



ITA No.6003/Mum/2019
M/s. J.R. Properties
Assessment Year: 2010-11

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.6003/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. J.R. Properties 112, Prime Plaza, J.V. Patel Compound B.M. Road, Elphinstone West Mumbai-400 013.	बनाम/ Vs.	Income Tax Officer-21(1)(5) Room No.120, 1 st Floor Piramal Chamber, Lalbaug Parel, Mumbai-400 012.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAFFJ-0934-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Neelkanth Khandelwal-Ld.AR
Revenue by	:	Ms. Usha Gaikwad-Ld. Sr.DR

सुनवाई की तारीख/ Date of Hearing	:	09/12/2020
घोषणा की तारीख / Date of Pronouncement	:	09/12/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 As per the provisions of Section 68 of the Income Tax Act, 1961, where any sum is found credited in the assessee’s books and assessee offers no explanation about the nature and source thereof or the explanation furnished is found to be unsatisfactory, the sum so credited may be charged to Income-Tax as the income of the assessee of that



previous year. A proviso has been inserted to the said section by Finance Act, 2012 w.e.f. 01/04/2013 to provide that where the assessee is a company and the sum so credited consists of share application money, share capital, share premium etc., the explanation furnished by the assessee shall be deemed to be not satisfactory unless the person in whose name such credit is recorded also offers an explanation about nature and source of sum so credited and such explanation is found to be satisfactory. However, this proviso is applicable only from AY 2013-14 and the same is not retrospective in nature as held by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]**. The said position has also been reiterated by Hon'ble Bombay High Court in its recent decision tilted as **Gaurav Triyugi Singh V/s ITO (ITA No.1750 of 207, dated 22/01/2020)** which also consider its earlier decision of **Pr.CIT V/s Veedhata Towers Pvt. Ltd. (2018 403 ITR 415)**. More pertinently, the said proviso is not, at all, applicable in case of unsecured loans or deposits.

1.2 It is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders / investors to advance such monies and genuineness of the transactions. Once these three ingredients are shown to be fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of **Lovely**



Exports P. Ltd. [319 ITR 5], dismissing revenue's appeal, observed as under: -

2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** & subsequently in **CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]**. The Hon'ble Delhi High Court followed the said decision in **Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84]** against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in **Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72]** against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in **Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47]** against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the recent decision of Hon'ble Bombay High Court in **Pr. CIT V/s Ami Industries (India) Pvt.**



Ltd. [ITA No. 1231 of 2017, dated 29/01/2020) which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161].

1.3 Proceeding further, it is trite law that no additions could be made on the basis of mere doubts, conjectures or surmises. Once the primary onus to substantiate the transactions is discharged by the assessee, it would be incumbent upon revenue to dislodge the assessee's claim and substantiate the allegations with corroborative evidences. Until & unless this exercise is undertaken, the additions would not be sustainable in the eyes of law. Lastly, as a principle of natural justice, the adverse material being used against the assessee must be confronted to the assessee and an opportunity to rebut the same was to be provided to the assessee. The failure to do so would result into violation of assessee's substantive rights to defend his stand in the matter.

2.1 Keeping in mind the aforesaid legal position, we find that the present assessee is in appeal before us for Assessment Year [in short referred to as 'AY'] 2010-11 and contest the order of Ld. Commissioner of Income-Tax (Appeals)-33, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No.CIT(A)-33/Rg.21/337/17-18* dated 16/08/2019 in sustaining certain additions u/s 68. The only ground pressed before us is ground No.2, which read as under: -

2. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of an amount Rs.4,00,00,000/- on account of alleged bogus unsecured loan taken by the appellant -

a. By upholding the addition even though the assessment was framed in violation of principles of natural justice, in as much as, the Ld Assessing



Officer relied on the statement of Shri Bhawarlal Jain without granting the appellant an opportunity to cross-examine him.

b. By overlooking the documentary evidences furnished by the appellant to prove the genuineness of the alleged bogus unsecured loan taken.

c. By taking an adverse view in respect of alleged bogus unsecured loan on the ground that the appellant failed to produce the loan party without appreciating that it was the Ld Assessing Officer who was relying on the statement of the supplier parties and as such were his witness. It was for the Ld Assessing Officer to produce these parties for cross-examination by the appellant and not the other way around.

d. The addition was confirmed on inference raised against the appellant on the basis of mere suspicion, conjectures and surmises and not on any tangible material.

e. By overlooking the fact that the excerpts of the statement of Shri Bhanwarlal Jain provided does not find any mention of the appellant or the firm i.e. Regent Diamond from whom alleged bogus unsecured loan was taken.”

As evident, the assessee is aggrieved by certain additions u/s 68 on account of unsecured loan of Rs.400 Lacs stated to be taken from an entity namely M/s Regent Diamond allegedly controlled and managed by one Shri Bhanwar Lal Jain

2.2 We have carefully heard the arguments advanced by both the representatives. The Ld. Authorized Representative for Assessee (AR), drawing out attention to the documents as placed in the paper book, assailed the additions as sustained by Ld. first appellate authority. Reliance has been placed on various judicial pronouncements, the copies of which have been placed on record. The same has duly been deliberated upon and the settled legal position has already been enumerated by us in the opening paragraphs. The Ld. DR relied upon the findings of lower authorities and pleaded for dismissal of appeal. In the above background, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.



3.1 The assessee being resident firm is stated to be engaged as builders & developers. The original return of income filed by the assessee was processed u/s 143(1). However, the case was reopened and an assessment was framed u/s 143(3) r.w.s. 147 on 28/12/2017 wherein the assessee was saddled with impugned additions of Rs.400 Lacs.

3.2 Pursuant to receipt of certain information from ADIT (Investigation), it transpired that the assessee was in receipt of unsecured loan from an entity namely M/s Regent Diamond. This entity was allegedly controlled & managed by accommodation entry provider Shri Bhanwar Lal Jain. Accordingly notice u/s 148 was issued on 31/03/2017 which was followed by statutory notices u/s 143(2) as well as u/s 142(1) wherein the assessee was directed to substantiate the said unsecured loan.

3.3 The assessee while submitting that interest was paid on the said loan after deduction of due TDS, stated that the loan was taken in the normal course of business for business purposes. The assessee denied having known Shri Bhanwar Lal Jain and having connection with any of his entities. The attention was drawn to the fact that the loan was already repaid 3 years back through banking channels and therefore, there would be no justification to treat the same as non-genuine. At the same time, Ld. AO was requested to provide the statement of Bhanwar Lal Jain group as being relied upon by Ld. AO to draw adverse inference. The cross-examination of persons making the statement was also demanded.

3.4 In support of transaction, the assessee filed the following documentary evidences during the course of assessment proceedings: -



1. Copy of account confirmation of M/s. Regent Diamond
2. Bank statement showing receipt of payment through banking channels
3. Photocopy of Income Tax Return acknowledgement for the AY 2010-11
4. Copy of Profit/loss a/c and Balance sheet for A.Y. 2010-11

In the aforesaid background, it was submitted that the assessee had proved the identity of loan creditor, its creditworthiness and genuineness of the translations.

3.5 However, rejecting the same, Ld.AO treated the loan as unsecured cash credit and added the same u/s 68. Consequently, interest paid against the same was also reduced from work-in-progress.

4.1 During appellate proceedings, a remand report was called from Ld.AO directing him to provide all the statements recorded from the entity of Shri Bhanwar Lal Jain which was being relied upon for making addition. The Ld. AO was also directed to provide cross-examination of relevant persons.

4.2 It was submitted in the remand report that summons issued to M/s Regent Diamond as well as Shri Bhanwar Lal Jain was returned back by postal authorities and the same were served though affixture. The said party was not available at the given addresses and not accepting the summons intentionally. The assessee also failed to produce the stated party to prove the genuineness of the transactions. Hence, the additions were justified.

4.3 Going by the findings of Ld. AO, the additions were confirmed which has led to assessee's appeal before us.

5. Upon careful consideration of factual matrix as enumerated in the preceding paragraphs, it is quite discernible that the loan was taken as



early as in AY 2010-11 whereas the inquiries being conducted by revenue authorities were as late as in 2019. The assessee had filed sufficient documentary evidences in the shape of account confirmation, bank statements, financial statements of the lender, its Income tax returns etc. to establish the identity of the lender, his creditworthiness as well as the genuineness of the transaction. Thus the primary onus of establishing the identity of the lender, proving its creditworthiness and to establish the genuineness of the transactions was duly been discharged by the assessee. The assessee was not required to prove the source of source as noted in the opening paragraphs. This is in the backdrop of the fact that the assessee had paid interest on loan after deduction of TDS. Another pertinent fact to be noted is that the loan stood fully squared up 3 years back and therefore, there could be no occasion to treat the same as assessee's income. Merely because the party did not respond after such a long period, the same could not be the sole basis to make additions in the hands of the assessee. By furnishing the documentary evidences, the onus had shifted on revenue to dislodge assessee's claim by bringing on record cogent evidences. The assessee, all along, denied having any business connection with the tainted group. Except for the fact that the party did not respond to summons, there is nothing adverse against the assessee. It is trite law that no addition could be made merely on the basis of suspicion, conjectures or surmises. There is nothing in revenue's armory which would indicate that any cash got exchanged between the assessee and the said entity while accepting as well as while repaying the unsecured loan.



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6. Therefore, on the given facts and circumstances, we are not inclined to concur with the view of the revenue authorities. Hence, by deleting the impugned addition, we allow ground thus raised before us. Consequently, the interest as claimed on the loans would be deductible from work-in-progress as done by the assessee.

7. The appeal stand partly allowed in terms of our order.

Order pronounced on 09th December, 2020.

**Sd/-
(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-
(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09/12/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**