

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.6139/M/2016
Assessment Year: 2012-13**

M/s. Garware Synthetics Ltd., Manish Textiles Industries Premises, Opp. Golden Chemical, Penkar Pada, Post Mira, Dist. Thane- 401104 PAN: AAACG4208M	Vs.	Asst. Commissioner of Income Tax-15(1)(2), Mumbai - 401104
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Haridas Bhat, A.R.
Revenue by : Shri Chaudhary Arunkumar Singh, D.R.
Shri Ajit Pratap Singh, D.R.

Date of Hearing : 27.09.2019
Date of Pronouncement : 14.11.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 05.08.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The revised grounds filed by the assessee are as under:

"Ground 1.

The Assessing officer and the Learned CIT(A) erred in making the addition U/s 68 of the Act, totaling to Rs.59,00,000/- Loans taken from M/s Sumukh Commercial Pvt Ltd Rs.50,00,000/- and M/s Casper Enterprises Pvt. Ltd. Rs.9,00,000/- alleging that the said parties are part of Consortium of Shri Bhanwarlal Jain, who has admitted to issuing bogus Loans, by neither making any investigation nor giving any evidences to the Assessee.

Ground 2.

The Assessing officer and the Learned CIT(A) erred in making the addition of Rs.9,90,514/- U/s 36 (1)(va) r.w.s. 2(24)(x) on account of delay in payment of employees contribution towards PF and ESIC dues, ignoring the fact that the said dues were paid before the due date of filing of the Income Tax Returns.”

3. The issue raised in ground No.1 is against the confirmation of addition of Rs.59,00,000/- by Ld. CIT(A) comprising loans from M/s. Sumukh Commercial Pvt. Ltd. Rs.50,00,000/- and M/s. Casper Enterprises Pvt. Ltd. Rs.9,00,000/- on the ground that these concerns were part of Consortium of Shri Bhanwarlal Jain.

4. The facts in brief are that the assessee is engaged in the manufacturing of Nylon Bristles, Nylong Tubing & Nylon Rods and during the year filed the return of income on 26.09.2012 declaring income at Nil after setting of B/F losses of Rs.1,01,43,515/-. During the course of assessment proceedings, the case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was duly issued and served upon the assessee. During the course of assessment proceedings, the AO observed that assessee has unsecured loans outstanding as on 31.03.2012 of Rs.1,44,00,000/-. In the meanwhile, the AO also received information from the investigation of the IT Department that the said companies were related concerns of Bhanwarlal Jain group and also mentioning that the assessee has received unsecured loans of Rs.1,44,00,000/- from the said concerns. Accordingly, the AO called upon the assessee to furnish the details such as copies of returns, financial statements to verify the identity, genuineness and creditworthiness of the persons which were filed by the assessee and were available on record. The AO noted that the

assessee has filed the ITRs of the said parties along with loan confirmations, however, the bank statement and other evidences were not produced and thus though the identity of the lenders were proved ,however, the genuineness of the transactions and creditworthiness of lender remained unestablished. Thereafter, the AO narrated the modus operandi of the hawala racket and relied primarily on the fact that Shri Bhanwarlal Jain had admitted during the course of search on him and associated concerns that bogus entries in the form of unsecured loans were given as accommodation entries. The AO added Rs.1,44,00,000/- to the income of the assessee under section 68 of the Act in the assessments framed under section 143(3) dated 29.03.2015.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by deleting the addition of Rs.85 lakhs being unsecured loan from M/s. Tyson Marketing Pvt. Ltd. whereas additions in respect of two loans from two parties M/s. Sumukh Commercial Pvt. Ltd. Rs.50 lakhs and M/s. Casper Pvt. Ltd. Rs.9 lakhs was confirmed by holding that they were related to Shri Bhanwarlal Jain who admitted during the course of search that he and his concerns were providing accommodation entries only and thus the submissions of the assessee and evidences filed on record were not accepted by the CIT(A).

6. After hearing both the parties and perusing the material on record, we observe that assessee has submitted supporting evidences to establish the identity of the lenders, genuineness and creditworthiness of the parties by filing names, addresses, ITRs, financial statements and bank statements of the parties.

We observe that the AO and Ld. CIT(A) have primarily harped on the fact that these parties belong to Shri Bhanwarlal Jain whereas the ld counsel of the assessee that the parties belonged to Pravin Kumar Jain. We further observe that the AO has not made any investigation on the evidences submitted by the assessee even after admitting that the identities of the loanees were established by the assessee. The assessee has also brought to the notice of the authorities below that Shri Pravin Jain has retracted the statement given during search, a copy of which is also placed on record. In our opinion, the Ld. CIT(A) has only confirmed the addition on the basis that these parties belong to the consortium of Shri Bhanwarlal Jain whereas as a matter of fact these parties relate to Shri Pravin Kumar Jain. The case of the assessee is supported by the decision of Sanghvi Reality Pvt. Ltd. vs. DCIT (2017) 51 CCH 0041 Mumbai –Tri. (2017) 60 ITR (Tri) 0150 (Mumbai) wherein the Co-ordinate bench of the Tribunal has held that no addition can be made under section 68 where the loans were advanced by Bhanwarlal Jain group where no investigation is carried out. Similarly, in the case of ACIT vs. Shreedham Builders (2018) 53 CCH 0212 (Mum – Tri.) the co-ordinate bench of the Tribunal has laid down the same ratio. Accordingly, in our considered view the order of Ld. CIT(A) can not be sustained as purely based on the mere conjunctures and assumptions without bringing any concrete materials record. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition of Rs.59 lakhs.

7. The issue raised in 2nd ground of appeal is against the confirmation of addition of Rs.9,91,514/- by Ld. CIT(A) as made by the AO under section 36(1)(va) read with section 2(24)(x) on

account of late payment of employees contribution towards PF and ESI dues.

8. The facts in brief are that the AO observed from the perusal of annexure B to clause No.21(b) of the tax audit report that the employee's contribution towards PF Rs.8,47,971/- and ESI Rs.1,42,543/- aggregating to Rs.9,90,514/- were remitted to the government treasury after the due date as per the proviso to section 36(1)(va) of the Act and accordingly the same were added to the income of the assessee.

9. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee on this ground by holding that the decision cited by the Ld. A.R. were rendered after considering the decision of Hon'ble Supreme Court in the case of CIT Vs Alom Extrusions Ltd. 319 ITR 306 (SC) and the facts in Apex Court decision were distinguished by Hon'ble Gujarat High Court in the case of CIT vs. GP Road Transport Corporation Ltd. in ITA No.637 of 2013, 366 ITR 170 (Guj).

10. After hearing both the parties and perusing the material on record, we observe that in this case the assessee has remitted the dues on account of PF and ESI to the Government of Exchequer after the due date as per the proviso to section 36(1)(va) but before the due date of filing the return. In our opinion, the case of the assessee is squarely covered in favour of the assessee by the decision of the Hon'ble Bombay High Court in the case of CIT vs. Ghatge Patil Transports Ltd. 368 ITR 074 (Bom.) and also the decision of the Hon'ble Apex Court in the case Alom Extrusions Ltd. (supra). Accordingly, we are not in

agreement with the decision of the Ld. CIT(A) on this issue and therefore, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order pronounced in the open court on 14.11.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated:14.11.2019.

* 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.