

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA NO. 5682/MUM/2017 : A.Y : 2010-11

DCIT – 4(2)(2), Mumbai. Vs. M/s. Hema Dyeing & Printing Mills  
(Appellant) Pvt. Ltd.  
313, Mayabai Chowk, Swadesh  
Market, Kalbadevi Road,  
Mumbai 400 002 (Respondent)  
PAN : AAACH2581G

C.O NO. 327/MUM/2018 : A.Y : 2010-11

M/s. Hema Dyeing & Printing Vs. DCIT – 4(2)(2), Mumbai.  
Mills Pvt. Ltd. (Appellant)  
313, Mayabai Chowk, Swadesh  
Market, Kalbadevi Road,  
Mumbai 400 002 (Respondent)  
PAN : AAACH2581G

Assessee by : Shri Vipul Joshi  
Revenue by : Shri Kamal Mangal

Date of Hearing : 17/01/2020  
Date of Pronouncement : 13/03/2020

O R D E R

PER SHAMIM YAHYA, ACCOUNTANT MEMBER

This appeal filed by the Revenue and Cross-objection by the assessee arise out of order of learned CIT(A)-9, Mumbai dated 27.06.2017 and pertains to assessment year 2010-11.

2. The issues raised in Revenue's appeal read as under :-

"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing in relief to the assessee on account of bogus unsecured loans even though the loan parties involved were*

*indulging and providing bogus entries as per the statement of Mr. Praveen Kumar Jain and group.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the interest paid on loan of Rs.3,48,494/-.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.4,80,000/- on account of unexplained expenditure u/s 69C of the I.T. Act.”*

and the issues raised in the Cross-objection of assessee read as under :-

“1 *Reassessment*

1.1 *The Learned Commissioner of Income-tax (Appeals) – 9, Mumbai [“Ld. CIT(A)”] erred in confirming the action of the A.O in initiating reassessment proceedings and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income-tax Act, 1961 [“the Act”].*

1.2 *While doing so, the Ld. CIT(A) failed to appreciate that :*

- (i) *The case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act;*
- (ii) *The necessary preconditions for initiating and completion thereof were not satisfied.*

1.3 *It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void.”*

3. We note that there is a delay of 69 days filing of cross objection. The reasonable cause for the same has been attributed to the delay in consultant’s office. Upon careful consideration, we condone the delay.

4. The assessee-company is engaged in the business of manufacture and trading in textiles. The Assessing Officer noted from the Balance-sheet of the assessee as on 31.03.2010 that assessee has shown receipt of unsecured loan amounting to Rs.8,10,03,485/-. From the break-up of the unsecured loans, the Assessing Officer noted that assessee has received loan from following entities:-

S.N.	Name of the loan party	Opening Balance (Rs.)	Loan Received/ (Repaid) Rs.	Interest paid during the year (Rs.)	Closing Balance (Rs.)
1	Kush Hindustan Ent. Ltd.	0	1,00,00,000	1,74,247	1,07,74,247
2.	Nakshatra Business Pvt. Ltd.	0	1,00,00,000	1,74,247	1,07,74,247
Total			2,00,00,000	3,48,494	2,03,48,494

The Assessing Officer noted that from the above it is evident that assessee has taken loan of Rs.1,00,00,000/- each from two concerns who are managed and controlled by Pravin Kumar Jain, a *hawala* operator. Thereafter, the Assessing Officer narrated the *modus operandi* of said Pravin Kumar Jain and the statements obtained. In this background, the Assessing Officer noted that the assessee was asked to prove the identity and creditworthiness as well as genuineness of the transactions of receipt of loan in the name of M/s. Kush Hindustan Entertainment Ltd. and M/s. Nakshatra Business Pvt. Ltd. The assessee submitted copy of confirmation, copy of return and copy of bank statement and audited accounts of these parties. The Assessing Officer observed that these parties have declared no income. He further noted from bank statement that huge value cheques have been credited and subsequently transferred. Thus, the Assessing Officer inferred that these are just accommodation entries by transferring the funds by way of loans and advances to beneficiaries and proceeded to hold that these are to be added under Section 68 of the Income Tax Act, 1961 (in short 'the Act'). Since he doubted the genuineness of the creditors, he disallowed the interest thereupon also. Against the said order, assessee appealed before the CIT(A) challenging both the validity of reopening and the merits of the addition.

5. As regards challenge to the validity of reopening, CIT(A) observed that the Assessing Officer had received authentic information from DGIT (Inv.) about Pravin Kumar Jain group which is involved in providing

accommodation entries for bogus loans, share application money, bogus sales and bogus purchases and it was an admitted fact that assessee had taken loans from Pravin Kumar Jain group. The CIT(A) observed that the information received is reason enough for the Assessing Officer to believe that income has escaped assessment. In this regard, the CIT(A) referred to provisions of Section 147 of the Act and noted that the information in possession of the Assessing Officer is not some vague/absurd information on the basis of which he has reason to suspect, but is precise and authentic which gives any reasonable person a reason to believe that income has escaped assessment and that no sensible and reasonable person will ignore or overlook that kind of information. Hence, the CIT(A) upheld the action of Assessing Officer initiating proceedings under Section 147 of the Act by observing in para 5.3 of his order as under :-

“5.3 .....

*The Assessing Officer had information in his possession and that is the reason why he had recorded the reasons for reopening, took sanction of the appropriate authority and then issued notice u/s. 148. The learned counsel's emphasis that reopening on borrowed reason is not justified is ridiculous. What makes the appellant allege that the AO has not applied his mind is not understood. When the AO is performing an action, it has to be presumed that he has applied his mind and doing his duties. Unless there is evidence to the contrary, nobody can allege that he has not applied his mind.*

*As could be seen from the discussion above and in view of the decisions in the case of Rohilkhand Educational Charitable Trust vs. CCIT and Others 365 ITR 233 (All.) and Sun Pharmaceuticals Industries Ltd. Vs DCIT 353 ITR 474 (Guj.), the AO had in his possessions, new tangible material because of which he had issued notice u/s. 148. In view of the counter arguments given against each point of the learned counsel for the appellant, it is held that there is no substance in this ground of appeal and the same is dismissed. The action of the AO in initiating the proceedings u/s. 147 and issuing notice u/s. 148 is upheld.”*

6. With regard to merits of the case, the learned CIT(A) found that assessee has submitted documents before the Assessing Officer. He noted

that the Assessing Officer has not been able to bring out on record any valid material or evidence to disturb the evidence and explanation given by the assessee other than merely relying upon the statement of Pravin Kumar Jain. He noted that the Assessing Officer has not done any investigation and accordingly, he proceeded to delete the addition by holding that assessee has discharged the onus cast upon it. Against the above order, assessee has filed Cross-objection against dismissal of validity of reopening and Revenue has filed appeal against the deletion of addition.

7. We have heard the both the counsel and perused the record. Ld counsel of the assessee has submitted that all necessary documents to prove the identity, creditworthiness and genuineness of the transaction have been submitted. He placed reliance upon several case laws from the ITAT, wherein loans from the same parties have been found to be correct.

8. Per contra, learned Departmental Representative referred to the decision of Hon'ble Gujarat High Court in the case of Pawan Kumar M. Sanghavi (404 ITR 601) in which Hon'ble High Court had upheld the addition of unsecured loan as unexplained credit u/s. 68 of the I.T. Act in similar case. Hon'ble Apex Court has dismissed the SLP against the above order of Hon'ble Gujarat High Court.

9. In the rejoinder, learned Counsel of the assessee sought to distinguish this case law from the facts of the assessee's case.

10. We have carefully perused the records and considered the rival contention. As regards the challenge to reopening is concerned, we find that learned CIT(A) has passed a correct order. Assessment has been reopened on receiving specific information from DGIT(Information). We agree with learned CIT(A) that

information received is cogent enough for the Assessing Officer to believe that income has escaped assessment. It is settled law that at the time of reopening, escapement of income, need not to be proved to hilt. Hon'ble Apex court in the case of cit vs. Kelvinator of India Ltd. (Civil Appeal Nos. 2009-2011 of 2003) is relevant here and support the case of the Revenue. Furthermore, the decisions referred by learned CIT(A) were also germane and support the case of the Revenue.

11. Accordingly, in the background of the aforesaid discussion and precedent, in our considered opinion there is no infirmity in the order of learned CIT(A) upholding the validity of reopening.

12. As regards the merits of the case, we find that the Assessing Officer has given a finding that the parties giving loans do not have any creditworthiness. The Assessing Officer noted that these parties have declared no income. He further noted that in the bank statement there was huge cheque credit and subsequently transferred. Hence, the Assessing Officer was of the opinion that these are accommodation entries by transferring funds by way of loans and advances to the beneficiary. Learned CIT(A) on the other hand has held that documentary evidence submitted by the assessee has not been disproved by the Assessing Officer. He has held that the Assessing Officer has not bothered to issue notice u/s. 133(6) of the Act or summons u/s. 131 of the Act and examined loan creditors. That the Assessing Officer has also not cross examined the loan creditors though the assessee has made a specific request for cross examination. In this regard we note that Hon'ble Apex Court in the case of Kapurchand Srimal Vs. CIT (131 ITR 451) had expounded that it is the duty of the appellate authority to correct the errors in the orders of the authorities below and remit the matter for reconsideration with or without direction unless prohibited by law. Accordingly, we are of the considered opinion that learned CIT(A) has erred in not completing examination which according to him the Assessing Officer has erred in not completing. It is settled law that powers of learned CIT(A)

are co-terminus with that of the Assessing Officer. Accordingly, in these circumstances, in our considered opinion the matter needs to be remitted to the file of the learned CIT(A). Learned CIT(A) is directed to complete the enquiry which in his opinion was necessary in the facts and circumstances of the case. Learned CIT(A) shall take into account our observation as above and also submissions of the assessee. Needless to add the assessee shall be granted adequate opportunity of being heard.

13. In the result, assessee's Cross Objection is dismissed and appeal by the Revenue stands allowed for statistical purposes.

Sd/-

(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 13/03/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai