

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.6040/M/2017  
Assessment Year: 2008-09**

ACIT 15(2)(1), Room No.357, 3 <sup>rd</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. N.J.P Trading Company, B-12, 2N Floor, Navin Manjau, S.L. Road, Mulund (West), Mumbai - 400 080 <b>PAN: AACCN2258A</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Mari Jain, A.R.  
Revenue by : Ms. Kavita P. Kaushik, D.R.

Date of Hearing : 24.09.2020  
Date of Pronouncement : 07.10.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 12.06.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2008-09.

2. The only effective issue raised by the Revenue in the various grounds of appeal is against the deletion of addition of Rs.1,80,00,000/- by Ld. CIT(A) as made by the AO under section 68 of the Act.

3. The facts in brief are that the assessee filed the return of income on 30.09.2008 declaring total income of Rs.44,46,582/-

which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was reopened under section 147 by issuing notice under section 148 of the Act dated 09.03.2015 which was complied with by the assessee by filing return of income on 10.10.2015 declaring the same income as was declared in the original return of income. Thereafter, the statutory notices were issued and duly served upon the assessee. The assessee is engaged in the business of trading in shares and equities. In this case, the case was reopened after AO received information from DGIT (Inv.)(2), Mumbai that assessee is beneficiary of accommodation entries from various group companies belonging to Shri Praveen Kumar Jain who is a hawala operator. The said fact came to light after a search and seizure action under section 132 of the Act on Shri Praveen Kumar Jain and his associate concerns by the investigation wing. The details of loans taken as accommodation entries from five companies as mentioned in para 6.2 of the assessment order from whom an aggregate of Rs.1,80,00,000/- was borrowed. During the course of assessment proceedings the AO called for various details from the assessee such as name and address of the persons from whom loans were raised, their PAN, purpose of loans, mode of receipt of loans and interest thereon, date, source and mode of repayments, amounts outstanding as on 1<sup>st</sup> day and the last day of the financial year, copies of bank statements, balance sheets, capital accounts and copies of income tax return of the lenders, details of bank accounts used for receipt and payments of loans, loan confirmations from these persons or produce the parties. The assessee filed all the necessary details on 15.01.2016. The AO also issued notice under section 133(6)

to these parties, however, the same were remained unserved or unanswered. Finally, the AO after issuing show cause notice to the assessee added the said amount to the income of the assessee under section 68 of the Act as unexplained cash credit by framing assessment under section 143(3) read with section 147 of the Act vide order dated 07.03.2016.

4. The Ld. CIT(A) deleted the addition by holding that assessee has furnished all the documents and details proving conclusively the three ingredients of identity, creditworthiness of the lenders and the genuineness of the transactions. The Ld. CIT(A) noted that the amounts were paid from the running accounts and duly accounted in the books of accounts of the assessee as well as the investors as is evident from the financial statements filed. The Ld. CIT(A) observed that all the lenders have confirmed the transactions and thus held the loan transactions by all companies as genuine and thus directed the AO to delete the addition.

5. The Ld. A.R., at the outset, submitted that the issue is squarely covered by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.1778/M/2018 A.Y. 2007-08 wherein identical issue has been decided in favour of the assessee by holding that the assessee has filed all the necessary documents thereby satisfying the three ingredients namely identity, creditworthiness of the investors and the genuineness of the transactions. The Ld. A.R., therefore, prayed that in the present case also the appeal of the Revenue may

kindly be dismissed by following the said co-ordinate bench of the Tribunal.

6. The Ld. D.R., on the other hand, strongly objected to the arguments of the Ld. A.R. by submitting that the case is not covered by the said order as there was SEBI investigation in that year whereas in the current year there is such investigation. Therefore, it may not be taken as covered issue. The Ld. D.R. also submitted that the assessee has only filed the evidences in the form of name of the lenders, mode of receipt of loans, copies of bank statements and annual accounts of the lenders, mode of repayments etc. along with the copy of PAN which in any way do not satisfy the three ingredients as envisaged under section 68 of the Act as mere filing of these documents would not itself prove the genuineness of the transactions. The Ld. D.R. submitted that the assessee has failed to produce the parties and even the letters issued under section 133(6) of the Act either remained unserved or unanswered by these parties and therefore Ld. CIT(A) findings that assessee has proved all the three ingredients need to be reversed.

7. The Ld. A.R. in the rebuttal, submitted that assessee has filed all the necessary evidences which are required to prove the genuineness of the transactions, identity and creditworthiness of the parties and accordingly the Ld. CIT(A) has allowed relief to the assessee directing the AO to delete the said addition. The Ld. AR submitted that loans taken from these parties were repaid during the year itself and nothing was outstanding at the year end. Moreover, in the earlier year under the same facts the issue

was decided in favour of the assessee though agreed to the plea of the Ld. D.R. that there was a SEBI enquiry in the preceding assessment year whereas in the current year there is no such investigation. However, the Ld. A.R. predominantly maintained that the issue is identical on merits and may kindly be decided by dismissing the appeal of the Revenue.

8. We have heard the rival submissions of both the parties and perused the material on record including the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.1778/M/2018 A.Y. 2007-08. we note that identical issue has been decided by the co-ordinate bench of the Tribunal in favour of the assessee. The operative part wherein is reproduced as under:

"10. We have heard both the counsels and perused the material placed on record as well as the orders passed by the revenue authorities. We have gone through the provisions of section 68. The assessee should have file a valid confirmation in complete details ( like mode-cash or cheque), with number date of cheque with bank details) and bank account of the lender. The creditworthiness or financial strength of the subscriber(s) can be proved by producing bank statement to subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. Once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the AO to scrutinize the same and in case he nurtures and doubt about the veracity of these documents, to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials with the and Assessing Officer cannot not go into the realm of suspicion. Thus, the element of creditworthiness and satisfaction of A.O thereafter is subjective and requires more efforts/inquiry on the part of the A.O to give a finding in the order that lender is not creditworthy. The assessee can be discharged his onus by proving three things (i) identity of the creditor, ii) capacity of the creditor and (iii) the genuineness of the transaction. Once the assessee has proved all these three things, then onus of the assessee stands discharged. The assessee only needs to prove the source of an entry and he need not to prove the source of the source. A perusal of all the documents submitted by the assessee reveals that the assessee has discharged its onus of establishing genuineness of the transaction. The A.O has not observed or noted any faults or discrepancies in the documents submitted. We have also considered the judgment of the Hon'ble Bombay High Court referred by the Bench in the case of Vijay

Granites P.Ltd, in the case of Novodaya Castle P. Ltd reported in 56.taxmann.com 18(SC)/(2015) 230 taxman.268 SC) decision of Hon'ble Jurisdictional High Court and in the case of Nemi Chand Kothari reported in (2003) 264 ITR 254 (Gau), the decision in CIT Vs. Divine Leasing & Finance Ltd reported in 299 ITR 268 (Del) and decision of Hon'ble S.C in the case of CIT Vs. Lovely Exports P. Ltd reported in 216 CTR 195(SC). It is an admitted and undisputed fact that the assessee has not proved on record any transaction in terms of cash money being deposited by assessee or any cash transaction by way of share subscription. Thus, in a recent decision of Hon'ble Delhi High Court in the case of PCIT Vs. , ITA No. 693 dated 26-07-2019 has held that that there is no requirement to examine the creditworthiness of any sum/money advanced or invested u/s. 68, in case there is not transaction in term of cash/money. One of the important factor in this case the A.O had relied upon one SEBI's order in the case of M/s. Pyramid Saimira Theatre Ltd. and found that one, Shri Nirmal Kotecha was using large number of front companies to manipulate the scurrilities market and to route the funds through several layers in order to hide the source. Whereas on the contrary the assessee placed on record the final order passed by the SEBI vide No. WTM/SR/EFD-DRA 2/72/03/2015 dt. 31-03-2015, wherein SEBI relieved all the charges against all the alleged entities (230 entities). The details of said order SEBI dt. 31-03-2015 is contained in pages 13-14 in the CIT(A)'s order, and the same has also already been extracted hereinabove in earlier paras of this order. On perusal of the said order of SEBI dt. 31-03-2015, it is clear 217 out of 230 entities were found to be incorrect in view of enquiry by RBI/FIU Unit. The assessee has also submitted 8 share applicants are part of above mentioned 217 entities mentioned in the impugned SEBI order listed at sr. no.4,61,70,92,96, 157,210 and 216. Thus, this order of SEBI proves that the matter regarding suspected banking transactions are not money laundering as alleged by the A.O in his order. Thus, basic reliance placed by the AO on SEBI order in itself is not valid today in the light of the fact cleared all the allegations. The CIT(A) also held that the share application money received by the assessee is not be added u/s. 68 of the act having regards to the facts of the case wherein the same was doubted as an accommodation entry from the group of Pravin Kumar. From he entity of facts and circumstances as narrated above, we find that A.O the AO has merely relied on the interim order of SEBI in the case of M/s. Pyramid Satsmira instead of gathering any evidences to show that the unaccounted cash of the assessee has changed consequently, resulting in the cheque payment. The interim order of the SEBI has be reversed vide the final order dated 31.03.2015. The CIT(A) also taken into consideration all the facts as narrated above. No new facts or contrary judgment/material has been brought on record to controvert the finding of the Id. CIT(A). We find no reason to interfere the findings so recorded by the Id. CIT(A). We uphold the same and dismiss ground nos.1 to 4 raised by the revenue. Ground no.5 is general in nature and requires no adjudication.

11. In the result, the appeal filed by the revenue stands dismissed with no order as to cost."

9. The contention of the Ld. D.R. that in the present year there is no SEBI investigation is correct, but the issue is same

on merits and therefore the same is squarely covered by the decision of the co-ordinate bench of the Tribunal as stated above. We are, therefore, inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

**Order pronounced in the open court on 07.10.2020.**

**Sd/-  
(Amarjit Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 07.10.2020.

\* 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.