

THE INCOME TAX APPELLATE TRIBUNAL
“E” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 256/Mum/2019 (Assessment Year 2008-09)

Everframe Construction Private Limited 402, Silver Spring, Sherly Rajan Road, Rizvi Complex Bandra West Mumbai- 400 050. PAN : AABCE7652E	Vs.	ITO-12(2)(2) Room No. 146A Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	Shri Rakesh Joshi
Department by	Shri Vijay Kumar P. Menon
Date of Hearing	04.11.2020
Date of Pronouncement	01.12.2020

ORDER

Per Shamim Yahya (AM) :-

This is in appeal by the assessee directed against order of Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 28.8.2018 and pertains to assessment year 2008-09.

2. The grounds of appeal read as under :-

Based on the facts and circumstances of the case, Everframe Construction Pvt. Ltd (hereinafter referred to as 'the Appellant') respectfully craves to prefer an appeal against the order issued by the Commissioner of Income-tax (Appeals) 20, Mumbai (hereinafter referred to as the 'CIT(A)') against the reassessment order issued by the Income-tax Officer - 12 (2)(2) (hereinafter referred to as the 'Assessing Officer') under section 143(3) rws 147 of the Income-tax Act, 1961 ('the Act') on the following grounds:

1. The CIT(A) ought to have held that the reassessment proceedings are without jurisdiction as the jurisdictional pre-conditions necessary to be satisfied as per sections 147 to 151 of the Act have not been fulfilled in the present case.

2. The CIT(A) erred in upholding the addition of Rs 2,60,00,000 by applying the provisions of section 68 of the Act.

3. That provisions of section 68 are discretionary and the facts and circumstances of the present case do not justify the making of such addition.
4. The CIT(A) has erred in overlooking the relevant facts and material forming part of the record and on the contrary relied on material which was not relevant and which was not admissible as evidence in the absence of fulfillment of the requirement relating to natural justice.
3. Brief facts of the case are as under :-
- The assessee filed return of income for A.Y. 2008-09 on 30/09/2008 declaring total income at Rs. NIL. The return was processed u/s. 143(1) of the Act on 22/09/2009. Subsequently, the assessment was reopened u/s.147 by issue of notice u/s.148 on 28/03/2015. The reopening was done on the basis of information received that the assessee had obtained accommodation entries of Rs.2,60,00,000/-. Therefore, the AO formed the reason to believe that the assessee's income for the A.Y. 2008-09 had escaped assessment. Accordingly, the assessment was reopened and notice u/s.148 of the Act was issued.
4. The assessee has taken the following loans during the F.Y. 2007-08.

Sr.No.	Name of the bogus concern	Amount involved
1	Casper Enterprises P. Ltd. (Ostwal Trading (I) Pvt. Ltd.)	1,05,00,000
2	Atharv Business Pvt. Ltd. (Fast Stone Trading (I) Pvt.Ltd.)	1,05,00,000
3	Duke Business Pvt. Ltd. (JPK Trading (I) Pvt.Ltd.)	50,00,000
	Total	2,60,00,000

AO received information from the office of DGIT (Inv.), Mumbai that those loans were not genuine and they represented accommodation entries taken by the assessee from companies floated by Shri Praveen Kumar Jain & his Group. In the course of the assessment proceedings, the AO issued notices u/s. 133(6) of the Act to all the above mentioned parties.

5. However, the notices were returned by the Postal Authorities with the remark "not known". Thereafter, the AO deputed an Inspector to locate the parties. The Inspector reported that no such entities were operating from the

given addresses. In view of the above, the Assessing Officer asked the assessee to produce the said parties for examination and also show caused the assessee as to why the entire amount of Rs. 2,60,00,000/- should not be brought to tax u/s, 68 of the Act as unexplained cash credits. In response, the assessee filed various documents in this regard.

6. However the assessing officer was not satisfied. He did not make any comment whatsoever on the documents submitted by the assessee. He placed reliance upon the modus operandi found in the case of accommodation entry given by Praveen Kumar Jain group. As regards assessing officer's own enquiry and examination he solely relied upon the unserved notices and he concluded that the identity genuineness and creditworthiness of these loans are not established. He referred to several case laws including that of Sumati Dayal and Durga Prasad More from Supreme Court.

7. Before the learned CIT(A) assessee submitted that assessing officer has only relied upon the information received from investigation being of the Department. That the assessee has submitted various documents, which have not at all been commented upon by the assessing officer. That eight years have elapsed and assessee was not in position to bring the loan creditors before the assessing officer. However the learned CIT(A) was not convinced. In a very short order he upheld the assessing officer's order. He held that he is not convinced that assessee is not in a position to bring those creditors before the assessing officer despite having taken high amount of loan. He also rejected the assessee's reliance upon the various documents submitted and assessee's claim that they have not been rebutted by observing that notices have returned unserved and the inspector has reported the non-existent at the concerned address. The learned CIT(A) also did not offer any comment on the various documents submitted by the assessee

8. Against this order assessee is in appeal before us.

9. We have heard both the Counsel and perused the records. Learned counsel of the assessee submitted that assessee has submitted following documents before the authorities below.

- Balance sheet and profit and loss account alongwith audited report of the assessee as well as loan creditors.
- Ledger confirmation of loan creditors.
- Extract of bank statements reflecting loan received and repaid.
- Confirmation from creditors at the time of repayment of loan.

He submitted the all the documents necessary for proving the identity genuineness and creditworthiness of the loan creditors have been submitted. He submitted that authorities below have not pointed out anything wrong in the various documents submitted. He further submitted that these loans have subsequently been repaid. He submitted that all the necessary details were submitted to the assessing officer. He submitted that the sole reliance of the Assessing Officer is upon the inspector's report which was never confronted to the assessee. He further submitted that no summon under section 131(1) of the Act was served upon the loan creditors. In this regard he placed reliance upon the following case laws.

- CIT Vs. Orchid Industries (P) Ltd. (397 ITR 136)
- ACIT Vs. Samdani Steels Pvt. Ltd. (387 ITR 561) (Bombay High Court)
- ITO Vs. Smt. Pratima Ashar (177 ITD 481)(Bombay Tribunal)

10. Per contra learned departmental representative relied upon the orders of authorities below, and the detailed investigation by the income tax department done in the case of Praveen Kumar Jain group of companies

11. Upon careful consideration we find that in the present case the assessee has provided the necessary documents in connection with the loan taken. The documents provided are as under :-

Balance Sheet & Profit & Loss a/c for the A.Y. 2008-09 along with its annexure
Documents of Lenders.
M/s. Casper Enterprises Pvt. Ltd. (Formerly Known as M/s. Ostwal Trading India Pvt. Ltd.)

A	Financial Statement for A.Y. 2008-09 & 2009-10 along with Audit Report
B	Ledger Confirmation
C	Extract of Bank Statements reflecting Loan Received and Repaid.
M/s. Atharv Business Pvt. Ltd. (Formerly Known as M/s. Fast Stone Trading India Pvt. Ltd.)	
A	Financial Statement for A.Y. 2009-10 along with Audit Report
B	Ledger Confirmation
C	Extract of Bank Statements reflecting Loan Received and Repaid.
M/s. Duke Business Pvt. Ltd. (Formerly Known as M/s. JKP Trading India Pvt. Ltd.)	
A	Financial Statement for A.Y. 2008-09 along with Audit Report
B	Ledger Confirmation
C	Extract of Bank Statements reflecting Loan Received and Repaid.

These documents were also filed by way of paper book before us. There is no comment whatsoever on these documents by Assessing Officer learned CIT(A).

12. The authorities below have not done any enquiry or examination to dislodge the submissions. The assessing officer is solely relying upon the aspect that section 133 (6) notices have returned unserved. We note that the notices under section 133(6) enable the assessing officer to obtain information and other explanations from the persons to whom the notices have been served. In the present case we note that all the necessary documents from the loan creditors have been supplied to the assessing officer. They include their bank statement, balance sheet, profit and loss account and confirmation.

13. Hence in our considered opinion no adverse inference so much as to treat the unsecured loan as bogus can be drawn solely on the ground of 133(6) notice remaining unserved. The assessee has duly explained before the authorities below that the loans were taken 8 years before and assessee was not in a position to bring the loan creditors before the assessing officer. That loans have also been duly paid back. We note that income tax act contains provision for summoning the concerned person before the assessing officer for examination under section 131(1). However we note that no such summon was issued by the assessing officer.

14. Only other ground of the assessing officer is that he has deputed an inspector who has reported the nonexistence at the concerned address. In this regard learned counsel of the assessee submits that assessee was never confronted with the inspector's report.

15. We find that except for relying upon the income tax investigation wing investigation in the case of Praveen Kumar Jain no other material is there for the assessing officer to make the addition of the impugned loans as unexplained income of the assessee. In our considered opinion the assessee having given all the necessary confirmation document has cogently discharged its onus. No attempt whatsoever to dislodge the veracity of these documents is there in the orders of the authorities below. We further note that in identical situation this tribunal in the case of income tax officer, Mumbai vs Pratima Ashar (177 ITD 481) has confirmed the deletion of unsecured loan under section 68 by observing as under :-

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee had raised loans aggregating to Rs.1,05,00,000/- from six companies which are allegedly stated to be controlled by Shri Praveen Kumar Jain. On a perusal of the orders of the lower authorities, we find, that the assessee on being called upon to substantiate the genuineness and veracity of the loan transactions that was entered into by him with the aforementioned companies, had placed on record substantial documentary evidence in support of the same viz. (i) confirmations of the lender companies; (ii) copies of the financial statements of the lender companies; and (iii) copies of the bank statements evidencing the advancing of loans by the lender companies to the assessee through normal banking channel. Apart there from, the assessee had submitted before the A.O that the interest paid on the loans advanced by the lender companies was subjected to deduction of tax at source as per the mandate of law. We further find that the assessee in order to buttress his claim as regards the genuineness of the loan transactions had also drawn support from the fact that the respective loans were repaid by him to the aforementioned companies. Further, the notices issued by the A.O under Sec. 133(6) to the principal officers of the aforesaid companies, therein calling upon them to furnish the requisite information as regards the exact nature of the activity carried out by the respective companies, along with the source from which the loans were advanced to the assessee, was also complied with and the required details viz. details of the loan transactions, copy of ledger accounts, copies of the bank statements etc were furnished by the abovementioned parties with the A.O. In sum and substance, the

assessee had placed on record substantial supporting „material“ to drive home his contention that genuine loans were raised by him from the aforementioned companies.

9. We have perused the observations of the A.O and find that he had in support of his claim that the assessee had obtained accommodation entries from the aforementioned companies, primarily focused on the fact that the said companies as per the information received by him from the office of the DDIT(Inv)-II, Mumbai, were controlled by Shri Praveen Kumar Jain, who as per the information shared by the DDIT (Inv.)-II, Mumbai, was found to be involved in providing accommodation entries of bogus unsecured loans to various parties through companies managed and controlled by him. In fact, a perusal of the assessment order reveals that the A.O had not even attempted to dislodge the documentary evidence which was placed on record by the assessee to substantiate the authenticity of the loan transactions and had rejected the explanation of the assessee and characterised the said loans as accommodation entries, observing as under:

“1. A perusal of the information reveals that the search action resulted into collection of evidences and other findings which conclusively proved that the Shri Praveen Kumar Jain Group through a web of concerns run and operated by him, is engaged in providing accommodation entries of various nature like bogus unsecured loans, bogus share application and bogus sales (purchases for the beneficiaries), etc.

2. During the course of the search at various premises which were shown by the assessee group to be the place of operation and registered addresses as per the Income tax Returns, MCA website and bank documents, it was found that the entities at these and no genuine business was being carried out at any of these premises.

3. In many concerns formed by Shri Praveen Kumar Jain Group, various persons shown to be the directors/proprietors were non-existent on the given addresses. In certain cases, in the statements recorded u/s.132(4)/131 of the I.T Act these directors/proprietors admitted that they were merely dummy directors and used to sign different papers for nominal consideration given by Shri Jain.

4. In view of the above, it is seen that through various dummy directors/proprietor, he controls, operates and manages a large number of concerns. All such concerns are not carrying out any genuine business. They do not have any physical stock of goods, which they claimed to be dealing in, all such concerns have no employed persons except the few common accountants who manage accounts and banking transactions of all such concerns. All such concerns are indulged in the activity of providing accommodation entries only.

5. Further it is seen that Mr. Jain basically gives accommodation entries which are routed through the companies under his control. All the companies are either owned by him or directly/indirectly under his control are paper companies with no real business transactions. In most of the cases various, brokers who operate in the field of providing accommodation entry like bogus unsecured loan, bogus LTCG, etc. however, in very few cases the end beneficiaries also approach him when they want an accommodation entry. Based on the specific type of accommodation entry required, Mr. Jain either provides the same through the companies under his control or contact other brokers and facilitate the accommodation entries providers.

6. The payment through account payee cheque, if any, does not substantiate the assessee's claim as it is already accepted by the persons. Perusal of information is enough to show that the assessee has taken only accommodation entry in the name of unsecured loan. These entities were not carrying out any business. After going through the facts, information gathered and the above elaborate discussion it is concluded that the assessee has taken accommodation entry of unsecured loan of Rs.1,05,00,000/- from the above said parties."

10. We have given a thoughtful consideration to the facts of the case, and are unable to persuade ourselves to subscribe to the view taken by the A.O. As per Sec. 68 of the I-T Act, the assessee remains under a statutory obligation to substantiate both the "Nature" and "Source" of a „sum“ found credited in his books of accounts maintained for any previous year. In case, the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the A.O, satisfactory, then the sum so credited may be charged to income tax as the income of the assessee for that previous year. Accordingly, as per the mandate of the aforesaid statutory provision, the assessee is obligated to substantiate on the basis of a plausible explanation the nature and source of a sum found credited in his books of accounts. In the case before us, we find, that as is discernible from the records, the assessee in discharge of the „onus“ that was cast upon him as regards proving the "Nature" and "Source" of the amount aggregating to Rs.1,05,00,000/- which was claimed by him to have been raised as loans from the aforementioned six companies, had therein placed on record supporting documentary evidence viz. (i) copies of the returns of the lender companies; (ii) copies of their audited financial statements; (iii) copies of the bank accounts of the lender companies; and (iv) the 'affidavits' of the principle officers of the lender companies, wherein they had confirmed the loan transactions. Further, on a perusal of the bank accounts of the aforementioned lender companies, all of which we find were being assessed to income tax, therein revealed that there was no immediate cash deposits in their respective bank accounts in order to facilitate advancing of the loans to the assessee. In nutshell it is neither the case of the revenue, nor a fact borne from the records, that the assessee had routed his own money in the garb of the unsecured loans raised from the aforementioned parties. As observed by the CIT(A), the assessee had also deducted tax at source at the time of payment/crediting of the interest on the loans raised from the aforementioned companies. Accordingly, in the backdrop of the aforesaid

facts, we are of a strong conviction that the assessee had sufficiently discharged the „onus“ that was cast upon him as regards proving the authenticity of the loan transactions under consideration. As per the settled position of law, once the assessee had proved the genuineness of the transactions, identity of the creditors and the creditworthiness, the „onus“ was thereafter shifted on the A.O to prove otherwise. In fact, in the case before us, as the loans had been raised by the assessee from certain companies which on the basis of information received by the A.O from the office of the DDIT(Inv)-II, Mumbai, were stated by the A.O to be the companies which were controlled by Shri. Praveen Kumar Jain, an infamous accommodation entry provider, therefore, it was all the more onerous on the part of the A.O to have demonstrated on the basis of supporting „material“ that accommodation entries in the garb of loans was provided by the said six companies by adopting the modus operandi of Sh. Praveen Kumar Jain and his group entities. However, we find, that as observed by us hereinabove, the A.O except for harping on the fact that the assessee had raised the loans from the companies which were controlled by Shri Praveen Kumar Jain, had absolutely done nothing which would conclusively prove that no genuine loans were raised by the assessee from the aforesaid companies. On the contrary, the notices which were issued by the A.O under Sec.133(6) to the aforementioned companies, wherein they were called to share certain information viz. nature of activities of the lender companies, source for giving the loans etc., were duly complied with by the said concerns and the requisite documents were placed on the record of the A.O by the aforementioned companies. We find that the A.O who ought to have made necessary verifications as regards the authenticity of the loan transactions by summoning the principal officers of the aforementioned companies under Sec.131 of the I-T Act, and also carrying out field inquiries/investigations as regards the identity and creditworthiness of the investor companies, and also the genuineness of the transactions, had however, not even done the bare minimum. Rather, only on the basis of his observations that the search proceedings conducted on Shri Praveen Kumar Jain group revealed that he was engaged in the business of providing accommodation entries, that the A.O had hushed to the view that the loan raised by the assessee from the aforementioned companies were to be dubbed as accommodation entries. We are unable to persuade ourselves to subscribe to the aforesaid view so arrived at by the A.O. In fact, a perusal of the assessment order reveals as if the A.O was framing the assessment in the case of Shri Praveen Kumar Jain, and not in the case of the assessee. It is in the backdrop of the aforesaid factual position, we find, that the CIT(A) observing that as the assessee had duly discharged the „onus“ that was cast upon him under Sec. 68 for proving the authenticity of the loan transactions, therefore, in the absence of any „material“ placed on record by the A.O to dislodge the said duly substantiated claim of the assessee, there was no occasion for him to have to re-characterised the loans raised by the assessee.

16. We further note that Hon'ble Bombay HC decision in the case of CIT Vs. M/s. Orchid Industries Pvt. Ltd. (ITA No. a1433 of 2014 order dated 5.7.2017) is also germane and supports the case of the assessee. In this case the Hon'ble

Bombay High Court has confirmed the ITAT order on similar addition under section 68 for non response of notices by observing as under :-

“The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case.”

17. We find that these case laws are fully applicable on the facts of the case. Assessing Officer had been provided all the details for verification. He did not bother to make any examination. He did not even issue any summon to the concerned parties. Accordingly in the background of aforesaid discussion and precedent, we set aside orders of authorities below and decide the issue in favour of assessee.

18. Since we have decided the issue on merits in favour of the assessee, adjudication of the grounds relating to validity of reopening are of academic consequence in nature, hence, we are not engaging into that.

19. In the result, assessee's appeal is partly allowed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 1.12.2020.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/12/2020

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//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai