

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

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

**ITA No. 6267/MUM/2017
Assessment Year: 2013-14**

The Dy. Commissioner of Income Tax - 15(1)(1), Room No. 470, 4 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020	Vs.	M/s Almega Paints Pvt. Ltd., B-24, Minerva Industrial Estate, Off P.K. Road, Mulund (W), Mumbai - 400080 PAN: AAHCA3698N
(Appellant)		(Respondent)

Revenue by : Shri Michael Jerald (DR)

Assessee by : Shri Satish Mody (AR)

Date of Hearing: 25/09/2020
Date of Pronouncement: 06/11/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 27.07.2017 passed by the Commissioner of Income Tax (Appeals)-24 (for short 'the CIT(A), Mumbai, for the assessment year 2013-14, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee a private limited company engaged in the business of processing paints and raw materials, filed its return of income for the assessment year under consideration declaring loss at Rs. 1,77,98,996/-. Since the case was selected for scrutiny, AO passed assessment order u/s 143 (3) and determined the total income of the assessee at Rs. 2,47,69,345/- after making various additions including the addition of Rs. 2,20,00,000/- as unexplained cash credit u/s 68 of the Act. The assessee

challenged the assessment order before the Ld. CIT (A) *inter alia* on the ground that the Ld. AO has erred in law and on facts in making addition of Rs. 2,20,00,000/- treating unsecured loans as unexplained cash credit u/s 68 of the Act. The Ld. CIT (A) after hearing the assessee partly allowed the appeal of the assessee and deleted the addition of Rs. 2,20,00,000/- made by the AO u/s 68 of the Act. Against the said findings of the Ld. CIT (A), the revenue is in appeal before this Tribunal.

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

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition of unsecured loans from Individuals, HUF and Companies amounting to Rs. 2,20,00,000/- made u/s 68 of the I.T. Act, holding that the appellant has proved the genuineness of the transaction in the form of confirmation, PAN, return of income, bank statement etc., thereby ignoring the recent decision of the Hon’ble Supreme Court of India in the case of Navodaya Castle (P) Ltd. [2015] 56 taxmann.com 18(SC), wherein the Apex Court has upheld the Delhi High Court decision holding that certificate of incorporation, PAN, etc., were not sufficient for purpose of identification of subscriber company.*
2. *“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition of unsecured loans from Individuals, HUF and Companies amounting to Rs. 2,20,00,000/- made u/s 68 of the I.T. Act ignoring the financial inability of the investors to invest such huge amount of money and that the explanation offered by the assessee was not to the satisfaction of the Assessing Officer, thereby also ignoring the decision of the Hon’ble Bombay High Court in the case of Major Metals Ltd. V. UOI and Ors (2012) 251 CTR (Bom.) 385, wherein the Hon’ble Bombay High Court has upheld the findings of the Settlement Commission in respect of the addition made u/s 68 of the Act, where the nature and source of receipt could not be satisfactorily explained by the assessee.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition of unsecured loans from Individuals, HUF and Companies amounting to Rs. 2,20,00,000/- made u/s 68 of the I.T. Act, ignoring the decision*

of the Calcutta High Court in the case of precision Finance Pvt. Ltd. 208 ITR 465, where in it is held that mere payment by account payee cheque is not sacrosanct not can it make a non-genuine transaction genuine.”

4. The only ground raised by the revenue is that the Ld. CIT (A) erred in deleting the addition of unsecured loans from individuals, HUF and companies amounting to Rs. 2,20,00,000/- holding that the assessee has proved the genuineness of transaction by filing confirmation, PAN, return of income, bank statements etc. The Ld. Departmental Representative submitted before us that the Ld. CIT (A) has decided the issue in question in favour of the assessee without taking into consideration, the judgment of the Hon'ble Supreme Court in the case of *Navodaya Castle (P) Ltd. (2015) 56 taxman.com 18 (SC)*. The Ld. DR pointed out that in the said case the Hon'ble Court has upheld the decision of the Hon'ble High Court, holding that the certificate of incorporation PAN etc. are not sufficient for proving the identity of subscriber company. The Ld. DR further pointed out that the findings of the Ld. CIT (A) are not in accordance with the judgment of the Hon'ble Bombay High Court in the case of *Major Metal Ltd. vs. UOI & Ors. 251 CTR (Bombay)*, wherein the Hon'ble High Court has upheld the findings of the Settlement Commission in respect of addition made u/s 68 of the Act where the nature of source and receipt could not be satisfactorily explained by the assessee. The Ld. DR further submitted that the findings of the Ld. CIT (A) are also contrary to the judgment of the Hon'ble Calcutta High Court in the case of *Precision Finance Pvt. Ltd. 208 ITR 465*, wherein the Hon'ble Court has held that mere payment by account payee cheque is not sufficient to establish the genuineness of transaction. The Ld. DR further relied on the judgment of the *Hon'ble Supreme Court in the case of Pr. CIT vs. NRA Iron & Steel Pvt. Ltd. 412 ITR 616 (SC)* to substantiate the contention of the department.

5. On the other hand, the Ld. counsel for the assessee vehemently supporting the decision of the Ld. CIT (A) submitted that since the assessee has discharged the onus of establishing the identities and creditworthiness of

the parties from whom, the assessee had taken loans in question and further established genuineness of the transaction, the CIT(A) has rightly deleted the addition made by the AO. The Ld. counsel further submitted that the assessee has furnished PAN Nos., copies of IT Return, confirmations from the parties, bank statements' and audited accounts etc. to establish the genuineness of the transaction. The Ld. counsel further submitted that the facts of the cases relied upon by the Ld. DR are different from the facts of the present case, therefore not applicable to the present case. The Ld. counsel relied upon the following judgments/ orders of the Hon'ble Supreme Court, various High Courts and various Benches of the Tribunal:

- (i) *Anand Prakash Agarwal v. Asstt. CIT [2008] 6 DTR 191 (All.)*
- (ii) *CIT v. Jauharimal Goel [2005] 147 Taxman 448 (All.)*
- (iii) *S. Hastimal v. CIT [1963] 49 ITR 273 (Mad.)*
- (iv) *Tolaram Daga v. CIT [1996] 59 ITR 632 (Assam)*
- (v) *CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC)*
- (vi) *Sarogi Credit Corpn. V. CIT [1976] 103 ITR 344 (Pat.)*
- (vii) *CIT v. Orissa Corpn. (P) Ltd. [1986] 159 ITR 78/25 Taxman 80F (SC)*
- (viii) *Asstt. CIT (Investigation) v. Shree Ram Hard Coke & Allied Industries [2003] 1 MTC 780*
- (ix) *ITO v. M.S. Advance (P) Ltd. [2005] 188 Taxation 181 (Trib.)*
- (x) *Vinod Kumar Bhandari v. Asstt. CIT [2003] 174 Taxation 49 (Trib.)*
- (xi) *Orissa Corpn. (P) Ltd.'s case (supra)*
- (xii) *Nemi Chand Kothari vs. CIT [2004] 136 Taxman 213 (Gaul)*
- (xiii) *Addl. CIT v. Bahri Bros. (P) Ltd. [1985] 154 ITR 244/22 Taxman 3 (Pat.)*

6. In the light of the aforesaid cases, the Ld. counsel submitted that since the assessee has discharged the initial onus of establishing identity, creditworthiness of the parties and genuineness of the transaction, the Ld. CIT(A) has rightly deleted the addition made by the AO on account of unexplained cash credit.

7. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the parties. The Ld.

CIT(A) has deleted the addition made by the AO on the ground that the assessee has discharged the primary onus of furnishing complete details of the lenders to establish identity and creditworthiness of the lenders and the genuineness of transactions. The Ld. CIT (A) has relied on the decisions of the Hon'ble Supreme Court and the various High Courts. The findings of the Ld. CIT (A) are as under:-

“ 3.1.3I have carefully examined the facts in the case of the appellant and the submissions filed in respect of the same. I have also perused the assessment order passed by the AO in details. The AO has mentioned that substantial amount was deposited in the bank account and subsequently cheques were issued to the beneficiary before its being routed out through the circuitous entities. The Id A O has discussed in detail in the order the modus operandi followed for issuing accommodation entries by the loan lending concerns. The said modus operandi which has been minutely elaborated in the assessment order. Based on such discussion, the Id AO has come to the conclusion that the appellant's own money has been brought into the books by way of accommodation entries and assessed the same as unexplained credits under section 68 of the IT Act, 1961.

During the appellate proceedings, the Id AR has filed detailed submissions and other relevant documents in a paper book. He has also referred to several case laws on which they rely in support of the ground of appeal. I have carefully considered the facts of the case and submissions of the Id AR. I have also gone through the decisions relied on by the AO and Id AR. It is observed that during the assessment proceedings the appellant has filed relevant details required to prove the identity and creditworthiness of the investing companies and the genuineness of the transactions in the form of PAN, IT return copies, confirmations, bank statements, audited accounts etc. as evident from the record. The Id AR has further argued that the transaction has taken place through banking channels, therefore the genuineness of the investment cannot be doubted. Hence the AR argued that appellant has discharged its onus and the identity, genuineness and creditworthiness of the loan creditors were proved beyond doubt. On the other hand the Id

AO has believed the evidence(supporting documents) submitted before him was engineered to explain bogus investment saying that the those who involved in accommodation entries in an organized way are meticulous in arranging the make-believe documents. The Ld. AR argued that the AO failed to collect further information and not made any efforts to disprove the genuineness of the transactions of unsecured loans. It is also the contention of the Id AR that the AD has failed to discuss the merits of the cases cited by the appellant company during the course of assessment proceedings.

In the present case before me, as seen from the details filed before the AO, as evident from the paper book, I do not find any inconsistency or incoherence in respect of the receipt of the unsecured loans from the said concerns. Primarily, as regards the transaction, the same has routed through the banking channels and the source cannot be doubted. It was held in several cases that whatever may be the strength of presumption it cannot substitute the evidence. Even though the transaction is from a circuitous group concerns, the AO has not made any efforts to show that the transaction with the appellant company was sham, fictitious or artificial except believing the statements given by the accommodation entry providers. He has failed to gather any evidence to show that the unaccounted cash of the appellant has changed hands consequently replacing the cheque payments. The AO has also failed to prove how the details like PAN, IT returns, audited financials, incorporation certificates, bank statements etc. cannot be taken note of in this regard. The Hon'ble Mumbai ITAT in the case of Anant shelters P ltd 20 Taxmann.com 153(2012) has laid down certain principles with regard to section 68 which the AO is bound to follow. It has observed as under:

"(i) section 68 can be invoked when following three conditions are satisfied -

(a) when there is credit of amounts in the books maintained by the assessee

(b) such credit has to be a sum of money during the previous year

(c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the Assessing Officer,

is not satisfactory. It is only then that the sum so credited may be charged to income tax as the income of the assessee of that previous year.

(ii) The expression the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material on record file. Once the explanation of the assessee is found unbelievable or false the Assessing Officer is not required to bring positive evidence on record to treat amount in question as income of the assessee. While considering the explanation of the assessee, the Assessing Officer has to act reasonably - application of mind is the sine qua non for forming the opinion.

(iii) Phrase appearing in the section - nature and sources of such credits - should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner. Assessee cannot be asked to prove impossible. Explanation about 'source of source' or 'origins of the origin' cannot and should not be called for while making inquiry under section.

(iv) In the matters related to section 68 burden of proof cannot be discharged to the hilt - such matters are decided on the particular facts of the case as well as on the basis of preponderance of probabilities. Credibility of the explanation, not the materiality of evidences, is the basis for deciding the cases falling under section 68.

(v) Though confirmatory letters or account payee cheques do not prove that the amount in question is properly explained for the purpose of section 68 and assessee has to establish identity and creditworthiness of the creditor as well as the genuineness of the transaction, it is also true that money received through foreign remittance with RBI approval is a strong indicator of bona fide of the cash credit that has to be disapproved only with positive evidence.

(vi) In matters regarding cash credits, the onus of proof is not a static one. As per the provisions of the section the initial burden of proof lies on the assessee. Amount appearing in the books of account of the assessee is considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of the transaction can be proved by showing that the money was received by an account payee cheque or by draft. Creditworthiness of the lender can be established by attending circumstances. Once the assessee produces evidences about identity, genuineness and creditworthiness of the lender onus of proof shifts to the revenue."

2.4.8 The Hon'ble Apex Court in the case of Lovely Exports Pvt Ltd. 216 CTR 195(SC) 2008 held that the AO is at liberty to bring to tax the amounts in their respective hands of the investors if their identity, genuineness and creditworthiness is not proved. The AO should have made efforts to assess the amounts in the hands of the investors at least on protective basis. Even in case, the creditworthiness of the investors is not proved it will not automatically give license to-the-assessing authority to make additions in the hands of the recipient u/s 68 unless it is proved that it is the unexplained and unaccounted money of the appellant which has been introduced in its books of account in the name of bogus/non-existent entities.

As it is observed that, in the instant case, the AO has not made any dent on these line. On the other hand the appellant has filed all the details and supporting documentary evidence to prove the identity, genuineness and creditworthiness of all the loan creditors.

As seen from the above, the appellant has furnished all the documents and details proving conclusively the three ingredients of identity, creditworthiness of the share-applicants and the genuineness of the transaction. The amounts were paid by investors from their running bank accounts which were duly accounted in the books of the appellant as well as the investors as evident from the audited financial statements filed. All the loan creditors have confirmed the transaction. In view of the above discussion, I hold that the unsecured loan given by the said creditors cannot be doubted-and addition made by the AO

u/s 68 of the Act cannot survive the test of judicial scrutiny. I therefore direct the AO to withdraw the addition. The appellant succeeds and this ground is allowed.”

8. The only issue in the present case raised by the revenue is that the assessee has failed to establish the genuineness of the transactions in question. We notice that during the assessment proceedings and during the appellate proceedings, the assessee has filed copies of loan confirmations, ITR acknowledgement, Income Tax computation and bank statements in respect of the following persons/companies:

- (i) Octagon Agro and Infrastructure P Ltd.,
- (ii) Narendra J Sachde HUF,
- (iii) Surendra Prasad Nayak,
- (iv) Durga Pravin Rathod,
- (v) Praful A Mota
- (vi) A.R. Vehicle Services Pvt. Ltd.
- (vii) Fried Water Foods and Beverages P. Ltd. and
- (vi) Quest Data India P Ltd.

9. These documents are available in the paper book submitted by the assessee. We further notice that the transactions have taken place through banking channels. Apart from these documents the assessee has furnished the addresses and PAN No. of the companies/entities from whom, the assessee had taken loans in question. As pointed out by the Ld. counsel, the Hon'ble Supreme Court in the case of *CIT vs. Orissa Corporation Pvt. Ltd. (1986) 159 1TR 78 (SC)* has held that if the assessee has given names and address of the creditors and it is in the knowledge of the revenue that the creditors were being assessed to tax, the onus is on the revenue to pursue the matters with the creditors. Similarly, in the case of *CIT vs. Jauharimal Goel 147 Taxman 448 (All)*, it has been held that assessee cannot be asked to prove source of source or the origin of money. Further, as pointed out by the Ld. CIT (A), the Hon'ble Supreme Court in the case of *Lovely Exports Pvt. Ltd. 216 CTR 195 (SC)* has held that the AO is at liberty to bring to tax the amounts in

their respective hands of the investors if their identity, genuineness and creditworthiness is not prove. Even in case the assessee fails to establish the creditworthiness of the investors it will not automatically give license to the assessing authority to make addition in the hands of the recipient u/s 68 of the Act unless it is prove that the same is the unexplained and unaccounted money of the appellant which has been introduced in its books of account in the name of bogus/ non-existent entity. In the present case, there is no evidence on record, to conclude that the amounts of loans in question actually belonged to the assessee and were introduced in the books of account in the name of the creditors. In our considered view, the assessee has discharged the onus of establishing identity and creditworthiness of the lenders and the genuineness of transactions. On the other hand, the AO has not pointed out any evidence to rebut the contention of the assessee that the transactions are genuine. In our considered view, the facts of cases relied upon by the revenue are different from the facts of the present case, therefore not applicable to the present case. Hence, we do not find any infirmity in the order passed by the Ld. CIT (A) to interfere with. Accordingly, we uphold the findings of the Ld. CIT (A) and dismiss the appeal filed by the revenue.

In the result, appeal filed by the revenue for assessment year 2013-2014 is dismissed.

Order pronounced on 6th November, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 06/11/2020

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

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,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**