



IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2673/Mum./2018
(Assessment Year : 2014-15)

Yash Vikram Developers
C-29, Bhanu Park Building
Jamnadas Adukiya Road
Kandivali (W), Mumbai 400 067
PAN – AAIFY8741J

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-33(3), Mumbai

..... Respondent

Revenue by : Shri Nitin Waghmode
Assessee by : Shri Ashok L. Gosar

Date of Hearing – 05.08.2019

Date of Order – 25.10.2019

ORDER

PER SAKTIJIT DEY, J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 1st February 2018, passed by the learned Commissioner of Income Tax (Appeals)-45, Mumbai, pertaining to the assessment year 2014-15.

2. The issue in challenge in the present appeal is the addition of ` 86,49,448, as unexplained cash credit under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee, a partnership firm, is engaged in the business of builder and developer. For the assessment year under consideration, the assessee filed its return of income on 21st September 2014, declaring total income of ₹ 52,50,000. During the assessment proceedings, the Assessing Officer, while examining the details available on record, noticed that the assessee had availed unsecured loans of ₹ 75 lakh during the year. Further, on such unsecured loans, the assessee had claimed payment of interest. Additionally, the assessee had paid interest of ₹ 10,12,500, on unsecured loan availed in earlier assessment years. The total unsecured loan availed during the year and interest paid on unsecured loan during the year aggregated to ₹ 86,49,448. Therefore, he called upon the assessee to prove the genuineness of such loan transactions. In response, the assessee furnished confirmations from the concerned parties. However, as alleged by the Assessing Officer, the assessee did not furnish copies of the returns of income and bank statements of the concerned parties to prove the identity, creditworthiness and genuineness of the transactions. Therefore, the Assessing Officer issued a show cause notice on 2nd December 2016, calling upon the

assessee to produce the concerned parties / lenders for examination. In reply to the said show cause notice, the assessee expressed its inability to produce the lender. Therefore, the Assessing Officer issued summons under section 131 of the Act to the lenders for appearing before him. However, as alleged by the Assessing Officer, the lenders neither attended nor furnished any submissions. Faced with such situation, the Assessing Officer undertook independent enquiry to verify genuineness of loan transactions. In this context, he was able to obtain the returns of income and the bank statements of the lenders. On analyzing the return of income of one of the lenders Rightlink Infra Projects Pvt. Ltd., he found that in the assessment years 2013-14 and 2014-15, it has offered income of ₹ 14,730, and ₹ 76,470, respectively. Further, the turnover shown by the assessee in the aforesaid assessment years were ₹ 17,28,240 and ₹ 25,74,892, respectively. On examining the Bank statement of the lenders, he did not find any entry to support the loan transactions. He further observed, though, the lender is filing its return of income at a place in Solapur District, however, he is operating a Bank account at Kalbadevi, Mumbai, and keeps changing to different places. Thus, from the aforesaid facts, the Assessing Officer concluded that, though, the identity of the creditor was established, however, neither its creditworthiness nor the genuineness of the transaction could be

proved. Accordingly, he held that the unsecured loan availed from the said lender and interest paid thereon has to be treated as unexplained cash credit under section 68 of the Act. In respect of the second lender Jayshyam Investment and Finance Pvt. Ltd., the Assessing Officer noted that it has offered income of ₹ 76,549 and ₹ 48,963, in assessment years 2013-14 and 2014-15, respectively. The turnover declared by the said party in these two assessment years were ₹ 3,29,420 and ₹ 5,63,672, respectively. The party had also a very insignificant capital available with him in these two assessment years. The Bank statement of the party also revealed that it has credit of ₹ 10 lakh only. Thus, from the aforesaid facts, the Assessing Officer concluded that though the identity of the creditor is established, however, neither its creditworthiness nor the genuineness of the transaction could be established. Insofar as Madan Impex Pvt. Ltd. is concerned, the Assessing Officer observed that the assessee had availed unsecured loan of ₹ 1.25 crore from this party in the earlier years and has paid interest of ₹ 10,12,500, in the impugned assessment year. The Assessing Officer observed, the income returned by the party in assessment years 2013-14 and 2014-15 is ₹ 2,18,667 and ₹ 3,73,060, respectively. It had a very insignificant capital of ₹ 1 lakh in the aforesaid two assessment years. He observed, though the lender is filing its return of income at Surat, but it is maintaining a

bank account at Opera House, Mumbai, and keeps changing from one place to another from time-to-time. Thus, from the aforesaid facts, the Assessing Officer concluded that though the identity of the party is established, however, neither its creditworthiness nor genuineness of the transactions is established. Accordingly, he held the interest paid as non-genuine expenditure and disallowed it. The assessee challenged the aforesaid additions before the first appellate authority.

4. The learned Commissioner (Appeals), however, having not found merit in the submissions of the assessee, sustained the addition made by the Assessing Officer.

5. The learned Authorised Representative submitted, the genuineness of the loan transactions cannot be doubted as all the loan transactions were carried out through proper banking channel. He submitted, the assessee has availed the unsecured loan through cheque and has also paid interest on such unsecured loans from time-to-time after deducting TDS. He submitted, in course of assessment proceedings, the assessee had furnished confirmations of the creditors/lenders to prove the genuineness of the loan transactions. He submitted, merely because the assessee was unable to furnish return of income of the lenders and could not produce them in person before the Assessing Officer, unsecured loans have been treated as

unexplained cash credit and the interest paid thereon was also disallowed. Drawing our attention to the Bank account of the assessee as well as the lenders placed in the paper book, the learned Authorised Representative submitted, the unsecured loans have been re-paid with interest much prior to the assessment proceedings. Therefore, the Assessing Officer was completely wrong in making addition as unexplained cash credit on the wrong premises that the transactions are not genuine and the parties do not have the creditworthiness. The learned Authorised Representative submitted, in respect of Madan Implex Pvt. Ltd., the loan was availed in earlier assessment years and during the year under consideration, the assessee had only paid interest. He submitted, neither the availing of loan nor payment of interest thereon in the earlier years was doubted by the Assessing Officer. Therefore, the interest paid in the impugned assessment year on such loan cannot be held as non-genuine. In this context, he drew our attention to the scrutiny assessment order passed for the assessment year 2013-14. Thus, he submitted, the addition made should be deleted. In support of his contentions, he relied upon the following decisions:-

- i) *PCIT v/s Hi-Tech Residency Pvt. Ltd., [2018] 257 Taxmann 335 (SC);*
- ii) *CIT v/s Orchid Industries Pvt. Ltd., [2017] 397 ITR 136 (Bom.);*

- iii) *CIT v/s Ranchhod Jivabhai Nakhava, [2012] 208 Taxman 35 (Guj.);*
- iv) *M/s. Rushabh Enterprises v/s ACIT, W.P. no.167/2015, dated 15.04.2015 (Bom. HC);*
- v) *Aravali Trading Co. v/s ITO, [2010] 187 Taxman 338 (Raj.);*
- vi) *Vasant Ramji Savla v/s ACIT, ITA no.1633, 1634, 1637/2017;*
- vii) *CIT v/s Vijay Kumar Jain, [2014] 221 Taxman 180 (All.);*
- viii) *CIT v/s Rahul Vineet Traders, [2014] 221 Taxman 46 (All.); and*
- ix) *ACIT, v/s Shreedham Builders, ITA No.5589/Mum./2017;*

6. The learned Departmental Representative submitted, merely because the loan transaction was through banking channel it cannot be held as genuine unless the creditworthiness of the lenders are established. He submitted, the assessee failed to produce the lenders either before the Assessing Officer or before learned Commissioner (Appeals). He submitted, even the summons issued under section 131 of the Act to the lenders were not responded to. He submitted, on a specific request of the Assessing Officer, the assessee expressed his inability to produce the lenders. Therefore, in such circumstances, the loan transactions cannot be treated as genuine. He submitted, the Assessing Officer on the basis of independent enquiry conducted by him has obtained the copies of return of income as well as bank statement of the lenders. On verifying them, he has come to a categorical conclusion that none of the lenders have the

creditworthiness to advance such huge loans. Thus, he submitted, since the assessee failed to discharge the onus cast upon it to prove the creditworthiness and genuineness of the transactions, the additions made is justified.

7. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. As could be seen from the facts on record, the Assessing Officer has disbelieved the unsecured loan availed from three parties viz. Rightlink Infra Project Pvt. Ltd., Jayshyam Investment and Finance Pvt. Ltd. and Madan Impex Pvt. Ltd. Undisputedly, in the course of assessment proceedings the Assessing Officer called upon the assessee to prove the genuineness of loan transactions. In response, though, the assessee furnished confirmations from the lenders, however, as alleged by the Assessing Officer, the assessee could not furnish the return of income and bank statement of the lenders. Further, when the Assessing Officer requested the assessee to produce the lenders before him for examination, the assessee expressed its inability to produce them. Even, the summons issued under section 131 of the Act by the Assessing Officer requiring the presence of the lenders though were served, however, they were not responded to by the lenders. From the aforesaid facts, it becomes clear that, though, the identity of the lenders were established, however, the genuineness of the loan

transactions and the credit worthiness of the lenders could not be verified due to failure on the part of the lenders to appear before the Assessing Officer. Further, in the absence of other evidences like return of income as well as bank statement of the lenders, the Assessing Officer undertook independent enquiry to obtain the return of income as well as bank statement of the lenders. As could be seen from the observations of the Assessing Officer, on verifying the return of income and the bank statement, he was of the view that the lenders did not have the creditworthiness to advance the loan. Though, the observations of the Assessing Officer with regard to the creditworthiness of the creditors cannot be discarded outrightly, however, at the same time, it is a fact on record that all the lenders are income tax assesseees and filing their return of income. Further, the Assessing Officer himself has admitted that the identity of the lenders has been established. Thus, the assessee is required to establish the other two ingredients of section 68 of the Act viz. creditworthiness of the creditors and genuineness of the transactions. Undisputedly, the entire loan transactions were carried out through banking channel. The bank statement of the assessee and the lenders are also available. Therefore, a proper examination of the credit and debit entries appearing in the bank statements of the assessee and the concerned creditors have to be carried out to verify the money trail to come to a

definite conclusion that assessee's own money was not routed back again through the lenders. It is relevant to observe, before us the learned Authorised Representative has submitted that prior to the assessment proceedings, the assessee had re-paid the loans along with the interest. This aspect has not at all been examined either by the Assessing Officer or learned Commissioner (Appeals). No doubt, the Assessing Officer had conducted some enquiry to find out the genuineness of the loan transactions by issuing summons to the lenders and by obtaining bank statement and return of income of the lenders. However, it is imperative that a proper enquiry should be conducted before holding the loan transactions unexplained cash credit. Though, the burden is on the assessee to ensure the attendance of the lenders before the Assessing Officer, however, the Assessing Officer is also not powerless in enforcing their attendance before him. Though, it may be a fact that the Assessing Officer had issued summons under section 131 of the Act, but in case of non-attendance by the concerned persons in response to such summons, the Assessing Officer is empowered to take further action either himself or through the concerned Assessing Officer who are having jurisdiction over the lenders to ascertain the correct facts. The assessee on its part should also make efforts for producing the lenders before the Assessing Officer. Insofar as the lender Madan Impex Pvt.

Ltd. is concerned, it is observed that during the year, the assessee had not availed any loan from the concerned party and the loans were availed in the earlier assessment years. In the impugned assessment year, the assessee had only paid interest on such loan. In our view, if the loans have been accepted as genuine in the year in which they were availed, they cannot be treated as unexplained cash credit in the impugned assessment year. This fact also requires verification by the Assessing Officer. Therefore, on overall consideration of facts and material on record, we are of the view that complete enquiry to find out the genuineness of the loan transaction and creditworthiness of the creditors have not been carried out in the instant case before making the addition. Therefore, we are inclined to restore the issue to the file of the Assessing Officer for de novo adjudication after making proper enquiry. It needs to be mentioned, the Assessing Officer must confront the result of any enquiry conducted by him to the assessee and decide the issue after providing reasonable opportunity of being heard to the assessee. With the aforesaid observations, the grounds are allowed for statistical purposes.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 25.10.2019

**Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 25.10.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai