

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

माननीय श्री पवन कुमार गडाले, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI PAVAN KUMAR GADALE, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
 (Hearing through Video Conferencing Mode)

1. आयकर अपील सं./ I.T.A. No.1217/Mum/2020
 (निर्धारण वर्ष / Assessment Year: 2014-15)

ACIT-26(3) R. No. 332, 3 rd floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400 051	बनाम/ Vs.	Ms. Vishakha U. Manania (Legal heir of Late Shri Umakant Laxmidas Manania) 131/6, 1 st floor, Mani Bhuvan Jain Society, Sion(W) Mumbai-400 037
स्थायीलेखासं./जीआइआरसं./ PAN/GIR No. AACPM-0540-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Usha Gaikwad-Ld. Sr. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Suchek Anchaliya -Ld. AR

सुनवाईकीतारीख/ Date of Hearing	:	08/09/2021
घोषणाकीतारीख / Date of Pronouncement	:	13/09/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income-Tax (Appeals)-38, Mumbai [CIT(A)], dated 27/11/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 30/12/2016. The ground read as under: -

- A. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the disallowance of purchases on G.P% basis and addition made thereof on estimation basis along with addition on estimated commission @ 2% of bogus purchase transaction for the A. Y. 2014-15?
- B. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not considering that the addition was made on the basis of information received from DGIT(Inv.) with regard to bogus purchase made by the assessee from dealers without actual supply of goods?
- C. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not considering that the assessee could not prove the genuineness and creditworthiness of purchase transactions during the course of assessment proceedings?
- D. Whether on the facts and circumstances of the case and in Law, the Ld. CIT (A) has erred by not appreciating that onus to justify the claim of expenses is on the assessee and he has failed to discharge it in relation to the purchases made from the non credible vendors?
- E. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was correct in not considering the decision of Hon'ble Apex Court in the case of N K Proteins Ltd. vs. DCIT in SLP (Civil) No. 769/2017 dated 16.01.2017 wherein the Court has held that when the purchases are from bogus suppliers the entire purchases are liable to be disallowed.
- F. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting addition made on account of bogus loans and interest claimed on it without appreciating the fact that Shri Lunkaran Kothari and Shri Bhanwarlal Jain has admitted before the investigation wing that they did not carry out any real business.?

As evident the revenue is aggrieved by relief provided by Ld. CIT(A) on account of alleged bogus purchases and bogus loans.

2. The Ld. DR, drawing attention to the factual matrix, supported the assessment framed by Ld. AO. The Ld. DR referred to the decision of Hon'ble Rajasthan High Court in **Clarity Gold Private Ltd. V/s Pr. CIT (102 Taxmann.com 421)** which has confirmed the addition made u/s 69A in respect of bogus purchases. The Ld. AR, on the other hand, submitted that inquiries were conducted by Ld. AO at the fag-end of assessment proceedings due to which the compliances could not be

made by the assessee. However, due compliances were made during remand proceedings.

3. Having heard rival submissions and after careful consideration of material on record, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

Assessment Proceedings

4.1 The material facts are that deceased assessee being resident individual was stated to be engaged as Diamond Manufacturer, Trader & Exporter. While verifying the purchases, notices issued to three entities u/s 133(6) as well as commission issued u/s 131(1)(d) revealed that none of these entities were running their business at the given addresses. The details of three entities has been extracted in para 4.1 of the order. The assessee made aggregate purchases of Rs.1059.01 Lacs from these entities. The purchases made from another entity i.e. M/s Marine Gems Private Limited for Rs.10 Lacs has also been subsequently added in this list.

4.2 Accordingly, the assessee was show-caused as to why the purchases made from these entities be not treated as bogus purchases and added to its income. The assessee refuted the allegations by submitting that the purchases were genuine. In support, the assessee filed Income Tax Return of the three entities and submitted that there was no change in the address. The assessee also submitted copies of purchase invoices, sales invoices, stock book showing movement of goods, ledger confirmations, bank statements evidencing payment through banking channels etc.

4.3 However, rejecting the assessee's submissions, Ld. AO rejected books u/s 145(3). The assessee reflected Gross Profit (GP) Rate of

4.05% in this year as against GP rate of 5.17% in immediately preceding year. Therefore, the additions were estimated @1.12% against these purchases. The assessee must have paid commission to procure these entries which was estimated @2%. Finally, an addition of Rs.75.22 Lacs was made in the hands of the assessee on account of unproved purchases.

4.4 The second addition was u/s 68 since the assessee had outstanding loans of Rs.805.01 Lacs at year-end against seven entities as detailed in para 5.1 of the order. These entities were allegedly being run by accommodation entry provider Shri Gautam Jain who was subjected to search proceedings. In the recorded statement, it was admitted that the group provided accommodation entries as per the requests of the parties. Few of the parties were allegedly being run by another entry provider Shri Bhanwarlal Jain wherein similar admissions were made. The summons issued to the parties remains un-responded and the assessee failed to produce the parties. Consequently, in terms of ratio of various judicial pronouncements, the unsecured loans of Rs.795 Lacs as taken from seven entities were added to assessee's income u/s 68 as unexplained cash credit. The interest of Rs.29.90 Lacs paid to these entities was also added back.

Appellate Proceedings

5.1 During appellate proceeding, the assessee assailed the findings of Ld. AO by drawing attention to the documentary evidences supporting the purchase made by the assessee. It was stated that no purchases were made from M/s Marine Gems Pvt. Ltd.

5.2 Regarding unsecured loans, the assessee drew attention to the fact that during assessment proceedings account confirmation of loan

parties, bank statement of the assessee as well as lenders, ITR acknowledgement of the lenders were filed and the transactions were genuine. It was submitted that the loans were repaid through banking channels during the year itself. The interest was paid on these loans after deduction tax at source.

5.3 The assessee submitted additional evidences in the shape of (i) affidavit of lenders and suppliers; (ii) audited financial statements of lenders; (iii) bank statements of purchase parties. These were subjected to remand proceedings. During remand proceedings, fresh notices u/s 133(6) were issued which were duly responded to by all the parties along with requisite documents. The statement on oath was recorded in few cases wherein the transactions were confirmed.

5.4 The Ld. CIT(A) after due consideration of material on record, remand report and assessee's rejoinder concurred that the estimated additions on account of purchases were not sustainable since Ld. AO could not point out any discrepancies in assessee's documentary evidences. The time allotted to the assessee to produce the parties was inadequate. However, the assessee furnished confirmation of accounts, affidavit, ITR, bank statements, statement of on-to-one mapping of the purchases with corresponding sales, purchase and sales invoices etc. Notices issued u/s 133(6) during remand proceedings were duly responded to by the suppliers along with documentary evidences. Further, there was no adverse remark in the remand report regarding the authenticity of documents submitted by the assessee as well as by the suppliers. The three suppliers were well in existence as on-going business concerns. Therefore, the addition of Rs.75.22 Lacs was not sustainable.

5.5 Similarly, the additions u/s 68 was deleted with following observations: -

8.4.3 I have carefully considered the submissions of the appellant, perused the assessment order, material on record and duly considered the factual matrix of the case and the legal provisions applicable to the facts of the case. On careful perusal of the balance sheet for the year ended on 31.03.2014 relevant to A.Y. 2014-15 of the appellant, it is seen that no outstanding balances in the name of the above-mentioned parties are reflected in the Balance Sheet which is in conformity with the submission of the appellant that the said funds were borrowed during the impugned assessment year for short duration and the loans were repaid within the same financial year relevant to the assessment year under consideration. Further, as per annexure No.6 to Clause 31 (a) of Audit Report dated 29.11.2014 for the year ended on 31.03.2014 relevant to A.Y. 2014-15, all the aforesaid loans are certified by the auditor to have been taken and repaid by the appellant during the instant assessment year. This is also evident from the bank statements of the appellant as well as of the aforesaid loan creditors. I have observed that there are credit and debit entries in the bank statement of the appellant as well as in the bank statement of the afore-said parties during the financial year, 2013-14 relevant to the instant assessment year. Hence, these transactions are in the form of running accounts as depicted in the confirmation of ledger account. This indicates that appellant has taken funds from the said parties on several instances and repaid the same in installments during the same financial year. Hence, in the given facts and circumstances, in my opinion, the creditworthiness of the parties, cannot be based solely on the total income declared in the Income Tax Return. What is to be seen is the availability of funds with them to lend at that point of time when it is claimed that such finance was transacted and transferred to the bank account of the appellant. The bank statements show that the afore-said parties transacted in sizeable amounts during the impugned assessment year and there was sufficient credit balance in their bank accounts to lend money to the appellant. Before me, besides the ledger confirmation submitted to the AO during the assessment proceedings, the appellant submitted affidavits of loan parties in which they have confirmed that they have given genuine loan to the appellant through banking channels. The above documents forwarded to the AO have been verified in the remand proceedings and the AO has not pointed out any discrepancy noticed in the said documentary evidence. In the remand proceedings, the parties submitted to the AO, the documents requisitioned by the AO u/s. 133(6). The concerned persons of three parties, M/s Arya Exports, M/s Kothari & Co. and M/s Jewel Diam were present before the AO for deposition in response to summons issued u/s. 131 by the AO. In their statements recorded under oath, they have admitted that during the impugned assessment year, loans were given and received back from the appellant with interest. The appellant deducted TDS on the interest paid to them. Therefore, in my considered opinion there is merit in the contention of the appellant that all the three requisite ingredients, viz., identity and creditworthiness of the loan creditors and genuineness of the loan transactions stand established and proven satisfactorily.

8.4.4 I find the AO considering the statement of Shri Gautam Jain recorded by the Investigation Wing, Income tax Department during the search action u/s. 132 that he has provided bogus purchase bills and bogus unsecured loan entries through the

business concerns floated by him to the parties as per their requirements and that such companies, M/s. Marine Gems Pvt. Ltd. and M/s. Rajat Diamond Exim Pvt. Ltd. advanced loans amounting to Rs.10,00,000/-and Rs. 35,00,00,000/- respectively to the assessee issued summons u/s. 131 of the I.T. Act to the above parties and others mentioned at Sr. No. 4 to 7 through Commission to his counterpart in Surat. From the perusal of report dated 29.12.2016, sent by the AO's counterpart from Surat, the AO learnt that the Inspector deputed to serve the notice u/s.131 found the given premises closed and the local enquiries made revealed that no business was ever running from that place and that the said parties do not exist at the given address and are not traceable and nobody had heard any time anything about them. Based on the above, the AO vide order sheet entry dated 29.12.2016 asked the appellant to produce the parties on 30.12.2016 which was not complied with. The appellant expressed inability to produce the parties who are based in Surat within such a short duration. Thus, the conclusion drawn by the AO that the genuineness of loan transaction, identity and creditworthiness of the loan creditors have not been established is not a sound footing in the absence of any corroborated material supporting the statement of third-party.

8.4.5 In view of the documentary evidences mentioned above, brought on record by the appellant during the assessment proceedings and in the appellate proceedings which were remanded to the AO, I find the view of the AO that the impugned loan creditors are mere entry providers and that the impugned loan entries have been obtained by the appellant against payments made to the said entry providers in cash is not sustainable. There is no specific material on record to pin-point that the aforementioned creditors are entry providers and that entries of the loan in question have been obtained against payments made by the appellant in cash outside the regular books of account. There is no material proof on record of payment of any commission or fee by the appellant to the alleged aforesaid parties. All this goes to support the contentions of the appellant that these are genuine loans. On the contrary, the key persons of the alleged parties, M/s Arya Exports, M/s Kothari & Co. and M/s Jewel Diam appeared before the AO. In their statements recorded under oath before the AO which are reproduced in the remand report it transpires that all the three parties have confirmed that they have given genuine loans to the appellant in the regular course of business and have not provided any accommodation entries or cash in exchange of cheque. Further, there is no cash movement and as per the bank account no withdrawals were found before and after the said loans were taken which proves that the appellant has not paid any cash at the time of taking the loan nor has received any cash at the time of repaying the loan and AO's contentions of involvement of unexplained cash is therefore not viable. The fact remains that, there is no incriminating material to contradict the submissions and contentions of the appellant that the loans received from the aforesaid parties and repaid within short span of time are genuine borrowings.

8.4.6 The facts of the appellant's case are identical to those of in the case of H.R. Mehta, *wherein the Hon'ble Bombay High Court adjudicated similar issue in its order dated 30-06-2016 in INCOME TAX APPEAL NO.58 OF 2001*. In that case, the assessee had adduced evidence by way of bank record to show that loan had been received from a creditor through banking channels. The creditor was not physically traceable, as much time had elapsed and his address had changed. The assessment had been reopened on the basis of third party evidence collected in a search action in the case of a charitable trust. Despite specific request in this regard, the Assessing Officer concerned did not provide to H R Mehta a copy of the

appraisal report & third party statement etc. and proceeded to treat the loan as unexplained. The Hon'ble High Court struck down the order of reassessment by observing that revenue was not justified in making the addition without having first giving the assessee an opportunity to cross examine the deponents on the statements relied upon by the ACIT.

8.4.7 Hence, it is to be inferred that in a case where the assessee has supplied all possible information to the Assessing Officer to explain the credit transaction, he has satisfactorily discharged the burden cast on him and it would be for the revenue to prove that the transaction is not satisfactorily explained and provisions of section 68 of the Act are applicable. In the case before me, the record also shows that to prove the genuineness of the impugned loan entries from the 7 creditors, the appellant has furnished to the Assessing Officer the following details and the copies of which are also furnished before me. They are-

- I. PAN details of creditors
- II. Constitution and address of the creditors
- III. Particulars of income-tax returns filed by the creditors
- IV. Confirmatory letters given by the creditors
- V. Audited financial accounts (including balance sheets) of the creditors
- VI. Relevant bank statements of the creditors

8.4.8 In the case of **ITO vs. Anant Shelters (P) Ltd. [2012] 051 SOT 0234**, the Hon'ble ITAT (Mumbai) the Tribunal has held that *"in matters regarding cash credit the onus of proof was not a static one. As per the provisions of the section 68, the initial burden of proof lies on assessee. Amount appearing in books of accounts of the assessee was considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of transaction could be proved by showing that money was received by an account payee cheque or by draft. Credit worthiness of the lender could be established by attending circumstances. Once assessee produces evidences about identity, genuineness and credit worthiness of the lender, onus of proof shifts to revenue. Therefore, it was held that assessee had furnished all the details regarding genuineness of cash credit, i.e., he had discharged his burden of proof. AO did not make any attempt to discharge his burden of proof to rebut the evidences produced by assessee. No addition u/s.68 can be sustained."*

8.4.9 From the records, it is seen that the appellant has substantially proved the three ingredients required to prove the identity and creditworthiness of the creditor and genuineness of loan transactions. The three ingredients having been satisfied, the impugned loans of Rs.7,95,00,000/- have to be treated as explained satisfactorily. The AO to show that loans were unexplained adduced no cogent material. In view of the above, I am unable to sustain the addition made u/s 68 of the Income Tax Act, 1961. The AO is directed to delete the addition of Rs. 7,95,00,000/- . Accordingly, the grounds of appeal No. 4 & 5 are allowed.

Consequently, interest paid by the assessee on these loans was to be allowed. Aggrieved as aforesaid the revenue is in further appeal before us.

Our findings and Adjudication

6. So far as the addition on account of suspicious purchase is concerned, upon perusal of impugned order, it could be gathered that Ld. AO could not point out any discrepancies in assessee's documentary evidences. The time allotted to the assessee to produce the parties was inadequate. However, during assessment / remand proceedings, the assessee furnished copies of sale & purchases invoices, confirmation of accounts, affidavits of the suppliers, Income Tax Returns of the suppliers, bank statements, and statements of on-to-one mapping of the purchases with corresponding sales. Notices issued u/s 133(6) during remand proceedings were duly responded to by the suppliers along with documentary evidences as desired by Ld. AO. Further, there was no adverse remark in the remand report regarding the authenticity of documents submitted by the assessee as well as by the suppliers. The three suppliers were well in existence as on-going business concerns. Therefore, the assessee, in our considered opinion, had duly substantiated the purchases transactions and the additions have rightly been deleted by Ld. CIT(A) in the impugned order. The case law of Hon'ble Rajasthan High Court in **Clarity Gold Private Ltd. V/s Pr. CIT (102 Taxmann.com 421)**, as referred to by Ld. DR, deal with a search case and the additions were made on the basis of seized material. However, the same is not the case here. Ground Nos. A to E stand dismissed.

7. We find that similar is the position of unsecured loans. It could be gathered that the loans obtained by the assessee were already repaid during the year along with interest. The funds were borrowed for a short duration. This fact was duly certified by the Tax Auditor in the Audit

Report. The transactions have taken place through banking channels. The transactions were in the form of running accounts as depicted in the confirmation of ledger account. The source of funds could not merely be the Income declared in the Income Tax Return. What is to be seen is the availability of funds with the lenders at that point of time when it is claimed that such finance was transacted and transferred to the bank account of the appellant. It is undisputed fact that the lenders transacted in sizeable amounts during the impugned assessment year and there was sufficient credit balance in their bank accounts to lend money to the appellant. The transactions have duly been confirmed by the lender and confirmatory affidavits have been placed on record. The additional documents furnished by the assessee were forwarded to Ld. AO and the same were verified in the remand proceedings. The Ld. AO has not pointed out any discrepancy in the said documentary evidences. It is noteworthy that notices issued u/s 133(6) during remand proceedings were duly responded to by the lenders along with documentary evidences. Few of the lenders appeared before Ld. AO and confirmed the transactions. The interest was paid on loans after complying with TDS requirements. Therefore, the conclusion of Ld. CIT(A) that the assessee demonstrated fulfillment of primary ingredients viz. identity and creditworthiness of the loan creditors and genuineness of the loan transactions, could not be faulted with. Hence, the reliance on case laws as referred to by Ld. CIT(A) in the impugned order, to support the conclusion was quite apt which would not require any interference on our part. Consequently, the interest paid by the assessee on these loans was to be allowed. Finding no reason to interfere in the findings of Ld. CIT(A), we dismiss ground no. F of the appeal.

8. The appeal stand dismissed.

Order pronounced on 13th September, 2021.

Sd/-
(Pavan Kumar Gadale)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/09/2021
Sr.PS, Dhananjay

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2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
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