

**आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

**आयकर अपील सं./ ITA No. 4205/Mum/2017**

(निर्धारण वर्ष / Assessment Year 2012-13)

Shri Nasirali Asgharali Madraswala 1201, Plot No. 11, Naney CHS Ltd. 3 <sup>rd</sup> Road, Almeda, Park NR, Bandra West, Mumbai-400 050	बनाम/ Vs.	The Income Tax Officer Ward -13(1)(1) R.No. 225, Aayakar Bhavan, M.K. road, Mumbai-20
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AFUPM2789R</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Sashi Tulsian, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Ms. Kavita P. Kaushika, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	25.11.2019
घोषणा की तारीख / <b>Date of pronouncement</b>	25.11.2019

**आदेश / ORDER**

**महावीर सिंह, न्यायिक सदस्य/**  
**PER MAHAVIR SINGH, JM:**

This appeal filed by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)]-21, Mumbai [in short CIT(A)], in appeal No. CIT(A)-21/ITO-13(1)(1)/IT-146/2015-16 vide dated 23.03.2017. The Assessment was framed by the Income Tax officer, Ward 13(1)(1) Mumbai (in



short ITO/ AO) for the A.Y. 2012-13 vide order dated 27.03.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making addition of unsecured loans of ₹50 lacs from Nakshatra Business Pvt. Ltd. and ₹70 lacs from Golding Mercantile Pvt. Ltd. under section 68 of the Act. For this, assessee has raised the issue of violation of principles of natural justice as well as the issue of merits. For this, assessee has raised the following ground No 1 to 5: -

*"violation of Principles of Natural Justice*

1. *The learned CIT(A) erred in confirming addition of unsecured loan of Rs. 50,00,000/- from M/s. Nakshatra Business Pvt. Ltd. and Rs. 70,00,000/- from M/s. Golding Mercantile Pvt. Ltd. under section 68 without affording sufficient opportunity of hearing to the assessee and thereby violating principles of natural justice and hence the order of learned CIT(A) may be quashed.*

2. *The learned CIT(A) erred in confirming addition of unsecured loan for Rs. 50,00,000/- from M/s. Nakshatra Business Pvt. Ltd. and Rs. 70,00,000/- from M/s. Golding Mercantile Pvt. Ltd. u/s. 68 without appreciating that no opportunity of cross-examination was provided*

to assessee during assessment proceedings as well as during remand proceedings and hence, addition u/s. 68 of Rs. 1,20,00,000/- ought to be deleted.

3. The learned CIT(A) erred in confirming addition of unsecured loan of Rs. Rs. 70,00,000/- from M/s. Golding Mercantile Pvt. Ltd. u/s. 68 without appreciating that no details of investigation with respect to Mr. Satish Shah who is alleged to be maintaining M/s. Golding Mercantile Pvt. Ltd. were provided during assessment proceeding nor during proceedings before learned CIT(A) including remand proceedings and hence addition of Rs.70,00,000/- pertaining to M/s Golding Mercantile Pvt. Ltd. ought to be deleted.

#### Merits

4. The learned CIT(A) erred in confirming addition of unsecured loan of Rs.50,00,000/- from M/s. Nakshatra Business Pvt. Ltd. and Rs. 70,00,000/- from M/s. Golding Mercantile Pvt. Ltd. u/s. 68 without appreciating that assessee discharged its onus u/s. 68 by proving the identity of lenders, genuineness of the loan transaction and creditworthiness of the parties by filing loan confirmations, Bank A/c. of lenders and assessee, balance sheet and P & L A/c of lenders, Income tax Return of lenders

*and lenders responded to notice u/s. 133(6) and hence addition u/s. 68 of Rs. 1,20,00,000/- ought to be deleted.*

*5. The learned CIT(A) erred in confirming addition of unsecured loan of Rs. 50,00,000/- from M/s. Nakshatra Business Pvt. Ltd. and Rs. 70,00,000/- from M/s. Golding Mercantile Pvt. Ltd. u/s. 68 without appreciating that assessee is not required to prove source of source u/s. 68 and hence addition u/s. 68 of Rs. 1,20,00,000/- ought to be deleted."*

3. Briefly stated facts are that the assessee is an individual deriving income from salary and interest. The balance sheet filed by the assessee along with return of income discloses that the assessee has received loan amounting to ₹50 lacs from Nakshatra Business Pvt. Ltd. and ₹70 lacs from Golding Mercantile Pvt. Ltd. The AO noticed from the details and information available in the records of the department that a search and survey action under section 132 of the Act was carried out at the residential and business premises of Shri Pravin Kumar Jain and Mr. Satish Shah by the Investigation Wing of the Income Tax Department. During the course of search and based on investigation it is established that these persons are in the business of providing accommodation entries to various beneficiary companies, entities, persons through cheque to a number of paper companies in lieu of cash. The AO noted that the assessee is beneficiary of the group of companies of Pravin Kumar Jain and Mr. Satish Shah in the name of

Nakshatra Business Pvt. Ltd. and Golding Mercantile Pvt. Ltd. The AO noted that loans from these two lenders were utilized for making advance to NA Construction Pvt. Ltd. for business purposes, where assessee is a Director. The AO treated this amount as unexplained cash credit under section 68 of the Act for the reason that these two lenders are operated by Shri Pravin Kumar Jain and Satish Shah for provided bogus accommodation entries. Aggrieved, assessee preferred the appeal before CIT(A).

4. The CIT(A) confirmed the addition by observing in Para 5.9 to 5.14 as under: -

*"5.9. From the details filed by the appellant it was noticed that loan of Rs.50,00,000 received from M/s. Nakshatra Business Pvt. Ltd. on 3.1.2012 was repaid on 16.05.2012. Shri Pravin Jain was a director of M/s. Nakshatra Business Pvt, Ltd. Appellant submitted that these loan funds were transferred to N. A. Construction Pvt. Ltd. for business purpose and the repayment to M/s Nakshatra Business Pvt. Ltd. was out funds received from M/s. N. A. Construction Pvt. Ltd. As regards, loan from Golding Mercantile Private Limited, it was received on 14.3.2012 and it was repaid on 04.03.2014 and 05.03.2014 out of funds received from Shaheen Madraswala, as explained by the appellant. While interest was paid @ 10% to M/s. Nakshatra Business Pvt.*

*Ltd., no interest was paid on the loan from Golding Mercantile Private Limited.*

*5.10. Even if the statements recorded are ignored, the requirement of establishing the identity and creditworthiness of the lender, and the genuineness of the transaction has to be satisfied by the appellant. The two corporate entities are registered and thus their identities are proved. The creditworthiness can be judged from their financials. Balance sheet and audited accounts of M/s Golding Mercantile P. Ltd. shows the following.*

	31.03.2012	31.03.2011
Share capital	972,750	100,000
Share premium	34,82,27,250	0
Revenues	0	21,84,010
PBT	(-) 55,373	20,00,360
Loans and advances	2,75,61,932	11,83,260

*Balance sheet and audited accounts of M/s Nakshatra Business Pvt. Ltd. shows the following.*

	31.03.2012	31.03.2011
Share capital	2,00,00,000	2,00,00,000
Share premium	(-) 6,79,41,895	78,99,362
Revenues	43,16,09,874	90,54,61,107
PBT	(-)7,59,40,654	20,50,972
Loans and advances	27,27,47,415	32,40,52,991

*5.11. It can thus be seen that M/s Golding Mercantile P. Ltd. has hardly any profits but has shown a humungous increase in premium of ₹34.82 crores clearly showing that it is shell company. It has not even charged interest on*

*loan of Rs 70,00,000 given to appellant. Similarly, M/s. Nakshatra Business Pvt. Ltd. has huge loss and its share capital is wiped out. It has advanced loan to the appellant.*

*5.12. Appellant has submitted that the loan to M/s Golding Mercantile P. Ltd. has been repaid from funds received from Shaheen Madraswala. Shaheen Madraswala's balance sheet as on 31.3.2012 shows gift received from appellant of Rs 2,37,00,000 from the appellant taken to her capital account and remuneration from N.A. Construction P. Ltd. of Rs 12,00,000/- Further unsecured loans of Rs 175,70,000 is shown. These funds have been used for loan to appellant of ₹50,00,000 and purchase of Flat 1201 Nensey CHS at Bandra for Rs.3,50,93,820/- As noted earlier, the gift to her by the appellant is financed out of unsecured loans shown by the appellant. Thus she has no resources to advance loan to the appellant.*

*5.13. In the appellate proceedings, the appellant was asked to explain how the loans were arranged from these two companies. Who was contacted and to submit contemporaneous records of the same. No details could be provided. Further, the appellant was asked to explain the credits immediately appearing in*

*the bank accounts of these two lenders before amounts were advanced to the appellant. This could also not be submitted. Evidence of sources of funds for M/s. N. A. Construction Pvt. Ltd. and Shaheen Madraswala who it is claimed has provided funds for repayment of these loans called for was also not furnished.*

*5.14. Based on the facts discussed above, I find that the creditworthiness of the lender and the genuineness of the transactions is not established. Accordingly, the addition made u/s 68 is sustained. Grounds of appeal no 2 to 4 are dismissed."*

Aggrieved, against the order of CIT(A) assessee came in appeal before Tribunal.

5. Before us, assessee stated the facts that a search/survey action under section 132/133A of the Act was conducted at the residential and business premises of Shri Pravin Kumar Jain and Mr. Satish Shah by the Investigation Wing of the Department. These were the persons who managed/ operated the lender companies. In the Sworn statement recorded Shri Pravin Kumar Jain admitted that he was engaged in the business of giving accommodation entries to the clients who were desirous of taking it. The AO in the course of assessment proceedings issued notices under section 133(6) of the Act on the above mentioned lender companies calling for information on the assessee's transactions. The assessee in compliance to the notice the following details were filed:

- i. Copy of Loan Confirmation*
- ii. copy of Bank statement*
- iii. Copy of ITR Acknowledgement*
- iv. Copy of Balance sheet and Profit and Loss Account*

6. It was stated by the learned Counsel that the AO required the assessee to produce the directors of the above mentioned companies for recording the statement and verification along with supporting documents that is identity, creditworthiness and genuineness of the transactions. In response to the above, assessee vide submission dated 19.03.2015 requested for the copies of statements of these persons who were alleged to be entry providers. No copy of statement was however, provided. Afterwards, vide submission dated 21.03.2015, the assessee filed the following details:

- i. Ledger confirmation of various lenders including the above companies.*
- ii. copies of bank statements.*
- iii. Copies of income tax acknowledgements along with financials statement of various lenders companies including the above companies.*

7. However, the Assessing Officer disregarded the evidences and explanations as furnished by the assessee and processed to pass order under section 143(3) of the Act, wherein he made



addition of loans raised from the two parties. The CIT(A) also confirmed the addition on the following grounds: -

*i. M/s Golding Mercantile Pvt Ltd has hardly any profits but had shown a humungous increase in premium of ₹34.82 cores showing that it is Shell Company. They did not charge interest on loan of ₹70,00,000/- given to appellant. Hence, creditworthiness was not established.*

*ii. M/s Nakshatra Business Pvt. Ltd huge loss and its share capital was wiped out.*

*iii. Shaheen Madraswala wife of the appellant had no resourced to advance loan to the appellant.*

*iv. The appellant failed to explain how the loans were arranged from these two companies i.e. who was contacted and to submit contemporaneous records of the same.*

*v. Appellant failed to explain the credits immediately appearing in the bank accounts of these two lender companies before amounts were advanced to the appellant.*

*vi. Appellant failed to provide evidence of sources of funds for M/s NA Construction Pvt. Ltd. and Shaheen Madraswala who has provided funds for repayment of these loans.*

8. We noted that the assessee before the AO filed copy of bank statement of the assessee showing acceptance of repayment of loan from the above parties. The assessee also filed the copy of bank statement from the above two parties from whom it was accepted loan. The assessee also filed copies of income tax returns, balance sheet, profit and loss account and confirmations from these two parties namely; Nakshatra Business Pvt. Ltd. and Golding Mercantile Pvt. Ltd. The assessee claimed that it has provided all the necessary details to discharge its onus under section 68 of the Act because the assessee has taken credit during the previous year and prove the identity of the creditors, creditworthiness and capacity of the creditors and also genuineness of the transaction. The lender's namely; Nakshatra Business Pvt. Ltd. and Golding Mercantile Pvt. Ltd. are assessed to tax and had filed their returns of income from the year under consideration. The financial statement proves the creditworthiness and the financial statements clearly establishes the following: -

*In regard to Golding Mercantile Pvt. Ltd. following points should be noted:-*

*1) The share capital was ₹9,72,750/- as on 31.03.2012.*

*2) The reserve and surplus amounted to ₹34,82,27,250/-.*

*It shows that the company had sufficient funds to advance loan of ₹70,00,000/- to the appellant*

*In regard to Nakshatra Business Pvt. Ltd following points should be note:-*

- 1) The lender has cash and bank balances amounting to ₹ 91,26,938/- as on 31.03.2012.*
- 2) The revenue from operation amounted to ₹43,16,09,974/- which shows that they are creditworthy.*
- 3) There is opening reserve and surplus amounted to ₹ 78,99,362/-*
- 4) There is decrease in trade receivables amounting to ₹20,07,91,920/- as compared to previous year.*

9. The above facts clearly establish the creditworthiness of the lenders and from the bank statements and loan confirmations it proves that the transactions are genuine. Even, the said amounts were confirmed by the lender companies by replying to the notices under section 133(6) of the Act issued by the AO. We noted that the CIT(A) has doubted the creditworthiness of the parties on the basis of financials of Golding Mercantile Pvt. Ltd. because the said company has suffered losses in the current year and has showed a humungous increase in premium. It was explained before us that the lender company has proved the source and charging premium is a commercial decision and assessee has already prove the financial position, which is not in doubt. As regards to Nakshtra Builders Pvt. Ltd, the CIT(A) noted that the lender company incurred huge losses, but that cannot be the reason to examine the loans including their sources. Hence, we are of the



view that once the assessee is able to explain the source of the transaction, creditworthiness of the parties and identity, nothing remains under section 68 of the Act to make addition. Hence, we delete the addition and allow the appeal of the assessee.

**10. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 25.11.2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)  
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 25.11.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**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 (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai