

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

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

ITA No. 421/Mum/2018
(Assessment Years 2013-14)

ACIT-25(2), R. No. 508, C-10, 5 th Floor, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	Vs.	M/s Hetali Enterprises Bhanu 6, Vithal Nagar Society, N.S. Road No.10, Juhu Scheme, Vile Parle (W), Mumbai-400049
(Appellant)		(Respondent)
PAN No. AAAFH3954Q		

Revenue by	:	Shri Gurbinder Singh (DR)
Assessee by	:	Shri Sanjay R. Parikh (AR)

Date of hearing:	13.01.2021
Date of pronouncement:	09.04.2021

ORDER

PER M. BALAGANESH, AM:

1. This appeal of the revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals) -37, Mumbai [hereinafter referred to as the Id CITA] in Appeal No. CIT(A)-37/IT-663/ACIT-25(2)/16-17 dated 8.11.2017 against the order passed by the Learned Joint Commissioner of Income Tax, Range 25(2), Mumbai [hereinafter referred to as the Id AO] under section [u/s] 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'] dated 14.3.2016 for the Assessment Year 2013-14.

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the addition of Rs 2,86,00,000/- made on account of unsecured loans u/s 68 of the Act in the facts and circumstances of the case.

The interconnected issue involved therein is as to whether the Id CITA was justified in directing the Id AO to allow interest paid on such unsecured loans in the sum of Rs 2,80,828/- 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 partnership firm engaged in the business of property developers and had filed its return of income for the Asst Year 2013-14 on 30.9.2013 declaring total income of Rs 99,60,380/-. We find that during the course of assessment proceedings, the Id AO observed that the assessee had shown unsecured loans of Rs 7,77,18,378/- from various parties in its balance sheet and assessee was asked to furnish confirmations from the lenders for the same. The assessee was also asked to prove the identity, creditworthiness of the lenders and genuineness of the transactions within the meaning of section 68 of the Act. We find that the Id AO had admitted in para 6.1. of his assessment order that the assessee had furnished the loan confirmations along with the copies of ITR acknowledgement, balance sheet and bank statement of the lenders together with the list of details and documents called for with regard to unsecured loans. The Id AO thereafter summarised the unsecured loans received from following 7 parties as under:-

Casper Enterprise Pvt Ltd	- Rs	10,00,000/-
Duke Business Pvt Ltd	- Rs	20,00,000/-
Pragati Gems Pvt Ltd	- Rs	50,00,000/-
Josh Trading Pvt Ltd	- Rs	50,00,000/-
Nakshatra Business Pvt Ltd	- Rs	40,00,000/-
Olive Overseas Pvt Ltd	- Rs	45,00,000/-
Sumukh Commercial Pvt Ltd	- Rs	71,00,000/-
	-----	Rs 2,86,00,000/-

3.1. We find that the Id AO observed in his order that information was received from office of DGIT (Inv.) Mumbai vide letter dated 7.7.2014 wherein it was informed that Shri Pravin Kumar Jain was searched by the Investigation wing , Mumbai and during the course of search operation, it was found that Shri Pravin

Kumar Jain was an entry operator engaged into the practice of providing bogus accommodation entries and that the assessee had received bogus loans from parties controlled by Shri Pravin Kumar Jain. Thereafter, the Id AO issued notices u/s 133(6) of the Act to the aforesaid parties to verify the identity and creditworthiness of the loan creditors and genuineness of the transactions. These notices were sent to the addresses (including new addresses) provided by the assessee. We find that the Id AO observed that out of 7 parties above, 3 parties i.e Casper Enterprise Pvt Ltd (Rs 10 lacs), Duke Business Pvt Ltd (Rs 20 lacs) and Pragati Gems Pvt Ltd (Rs 50 lacs) responded before the Id AO to notice issued u/s 133(6) of the Act by furnishing ledger copies, bank statements and acknowledgement of returns of income. The Id AO observed in respect of these 3 parties, that the income disclosed by them in their income tax returns is very meagre and all these parties have negative reserves and surplus in their respective balance sheets and accordingly concluded that the transactions with these 3 parties were unverifiable. In respect of other 4 parties, the notices u/s 133(6) of the Act sent by the Id AO returned unserved with remarks of postal authorities stating 'not known' or 'left' in the addresses given by the assessee. Accordingly, the Id AO directed the assessee to produce all the principal officers of the companies for cross examination vide order sheet entry dated 29.2.2016 and also show caused as to why the loans received from aforesaid 7 parties should not be treated as unexplained cash credit u/s 68 of the Act.

3.2. We find that the assessee responded to the show cause notice before the Id AO by stating that the said loans of Rs 2.86 crores were received and repaid in normal course of business by account payee cheques. All these transactions were duly reflected in the bank accounts of the assessee as well as the respective parties also. Confirmations from all the parties together with their income tax return acknowledgements and bank statements were submitted vide letter dated 21.1.2016. We find that the assessee also furnished affidavits from all the parties denying the declaration given by them to the income tax

department. We find that the Id AO in para 6.29 of his order had stated that assessee had filed affidavit -cum-declarations given by Mr Deepak Dinesh Laddha, director of M/s Pragati Gems Pvt Ltd ; Mr Praveen Kumar H Jain, Director of M/s Olive Overseas Pvt Ltd , M/s Sumukh Commercial Pvt. Ltd and M/s Nakshatra Business Pvt Ltd ; Mr Jitendra Mahaveer Tater, Director of M/s Duke Business Pvt Ltd and M/s Casper Enterprise Pvt Ltd and Mr Abhinandan Dharmichand Ranka, Director of M/s Josh Trading Pvt Ltd. We find that the Id AO observed that all the above affidavits were dated 10.8.2015 which were notarised in Thane, wherein it was mentioned that the loan is advanced out of business funds of the company and is reflected in the respective books of accounts of the company. It was also mentioned that they confirmed that statement given to income tax authorities on behalf of their company was retracted vide affidavit dated 15.5.2014 and hence the statement is null and void and as have never been made. We find that the Id AO also observed in para 6.30 of his order that Shri Praveen Kumar Jain and his associates had also filed individual affidavits on 15.5.2014 in the CBDT duly retracting their earlier statements given u/s 132(4) of the Act during the course of search proceedings. We find that the Id AO disregarded these retraction statements and affidavits by stating that the same had already been disposed off by the Investigation Wing, Mumbai by countering with para wise comments and hence reliance on the same would not hold any water for the assessee. It was submitted by the assessee that all the above parties are private limited companies and their proof of identity can easily be established through government website of Ministry of Corporate Affairs and accordingly pleaded that all the transactions with the aforesaid parties were genuine and no addition u/s 68 of the Act need to be made thereon. We find that the Id. AO observed in para 6.7. of his assessment order that mere filing of annual accounts, ITR acknowledgements, confirmations and bank statements / affidavits does not actually prove the identity, creditworthiness and genuineness. Thereafter we find that the Id AO observed that by these documents, only the identity and creditworthiness of the lenders

are proved but the genuineness of the transactions had not been proved. But finally the Id AO in para 6.38 of his order observed that the assessee had not proved the creditworthiness of the lenders and genuineness of the transactions and accordingly proceeded to treat the loans received from the aforesaid 7 parties as unexplained cash credit u/s 68 of the Act in the sum of Rs 2,86,00,000/- . Since loans were added u/s 68 of the Act, the corresponding interest paid on such loans amounting to Rs 2,80,828/- was also sought to be disallowed by the Id AO in the assessment.

4. We find that the Id CITA, after duly acknowledging the fact that the entire documents that were called for by the Id AO had been duly submitted by the assessee before him in respect of all the 7 unsecured loan creditors, observed that the Id AO had solely relied upon the statement of Shri Pravin Kumar Jain given by him during his search. We find that the Id CITA also observed that the Id AO did not carry out any worthwhile independent enquiry in the matter and ignored the documentary evidences completely which were submitted by the assessee. He observed that no defects were pointed out by the Id AO with regard to the documentary evidences submitted by the assessee. He observed that without pointing out any defects or lacuna in the evidences submitted by the assessee, the Id AO ought not to have doubted the sources and genuineness of transactions. We find that the Id CITA observed that once the primary documents are submitted by the assessee to the Id AO as directed, then the onus shifts on the Id AO to prove that those are non-genuine. In the instant case, the Id AO had not discharged the onus cast on him and merely based on statement of a third person without any corroborative evidence, the Id AO had treated the loan transactions as accommodation entries. With these factual observations and by placing reliance on various decisions, we find that the Id CITA had deleted the addition made u/s 68 of the Act in the sum of Rs 2,86,00,000/- towards unsecured loans and correspondingly allowed deduction for interest on such unsecured loans in the sum of Rs 2,80,828/-.

5. At the outset, we find that the assessee had borrowed loans from 7 parties as detailed above during the Asst Year 2013-14. Out of these borrowings, we find that the assessee had duly repaid the loans within the Asst Year 2013-14 in respect of following parties :-

30.8.2012 – Repayment to Nakshatra Business Pvt Ltd	– Rs 40 lacs
30.8.2012 – Repayment to Olive Overseas Pvt Ltd	– Rs 45 lacs
30.8.2012 – Repayment to Casper Enterprises Pvt Ltd	– Rs 10 lacs
30.8.2012 – Repayment to Duke Business Pvt Ltd	– Rs 20 lacs

Similarly, the loans were repaid by the assessee firm to remaining three parties in Asst Year 2014-15 as under:-

31.12.2013 – Repayment to Josh Trading Pvt Ltd	– Rs 16.50 lacs
31.12.2013 – Repayment to Josh Trading Pvt Ltd	– Rs 16.50 lacs
01.01.2014 – Repayment to Josh Trading Pvt Ltd	– Rs 10.00 lacs
01.01.2014 – Repayment to Josh Trading Pvt Ltd	– Rs 7.00 lacs

	Rs 50.00 lacs

07.01.2014 – Repayment to Pragati Gems Pvt Ltd	– Rs 25 lacs
12.02.2014 – Repayment to Pragati Gems Pvt Ltd	– Rs 25 lacs

	Rs 50 lacs

12.02.2014 – Repayment to Sumukh Commercial Pvt Ltd – Rs 71 lacs

5.1. We find that this tribunal had accepted loans received from 6 lenders out of the aforesaid 7 lenders as genuine while deleting the additions made u/s 68 of the Act in the case of M/s Yug Developers vs ACIT in ITA Nos. 7130 & 7222/Mum/2018 dated 17.7.2019. The lenders who are construed as genuine in this decision are Casper Enterprises P Ltd, Duke Business Pvt Ltd, Nakshatra

Business Pvt Ltd , Pragati Gems Pvt Ltd, Olive Overseas Pvt Ltd and Sumukh Commercial Pvt Ltd .

5.2. We find that this tribunal had accepted loans received from Josh Trading Pvt Ltd to be genuine while deleting the addition made u/s 68 of the Act in the case of DCIT vs Trinity Infratech Pvt Ltd in ITA No. 2721/Mum/2017 dated 6.2.2019.

5.3. We find that once the assessee has furnished the complete details about the loan creditors together with their latest addresses as available with it and affidavits from directors duly notarised including details of loan repayments made to those companies and confirmations from them for the loans advanced to the assessee, the onus cast on the assessee u/s 68 of the Act stands duly discharged and no addition could be made in its hands merely on because the lenders fail to appear before the Id AO or the assessee failing to produce them before the Id AO. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Orchid Industries P Ltd reported in 397 ITR 136 (Bom). We further hold that no addition could be made on mere presumption that the assessee routed its own cash in the form of unsecured loans without any concrete evidence to this effect. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Aquatic Remedies P Ltd in ITA No. 83 of 2016 affirming the tribunal decision in ITA No. 6356/Mum/2014. We also find that the directors of the lending companies had filed affidavits confirming the loan transactions before the Id AO which had not been disputed. Once the averments made in the affidavit are not disputed or refuted, the same are to be construed as true and correct, as held by the Hon'ble Supreme Court in the case of Mehta Parikh & Co. vs CIT reported in 30 ITR 181 (SC).

6. In view of our aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we find no infirmity in the order of the Id CITA deleting the addition made towards unsecured loans u/s 68 of the Act and correspondingly allowing interest on such unsecured loans by duly appreciating the facts and evidences on record. Accordingly, the grounds raised by the revenue are dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on .04.2021

Sd/-

(PAWAN KUMAR GADALE)
(JUDICIAL MEMBER)

Mumbai, Dated: 09.04.2021

SK.PS

Sd/-

M. BALAGANESH
(ACCOUNTANT MEMBER)

Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील)/ The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधिआयकर ,अपीलीयअधिकरणमुंबई ,/
DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai