

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 2195/MUM/2018
Assessment Year: 2011-12**

Shri Ashok Kumar A. Banthia, Prop. Of M/s A.B. Enterprises, 601/2, Giri Residency CHS Ltd., 88/91, Andheri Kurla Road, J.B. Nagar, Andheri (E), Mumbai - 400059 PAN: AABPB9970H	Vs.	The ITO 24(1)(2), R. No. 605, 6 th Floor, Piramal Chambers, Lalbaug, Mumbai - 400012
(Appellant)		(Respondent)

Assessee by : Shri Naveen Kumar Mishra (AR)
Revenue by : Shri Michael Jerald (DR)

Date of Hearing: 24/02/2020
Date of Pronouncement: 20/04/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 31.01.2018 passed by the Commissioner of Income Tax (Appeals)-36 (for short 'the CIT(A), Mumbai, for the assessment year 2011-12, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act') and confirmed the addition made by the AO.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year under consideration declaring total income of Rs. 2,67,140-/- which was processed u/s 143 (1) of the Act. Subsequently, on the basis of information received from the DGIT (Inv.) that assessee had obtained accommodation entries amounting to Rs. 61,50,000/- during the year relevant to the assessment year under consideration, reopen the assessment u/s 147 of the Act after issuing notice u/s 148 of the Act. The assessee objected the

reopening, however the AO rejected the contention and passed assessment order u/s 143 (3) r.w.s. 147 of the Act and determined the total income of assessee at Rs. 64,17,130/- after making addition of Rs. 61,50,000/-, capital gain of Rs. 46,540/- and income from other sources amounting to Rs. 2,367/- . The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee confirmed the addition made by the AO. Aggrieved by the said order, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following grounds:-

1. "On the facts and circumstances of the Appellant's case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Ld. AO amounting to Rs. 61,50,000/- being unsecured loan taken treating the same as unexplained cash credit u/s 68 of the Income Tax Act, 1961.

2. The Appellant prays craves leaves to add, to amend, alter, modify and /or withdraw any or all of the above grounds of appeal, each of which are without prejudice to one another.

The appellant prays this Hon'ble Tribunal to delete the addition / disallowance made by the Ld. Assessing Officer, which is confirmed by the Ld. Commissioner of Income Tax (Appeals)."

4. The Ld. counsel for the assessee submitted before us that the assessee has produced all relevant documents to prove the transaction of loan including the bank statements confirmation from the concerned parties and affidavit by Sh. Pravin Jain stating that the earlier affidavit was incorrect. The Ld. counsel further submitted that loans have already been paid, thus there is no unexplained credit as such. The Ld. counsel further submitted that the Tribunal has deleted the similar additions made by the AO and confirmed by the First Appellate Authority in assessee's own case pertaining to the AYs 2008-09, 2009-10, 2010-11, 2012-13, 2013-14 and 2014-15. In the said cases also, the assessee furnished confirmation from creditors, bank statement of the creditors, bank statements of the assessee and the affidavit of Sh. Pravin Kumar Jain retracting his earlier statements regarding providing

accommodation entries. The Ld. counsel further pointed out that in the present case the Assessing Officer had not provided the copies of statements of the witnesses relied upon by the AO nor an opportunity to cross examine those witnesses afforded to the assessee regarding the notice issued u/s 133 (6) of the Act, the Ld. counsel submitted that the notices could not be served as the creditors had changed their addresses. In view of the aforesaid facts, the Ld. counsel submitted that since the assessee has prove the genuineness of transaction identity and creditworthiness of the creditors by furnishing all necessary information, the Ld. CIT (A) has wrongly confirmed the addition made by the AO.

5. On the other hand, the Ld. Departmental Representative (DR) supported the orders passed by the authorities below and submitted that since the assessee has failed to discharge the primary onus of proving the identity of the parties, genuineness of the transaction and creditworthiness of the creditors to the satisfaction of the AO as required under law, the Ld. CIT (A) has rightly confirmed the addition made by the AO.

6. We have heard the rival submissions of the parties and perused the material on record including the order dated 13.03.2019 passed by the "SMC" Bench Mumbai in assessee's own appeals ITA No. 2192, 2193, 2194, 2196, 2197 and 2198/Mum/2018 for the AYs 2008-09, 2009-10, 2010-11, 2012-13, 2013-14 and 2014-15. As pointed out by the Ld. CIT (A) the assessee has produced the copy of ITR of creditors, M/s Accurate Multitrade Pvt. Ltd., M/s Caspar Enterprises Ltd., M/s Taj Impex and M/s Ansh Merchandise Pvt. Ltd., audited computation of income and balance sheet of the creditors for the AY 2011-12, retraction affidavit by Sh. Pravin Kumar Jain, copy of bank statements showing receiving and repayment of loan and confirmation of loan from the creditors. As pointed out by the Ld. counsel, the coordinate Bench has decided the identical issue in favour of the assessee in assessee's own appeals for the previous years and the subsequent years referred above. The findings of the "SMC" Bench are reproduced as under:-

“9. Assessee contends before me that the initial burden of proving the identity, genuineness and creditworthiness of the creditors has been discharged by the assessee by providing complete details regarding the said loan transactions. It was further submitted that the loan was received and repaid only through account payee cheques, confirmations filed, bank statements filed Profit and Loss Account and balance sheets of creditors filed, PAN details of creditors filed and therefore, the loans cannot be treated as non-genuine based only on the report of the DGIT (Inv.) without providing the statements relied on by the Assessing Officer and without providing any cross examination to the assessee. I notice in the case of the M/s. Shree Laxmi Estate Pvt ltd., v. ITO and M/s. Shree Laxmi Developers v. ITO (supra) identical issue came up before the Coordinate Bench and the Coordinate Bench considering the submissions as well as the materials placed before the lower authorities concluded that when once the assessee furnished all the details in respect of the loan transaction assessee has discharged its initial burden and the burden shifts to the Assessing Officer to prove otherwise. It was also held that Assessing Officer made addition only on the basis of the information received from the investigation wing but not based on any evidence to disprove the loan transaction from the creditors, while holding so it has been observed as under:

4. The first issue that came up for our consideration is addition made by the AO towards unsecured loan u/s 68 of the Act. The AO made addition towards unsecured loans alongwith interest thereon received from Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd on the ground that these are bogus accommodation entries received from group companies of Shri Pravinkumar Jain. According to the AO, the assessee is the beneficiary of accommodation entries provided by Shri Pravinkumar Jain from his bogus companies. The AO further observed that though the assessee has furnished details of identity, failed to prove genuineness of transactions and creditworthiness of the parties in the backdrop of clear findings of Investigation Wing that Shri Pravinkumar Jain has admitted that he was indulging in providing accommodation entries. This fact has been further confirmed by Shri Dinesh Choudhary, broker involved in arranging accommodation entries with Shri Pravinkumar Jain, who stated that Shri Pravinkumar Jain is indulging in providing accommodation

entries, therefore, the AO opined that unsecured loans stated to be received from those companies are unexplained credit and hence made addition u/s 68 of the Act. It is the contention of the assessee that loans received from Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd are supported by valid documents. The assessee further submitted that it has furnished confirmation letters alongwith copies of their bank statement and acknowledgement of IT returns showing the above transactions. The assessee further contended that in response to notices u/s 133(6) issued by AO, the above parties replied alongwith documents mentioned in the notice, therefore, there is no reason for the AO to doubt the transactions only on the basis of information received from Investigation Wing that too, without providing any opportunity of cross examination of the parties. In this regard, he relied upon plethora of judgements including the judgement of Hon'ble Bombay High Court in the case of CIT vs Gagandeep Infrastructure Pvt Ltd 349 ITR 680 (Bom) and Hon'ble Supreme Court in the case of Lovely Exports Pvt Ltd vs CIT 216 CTR 295(SC).

“5. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO made addition towards unsecured loans received from Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd on the basis of information received from Investigation Wing which revealed that the assessee is the beneficiary of bogus accommodation entries provided by Shri Praveenkumar Jain through his bogus companies. The AO has made additions u/s 68 of the Income-tax Act, 1961 on the ground that though the assessee has furnished necessary evidences to prove identity of the parties, but failed to establish genuineness of transactions and creditworthiness of parties in the backdrop of clear findings of Investigation Wing that those companies are hawala companies involved in providing accommodation entries. The AO has brought out facts in the light of statement of Shri Pravinkumar Jain deposed before the Investigation Wing to make addition. Except this, there is no contrary evidence in the possession of the AO to disprove the loan transactions from Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd. On the other hand, the assessee has furnished various details including

confirmation letters from the parties, their bank statements alongwith their financial statements to prove identity, genuineness of transactions and creditworthiness of the parties. The assessee also furnished evidences to prove that the parties have responded to the notices issued u/s 133(6) by AO by filing various details. The assessee also filed bank statements to prove that the said unsecured loans have been repaid in the subsequent financial years. Therefore, we are of the view that there is no reason for the AO to doubt the genuineness of transactions despite furnishing necessary evidences including their financial statements, bank statements and IT returns.

6. The AO has made addition u/s 68 of the Act, on the ground that the unsecured loans are bogus accommodation entries provided by Shri Pravinkumar Jain through his hawala companies. The provisions of section 68 deal with cases where any sum found credited in the books of account of the assessee in any financial year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, then sum so credited may be charged to income-tax as the income of the assessee of that previous year. A plain reading of section 68 makes it clear that the initial burden of proof lies on the assessee. It is well settled legal position that the assessee has to discharge 3 main ingredients in order to discharge the initial burden of proof, i.e. the identity of the creditor, the genuineness of transaction and creditworthiness of the creditors. Once the assessee discharges initial burden placed upon him, then the burden todis prove the said claim shifts upon the AO. In this case, the assessee has discharged his onus cast u/s 68 by filing identity of the creditors, genuineness of transactions and creditworthiness of the parties which is evident from the fact that the assessee has furnished financial statements of the creditors wherein the said transaction has been disclosed in the relevant financial years. We further notice that the assessee also filed financial statements of the creditors which are enclosed in paper book filed. On perusal of the financial statements filed by the assessee, we find that both the companies are active in

the website of Ministry of Corporate Affairs. This fact has been further supported by the letter of AO wherein the AO has accepted that both companies, viz. Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd are active in MCA website. We further notice that both the companies have filed financial statements for the year ending 31-03-2006. Therefore, we are of the considered view that the assessee has discharged its initial burden cast u/s 68 by filing identity, genuineness of transaction and creditworthiness of the parties. Once, the assessee has discharged its initial burden, the burden shifts to the AO to prove otherwise. In this case, the AO made addition only on the basis of information received from Investigation Wing, but not based on any evidence to disprove the loan transaction from above companies are ingenuine. Therefore, we are of the view that there is no reason for the AO to treat loans from above 2 companies as unexplained credits u/s 68 of the Act.

11. In this view of the matter and considering the ratio of the case laws discussed above, we are of the considered view that the assessee has discharged identity, genuineness of transactions and creditworthiness of the parties. Therefore, there is no reason for the AO to make addition towards loan u/s 68 of the Act. Hence, we direct the AO to delete addition made towards loans alongwith interest u/s 68 of the Act.”

10. Similar view has been taken by the Coordinate Bench in the case of M/s. Shree Laxmi Developers v. JCIT in ITA.No. 6090/Mum/2017 dated 07.03.2018 wherein it has been held as under: -

“8. The next issue relates to the addition of loan of ₹.10.00 Lakhs taken from M/s. Falak Trading company P. Ltd, a company belonging to Praveen Kumar Jain who has confessed that he had provided only accommodation entries. A perusal of the record would show that the AO had issued notices u/s. 133(6) of the Act to the above said company and it has also furnished all the details, viz., confirmation, copies of financial statements, copies of income tax returns filed by it etc. and thus has confirmed the loan transactions. Thus, we notice that the assessee has also furnished the relevant details to prove the cash credits and the same has also been confirmed by the

lender also in response to the notice issued by the AO U/s. 133(6) of the Act.

9. The assessee had taken loan from two of Praveen Kumar Jain's group companies viz., M/s. Josh Trading Co P Ltd and M/s Viraj Mercantile Ltd in the year relevant to AY 2012-13. The AO had assessed the loan amounts on identical reasoning. We notice that the Coordinate Bench of ITAT has deleted the additions vide its order dated 239.12.2017 passed in ITA.No. 5954/Mum/2016, with the following observations: -

...

...

Since the facts surrounding the present issue being identical with that examined by the Coordinate Bench in A.Y. 2012-13, consistent with the view taken therein, we set aside the order passed by Ld.CIT(A) on this issue and direct the AO to delete the addition of ₹.10.00 lakhs."

11. In the case on hand also the assessee has discharged its initial burden by providing all the necessary details in respect of the loan transactions and thus the assessee has discharged identity, genuineness of the transactions and creditworthiness of the parties. Thus, I hold that there is no valid reason for the Assessing Officer to treat the loan transactions has not proved by the assessee. Hence, I direct the Assessing Officer to delete the addition made u/s. 68 of the Act in all these Assessment Years.

12. In the result, appeals of the assessee are allowed as indicated above."

7. We notice that during the aforesaid assessment years the assessment were reopened on the identical ground that the assessee obtained accommodation entries from various entities operated by Sh. Pravin Kumar Jain Group. The concerned Commissioners (Appeals) confirmed the action of reopening of assessments. The impugned orders were challenged before the "SMC" Bench, Mumbai. The "SMC" Bench of the Mumbai Tribunal deleted the additions confirmed by the Commissioners (Appeals) concerned holding that since the assessee has discharged its initial burden by providing all the necessary details in respect of loan transaction, there is no valid reason for the Assessing Officer to treat the transaction bogus. The facts of the present case are similar to the facts of the cases of the assessee referred above and the issue

involved in the present case is identical to the issues raised in the aforesaid cases. Since, the coordinate Bench has decided the said issue in favour of the assessee in assessee's own cases discussed above, we do not find any reason to take a different view. Hence, respectfully the decision of the coordinate Bench dated 13.03.2019 referred above, we allow the appeal of the assessee and direct the AO to delete the addition made u/s 68 of the Act.

In the result, appeal filed by the assessee for assessment year 2011-2012 is allowed.

Order pronounced on 20th April, 2020 under Rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/04/2020

Alindra, PS

आदेश 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,

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai