



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.2828/Mum./2018
(Assessment Year : 2009-10)

ITA no.2829/Mum./2018
(Assessment Year : 2011-12)

Vijay Project Consultants And
Land Developers Pvt. Ltd.
3rd Floor, Mani Bhavan
54, Hughes Road, Mumbai 400 007
PAN – AABCV3261G

..... Appellant

v/s

Income Tax Officer
Ward-2(3)(4), Mumbai

..... Respondent

Assessee by : Shri Rakesh Joshi
Revenue by : Shri Ashish Kumar

Date of Hearing – 29.01.2020

Date of Order – 05.02.2020

ORDER

PER SAKTIJIT DEY. J.M.

Aforesaid appeals by the assessee arise out of two separate orders, both dated 15th January 2018, passed by the learned Commissioner of Income Tax (Appeals)-6, Mumbai, for the assessment years 2009-10 and 2011-12.

ITA no.2828/Mum./2018
Assessment Year – 2009–10

2. The only issue in dispute relates to addition made of ₹ 35 lakh under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee, a resident company, is engaged in the business of construction. For the assessment year under dispute, the assessee had filed its return of income on 27th September 2009, declaring nil income. Subsequently, the assessment in case of the assessee was re-opened under section 147 of the Act and in the course of assessment proceedings, the Assessing Officer as per information received from the Investigation Wing found that un-secured loans worth ₹ 25 lakh from Awesome Package Pvt. Ltd. and ₹ 10 lakh from Parekh Estate Pvt. Ltd., required verification. Accordingly, to verify the genuineness of the aforesaid loan transactions, the Assessing Officer issued notices under section 133(6) of the Act to the concerned lenders seeking certain information. As alleged by the Assessing Officer, the notices issued under section 133(6) of the Act returned back un-served. Further, from the information available on record, he found that in course of a survey operation conducted in case of M/s Nina Concrete Systems Pvt. Ltd., the director of the company Shri Mehul Kirit Parikh, had stated on oath that one of his group company i.e., the present assessee, has received un-secured

loans amounting to ₹ 35 lakh from bogus parties in the impugned assessment year. When the assessee was confronted with the aforesaid facts, it was submitted that as the identity, creditworthiness and genuineness have been established, the loan transactions have to be accepted. The Assessing Officer, however, was not convinced with the reply of the assessee. He observed, notices issued under section 133(6) of the Act returned back un-served. Whereas, the assessee on his own furnished confirmations which could not be cross verified. Further, relying upon the statement of Shri Mehul Kirit Parikh, the Assessing Officer ultimately concluded that the loan transaction amounting to ₹ 35 lakh is non-genuine, hence, treated it as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. The aforesaid addition was also sustained by learned Commissioner (Appeals) while deciding assessee's appeal on the issue.

4. The learned Authorised Representative drawing our attention to the statement recorded from Shri Mehul Kirit Parikh submitted, nowhere he has stated that un-secured loan of ₹ 35 lakh availed by the assessee is non-genuine. He submitted, the only thing the concerned person has stated is, he not in a position to immediately furnish the necessary information. Thus, he submitted, no addition under section 68 of the Act can be made by simply relying upon the

statement of Shri Mehul Kirit Parikh. Further, he submitted, in the course of assessment proceedings, the assessee has furnished confirmation from the concerned parties. Merely because notices issued under section 133(6) of the Act could not be served, the loan transaction cannot be treated as non-genuine. The learned Authorised Representative submitted, given an opportunity, the assessee is ready to produce the concerned parties (lenders) before the Assessing Officer to prove the genuineness of loan transactions.

5. The learned Departmental Representative, though, justified the addition made by the Assessing Officer, however, he submitted that if the assessee can prove the loan transactions by producing the concerned parties before the Assessing Officer, there is no harm in providing further opportunity to the assessee.

6. We have considered rival submissions and perused the material on record. It is evident from the facts and material on record, the assessee has claimed to have availed un-secured loan of ₹ 35 lakh during the year from two parties. As per the information available with the Assessing Officer in the shape of material forwarded by the Investigation Wing including statement recorded on oath from Shri Mehul Kirit Parikh, who also happens to be a director of the assessee company, the aforesaid loan transactions were non-genuine. To verify the genuineness of the loan transaction, the Assessing Officer wanted

to conduct enquiry with the lenders by issuing notices under section 133(6) of the Act. However, as alleged by him, such notices returned back un-served. Though, the assessee has claimed that confirmations from the concerned parties were obtained and furnished before the Assessing Officer, however, in our considered opinion, the initial burden is entirely on the assessee not only to prove the identity of the lenders, but their creditworthiness and also the genuineness of the transaction. Since, the concerned parties did not respond to the notices issued under section 133(6) of the Act, their identity could not be verified. Similarly, for the very same reason and due to lack of information, their creditworthiness and genuineness of the loan could not also be verified. Though, it may be a fact that the assessee has furnished confirmations, however, the authenticity of such confirmation is also required to be established through corroborative evidences which admittedly has not been done. At this stage, it is also relevant to observe, while treating the loan transactions as non-genuine and adding it as un-explained cash credit under section 68 of the Act, the Assessing Officer has certainly relied upon the statement recorded from Shri Mehul Kirit Parikh. However, on careful perusal of the aforesaid statement, a copy of which has been furnished before us, we have noted that there is no such admission by the concerned person accepting the un-secured loan availed by the assessee to be non-genuine. Be that as it may, as observed by us earlier, the initial

burden of proving the genuineness of loan transaction is on the assessee. Before us, the learned Authorised Representative while asserting that the loan transactions are genuine had also submitted that the assessee is ready to produce the concerned parties/lenders before the Assessing Officer. Considering the aforesaid submissions of the learned Authorised Representative, we are inclined to restore the issue to the file of the Assessing Officer for de novo adjudication, thereby, enabling the assessee to not only produce the concerned lenders before the Assessing Officer, but any other evidences which the assessee may like to furnish to prove the genuineness of the loan transactions. In view of the aforesaid, the issue is restored back to the file of the Assessing Officer for fresh adjudication after providing reasonable opportunity of being heard to the assessee. Ground raised is allowed for statistical purposes.

7. In the result, appeal is allowed for statistical purposes.

ITA no.2829/Mum./2018
Assessment Year : 2011-12

8. In this appeal also, the only dispute is with regard to the addition of ₹ 35 lakh under section 68 of the Act.

9. Facts involved in the present appeal are more or less similar to the appeal being ITA no.2828/Mum./2018, except for the fact in the

impugned assessment year, the entire un-secured loan of ₹ 35 lakh was taken from a single entity viz. Michigan Traders Pvt. Ltd. Further, in the course of hearing, the learned Authorised Representative has tried to factually differentiate the present appeal by submitting that in the impugned assessment year, in response to the notice issued under section 133(6) of the Act, the lender has furnished necessary information accepting the loan transaction. However, on a careful perusal of the assessment order as well as the order of the first appellate authority, we do not find any mention regarding issuance of notice under section 133(6) of the Act to the lender or receipt of any reply/ information from the concerned party. Of-course, the Assessing Officer has stated that the assessee has filed confirmation of the loan transaction. Be that as it may, in our view, the facts relating to the addition made in the impugned assessment year is more or less identical to the assessment year 2009-10 dealt by us earlier. Therefore, our decision therein would also apply mutatis mutandis to the facts of the present appeal as well. Following the same, we restore the issue to the file of the Assessing Officer for fresh adjudication. The assessee on its part may produce the concerned (lender) and any other corroborated evidence to prove the loan transaction. If the lender appears before the Assessing Officer and accepts the loan transaction and if the lender is an Income tax assessee and the transaction has been carried out through Banking channel, in our view,

there should not be any doubt regarding the genuineness of the loan transaction. The Assessing Officer must decide the issue after providing reasonable opportunity of being heard. Ground is allowed for statistical purposes.

10. In the result, appeal is allowed for statistical purposes.

11. To sum up, both the appeals are allowed for statistical purposes.
Order pronounced in the open Court on 05.02.2020

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 05.02.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai