

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

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

**ITA No.4007/Mum/2017  
(Assessment Year: 2010-11)**

ACIT-32(2)  
Room No. 308, 3<sup>rd</sup> Floor,  
C-11, Pratayakshakar Bhavan,  
BKC, Bandra East,  
Mumbai- 400 051

M/s Mount Infra Project,  
702-A, Prem Nagar, Bldg.  
No.5, Mandpeshwar Road,  
Borivali (West),  
Mumbai 400 092

PAN – AAGFV7626P

**(Appellant)**

**(Respondent)**

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

Respondent by: None

Date of Hearing: 25.06.2019

Date of Pronouncement: 28.06.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-44, Mumbai, dated 15.03.2017, 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 12.02.2016. The revenue has assailed the order of the CIT(A) by raising before us the following grounds of appeal:

- i. On the facts and in the circumstances of the case and in law, the Ld. CT(A) erred in deleting addition of Rs.1,01,16,666/- made on account of unexplained loans and interest as the assessee has failed to prove the identity, creditworthiness and genuineness of the said loan.
- ii. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.1,01,16,666/-

made on account of unexplained loans and interest despite the fact that the parties from whom the alleged loans were received by the assessee were listed as hawala entry providers who indulged in providing accommodation entry of unsecured loans and related to Bhanwarlal Jain and his group.

- 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 facts 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 the Ld.CIT(A) that the assessee has proved identity, creditworthiness and genuineness of loan is perverse on facts as the assessee has not furnished any evidence to justify the creditworthiness and genuineness of the loan.
- v. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.
- vi. The appellant craves leave to amend or alter any ground or add a new ground.”

2. Briefly stated, the assessee firm which is engaged in the business of a civil contractor had e-filed its return of income for A.Y.2010-11 on 20.09.2010, declaring its total income at Rs. 84,73,690/-. 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 DGIT (Inv.) Mumbai, that the assessee as a beneficiary had obtained bogus loan from M/s Malhar Exports, which was a group entity of Shri Bhanwarlal Mansukhchand Jain, an infamous accommodation entry provider, the case of the assessee was reopened under Sec.147 of the Act.

3. During the course of the assessment proceedings, it was gathered by the A.O that apart from, the aforesaid loan of Rs. 50,00,000/- that was stated to have been raised from M/s Malhar Exports, the assessee had also claimed to have taken a loan of Rs.50,00,000/- from another group entity of Shri Bhanwarlal Jain viz. M/s Milan & Co. On being called upon to substantiate the

genuineness of the aforesaid loan transactions, it was submitted by the assessee that the said respective loans were raised in the normal course of its business. In order to fortify its aforesaid claim, the assessee placed on record the copy of loan confirmations and the copies of the bank statements showing the transactions with both the concerns through banking channels. The A.O not finding favour with the claim of the assessee that it had received genuine loans from the aforementioned parties, added the aggregate of the aforesaid loans amounting to Rs.1,00,00,000/- as an unexplained cash credit under Sec.68 in the hands of the assessee. Apart there from, the A.O also disallowed the interest of Rs. 1,16,666/- that was claimed by the assessee to have been paid on the loans raised from the aforementioned parties. Accordingly, the A.O after making a total addition/disallowance of Rs.1,01,16,666/- assessed the income at Rs.1,85,90,356/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) observed that the assessee in the course of the assessment proceedings had placed on record certain documentary evidence in order to substantiate the genuineness of the loan transactions viz. (i) loan confirmations from the lenders; (ii) PAN Nos. of the lenders; (iii) copies of the returns of income of the lenders; (iv) copies of the bank accounts of the lenders; (v) copy of the bank account of the assessee; and (vi) balance sheets of the lender concerns. In the backdrop of the aforesaid facts, the CIT(A) was of the view that the assessee had duly substantiated the identity of the parties, the genuineness of the transactions and also the creditworthiness of the parties before the A.O. Apart there from, it was observed by the CIT(A) that the A.O while drawing adverse inferences as regards the authenticity of the loans received by the assessee from the aforementioned parties, had failed to dislodge the authenticity of

the documentary evidence that was filed by the assessee in order to substantiate the genuineness of the aforesaid loan transactions. Further, it was observed by the CIT(A) that the A.O in the course of the assessment proceedings had confined himself to the *modus operandi* that was adopted by Shri Bhanwarlal Jain and his group entities for providing accommodation entries. Accordingly, the CIT(A) holding a conviction that the assessee had duly discharged the onus that was cast upon it to substantiate the 'nature' and 'source' of the credit appearing in the name of the aforementioned parties in its books of accounts, therefore, concluded that the addition of Rs.1,01,16,666/- made by the A.O in its hands could not be sustained and was liable to be vacated.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that the assessee respondent despite being put to notice as regards the date of hearing of the appeal has however failed to put up an appearance before us. Accordingly, left with no other alternative, we are constrained to dispose off the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963, after hearing the appellant revenue and perusing the orders of the lower authorities.

6. The Id. Departmental Representative (for short 'D.R') relied on the order passed by the A.O. It was submitted by the Id. D.R, that as the assessee had raised loans from the aforementioned concerns which were the group entities of Shri Bhanwarlal Mansukhlal Jain, an infamous accommodation entry provider, therefore, the said respective loans were rightly added by the A.O as an unexplained cash credit under Sec. 68 in the hands of the assessee.

7. We have heard the Departmental representative, perused the orders of the lower authorities and the material available on record. As

is discernible from the orders of the lower authorities, it is the claim of the revenue that as the two concerns viz. (i) M/s Malhar Exports; and (ii) M/s Milan & Co. from whom the assessee had raised loans of Rs.50,00,000/-each during the year under consideration were the group entities of Shri Bhanwarlal Mansukhlal Jain, an infamous accommodation entry provider, therefore, the said loans were correctly characterised as an unexplained cash credit in the hands of the assessee. Apart there from, the interest of Rs.1,16,666/- paid by the assessee to the aforementioned lenders and claimed as an expenditure by the assessee was also disallowed by the A.O, on the ground that no genuine loans were raised by the assessee from the aforementioned parties.

8. We have perused the orders of the lower authorities and find, that the assessee in the course of the assessment proceedings had in order to substantiate the authenticity of the loan transactions placed on record certain documentary evidence viz. (i) loan confirmations from the lenders; (ii) PAN Nos. of the lenders; (iii) copies of the returns of income of the lenders; (iv) copies of the bank accounts of the lenders; (v) copy of the bank account of the assessee; and (vi) balance sheets of the lender concerns. Apart there from, we find that the aforesaid respective loans were returned by the assessee in the financial year 2014-15 by account payee cheques. Also, a perusal of the submissions filed by the assessee before the CIT(A) reveals that the complete credentials of the aforementioned parties along with their respective PAN details were furnished with the A.O in the course of the assessment proceedings. In our considered view, the assessee by placing on record the requisite documentary evidence had duly established the identity of the lenders, the genuineness of the transaction and also the creditworthiness of the parties. As a matter of fact, the A.O in the course of the assessment proceedings had not

dislodged the authenticity of the aforesaid documentary evidence, and had merely drawn adverse inferences in the hands of the assessee, by harping on the fact that the said lender concerns were controlled by Shri. Bhanwarlal Mansukhchand Jain, an infamous accommodation entry provider. Further, the A.O instead of placing on record any material which could prove that the assessee in the garb of the aforesaid loans had only obtained accommodation entries from the aforementioned lender concerns, had however, merely dwelled on the *modus operandi* that was adopted by Shri Bhanwarlal Mansukhchand Jain and its group entities for providing accommodation entries in general. In fact, we are in agreement with the view taken by the CIT(A), that a perusal of the assessment order revealed as if the A.O was framing the assessment of Shri Bhanwarlal Mansukhlal Jain, and not that of the assessee.

9. As is discernible from the order of the CIT(A), the assessee had duly established the identity of the lenders by placing on record the copies of their returns of income along with their respective PAN Numbers. Further, the fact that acceptance and repayment of loans was carried out by the assessee through banking channels supported the genuineness of the transactions under consideration. Apart there from, the fact that the assessee had paid interest on the aforesaid loans which was subjected to deduction of tax at source, also fortifies the genuineness of the loan transactions under consideration. Also, the assessee by placing on record the balance sheets of the lenders alongwith their bank statements, which had not been subjected to any adverse inferences by the A.O, had thus also established the creditworthiness of the said respective parties. Accordingly, we are of the considered view that now when the assessee had been able to establish the identity of the parties, creditworthiness of the lenders, and also the genuineness of the loan transactions, therefore, no

adverse inferences in the absence of any material having been placed on record by the A.O to refute the authenticity of the said transactions could have validly been drawn. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **M/s Rushabh Enterprises Vs. ACIT 24(3) And Ors. (CWP No. 1670/2015, dated 15.04.2015)**. In the aforesaid case, the assessee had raised loan from a concern which was stated to be belonging to Shri. Bhanwarlal Mansukhlal Jain group. The A.O treated the said loan as unaccounted cash/accommodation entry. On appeal, the Hon'ble High Court deleted the addition, observing 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....."*

Accordingly, on the basis of our aforesaid observations, we are of the considered view that now when the authenticity of the loan transactions under consideration are established beyond doubt, therefore, the CIT(A) had correctly deleted the addition of Rs.1,01,16,666/- viz. (i) principal amount of loan raised by the assessee from the aforementioned parties: Rs.1,00,00,000/-; and (ii) interest paid by the assessee on the aforesaid loans: Rs.1,16,666/-. We thus not finding any infirmity in the order of the CIT(A), uphold his order. The **Ground of appeal No. (i) to (iv)** are dismissed.

10. As the **Ground of appeal No. (v) & (vi)** is general in nature, therefore, the same is dismissed as infructuous.

11. The appeal of the revenue is dismissed.

Order pronounced in the open court on 28.06.2019

Sd/-  
(Shamim Yahya)  
ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक 28.06.2019  
Ps. Rohit

Sd/-  
(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**