

आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SAKTIJIT DEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.2899/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

ACIT-Circle-6(3)(2) Aaykar Bhavan, Room No.576 M.K. Road, Mumbai-400 020.	बनाम/ Vs.	M/s. Kaizen Engineering Systems Pvt. Ltd. 67, Shanta Prasad, Hindu Colony Lane 01 Dadar, Mumbai-400 014.
PAN/GIR No. AADCK-1418-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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C.O. No.34/Mum/2020
(Arising out of ITA No. 2899/Mum/2019)
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Kaizen Engineering Systems Pvt. Ltd. 67, Shanta Prasad, Hindu Colony Lane 01 Dadar, Mumbai-400 014.	बनाम / Vs.	ACIT-Circle-6(3)(2) Aaykar Bhavan, Room No.576 M.K. Road, Mumbai-400 020.
PAN/GIR No. AADCK-1418-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Madhur Aggarwal-Ld. AR
Revenue by	:	Shri Gurbinder Singh -Ld.Sr.DR

सुनवाई की तारीख/ Date of Hearing	:	09/12/2020
घोषणा की तारीख / Date of Pronouncement	:	04/03/2021

आदेश / ORDER**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year (AY) 2009-10, contests the order of Ld. Commissioner of Income Tax (Appeals)-12, Mumbai [CIT(A)], dated 17/01/2019 on following effective grounds.

1 On the facts and in the circumstances of the case and in law, the Ld. CTT (A) has erred in restricting the addition to 5% instead of 100% being Rs.4,70,00,643/- made by the AO u/s.69C of the Act out of the bogus purchase transaction accommodation entry obtained by assessee from 3 parties -M/s. Natasha Enterprises, Atharva Business Put Ltd and Duke Business Pvt Ltd (JPK Trading I Pvt. Ltd), the entities controlled and operated by Shri Praveen Kumar Jain.

2. On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the addition u/s. 69C by holding that opportunity of cross-examination is not provided to the assessee ignoring the fact that at para 4.2 of the assessment order the AO has categorically mentioned that further to the non service of notice issued u/s. 133(6) by postal authority, the assessee was also asked to produce parties for verification which the assessee did not comply with and therefore, Ld.CJT(A) failed to appreciate that the onus to prove genuineness is not discharged by assessee.

2.1 On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in deleting the addition u/s. 68 of the Act in violation of Rule 46A of the I.T.Rules, by not remanding to the AO to afford opportunity of cross-examination to the assessee.

2.2 On the facts and in the circumstances of the case and in law, Id.CJT(A) has erred in deleting the addition u/s. 68 of the Act disregarding the Hon'ble Delhi High Court decision in the case of CIT V/s Jansampark Advertising & Marketing (P) Ltd, 375 JTR 373 (Delhi) wherein Hon'ble Court while remanding the matter held that two appellate authorities viz., Commissioner (Appeals) and Tribunal, are also forums for fact-finding, in event of Assessing Officer failing to discharge his functions properly, obligation to conduct proper inquiry on facts would naturally shift to door of said appellate authorities and they having noticed want of proper inquiry, cannot close chapter simply by allowing appeal and deletion additions made.

3. On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the quantum addition ignoring that the information on account of accommodation entry of bogus purchase of Rs.4,70,00,643/- is received from the Investigation Wing, Mumbai of Income Tax Department; that during the search action u/s.132 of the Act carried out on 01/10/2013 in the case of Praveen Kumar Jain & Group, are the entry operators and that they had provided accommodation entries in the form of bogus purchases to the assessee company through the companies under his control.

4. On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in restricting the quantum addition ignoring that the information on account of bogus purchases is received from the DIT(Investigation) Unit-2, Mumbai that the assessee had received accommodation entry from -Natasha Enterprises, Atharva Business Pvt Ltd. and Duke Business Pvt Ltd. (JPK Trading I Put Ltd), the concern controlled by Shri Praveen Kumar Jain.

5. On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the addition of Rs.2,61,53,918/- and the interest Rs.69,203/- u/s.68 out of the unsecured loan from nine parties as the Id.CIT(A) failed to appreciate that during the assessment proceedings AO had specifically asked assessee to file the supporting documents of the loan transactions.

6. On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the addition of delay in depositing Employees' Contribution of PF & ESIC without appreciating that it is specifically covered by section 36(1)(va) of the Act.

7. The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored.

Though the assessee has preferred cross-objection, however, no substantial arguments have been made therein and the same has not been pressed during the course of hearing before us.

As evident, the revenue is aggrieved by certain relief provided to the assessee by Ld. CIT(A) on account of *alleged bogus purchase* as well as deletion of addition u/s 68.

2. We have carefully heard the rival submissions and perused relevant material on record including written submissions and documents placed in the paper book. The judicial precedents as relied upon during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter would be as given in succeeding paragraphs.

3.1 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged as technology solution provider was assessed for the year under consideration u/s. 143(3) r.w.s. 147 on 29/03/2016, wherein it was saddled with following additions which are the subject matter of appeal before us: -

1. Bogus purchases	:	Rs.470 Lacs
2. Unexplained cash credit u/s.68	:	Rs.261.53 Lacs
3. Interest on unsecured loans	:	Rs.0.69 Lacs
4. Disallowance u/s. 36(1)(va)	:	Rs.1.16 Lacs

3.2 The original return of income filed by the assessee was processed u/s. 143(1). Pursuant to receipt of certain information from DGIT (investigation), it was alleged that assessee procured bogus purchase bills for Rs.470 Lacs from 3 entities, the details of which are extracted in para-3 of the assessment order. Accordingly, case was re-opened vide notice u/s. 148 dated 05/02/2015 which was followed by statutory notices u/s 143(2) & 142(1) wherein assessee was directed to file requisite details & documentary evidences. Although assessee defended the purchase transactions but Ld. AO disallowed entire purchases and added the same to the income of the assessee as unexplained income u/s 69C. The primary factor to disallow the same was that notices issued u/s 133(6) to the tainted supplied did not elicit satisfactory response.

3.3 The addition u/s 68 stem from the fact that the assessee obtained unsecured loan aggregating to Rs.261.53 Lacs from 9 entities as tabulated in para-7 of the assessment order. In the absence of documentary evidence to demonstrate fulfilment of primary ingredients of Sec.68, these loans were added as unexplained cash credit u/s 68. Consequently, interest of Rs.0.69 Lacs paid on these loans to 2 entities was also disallowed.

3.4 The last addition arose on account of assessee's default in payment of employees' contribution towards PF (EPF) and ESIC. The same aggregated to Rs.1.16 Lacs which was disallowed u/s 36(1)(va) and added back to the income of the assessee.

Appellate Proceedings & Our adjudication

4.1 During appellate proceedings, the assessee, inter-alia, challenged the validity of reassessment proceedings. However, same got rejected in

terms of decision of Hon'ble Supreme Court in **Raymond Woollen Mills Ltd. V/s ITO (236 ITR 34)**.

4.2 Regarding addition of alleged bogus purchases, the attention was drawn to the fact that In support of purchase transactions, the assessee had already filed copies of purchase invoices, ledger extracts, stock register extracts and copies of bank statements evidencing payment through banking channels and therefore, additions would not be justified merely because notices could not be served. The assessee also placed on record itemised summary of purchases and corresponding sales made against these purchases which are already extracted in para 3.2 of the impugned order.

4.3 The Ld. CIT(A) concurred that invocation of Sec.69C would not be proper since the source of tainted purchases was assessee's bank account. Further, the assessee had placed on record all possible evidences to establish the genuineness of the transactions. The sales were not disturbed or doubted. Therefore, non-service of notice could not be the sole basis to make additions. However, on the facts of the case, the assessee may have made purchases from grey market but it procured bogus bills and therefore the profit element embedded in these transactions was to be estimated. The estimation was made @5% of these purchases which reduced the impugned addition to Rs.12.61 Lacs. Aggrieved, the revenue is in further appeal before us. However, the assessee has not pressed this ground before us and accepted the verdict of Ld. CIT(A).

5. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, it is evident that the assessee was in possession of purchase invoices and it placed on record confirmation of accounts.

The payments to the suppliers were through banking channels. The assessee produced stock register extract and correlated the tainted purchases with sales transactions. There could be no sale without actual purchase of material keeping in view the assessee's nature of business. The sales have not been disputed or disturbed by the revenue. In such a case, the approach of Ld. CIT(A) in estimating the additions @5% is quite fair & reasonable. We concur with the same and therefore, this ground raised by the revenue stand dismissed.

6.1 Regarding addition u/s 68, the assessee submitted additional evidences u/r 46A which were subjected to remand proceedings. The remand report was duly confronted to the assessee and the assessee assailed the findings of Ld. AO by drawing attention to the documentary evidences as placed on the record, during remand proceedings as well as during appellate proceedings, in support of the transactions. The assessee submitted that the loans were taken from directors and their relatives for meeting working capital requirements. During appellate proceedings, the confirmations of the lenders were submitted along with copy of PAN, bank statements and their respective Income Tax Returns to establish the identity & Creditworthiness of the lenders as well as the genuineness of the transactions.

6.2 After due consideration of material on record, remand report and assessee's submissions, Ld. CIT(A) rendered factual findings and deleted the impugned additions by observing as under: -

4.3 I have carefully gone through the assessment order, submissions made by the appellant, issues raised by the AO against the additional evidence filed by the appellant in the Remand report and the rejoinder to the remand report. It is observed from the assessment order that the AO asked only for the details of loans taken during the year by the appellant, which were provided by the appellant at the time of the assessment proceedings. After asking for initial details for which the reply was filed, it was incumbent upon the AO, if he was not satisfied with the details, to call for

more details as required by him. The AO did not issue show cause notice proposing the addition. It is expected as per the procedure, to give a pre-assessment show cause notice, which the AO failed to follow. It is seen from the assessment order itself that the AO neither called for any further details nor issued a show cause notice but concluded the assessment by making addition of the entire loans appearing in the books of accounts. During the appeal proceedings, the appellant filed petition under rule 46A of the IT Rules, requesting for admission of additional evidence on the ground that the AO did not asked for further details alleging that no show cause notice specifically requiring the appellant to establish the identity, source and creditworthiness. Remand report has been called for and the rejoinder of the assessee is also taken on record.

4.4 The appellant contended that the loans were taken for meeting the working capital requirements of its Ahmedabad Janmarg Limited of Ahmedabad Municipal Corporation popularly known as BRTS. The appellant vide additional evidence furnished the copy of PAN along with the signed copy of the loan confirmation; of the all the lenders. Further, the appellant has produced copy of bank statements reflecting the said loan amounts and Income Tax return of all the lenders except Mr. Ramji Shah and Mrs. Ratanbai Ramji Shah and Mr. Ranjit Kamat. It is further observed that both the lenders i.e. Mr. Ramji Shah and Mrs. Ratanbai Ramji Shah expired on 04.06.2010 & 17.07.2014 respectively. This fact is confirmed by their legal heir (son) Mr, Ajit Shah in his signed loan confirmation submitted by the appellant. Hence the appellant could not produce the bank statement and the copy of ITR for late Mr. Ramji Shah and late Mrs. Ratanbai Ramji Shah. Further, it is observed that the loan from Mr. & Mrs. Shah have been repaid along with interest during the previous year relevant to next assessment year. Owing to these facts, the unsecured loans are considered genuine and directed to be accepted as there is no way by which the appellant could have produced any further details to substantiate his claim.

4.5 Also, in case of unsecured loans taken from the lender Mr. Ranjit Kamat, ITR has not been produced by the lender. It is submitted that Mr. Ranjit Kamat is son of Mr. Prakash Kamat, Promoter Director of the appellant company and the onward Remittance Certificate certified by the bank for the said loan and the self-certificate for source of income in UK and academic qualification have been submitted during the appellate proceedings. This establishes the creditworthiness of the lender. The lender was employed in London and earning salary income, which was advanced as loan to Appellant company. Therefore, the unsecured loan taken from the son of the director is considered genuine and directed to be accepted.

4.6 Shri. Prakash Kamat is the one of the director who is managing the company, Shri Bharat Choramble is another director, who is also a director of Smart IT Solutions P. Ltd. Shri. Bharat Choramble attended before the AO and confirmed the loan given by himself and his company Smart IT Solutions P. Ltd. Bharat Choramble not having the detailed knowledge of the assessee company is not relevant for the issue, as far as the three criteria required u/s 68 are fulfilled. The assessee had filed point wise reply to all the observations made by the AO in the report, which is extracted above. After going through the observations of the AO and the rejoinder of the assessee, I am of the considered opinion that the issues raised by the AO have been satisfactorily explained by the appellant and found to be acceptable. The case laws relied by the AO are not relevant to the facts on record as the AO failed to give proper opportunity, make proper enquiries. However, the appellant has complied with the basic requirements of section 68 of the Act in establishing the identity and

creditworthiness of the lenders and the genuineness of the transactions by filing the necessary documents. Reliance is placed on following judicial pronouncements.

1. Dy. CIT vs. Rohini Builders (2002) 256 ITR 360 (Guj)(HC)
[SLP dismissed by SC (2002) 254 ITR (St.) 275]
2. CIT v. Jai Kumar Bakliwal (2014) 366 ITR 217 (Raj.)(HC).
3. Orient Trading Co. Ltd. vs. CIT (1963) 49 ITR 723 (Bom)(HQ)
4. CIT vs. Chandela Trading Co. P. Ltd. (2015) 372 ITR 232 (Cal.)(HC)
5. ACIT v. Sanjay M. Jhaveri (2015) 168 TTJ 751(Mum.)(Trib.)

4.7 Considering the evidence brought on record by the appellant company regarding the loans taken during the year, the explanations furnished and after considering the case laws on the issue, the addition made by the AO is found to be unwarranted. Therefore, the addition of Rs.2,61,53,918 made u/s 68 of the Act is hereby deleted. Appellant gets relief. Ground number 1 to 4 and 10 are allowed.

Consequently, the interest paid against these loans was also allowed.

Aggrieved, the revenue is in further appeal before us.

7. From the aforesaid factual findings rendered by learned first appellate authority, the undisputed position that emerges is that Ld. AO, without calling for requisite information from the assessee, chose to make impugned additions during assessment proceedings. During appellate proceedings, the assessee submitted documentary evidences to demonstrate the fulfilment of primary ingredients of Sec.68. The confirmations of the lender, bank statements, Income Tax Returns, PAN etc. were duly filed in support of the transactions. It is another fact that most of the loans has been taken either from directors or their relatives and therefore, the identity of the lender could not be doubted. The creditworthiness was established by adducing the bank statements as well as Income Tax particulars. The genuineness got established by confirmation of accounts. Since, the assessee discharged the primary onus, as casted upon him in terms of Sec. 68, of proving these transaction, the impugned loans could not be termed as assessee's unaccounted money. Therefore, no fault could be found in the approach

of Ld. CIT(A) in deleting the addition u/s 68 as well as interest disallowance. The ground thus raised before us stand dismissed.

8. The last addition u/s 36(1)(va) was deleted by Ld. CIT(A) by relying upon the binding judicial precedent in the shape of decision of Hon'ble Bombay High Court in **CIT V/s Hindustan Organic Chemicals Ltd. (366 ITR 1)**. Since no contrary decision is on record, our interference is uncalled for. Ground No.6 stand dismissed.

Conclusion

9. The appeal as well as cross-objections stand dismissed.

Order pronounced on 04th March, 2021

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04/03/2021

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ँ ग्रेषित/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– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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