parties. The **Ground of appeal No.2** raised by the revenue is dismissed.

9. The **Ground of appeal Nos. 3 and 4** being general in nature are dismissed as not pressed.

10. The appeal filed by the revenue is dismissed.

Order pronounced in the open court on 12.07.2019

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 12.07.2019
Ps. Rohit

Sd/-a
(Ravish Sood)
JUDICIAL MEMBER

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

