

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No.352/Mum/2020 (Assessment Year 2013-14)

Blue Circle Infratech 1101-1103, 11 <sup>th</sup> Floor Bhoomi Raj, Costa Rica Palm Beach Road Sector 18, Vashi Navi Mumbai-400703  PAN : AAHFB8724F (Appellant)	Vs.	ACIT-28(1) 3 <sup>rd</sup> Floor, Tower No.6 Vashi Railway Station Complex, Vashi Navi Mumbai-400 703  (Respondent)
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Assessee by	Shri Nilesh Joshi
Department by	Shri K.C.Selvamani & Shri Bharat Andhale
Date of Hearing	08.10.2021
Date of Pronouncement	18 .11.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-26 dated 06.11.2019 and pertains to assessment year 2013-14.

2. Grounds of appeal read as under:-

1. The learned Assessing Officer has erred in making the addition and the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 1,80,00,000/- towards the loan received by the appellant and treated as bogus loan and added back to the income of the appellant.

2. The learned Assessing Officer has not followed the due process of law, and merely passed the order in a mechanical manner and the learned Commissioner of Income Tax (Appeals) has erred in passing the ex-Parte Order and upholding the order passed by the Assessing Officer without considering the circumstances and facts of the case.

3. The brief facts are that the return of income for A.Y 2013-14 was filed on 31/03/2015 declaring total income at Rs. NIL. The appellant is a Real Estate Developer. Subsequently, the case was reopened by serving notice u/s.148 on 07.06.2016 after recording the reasons for reopening based on account of information received from Director of Income Tax (Investigation)-II vide letter No.DIT(INV)-II/information/PJ/2014-15 dated 07.07.2014. In response to notice sent u/s.148 assessee filed return of income on 24.06.2016 for A.Y.2013-14, declaring total income at nil. The reasons recorded for issuing of notice u/s.148 were provided at the assessee's request. Assessee also filed objection to the reopening of assessment proceeding which were duly disposed off as per the GKN Driveshaft case law of Bombay high court. Speaking order for disposal of objection was received by AR.

The assessment was completed on 27.06.2017 at income of Rs. 1,80,00,000/- on the basis of findings of search action at the premises of Shri Praveen Jain that the appellant has taken accommodation entries of Rs 1.80,00,000/- from 5 entities which were bogus concerns. Upon AO's query the assessee has **supplied** the confirmation from the parties. Bank statement was also submitted. The AO himself did not make any enquiry from the concerned parties. AO did not accept the contention of assessee by holding as under: -

- "i) Assessee is not able to produce ITR's of these 5 entities. Hence their identity isn't established,.
- ii) Search action conducted at the premises of Praveen Jain itself gives conclusive evidence that these are the bogus entities of Praveen Jain, which are utilized to give accommodation entries to various assesseees.
- iii) Statement recorded of Mr Nilesh Parmar who is accountant for 30 companies of Praveen jain is made part of the order as annexure 1. He clearly mentions that

Praveen Jain is providing accommodation entries to various assesseees. The statement includes names of all 5 entities from whom accommodation entries are taken by assessee in AY 2013-14.

iv) Statement recorded of Mr. Uttam Hinger is made part of assessment order as annexure B. He is brother in law of Praveen Jain and works with Praveen Jain. He has given statement of oath telling that none of the entities run by Mr. Praveen Jain are genuine in nature.

v) The relevant extracts of the said statement of Rakesh Doshi recorded u/s. 131 of the I.T. Act, 1961 during the course of the survey action in his case on 25/03/2014 which gives a fair idea regarding modus operandi of this whole entry providing business run by Mr. Praveen Jain of which our assessee is beneficiary.

vi) Shri Praveen Kumar Jain in his statement recorded on oath u/s. 132(4) of the I. T. Act, 1961 on 01/10/2013 admitted that he is indulged in providing accommodation entries and also explained the complete modus operandi of providing such entries."

4. Upon assessee's appeal Ld.CIT(A) confirmed the same in a very short order as under:-

"During the course of appellate proceedings, the appellant has not complied to any of the notices as stated above nor any submissions were made. Hence it can be inferred that the assessee has nothing to say in support of the grounds of appeal. The statement of facts also does not help the appellant in deciding the appeal on merits. Therefore there is no reason to deviate from the order of the AO. Hence, the addition made by the Assessing Officer for AY 2013-14 is confirmed. The appellant's grounds of appeal are 'Dismissed'."

5. Against the above order, assessee is in appeal before us.

6. We have heard both the parties and perused the records. The Ld. Counsel of the assessee submitted that assessee has submitted all the documentary evidence in support of the loans including the loan confirmation as well as the bank statement. The AO has not done any enquiry whatsoever, he has not issued notices to the parties, he has rejected all the documentary evidences, on the ground that ITR of the above entities was not produced by the assessee. Hence, Ld. Counsel submitted that since, assessee has discharged its onus and AO has not done any enquiry, the addition is not sustainable. Per contra Ld. DR relied upon the order of authorities below.

7. Upon careful consideration, we note that the addition loans as bogus cash credit has been done solely on the basis of information received from Investigation wing regarding the search in case of Praveen Jain and bogus companies being operated by him. Assessee has duly submitted the loan confirmation and bank statement. The AO has not even bothered to issued notice to the concerned parties. He has put the onus of providing the ITR of these parties to the assessee. In our considered opinion, this is a failure on the part of AO to discharge the duty cast upon him. It is not the case that AO is not having the name and address of the parties. These are all corporate entities. When the loans were through banking channel and confirmation was produced by the assessee. The onus was upon the AO to properly enquire and bring on record cogent evidence to sustain the addition. Simply on the basis of search and seizure made at other place, addition cannot be made in the hands of the assessee without any enquiry by the AO himself. In identical situation in the case of bogus purchases addition from Sales tax department information in the case of Shapoorji Pallonji & Co. Ltd. (supra) vide order dated 4.3.2020. Hon'ble Bombay High Court has held as under:-

"18. Thus, we find that according to the Tribunal the assessing officer had merely relied upon information received from the Sales Tax Department, Government of Maharashtra without carrying out any independent enquiry. Tribunal had recorded a finding that assessing officer had failed to show that the purchased materials were bogus and held that there was no justification to doubt genuineness of the purchases made by the respondent - assessee.

19. We are in agreement with the views expressed by the Tribunal. Merely on suspicion based on information received from another authority, the assessing officer ought not to have made the additions without carrying out independent enquiry and without affording due opportunity to the respondent - assessee to controvert the statements made by the sellers before the other authority. Accordingly, we do not find any good ground to entertain this question for consideration as well.

20. Consequently, we find no merit in the appeal preferred by the Revenue. Appeal is dismissed."

8. Here also, we note that there is no independent enquiry by AO and no opportunity has been afforded to the assessee to controvert the statements of parties, which have been relied by the AO.

9. In the background of aforesaid discussion and precedent, we set aside the order of authorities below and decide the issue in favour of the assessee.

10. In the result, this appeal by the assessee stands allowed.

Pronounced in the open court on 18.11.2021.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 18/11/2021  
Thirumalesh, Sr.PS

Copy of the Order forwarded to :

The Appellant

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

//True Copy//

BY ORDER,

(Assistant Registrar)

