

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
ITA NO.1235/MUM/2017(A.Y. 2012-13)

Naresh Hiran,
C-103, Vastu Park,
Evershine Nagar, Malad(W),
Mumbai 400 064.
PAN:ABJPH 8838H

..... Appellant

Vs.

ITO 30(2)(4),
C-13. Room No.609,
Pratyaksh Kar Bhavan,
BKC, Bandra(E),
Mumbai -400051

..... Respondent

Appellant by : Shri Nitesh Gandhi
Respondent by : Shri S.K.Jain

Date of hearing : 16/09/2019
Date of pronouncement : 31 /10/2019

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against order of Commissioner of Income Tax(Appeals)-41(in short 'the CIT(A)), Mumbai dated 20/12/2016 for the assessment year 2012-13.

2. The brief facts as emanating from records in this case are:

The assessee filed his return of income for the impugned assessment year on 30/03/2013 declaring total income of Rs.1,71,576/-. The return filed by the assessee was processed under section 143(1) of the Income Tax

Act, 1961 (in short 'the Act'). On the basis of the search and seizure action under section 132 of the Act carried out in the case of Shri Bhanwarlal Jain and group concerns on 03/10/2013, information was received by the Assessing Officer of the assessee that the assessee is one of the beneficiaries of bogus concerns operated and controlled by Shri Bhanwarlal Jain and Shri Rajesh Jain. The aforesaid persons had floated various companies/benami concerns and were engaged in providing accommodation entries in the form of bogus unsecured loans, bogus purchases and bogus capital gains, etc. It was alleged that during the period relevant to the assessment year under appeal, the assessee had secured accommodation entries on account of unsecured loans from following entities of Bhanwarlal Jain group:-

Name of the Entity	Amount (Rs.)
M/s. Rose Impex	25,00,000
M/s. Navkar Diamond	50,00,000
M/s. Surya Diam	14,00,000
Total	89,00,000

3. On the basis of aforesaid information assessment for 2012-13 was reopened. The Assessing Officer made addition of Rs.64,00,000/- on account bogus unsecured loans from M/s. Navkar Diamond and M/s.Surya Diam. Aggrieved against the assessment order dated 04/03/2016 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the CIT(A) challenging re-opening of assessment and addition on merits. The CIT(A) upheld the findings of Assessing Officer and confirmed the addition holding that the alleged unsecured loans are not genuine and it is a case of accommodation entry in lieu of unaccounted cash. Now,

the assessee is in second appeal before the Tribunal assailing the order of CIT(A) in confirming the addition of Rs.64,00,000/- on merits and challenging the validity of reopening of assessment.

4. Shri Nishit Gandhi, appearing on behalf of the assessee challenging reopening submitted that it is bad in law as the reasons recorded for reopening are borrowed and it is not based on the satisfaction of Assessing Officer. The Id. Authorized Representative for the assessee further pointed that similar reasons for reopening assessment were recorded in the assessment year 2010-11. The matter travelled upto the Tribunal in an appeal by the assessee in ITA No.1236/Mum/2017. The Tribunal vide order dated 20/04/2018, allowed the appeal of assessee on merits. Since, the reasons recorded for reopening assessment in assessment year 2012-13 are on similar lines, the addition is liable to be deleted in the light of Tribunal order in ITA No.1236/Mum/17 dated 20/04/2018(supra).

4.1 The Id. Authorized Representative of the assessee raised multiple contentions assailing the addition. He contended that the basis of entire addition is statement of Shri Bhanwarlal Jain recorded under section 132(4) and under section 131 of the Act after search and seizure action. The authorities below without appreciating the documentary evidences furnished by the assessee has made/confirmed the addition. The authorities below have failed to take note of the fact that Shri. Bhanwarlal Jain has retracted from his statement and has filed retraction affidavit dated 15/05/2014. Thus, no reliance can be placed for making addition on

statement of Shri. Bhanwarlal Jain recorded under sections 132(4) & 131 of the Act.

4.2 The Id. Authorized Representative of the assessee further contended that during assessment proceedings the assessee furnished confirmation from the lenders, copy of bank statements evidencing receipt and repayment of loans, copy of acknowledgement of Income Tax returns of the lenders and copies of audited accounts of the lenders. The above documents have not been considered by the authorities below. The assessee has discharged his onus of proving genuineness of loan transactions. The documentary evidences furnished by the assessee remain un rebutted. The Id. Authorized Representative for the assessee further pointed that unsecured loan taken by assessee from M/s. Navkar Diamonds, Rs.50,00,000/- was repaid in the subsequent assessment year i.e. assessment year 2013-14. The Id. Authorized Representative for the assessee referred to the bank statement at page 31 of the paper book to show that loan was repaid through banking channel on 23/03/2013.

4.3 The Id. Authorized Representative for the assessee submitted that the facts in assessment year 2012-13 are identical to facts in assessment year 2010-11. Therefore, the addition made on account of non-genuine unsecured loans are liable to be deleted for parity of reasons recorded by the Tribunal in assessment year 2010-11(supra).

5. On the other hand, Shri. S.K.Jain representing the Department vehemently supported the impugned order. The Id. Departmental

Representative submitted that reassessment proceedings were initiated by the Assessing Officer after recording reasons. The Assessing Officer in reasons for reopening has given source of information for initiating reassessment, the assessment was reopened by Assessing Officer after analyzing the information with due application of independent mind. The Id. Departmental Representative submitted that Shri Bhanwarlal Jain in his statement recorded during search admitted that he is engaged in providing accommodation entries. The assessee is one of the beneficiaries of such bogus transactions.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in Ground No.1 of the appeal has challenged addition of Rs.64,00,000/- on account of alleged non-genuine unsecured loans from M/s. Navkar Diamond and M/s. Surya Diam. The addition in the hands of assessee has been made primarily on the basis of statement of Shri Bhanwarlal Jain recorded under section 132(4) & 131 of the Act.

7. Reassessment proceedings for assessment year 2012-13, were initiated by the Assessing Officer on the ground that assessee has taken accommodation entries on account of unsecured loans from the following entities of Bhanwarlal Jain group:

- (i) M/s. Rose Impex - Rs. 25,00,000/-
- (ii) M/s.Navkar Diamond - Rs. 50,00,000/-
- (iii) M/s.Surya Diam - Rs. 14,00,000/-

During reassessment proceedings the Assessing Officer found that unsecured loan of Rs.25,00,000/- from Rose Impex were pertaining to assessment year 2010-11. Since the aforesaid amount was added in assessment year 2010-11, no addition was made in the assessment year under appeal. Thus, the addition was made only in respect of alleged unsecured loans from M/s. Navkar Diamonds & M/s. Surya Diam. The Id. Authorized Representative of the assessee has furnished copy of the Tribunal order in assessee's own case for assessment year 2010-11 in ITA No.1236/Mum/2017 dated 20/04/2018(supra), wherein addition made on account of unsecured loan from M/s. Rose Impex was deleted by the Co-ordinate Bench. The relevant extract of the findings of the Tribunal on the issue reads as under:-

“ 7. We have heard the rival contentions, and perused the record. The Assessing Officer has made impugned addition u/s. 68 of the Act on the ground that loan of Rs. 25 lakhs taken from Rose Impex was bogus since Rose Impex belonged to Mr. Bhanwarlal Jain group and Mr. Bhanwarlal Jain has accepted that his group was providing only accommodation entries. On the contrary, we noticed that the assessee has furnished all documents necessary to discharge burden of prove placed upon it u/s. 68 of the Act. It is well settled proposition of law that the assessee has to prove three main ingredients in order to discharge burden of proof placed upon him u/s. 68 of the Act i.e., the assessee has to prove the identity of creditor, creditworthiness of the creditor and genuineness of the transactions. In the instant case, the assessee has furnished confirmation obtained from Rose Impex, which contained PAN and address of the creditor. The assessee has also furnished copies of return of income filed by the creditor. These documents prove the identity of creditor. The assessee has also furnished bank account of Rose Impex and also it's own bank account in order to show that the loan transaction has been carried out through banking channel. Though, the learned CIT(A) has observed that there was huge transfer of fund before giving loan to the assessee, perusal of the bank account of Rose Impex would show that the funds have been transferred were through banking channels only and not by way of depositing cash. The assessee has also furnished bank statement to show that the above said loans have been repaid on 25.3.2013. Since transactions of taking loan and repayment of loan have taken place through banking channel, in our view, the genuineness of

transaction also stands proved. The assessee has furnished financial statement of Rose Impex. Perusal of the balance sheet would show that the loan of Rs. 25 lakhs given to the assessee is duly reflected in the balance sheet of the assessee. Further, it can be noticed that Rose Impex has taken loans from various persons, which formed source for giving loan to the assessee. Hence, it cannot be said the Rose Impex was not having funds for giving loan to the assessee, meaning thereby, creditworthiness of the creditor also stands proved. Hence, there is merit in the contention of the learned AR that the assessee has discharged primary onus placed upon it u/s. 68 of the Act. The Hon'ble Gujarat High Court has held in the case of Sachital Communications (2014) 227 Taxman 219, that if identity of creditor and capacity of the creditor is proved and the transactions have been carried out through banking channel, then no addition could be made on account of unsecured loan. Identical view was expressed by Hon'ble Gujarat High Court in the case of Patel Ramniklal Hirji (2004) 222 Taxam 15.

8. We noticed that the Assessing Officer did not examine various documents furnished by the assessee and did not show that the said documents are not reliable. Instead the Assessing Officer has totally placed reliance on the statement given by Mr. Bhanwarlal Jain, which is claimed to have been retracted. Since the addition has been made u/s. 68 of the Act and since we have noticed that the assessee has discharged burden of proof placed upon its shoulders u/s. 68 of the Act, we are of the view that the learned CIT(A) was not justified in confirming the addition by simply placing reliance on the statement given by Mr. Bhanwarlal Jain. The various documents furnished by the assessee, in fact, militate against the statement given by Shri Bhanwarlal Jain. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the addition of Rs. 25 lakhs and also disallowance of interest of Rs. 22,192/”

8. The Id. Authorized Representative of the assessee has brought to our notice that unsecured loan from M/s. Navkar Diamond was repaid by the assessee in the subsequent assessment year i.e. assessment year 2013-14. In support of his contention Id. Authorized Representative for the assessee has referred to bank statement of the assessee at pages 28 to 31 of the paper book. A perusal of the same reveal that the assessee has repaid Rs.50,00,000/- to M/s. Navkar Diamonds on 25/03/2013 through RTGS transaction. Apart from above, we observe that M/s.

Navkar Diamond in its books for the year ending 31/03/2012 has shown loan advanced to the assessee under the head 'Loans and Advances' Rs.50,00,000/-. The said firm has also filed confirmation supporting assessee's claim of unsecured loans. The authorities below have simply brushed aside the documents furnished by the assessee, which inter-alia, includes confirmation from the lending parties, copy of bank statement of the assessee, copy of acknowledgement of return of income of lenders, etc. furnished by the assessee during the assessment proceedings. The authorities below have made addition merely on the basis of statement of Bhanwarilal Jain without there being any corroborative evidence. Even the said statement was retracted by Bhanwarlal Jain. In our considered view, the addition on account of unsecured loans from M/s. Navkar Diamond is unsustainable.

9. As regards unsecured loans from M/s. Surya Diam is concerned, the assessee has filed confirmation from the lender, the same is at page-20 of the paper book. The assessee has also filed copy of audited accounts of the said firm at pages 22 to 26 of the paper book. The name of the assessee appears in the books of M/s. Surya Diam in Schedule-D of Balance Sheet as on 31/03/2012 under the head 'Loans and Advances'. We observe that unsecured loans from M/s. Surya Diam is on the same footing as loan from M/s. Rose Impex, the Tribunal has deleted the addition vide order dated 20/04/2018 (supra). The relevant extract of the finding of Tribunal has already been reproduced above. On account of parity of transactions, the finding given by the Co-ordinate bench would '*mutandis mutatis*' apply in the present set of transactions as well. The

ground No.1 of appeal stands allowed and the findings of CIT(A) on this issue are set-aside.

10. Since we have deleted the additions on merits, the issue raised in Ground no.2, challenging reopening of assessment has become academic. Therefore, the same is not taken up for adjudication.

11. The grounds of appeal No.3 to 5 are general in nature and, hence, requires no adjudication.

12. In the result, the appeal of assessee is allowed in the terms aforesaid.

Order pronounced in the open court on Thursday the 31st day of October, 2019.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 31/10/2019
Vm, Sr. PS(O/S)

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,
(Dy./Asstt. Registrar)
ITAT, Mumbai