

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4912/M/2018
Assessment Year: 2012-13**

Shri Nareshbhai V. Patel, 1404, Shree Naman Tower, S.V. Road, Kandivali (West), Mumbai – 400 067 PAN: AFYPP 6459B	Vs.	ACIT - 33(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rakesh Joshi, A.R.
Revenue by : Ms. Kavita P. Kaushik, D.R.

Date of Hearing : 19.09.2019
Date of Pronouncement : 21.11.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 16.07.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised by the assessee is against the confirmation of addition of Rs.4,27,00,000/- as made by the AO under section 68 of the Act treating the unsecured loans as unexplained cash credit.

3. The facts in brief are that the assessee filed the return of income on 23.09.2012 declaring income of Rs.58,08,630/-

which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny under CASS and the notices under section 143(2) and 142(1) of the Act were duly issued and served upon the assessee. During the course of assessment proceedings, the AO called upon the assessee to explain the acceptance of loans/deposits in respect of 10 parties the details whereof is as under:

Name of the party whose account is credited	Amount
Shankeshwar Exports	50,00,000/-
Dezire Exports	55,00,000/-
Kartik Diamond Pvt. Ltd.	35,00,000/-
Kushal Exports Surat	70,00,000/-
Manmohan Exports Pvt.	55,00,000/-
Madhav Gems India	27,00,000/-
Yashika Jewels Pvt. Ltd.	30,00,000/-
Rashmi Diamond Pvt. Ltd.	50,00,000/-
Dev Diamonds Surat	55,00,000/-
TOTAL	4,27,00,000/-

Smt. Bharti N. Patel

Date	Receipt Amount
19.05.2011	25,00,000/-
20.06.2011	40,00,000/-
20.06.2011	11,00,000/-
23.08.2011	7,00,000/-
25.08.2011	10,00,000/-
Total	93,00,000/-
Grand Total	5,20,00,000/-

4. It is pertinent to note that the said loans were duly reported in the tax audit report by the assessee. The assessee filed the confirmations of these loans during the assessment proceedings. The AO, finding various defects in the loan confirmations as filed by the assessee, came to the conclusion

that despite various opportunities given , the assessee has failed to prove the creditworthiness and identity of the parties and genuineness of the transactions and added the said loans aggregating to Rs.5,20,00,000/- under section 68 of the Act.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by sustaining the addition to the extent of Rs.4,27,00,000/- while deleting the Rs.93,00,000/- relating to loan from Smt. Bharti N. Patel after calling for the remand report from the AO and taking into account the contentions and submissions of the assessee. The Ld. CIT(A) deleted the addition in respect of loan of Rs.93,00,000/- from Smt. Bharti N. Patel on the ground that AO has accepted the correctness of the loan in the remand report whereas in respect of the remaining, AO doubted the creditworthiness of the creditors and the genuineness of the transactions. The Ld. CIT(A) noted that merely filing of copy of ITR and particular page of the bank statement, the identity, creditworthiness and genuineness of the transactions could not be proved. The Ld. CIT(A) observed that in the case of Shankeshwar Exports, a loan of Rs.50 lakhs was received through banking channel and interest was also paid on the said loan after deduction of TDS but doubted the said loan because such a huge loan was given without any sufficient security and also held that similar was the position in the case of other loan creditors and finally dismiss the appeal by observing and holding as under:

“Appellant has relied on CTT v Lovely Exports P Ltd. 216 CTR 195 (SC), CITv. Dwarkadhish Investment (P.) Ltd. [2010] 330 ITR 298/194 Taxman 43 (Delhi) and other such cases. I have gone through the cases cited by the appellant. In the of cases relied by the appellant the Courts have held that once documents like PAN card, bank account details or details from the bankers were given by the assessee, onus shifts upon the Assessing Officer and it is on him to reach the

creditors/shareholders to ascertain the true facts. It is for the Assessing Officer to make further inquiries with regard to the status of these parties to bring on record any adverse findings regarding their creditworthiness. This is exactly what the AO has done in this case. Appellant filed basic details of PAN and ITR-V and confirmations. AO asked the appellant to file more details like complete set of IT returns P&L, Balance Sheets and Bank statements to prove the genuineness and credit worthiness. Appellant failed to file complete details and also failed to produce the parties. AO took the onus on himself and collected the details, issued 133(6) notices to loan creditors. AO analyzed and proved that the loan creditors of the appellant have no capacity to extend such huge amounts based on the businesses and also gave a finding based on observations from the documents that these companies are paper companies rotating the entries. The loan creditor companies generally have no place of business for which they pay rent, no electricity expenses are claimed, no salary, no opening stock, no other administrative expenses are seen in the accounts. Reliance is placed on the following case laws in this regard.

CIT v Navodaya Castles (P) Ltd. 56 taxmann.com 18(50), which has confirmed the order of the Hon'ble High Court of Delhi in Navodaya Castles (P) Ltd. 367ITR306 (Delhi)

CIT v. Nova Promoters and Finkase (P) Ltd. [2012] 342 ITR 169/206 Taxman 207/18 taxmann.com 217,

CIT v. N.R. Portfolio (P.) Ltd. [2014] 222 Taxman 157/42 taxmann.com 339 (Delhi) and CIT v. MAF Academy (P.) Ltd. [2014] 361 ITR 258/42 taxmann.com 377 (Delhi)

The above decisions refer to the earlier decisions of Delhi High Court in CIT v. Sophia Finance Ltd. [1994] 205 ITR 98/[1993] 70 Taxman 69 (FB), CIT v. Divine Leasing and Finance Ltd. [2008] 299 ITR 268/[2007] 158 Taxman 440 (Delhi) and observations of the Hon'ble Supreme Court Court in CIT v. Lovely Exports (P.) Ltd. [2008] 319 ITR (St.) 5 (SC).

5.5 In the case of N.R. Portfolio (P.) Ltd. (supra), it has been held as under: —

'18. In the remand report, the Assessing Officer referred to the provisions of Section 68 of the Act and their applicability. The word "identity" as defined, it was observed meant the condition or fact of a person or thing being that specified unique person or thing. The identification of the person would include the place of work, the staff, the fact that it was actually carrying on business and recognition of the said company in the eyes of public. Merely producing PAN number or assessment particulars did not establish the identity of the person. The actual and true identity of the person or a company was the business undertaken by them. This according to us is the correct and true legal position, as identity, creditworthiness and genuineness have to be established. PAN numbers are allotted on the basis of applications without actual de facto verification of the identity or ascertaining active nature of business activity. PAN is a number which is allotted and helps the Revenue keep track of the transactions. PAN number is relevant but cannot be blindly and without considering surrounding

circumstances treated as sufficient to discharge the onus, even when payment is through bank account.

19. On the question of creditworthiness and genuineness, it was highlighted that the money no doubt was received through banking channels, but did not reflect actual genuine business activity. The share subscribers did not have their own profit making apparatus and were not involved in business activity. They merely rotated money, which was coming through the bank accounts, which means deposits by way of cash and issue of cheques. The bank accounts, therefore, did not reflect their creditworthiness or even genuineness of the transaction...

30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them.

5.6 Hon'ble Apex Court in the case of Navodaya Castles (P) Ltd 56 taxmann.com 18(SC), has dismissed the appeal of the assessee company against the order of Delhi High Court in the case 367 ITR 306 (Delhi). Hon'ble High Court held that certificate of incorporation, PAN, etc., are relevant for purpose of identification, but have their limitation when there is evidence and material to show that subscriber was a paper company and not a genuine investor. Also held that assessee cannot simply furnish some details and remain quiet when summons issued to shareholders remain un-served and uncomplied; their reluctance and hiding may reflect on genuineness of transaction and creditworthiness of creditors are reluctant. The court held that creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances require that there should be some more evidence of positive nature.

6. As already discussed above, non-filing of the required details asked for by the AO, nonproduction of creditors by the appellant conclusively proves that the loan entries appearing in the books of the appellant are not genuine. These loans were arranged accommodation entries. On analysis of financial documents proves that the loan creditors of the appellant were rotating the loans received on record showing only creditors/ loans on left side and almost equal debtors or loan advances on the right side without any fixed assets. These assessee do not have their own capacity to advance loans out of their accumulated profits or capital. The loan creditor companies have no place of business, not paying rent for any premises, no electricity expenses are claimed. No opening stock, no closing stock

and no other administrative expenses are seen in the accounts. This shows that these companies are paper companies. In view of the facts of the case and the judicial pronouncements discussed above, I agree with the AO that these are unexplained cash credits in the books of the appellant and the addition of Rs.4,27,00,000u/s 68 of the Act is confirmed. This ground of appeal is dismissed.”

6. The Ld. A.R. vehemently submitted before the Bench that Ld. CIT(A) has not appreciated the facts on record and the various evidences filed by the assessee and also by the loan creditors. The Ld. A.R. submitted that there is no allegation that these loans were taken from the various entities or concerns related to Shri Pravin Kumar Jain or Shri Bhanwarlal Jain. Even the AO admitted in the remand report that the assessee has filed various evidences in the form of PAN, confirmations of loans, bank statements, balance sheets, names and addresses of the lenders etc. The Ld. A.R. submitted that even the notice issued under section 133(6) of the Act to these parties in order to verify the genuineness of the transactions were duly responded by these parties by filing necessary evidences in support of the advancing of loans to the assessee. The Ld. A.R. submitted that the loan creditors in response to notice under section 133(6) filed the following information:

“Assesses ledger account in his books for the A.Y 2012-13 and subsequent year till the loan repaid.

j. Loan confirmation.

k. Bank statement reflecting loan given and received back.

l. Mode of receipt and payment of loan.

m. Whether any interest charged by you? If yes, than the rate of interest charged. Also state whether TD5 was made from the interest received on loan given to Naresh Patel.

n. Explain the nature, of loan that is whether it is business loan or otherwise. If it is business loan, than explain the nature of business loan with Naresh Patel with appropriate documentary evidences.

o. Copy of your ROI filed for A.Y. 2012-13 alongwith Balance sheet, Audit Report and its enclosures

p. Your PAN NO. with details of AO and proof of filing of ROI for A.Y.2012-13.”

The Id AO has candidly admitted in the remand report on page No.9 these evidences having been filed. The Ld. A.R. contended that despite having all the facts/evidences on record and even the evidences in the form of confirmations and other various evidences as submitted hereinabove, the AO has made the addition on the basis of presumptions and conjunctures which is not permissible under the Act. The Ld. A.R. also submitted that the assessee has duly paid the interest on these loans and the amounts were remitted to the loan creditors after deduction of tax at source which has been accepted by the Revenue. Ld. A.R. submitted that the AO has accepted the interest expenses claimed in the Profit & Loss account while the loans were treated as non genuine. The Ld. A.R. finally submitted that the assessee has adequately proved the identities of the parties or the loan creditors and also the genuineness of the transactions and creditworthiness of the loan creditors, therefore, the order of Ld. CIT(A) is wrong and against the facts and evidences on records and may kindly be reversed. The Ld. A.R. relied on the decision of Hon'ble Bombay High Court in the case of H.R. Mehta vs. ACIT (2016) 72 taxmann.com 110 (Bom) and Pr. CIT vs. Veedhata Tower Pvt. Ltd. 819 of 2015 dated 17.04.2018. The Ld. A.R. submitted while referring to the appellate order passed in the case of Smt. Bharati N. Patel for the A.Y. 2012-13 specifically the page No.6 of the said order that loan from Dev Diamond, Surat of Rs.50 lakhs have been held to be genuine and addition was accordingly deleted when the assessee furnished details, loan confirmation in response to notice under section 133(6) of the Act. The Ld. A.R. submitted that from the same lender the assessee has taken money and filed the

necessary evidences including loan confirmation. Besides the said party has also filed loan confirmation in response to notice issued under section 133(6) of the Act which was not accepted by the Ld. CIT(A) without any application of mind. The Ld. A.R. also submitted that if AO has used any material against the assessee which was in his possession of the revenue, the same was not confronted to the assessee at all and on this count also the order passed by the AO is bad in law.

7. The Ld. D.R. while relying on the order of Ld. CIT(A) submitted that the order of AO has rightly been upheld by the Ld. CIT(A) as the assessee has failed to satisfy the three ingredients as envisaged in section 68 of the Act i.e. identity of the parties and , creditworthiness and genuineness of the transactions. The Ld. D.R. submitted that though the assessee has filed the evidences in the form of copies of confirmations of the lenders, bank statements, ITRs, PAN cards, copies of balance sheet etc. However, the documents furnished by the assessee were incomplete and therefore could not be relied upon. The Ld. D.R. submitted that even the notices issued to the lenders under section 133(6) of the Act to verify the genuineness of the transactions and creditworthiness of the lenders did not yield any result as the information were provided incomplete and therefore , the order of Ld. CIT(A) may kindly be affirmed.

8. After hearing both the parties and perusing the material on record, we observe that the assessee has taken loans from 10 parties aggregating to Rs.5,20,00,000/-. The particulars of the said loans were duly reported in the tax audit report form 3CD under the heads "Acceptance of loans/deposits". The AO treated

the said loans as non genuine in which the identities and creditworthiness of the lenders were not proved and accordingly added the entire amount of Rs.5,20,00,000/- under section 68 of the Act to the income of the assessee. The Ld. CIT(A) partly allowed the appeal of the assessee by deleting the addition of Rs.93 lakhs in respect of Smt. Bharti N. Patel after calling a remand report from the AO whereas the addition of Rs.4,27,00,000/- were sustained for non filing of details/incomplete details, non production of creditors and ultimately holding that these were accommodation entries. The Ld. CIT(A) also held that the said companies were paper companies and were not having any regular place of business as they were not paying any rent of the premises and no electricity expenses were claimed. It is undisputed that the said companies were neither related to Shri Pravin Kumar Jain nor Shri Bhanwarlal. We further note that in the remand report called for by the Ld. CIT(A), the assessee has filed the necessary evidences in the form of confirmations of the lenders, bank statements, copies of balance sheets, PAN Numbers, ITRs etc. of the lenders. Even the lenders have replied in response to notice issued under section 133(6) of the Act. The copies of ledger accounts and subsequently repayment of loans, loan confirmations, bank statements reflecting the loan given and received back, mode of receipt / payment of loans, details of interest charged and TDS deducted, nature of loan advanced, returns of income filed along with balance sheets, audited reports and PAN numbers with the AO. We further notice that in respect of Dev Diamond Surat from whom Rs.55 lakhs were received was sustained by Ld. CIT(A) whereas the loan from the

same party in the hands of Smt. Bharti N. Patel was accepted by the AO in the remand report, a copy of which is filed at page No.35 to 39 and the relevant para is 3.1. We have also examined the appellate order passed by the Ld. CIT(A) in the case of Smt. Bharti N. Patel dated 14.02.2018 wherein addition made by the AO qua Dev Diamond Surat of Rs.50 lakhs was deleted. We also note that even the interest paid on these loans by the assessee after deduction of tax at source were duly allowed as expense by the AO. Under these circumstances, we are not in a position to subscribe and concur with the conclusion of Ld. CIT(A) that these are paper companies and identities of the creditors and genuineness and creditworthiness of the lenders were not proved especially when the information/evidences having been filed by the assessee in the assessment proceedings and remand proceedings and even the lenders have filed all the evidences before the AO which has been admitted by the AO in the remand report. Under these circumstances, it is nothing but an addition made by the AO and also confirmed by the Ld. CIT(A) on presumption basis. Further, we find that assessee has not been confronted with any information that the said companies were non genuine and paper companies. The case of the assessee is supported by the Hon'ble Bombay High Court in the case of H.R. Mehta vs. ACIT (supra) wherein the Hon'ble Bombay High Court has held that AO should have provided the assessee the material used against him apart from providing him an opportunity to cross examine the deponents whose statements were relied upon. In the case of Pr. CIT vs. Veedhata Tower Pvt. Ltd. (supra) wherein the Hon'ble Bombay High Court has held that assessee has

discharged his onus which has cast upon him in terms of pre-amended section 68 of the Act by filing the necessary confirmation letters from the creditors, their affidavits, their full addresses and their PANs and it was not necessary to prove the source of source prior to 01.04.2013 as has been held in the case of CIT vs. Gagan Deep Infrastructure Pvt. Ltd. 294 ITR 680 wherein it has been held that proviso to section 68 has been inserted to Finance Act, 2012 w.e.f. 01.04.2013 and therefore it would be effective from A.Y. 2013-14 onwards and not earlier assessment years. Keeping in view of the facts of the above case in the light of ratio laid down by the Hon'ble Bombay High Court in above two decisions, we are inclined to set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the addition of Rs.4,27,00,000/-.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.11.2019.

Sd/-
(C.N. Prasad)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 21.11.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.