

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

**BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.3383/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2013-14)

ACIT-33(2) Room No.608, 6 <sup>th</sup> Floor, Pratakshyakar Bhavan, BKC, Mumbai-400051.	<b>बनाम/</b> Vs.	M/s. M. K. International B- 606, Khakhharapt, MG Cross Road-1, Kandivali (W), Mumbai-400067.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKFM9567C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Drop Singh Meena (Sr. AR)
Assessee by:	Shri Bharat K. Patel & Gaurav V. Mehta

सुनवाई की तारीख / Date of Hearing: 11/11/2019

घोषणा की तारीख /Date of Pronouncement: 26/11/2019

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 02.02.2018 passed by the Commissioner of Income Tax (Appeals) -45, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2013-14.

2. The revenue has raised the following grounds: -

- "1) *The Ld. CIT(A) has erred in deleting the addition u/s 68 of the I. T. Act of Rs.1,19,00,000/- being loan received from M/s. Sach International when the credit worthiness of the creditor was not proved by the assessee.*



2. *The Ld. CIT(A) erred in deleting the addition u/s 68 of the I. T. Act of Rs.30,00,000/- being capital introduced by a partner when the source of the introduction has not been adequately explained by the assessee.*
3. *In deleting the above additions the Ld. CIT(A) relied on additional evidences which were neither submitted by the assessee during the assessment proceedings nor during the remand proceedings.*
4. *The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the AO be restored.*
5. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

3. The brief facts of the case are that the assessee filed its return of income on 25.09.2013 declaring total income to the tune of Rs.9,91,880/-. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee firm is engaged in the business of Import & Export of nay item/commodity. During the year under consideration, the assessee has shown the income from business & profession and income from other sources. On verification, it was found that the assessee has taken loan an amount of Rs.1,19,00,000/- from only one party viz: Sachs International, Gala No. C-15, High Tech Industrial Estate, Old Satpati Road, Village Aliyalik, Palghar, Thane-401404. To verify the claim, notice u/s 133(6) of the Act dated 31.07.2015 was issued which was returned with the remarks of “Incomplete address”/ party not found. Thereafter, the assessee was asked to prove the transaction, the assessee only filed the confirmation letter but failed to prove the genuineness of the transaction, therefore, an amount of Rs.1,19,00,000/- was added to the income of the assessee u/s 68 of the Act. One of the partners viz: M/s. Kamlesh N. Sheth, added an amount of Rs.36,38,684/- to



the capital account. He was asked to prove the genuineness of the claim but failed to prove the genuine of the claim, therefore, an amount of Rs.36,38,684/- was added u/s 68 of the I. T. Act as unexplained cash credit. The total income of the assessee was assessed to the tune of Rs.1,65,30,570/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

### **ISSUE NO. 1**

4. Under this issue the revenue has challenged the deletion of addition in sum of Rs.1,19,00,000/- being loan received from M/s. Sach International u/s 68 of the Act. The Ld. Representative of the revenue has argued that the creditworthiness of M/s. Sach International was not proved on record but the CIT(A) has wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is not justifiable, hence is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“4.4. I gone carefully gone through the assessment order, the submissions of the appellant, Remand Report of the AO and the rejoinder of the appellant. I have also perused the various judicial pronouncements vis-a-vis facts of the case. There was only one loan in the balance Sheet of the appellant which the AO wanted to verify. The appellant could not comply fully as the main partner was busy with business travels. I have verified the reasons with the evidences filed by the appellant. During the Remand Report the appellant has filed all the necessary details. If the AO wanted any other document, he could have called for the same and also heard the appellant. Having not done the same, raising fresh questions in the remand report is of no use. After



going through the documents filed, I am convinced that the appellant has discharged its burden to prove the identity genuineness and credit worthiness of M/s. Sach International. Accordingly, additions of Rs.1,19,00,000/- is deleted. This ground is allowed.”

5. On appraisal of the above mentioned finding, we noticed that the assessee filed the confirmation from Sach International but further nowhere filed any other documents, therefore, the claim of the assessee was declined. The assessee moved an application before the CIT(A) u/s 46A for additional evidences. The assessee produced the copy of ledger account of M/s. Sach International for the period of 01.04.2012 to 31.03.2016 along with Bank-statement of the appellant. The evidence in connection with the repayment of the loan from Sach International was also produced which was fully paid during the F.Y.2015-16. The repayment entries were identifiable in the bank statements of both the parties. Anyhow the additional evidence was forwarded to the AO who also replied the same. The identity, genuineness and creditworthiness of Sach International was duly proved. Remand report also confirmed the transactions. Since sufficient evidence was given, therefore, we are of the view that the CIT(A) has rightly allowed the claim of the assessee. The finding given by CIT(A) is quite correct which is not liable to be interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

## **ISSUE NO.2**

6. Under this issue the revenue has challenged the deletion of addition u/s 68 of the Act of Rs.30,00,000/- being capital introduced by a partner. The AO declined the claim of the assessee being no sufficient evidence was



produced. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim specifically in the circumstances when the assessee failed to explain the source of the introduction of an amount of Rs.30,00,000/-. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record: -

*“5.5 I have considered the assessment order, the submissions, remand report and the rejoinder of the appellant. The Assessee furnished photocopy of agreement for purchase of flat no. 1606 in Tower 'B' of "Celestia", Malad (West), Mumbai-400064 from ASPEE during appellate proceedings to establish the fact that the flat purchase transaction was paid to M/s M.K. International instead of in the personal name of Mr. K.N. Sheth. After considering various judicial pronouncements and the facts of the case, I am convinced that the appellant has successfully proved that the sources for introduction of Rs. 30 lakhs (wrongly taken by the AO as Rs.36,38,684) introduced in the capital account of Mr. Kamlesh N. Sheth. Accordingly, addition of Rs.36,38,684/- is deleted. This ground is also allowed.”*

7. On appraisal of the above mentioned finding, we noticed that the assessee moved an application u/s 46A of the Act for additional evidence to prove the claim before the CIT(A). The said application was forwarded to the AO who submitted the remand report. The assessee received an amount of Rs.25,00,000/- on 06.07.2012 from ASPEE (American Spring & Pressing Works Pvt. Ltd.). Copy of letter from ASPEE with ledger copy in the books speaks about an amount of Rs.25,00,000/- was paid to the assessee. Subsequently, the transaction was confirmed from the capital account. The assessee also paid a sum of Rs.5,00,000/- from his personal SB Account lies with the HDFC. Bank statement in this regard has also been placed on record. The assessee explained the introduction of the



money in sum of Rs.3,00,000/- by adducing the sufficient evidence on record. In view of the said evidence, the assessee no doubt proved his claim which was accepted by CIT(A). No illegality and infirmity was found on account of accepting the claim of the partner of the assessee for introducing an amount of Rs.3,00,000/- to the capital account of the assessee. We nowhere found any illegality and infirmity in the order passed by CIT(A) in question, therefore, taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide this issue in favour of the assessee against the revenue.

**8. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 26/11/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :26/11/2019

Vijay/Sr. PS

Sd

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 3383/M/2018  
A.Y.2013-14

**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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**