

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.5894/MUM/2018(A.Y.2010-11)
ITA NO.5895/MUM/2018(A.Y.2011-12)
ITA NO.5896/MUM/2018(A.Y.2012-13)

Anil Kumar Tibrewal,
145A, 1st Floor, Shop No.13,14,15,
DR.Beigas Road, Gaiwadi,
Kalbadevi, Mumbai 400 002.
PAN:AABPT 2575N

..... Appellant

Vs.

Dy. Commissioner of Income Tax,
Circle-4(3)(1),
Mumbai.

..... Respondent

Appellant by : Shri Satish R. Mody
Respondent by : Shri Kumar Padampani Bora

Date of hearing : 12/12/2019
Date of pronouncement : 29/01/2020

ORDER

PER VIKAS AWASTHY, JM:

These three appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-2, Mumbai [in short 'the CIT(A)] for the assessment year 2010-11, 2011-12 and 2012-13. All these three impugned orders by the CIT(A) are of even date i.e. 14/08/2018. Since, the issue raised in all the appeals is identical and emanates from same set of facts, these appeals are taken up together for adjudication and are disposed of by this common order.

2. For the sake of convenience, the facts are extracted from the appeal of assessee in ITA No.5894/Mum/2018for assessment year 2010-11.

ITA NO.5894/MUM/2018(A.Y. 2010-11):

3. Shri Satish R. Mody appearing on behalf of the assessee submitted that assessment for assessment year 2010-11 was reopened by the Assessing Officer on the information received from DCIT(Inv) that the assessee has obtained accommodation entries of loan from M/s. Mohit International, a hawala concern floated by Pravin Kumar Jain. The Assessing Officer in reassessment proceedings observed that the assessee has obtained accommodation entries in the form of unsecured loans to the tune of Rs.8.00 lacs from M/s. Mohit International.

4. During the course of assessment proceedings the assessee furnished various documents to prove genuineness of the loan transactions. To show the identity of the party, the assessee furnished postal address and PAN of the lender alongwith copy of income tax returns. To show creditworthiness of the lender, the assessee furnished annual financial statement with bank statement of the lender. A perusal of the same would show that the lender has sufficient funds for advancing loans. To prove genuineness of the transaction, the assessee filed confirmation from the lender. The Id.Authorized Representative of the assessee submitted that the Assessing Officer relied on the statement of Shri Pravin Kumar Jain, wherein he has purportedly admitted that he has floated concerns that are solely engaged in providing accommodation entries. The said statement was never provided to the assessee. No opportunity to cross examine Shri Pravin Kumar Jain was afforded to the assessee by the Assessing Officer despite specific request. The Id.Authorized Representative of the assessee submitted that the authorities below have violated the principle of

natural justice and have made addition on the basis of statement recorded at the back of the assessee. The Id.Authorized Representative of the assessee contended that the said statement of Shri Pravin Kumar Jain has no evidentry value as the same has already been retracted by him before the CBDT.

5. The Id.Authorized Representative of the assessee asserted that the addition made by the Assessing Officer is not sustainable as the Assessing Officer made independent enquiry by issuing notice under section 133(6) to M/s. Mohit International. The said lender has furnished reply to the notice and has admitted that it has advanced money to the assessee /appellant. The Id.Authorized Representative of the assessee further contended that assessee has repaid the loan amount through cheque on 23/03/2010. In support of his contention, Id.Authorized Representative of the assessee referred to the bank statement of M/s. Mohit International at page 39 and the assessee at page 42 of the Paper Book.

6. The Id.Authorized Representative of the assessee further submitted that the Co-ordinate Bench of the Tribunal in the case of Shree Shankar Sarees vs. ITO in ITA No.2750/Mum/2009 for assessment year 2008-09 decided on 31/10/2019, wherein similar addition was made in respect of the loans advanced by M/s. Mohit International deleted the addition. To further buttress his submissions that the addition cannot be made on the basis of statements recorded at the back of the assessee without affording opportunity to cross examine, the Id. Authorized Representative of the assessee placed reliance on the decisions of DCIT vs. Adhunik Transport Organisation Ltd., ITA No.3725/Mum/2017, A.Y.2012-13 decided on 22/08/2019.

7. On the other hand, Shri Kumar Padampani Bora representing the Department vehemently defended the impugned order and prayed for

dismissing the appeal of the assessee. The Id.Departmental Representative submitted that Pravin Kumar Jain in his statement had admitted that he has floated various concerns , who are engaged in providing accommodation entries only. These concerns are not doing any other business except providing accommodation entries. The assessee has obtained accommodation entries to the tune of Rs.8.00 lacs during the period relevant to the assessment year under appeal from one of such concern. The assessee neither produced the party nor the notice under section 133(6) issued by the Assessing Officer could be served on the said lender. The notice was returned back un-served. The Assessing Officer had deputed inspector to visit the lender at the given address. The Inspector reported that the party was not available at the given address. The Id.Departmental Representative vehemently prayed for dismissing the appeal by assessee.

8. We have heard the submissions made by rival sides and have perused the orders of authorities below. The addition has been made by the Assessing Officer under section 68 of the Act on account of unproved cash credits. The contention of Revenue is that the assessee has obtained accommodation entries from M/s. Mohit International one of the concerns associated with Pravin Kumar Jain.

8.1 We have closely examined the facts of the case and documents on record. As per Indian Overseas Bank, Malad (E), Mumbai statement available on record, the assessee has received Rs.8.00 lacs on 23/09/2009 vide cheque No. 718935. Corresponding debit entry on 23.09.2009 is reflected in the bank statement of M/s. Mohit International having bank account with Canara Bank, Khetwadi Branch, Mumbai. Further, the contention of the assessee is that the same amount has been repaid during the financial year 2009-10 itself. A perusal of the same bank statement reveal that on 25/03/2010, the assessee

has repaid Rs.8.00 lacs vide cheque No.551099. The corresponding credit entry in the bank account of M/s. Mohit International is recorded. Thus, the loan amount received in the financial year 2009-10 relevant to the assessment year 2010-11 was repaid in the same financial year by the assessee. The bank statements furnished by the assessee were not rebutted by the Revenue. Once the loan amount which is subject matter of dispute has been repaid, the repayment of loan has been substantiated by banking transactions and there is no allegation that the amount has flown back to the assessee in cash, addition made u/s 68 of the Act in respect of such loan transaction is unsustainable.

8.2 In so far as the other aspects to prove genuineness of the loan transaction, the assessee has filed various documents viz. Confirmation from the lender (which is at page 15 of the Paper Book), bank statement, audit report and the financial statement of M/s. Mohit International (lender), income tax return for assessment year 2010-11, etc. All these documents substantiate genuineness of the transaction and creditworthiness of lender. The assessee has discharged his onus to prove identity of the lender, creditworthiness of the lender and the genuineness of the transaction.

8.3 Thus, in view of the facts discussed above we find merit in the appeal of assessee. The impugned order is set-aside and the addition of Rs.8.00 lacs under section 68 of the Act on account of unproved cash credit is directed to be deleted.

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

ITA NO.5895/MUM/2018, A.Y.2011-12:

10. Shri Satish R. Mody, Id. Authorized Representative of the assessee submitted that the facts in the assessment year under appeal are similar. Except for the lender and the loan

amount, rest of the facts and the manner of addition is similar. In assessment year 2011-12 the assessee had taken unsecured loan of Rs.3.00 lacs from M/s. Taj Impex. The said loan was taken on 26/06/2010 and was repaid on 30/12/2010. The assessee had furnished financial statements, bank statements and copy of the income tax return of the lender. The assessee had also furnished confirmation of loan from the lender. To show that the loan was returned by the assessee, the assessee had filed copy of his bank statement to the Assessing Officer. However, all these documents were brushed aside by the authorities below and the addition of Rs.3.00 lacs made by the Assessing Officer was confirmed the CIT(A).

11. The Id.Departmental Representative vehemently defended the impugned order and reiterated the submissions made in ITA No.5894/Mum/2018 (supra).

12. Both sides heard. It is an unrebutted fact that the unsecured loan taken by the assessee during the period relevant to the assessment year under appeal from M/s. Taj Impex was repaid in the same financial year i.e. on 30/12/2010. Since, the facts in the assessment year under appeal are similar to facts in the appeal of assessee for assessment year 2010-11, the findings given by us in the appeal of the assessee in ITA No.2010-11 would *mutatis mutandis* apply to the present assessment year as well. The impugned order is set aside and the appeal of assessee is allowed.

ITA NO.5896/MUM/2018, A.Y.2012-13:

13. The Id.Authorized Representative of the assessee submitted that facts in the appeal for assessment year 2012-13 are similar to the facts in assessment year 2010-11. In assessment year 2012-13, the assessee had taken loan of Rs.15.00 lacs from M/s. Olive Overseas Pvt. Ltd on 22.03.2012. The assessee had repaid the entire loan amount with interest on 16/10/2012. To support his

contention the Id .Authorized Representative of the assessee referred to HDFC Bank account statement of the assessee. The Id.Authorized Representative of the assessee further submitted that the Co-ordinate Bench of the Tribunal in the case of DCIT vs. Adhunik Transport Organisation Ltd. (supra) has deleted the addition made by the Revenue on similar facts. In the said case, the assessee therein had taken loan from the same lender i.e. M/s. Olive Overseas. The Tribunal upheld the order of CIT(A) in deleting the addition and dismissed the appeal of the assessee.

14. The Id.Departmental Representative vehemently defended the impugned order and reiterated the submissions made in ITA No.5894/Mum/2018 (supra).

15. Both sides heard. We find that the facts in the assessment year 2012-13 are similar to assessment year 2010-11 and 2011-12. The findings given by us while allowing the appeals of the assessee for assessment year 2010-11 & 2011-12 would mutatis mutandis apply to this appeal as well. The impugned order is set aside and the appeal of the assessee is allowed for similar reasons.

16. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on Wednesday, the 29th day of January, 2020.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 29.01.2020
Vm, Sr. PS(O/S)