

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

**BEFORE: SHRI M.BALAGANESH, AM  
&  
SHRI PAVAN KUMAR GADALE, JM**

**ITA No.1079/Mum/2018  
(Assessment Year :1999-2000)**

M/s. NH Securities Ltd., 9, Bhupen Chambers, Ground Floor Dalal Street, Fort Mumbai – 400 023	Vs.	Deputy Commissioner of Income Tax, Central Circle-40 Aayakar Bhavan M.K. Marg, Mumbai – 400 020
<b>PAN/GIR No. 1999-2000</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rajiv Khandelwal
Revenue by	Dr. P. Daniel
<b>Date of Hearing</b>	<b>05/01/2021</b>
<b>Date of Pronouncement</b>	<b>24/03/2021</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.1079/Mum/2018 for A.Y.1999-2000 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A)-49/IT-118/2016-17 dated 29/12/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/10/2002 by the Id. Dy. Commissioner of Income Tax, Central Circle 40, Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition made on account of unexplained cash credit u/s 68 of the Act in respect of loans received by the assessee in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a public limited company engaged in the business of shares and stock broking, investment and trading in shares and securities. We find that the assessee is a member of National Stock Exchange. The business income derived by the assessee in the sum of Rs 1,37,38,650/- was declared in the return of income filed on 10.4.2000.

3.1. We find that this is the second round of proceedings before this tribunal. In the first round, this tribunal in ITA NO. 3717/M/2004 dated 3.10.2007 had remanded the issue to the file of Id CITA for the reason that the loan confirmations that were filed by the assessee before the Id CITA in the paper book were not considered by the Id CITA. Accordingly, this tribunal had directed the Id CITA to verify those confirmations for the following 5 parties for fresh adjudication of the issue :-

20 <sup>th</sup> Century Finance Corpn Ltd	- Rs 6,00,00,000
Mittal Ispat Ltd	- Rs 50,60,411
Pondy Metals & Rolling Mills Ltd	- Rs 50,73,644
Sharda Castings Ltd	- Rs 50,60,411
DSQ Holdings Ltd	- Rs 5,00,00,000
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	Rs 12,51,94,466
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3.2. The relevant directions given by this tribunal are reflected in para 22 of its order dated 3.10.2007. We find that the Id AO in the original

assessment had treated the loans received from aforesaid 5 parties as unexplained cash credit u/s 68 of the Act primarily on the ground that the confirmations from those parties could not be filed before him. During the course of first round of proceedings before the Id CITA, the assessee had indeed furnished confirmations from the aforesaid 5 parties which fact is also mentioned in the order of this tribunal dated 3.10.2007 . We find that the assessee had duly furnished the names and addresses of the aforesaid 5 parties, their PAN together with the copy of confirmations from the parties. But we find that the Id CITA had even in the second round of proceedings had stated that the confirmations were not found to be present in his file. Infact the Id CITA records at page 6 and 7 of his order that the assessee had submitted before him the copy of the submissions made before the tribunal in the first round of proceedings together with the paper book. We find that the Id CITA also records the fact that the paper book filed by the assessee did contain few papers of bank account statement of assessee and ledger extracts in the case of aforesaid 5 parties .We find that the Id CITA once again mentions that the ledger extracts alone have been filed by the assessee and the same would not establish the genuineness of the transaction and creditworthiness of the creditors.

3.3. We find that the ledger extracts given by the assessee before the Id CITA itself contains the counter signature of the creditors duly confirming all the transactions together with their PAN. From the perusal of the ledger extracts, we find that there is a running account maintained by the assessee with these creditors and all the transactions are routed through regular banking channels in account payee cheques. One more excruciating fact to be noted here is that the assessee had paid interest on these loans after subjecting the same to due deduction of tax at

source. We find that the lower authorities had duly granted deduction for the interest expenditure claimed on these loans by the assessee. Once the interest is accepted to be genuine, then how the principal component thereon could be disbelieved by the lower authorities. We are unable to comprehend and unable to persuade ourselves to accept to this act of the lower authorities.

3.4. Moreover, the Id CITA duly admits the fact that the assessee had also given certain evidences of suits being filed by some of these parties on the group concerns of the assessee. This fact of existing dispute is more pertinent in view of the fact that the assessee could at best only collect the confirmation in the form of counter signatures in the ledger extracts sent by it to the loan creditors and the said loan creditors were not cooperating further with the assessee in view of existing disputes. Hence assessee could not produce those creditors before the lower authorities for proving the genuinity of the loans beyond doubt. Similarly the assessee could not procure the details of their creditworthiness by way of their financial statements and income tax returns and produce the same before the lower authorities. Given this genuine predicament from the side of the assessee, we find that the assessee had requested the Id AO to issue summons u/s 131 of the Act to those loan creditors to find out the truth, which was not acted upon by the Id AO. We find that the assessee had duly disclosed the identity of the creditors and genuineness of the transactions are very much evident from the ledger extracts itself as all the transactions are routed through regular banking channels and assessee had even paid interest on these loans. Due to existing disputes with the parties by the sister concerns of the assessee, the assessee could not procure the financial statements and income tax returns from the loan creditors to prove their creditworthiness. But there is no dispute

that the assessee had indeed furnished the PAN of all the loan creditors. The Id AO / Id CITA could have cross verified from the PAN of the creditors with the assessing officers of the creditors and ascertain the creditworthiness. In any case, all these 5 loan creditors had duly confirmed the transactions carried out with the assessee by way of counter signature in the ledger extracts. We find that no adverse inference was drawn on the said ledger extracts by the lower authorities.

3.5. We also find that the loan borrowed from 20<sup>th</sup> Century Finance Corporation Ltd had been duly repaid during the assessment year under consideration itself by the assessee with interest. With regard to loans received from Sharda Castings Ltd, Mittal Ispat Ltd and Pondy Metal & Rolling Mill (P) Ltd, the assessee had repaid the loans in Asst Year 2000-2001 (i.e the immediately succeeding asst year) together with interest. We find that the Id AR before us had tried to produce certain documents connected with DSQ Software and 20<sup>th</sup> Century Finance Corporation Ltd (which was demerged later as TCFC Finance Ltd) to prove their creditworthiness. In our considered opinion, these documents are not required to be looked into at this stage as we have already held that the assessee had reasonable cause from not proving the creditworthiness of the creditors by producing the necessary documents due to ongoing legal suits and disputes pending with those creditors vis a vis the sister concern of the assessee. Moreover those disputes are money suits and obviously the loan creditors would not come forward to cooperate with the assessee by furnishing their financials. The relevant disputes that are pending in the case of sister concern of the assessee with these loan creditors are enclosed in pages 15 to 18 and 20 to 41 of the paper book filed before us which are already forming part of records of the lower authorities.

3.6. Since these are factual issues, the various case laws relied upon by the Id AR at the time of hearing need not be gone into as the relief is hereby granted to the assessee on first principle basis itself .

3.7. In view of the aforesaid detailed observations, we are inclined to accept to the contentions of the assessee that the loans received from aforesaid 5 parties are genuine and not to be treated as unexplained cash credit u/s 68 of the Act in the peculiar facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed.

**4. In the result, the appeal of the assessee is allowed.**

Order pronounced on 24/03/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
JUDICIAL MEMBER

Mumbai; Dated 24/03/2021  
KARUNA, *sr.ps*

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**