

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2335/MUM/2018
Assessment Year: 2012-13**

The Income Tax Officer-
15(3)(3), Room No. 452, 4th
floor, Aayakar Bhavan,
Maharshi Karve Road,
Mumbai-400020.

M/s Saubhagya Realtor Pvt. Ltd.
Shop No. 1, 2, & 3, Plot No. 88,
Vs. Sector-3, Koperkhairane, Navi
Mumbai-400709.

Appellant

**PAN No. AAKCS7352Q
Respondent**

Revenue by : Mr. Nitin Waghmode, DR
Assessee by : Mr. Suresh Otwani, AR
Date of Hearing : 07/08/2019
Date of pronouncement : 31/10/2019

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-24, 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 :

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition made by the Assessing Officer, in respect of unexplained cash credit u/s 68 of the Income Tax Act, 1961, amounting of to Rs.8,39,84,000/- to just Rs.5,85,000/-,

without appreciating the findings of the Assessing Officer in his remand report had not certified the identity, creditworthiness and genuineness of the transaction in real estate made by the assessee with various parties.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in restricting the addition made by the Assessing Officer, in respect of unexplained cash credit u/s 68 of the Income Tax Act, 1961, amounting of to Rs.8,39,84,000/- to just Rs.5,85,000/-, holding that the assessee has satisfactorily discharged its onus of establishing the identity, genuineness and creditworthiness of the parties concerned, ignoring the recent decision of the Supreme Court of India in the case of Navodaya Castle (P) Ltd [2015] 56 taxmann.com 18(sc), wherein the Apex Court has upheld the Delhi High Court decision holding that certificate of incorporation, PAN, bank statement etc., were not sufficient for purpose of identification of subscriber company.”

3. Briefly stated the facts of the case the assessee filed its return of income for the A.Y. 2012-13 on 29.09.2012 declaring total income of Rs.1,11,707/-. The assessee is engaged in the business of real estate. During the course of assessment proceedings, the Assessing Officer (AO) issued notice u/s.133(6) to various parties calling for confirmation of accounts, financial statements, bank statements etc. The AO found that confirmation in certain cases were not in order or were not submitted or the notice could not be served. Therefore, he made a disallowance of Rs.8,39,84,000/-, which is summarised overleaf:

Name of the Party	Amount	Remarks/Comments from the Party

	(Rs.)	
Yash Fiscal Services Pvt. Ltd.	8,00,000	Initially the notice was unserved. Later on, the details were filed but copy of MOU was not submitted.
ICSA India (G)	11,00,000	No transaction with the assessee during the year
Gateway Offshore Ltd	3,75,00,000	Bank statement and MOU not provided
Goodhope Software	2,90,00,000	Running from same premises as Gateway Offshore and identity, genuineness and creditworthiness not established
Healica Bio Science Ltd	71,35,000	Company is Span Allied Industries Ltd and only confirmation with bank statement filed. Signature on confirmation and letters are different
Planet Homemaker	20,00,000	Only confirmation filed
Total-A	7,64,35,000	Inadvertently stated by AO as Rs.7,75,35,000 in the assessment order
Advances Received (total 22 parties -B)	41,35,000	Confirmations or other basic details to establish genuineness not filed
Others - advances by cash (total 11 parties)- C	23,14,000	Only confirmation filed
Grand Total (A)+(B)+(C)	8,28,84,000	Computed by AO at Rs.8,39,84,000 due to total error in A above.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). During the appellate proceedings, the Id. CIT(A)

directed the AO to conduct for the enquiries and submit a remand report. The AO submitted a remand report with comments. As per said remand report 13 parties appeared before the AO and their statements were recorded. The said parties also filed before the AO, copies of PAN, acknowledgement of return of income, computation income, profit and loss account and balance sheet. However, 4 parties could not appear before the AO as they were residing out of Maharashtra State. The said 4 parties filed before the AO the confirmation of transaction, relevant bank statement copy, copy of acknowledgement of return of income and confirmation of closing balance.

Further, the AO submitted that the following 4 parties did not file the details.

Name of the Party	Amount (Rs.)	Remarks of the AO
Kunal G. Gupta	1,30,000	No response to notice u/s. 133(6)
Anita Narendra Yadav	1,00,000	No details submitted
Survase Mahindra S.	1,20,000	No details submitted
Narendra Gulab Yadav	1,20,000	No details submitted
Total	4,70,000	

Further, during the course of appellate proceedings the Id. CIT(A) forwarded a copy of the said remand report to the assessee to file a rejoinder, if any. The assessee filed a reply stating that as per the remand report all the parties from Mumbai have attended the summons and provided all necessary information and document to the AO and

four parties from outside Maharashtra have responded to the notices by filing copies of confirmations, bank statements, ITR, PAN and balance sheet. Thus, it was replied by the assessee that the addition made by the AO u/s.68 be deleted.

The ld. CIT(A) finally held as under:

“After giving due consideration to the assessee’s submissions, Remand Report and Rejoinder filed by the assessee, it appears that the assessee has bonafidely proved the identity, genuineness and creditworthiness of the transactions involved. Moreover, the AO had issued the summons to the parties u/s. 131 of the Act wherein all the parties appeared except Sachin J. Kurne with whom transaction of Rs.1,15,000 was made by the assessee. The assessee has discharged his onus of establishing the identity, genuineness and creditworthiness of the parties concerned. The AO has not raised any objections or drawn any adverse inference against any of the parties involved. Thus, where the assessee has satisfactorily discharged his obligation, the transactions cannot be considered to be unexplained. However, the assessee has not complied to prove the identity and genuineness of 5 parties (4 parties above + Sachin Kurne) aggregating to Rs.5,85,000 till the date of this order. Having considered all of the above, I am of the view that the assessee has satisfactorily discharged his onus of establishing the identity, genuineness and creditworthiness of the parties concerned and the AO has not raised any adverse inference against the same except for the transactions aggregating to Rs.5,85,000 which remains to be unexplained cash credits. Accordingly, the addition made by the AO is limited and restricted to Rs.5,85,000.”

5. Before us, the ld. Departmental Representative (DR) submits that matter be restored to the AO to examine parties who did not appear before him, in response to the summons issued u/s. 131 of the Act.

On the other hand, the ld. counsel for the assessee submits that excepting the four outstation parties, others appeared before the AO with complete details. It is further explained by him that even the four outstation parties submitted copies of confirmations, bank statements, ITR, PAN, profit and loss account and balance sheet. Thus, the ld. counsel submits that the order passed by the CIT(A) be confirmed.

6. We have heard the rival submissions and perused the material available on record. As mentioned earlier, in the remand proceedings 13 parties appeared before the AO. Their statements were recorded. Further, they filed confirmations, bank statements, ITR, PAN, profit and loss account and balance sheet. The other 4 parties could not attend the proceedings before the AO as they were not residing in Maharashtra. However, they filed confirmations, bank statements, ITR, PAN, profit and loss account and balance sheet.

It is well-settled that u/s.68, the primary onus as to the receipt of the amount is on the assessee to show the identity of the lenders, their creditworthiness and the genuineness of the transactions. Only where the assessee discharges the burden *prima facie*, does the burden shift on to the Revenue. In the instant case, the assessee has discharged the burden *prima facie*, even in respect of the 4 parties who could not attend the proceedings before the AO, in response to the summon u/s. 131 of the Act.

In explanation, *prima facie* reasonable cannot be rejected on capricious or arbitrary grounds or on mere suspicion or on imaginary or irrelevant grounds. In this regard, we fruitfully refer to the decision in *R.B.N.J. Naidu v. CIT*, [1956] 29 ITR 194 (Nag.), *Lajwanti Sial v. CIT*, [1956] 30 ITR 228 (Nag.).

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

7. In the result, the appeal is dismissed.

Order pronounced in the open Court on 31.10.2019

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31.10.2019

S. Samanta P. S. (On Tour)

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai