

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4390/M/2017
Assessment Year: 2012-13**

Income Tax Officer 5(2)(4), Room No.566, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Premier Capital Services Pvt. Ltd., 28-29, Vimal Mahal, 755, Peddar Road, Mumbai - 400 026 PAN: AAACPK6493R
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rakesh Joshi, A.R.
Revenue by : Shri Bbagchi, D.R.

Date of Hearing : 21.09.2021
Date of Pronouncement : 01.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 24.03.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised in the grounds of appeal by the Revenue is against the order of Ld. CIT(A) deleting the addition of Rs.3,46,00,000/- as made by the AO under section 68 of the Act towards unsecured loans taken from shell companies.

3. The facts in brief are that the assessee filed the return of income on 14.09.2012 declaring income of Rs.6,91,800/- which

was processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected under CASS and statutory notices were duly issued and served upon the assessee. During the course of assessment proceedings the AO observed from the balance sheet that assessee has raised short term loans from three parties namely M/s. Nishant Finance Pvt. Ltd. – Rs.96,00,000/-, M/s. Dev Share Trading Pvt. Ltd. – Rs.1,50,00,000/- and M/s. Printage Offset Pvt. Ltd. – Rs.1,00,00,000/- aggregating to Rs.3,46,00,000/- which were invested by the assessee company of unquoted securities in two companies namely M/s. Pumarth Widows Pvt. Ltd. Rs.1,50,00,000/- and M/s. Pumarth Property Holding Pvt. Ltd. Rs.1,99,99,500/- .Accordingly, the AO called upon the assessee to furnish the details of unsecured loans raised which was replied by the assessee vide letter dated 18.11.2014 accompanying therewith loan confirmations from the said parties. Thereafter, the AO issued show cause notice dated 19.03.2015 calling upon the assessee as to why the unsecured loans amounting to Rs.3,46,00,000/- should not be added to the income of the assessee for being bogus and non genuine which was again replied by the assessee vide letter dated 25.03.2015 again submitting the details of unsecured loans/inter corporate deposits from these three parties along with loan confirmations and bank statements etc. The AO was not convinced with the reply of the assessee and he added all these three loans to the income of the assessee by treating the same as bogus and non-genuine under section 68 of the Act.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by holding that the AO has completely failed to examine the evidences filed before him comprising annual audit reports, director's reports, PANs, bank statements, ROC, returns and confirmations from the lenders. The Ld. CIT(A) noted that the AO has relied on a document found during the course of search on Pumarth group whereas nothing incriminating about the assessee was mentioned in the said document. The Ld. CIT(A) also noted that during the course of search ,a statement of the director was also recorded and nowhere any query was raised in the said statement about these loans which proved that there were no incriminating documents found indicating that these loans were bogus accommodation entries. The Ld. CIT(A) further noted that the AO himself recorded a finding that M/s. Nishant Finance Pvt. Ltd. was an associated company of the group, however, thereafter the AO held that this company was a shell company. While allowing the relief, the Ld. CIT(A) noted that the loan was raised for a period of two months in March and thereafter were repaid alongwith interest on the said loans after deduction of tax at source which was duly deposited with the government treasury. The Ld. CIT(A) also given a finding that there was no deposit of cash in the bank account of the lenders immediately before advancing the loans to the assessee and even AO has allowed the interest on the said loans in the subsequent year. The Ld. CIT(A) further recorded a finding that AO has completely failed to conduct any enquiry further either by issuing summons under section 131 of the Act or notice under section 133(6) of the Act despite assessee filing all the necessary documents. Finally after considering all

the evidences on record the Ld. CIT(A) observed that assessee has proved the genuineness of the loan transactions and thus allowed the appeal of the assessee.

5. The Ld. A.R., at the outset, submitted before us that the issue is squarely covered by the decision of the co-ordinate Bench of the Tribunal in the case of sister concern of the assessee in Shri Sumati Kumar Kasaliwal vs. ACIT, Central-1, Indore in ITA(SS) No.181, ITA 472/Ind/2017 & ors. order dated 30.04.2019. The Ld. A.R. submitted that the assessee has filed all the necessary evidences to prove the identity and creditworthiness of the lenders and genuineness of the transactions by filing annual reports, director's reports, audited balance sheets, PANs, bank statements and confirmations etc., however, AO has not done any further enquiry to verify the truth behind the allegation of bogus loan transactions. The Ld. A.R. submitted that the AO has given conflicting findings that these lenders are shell company whereas as a matter of fact two lenders of the three lenders namely M/s. Nishant Finance Pvt. Ltd. and M/s. Printage Offset Pvt. Ltd. are the group concerns of the assessee and submitted that how can they be treated as shell company by the AO. The Ld. A.R. therefore prayed that the order of Ld. CIT(A) may kindly be affirmed as the same has been passed after taking into consideration all the facts of the case.

6. The Ld. D.R., on the other hand, relied on the order of AO.

7. After hearing both the parties and perusing the material on record, we find that in this case the loans were raised from three parties two of whom were group concerns of the assessee namely

M/s. Nishant Finance Pvt. Ltd. M/s. Printage Offset Pvt. Ltd. These loans were raised for a period of two months and the assessee has repaid the loans back in the subsequent year along with interest thereon after deduction of TDS at source. We note that in the subsequent year the interest on the said loans have been allowed by the AO. We also find that the AO has recorded a given conflicting finding by treating the sister concern of the assessee as shell companies without doing any investigation or enquiry on the evidences filed by the assessee. Therefore, we do not find any infirmity in the order of Ld. CIT(A) and hence uphold the same on the ground that AO has failed to conduct any enquiry in the matter despite assessee having filed all the evidences to prove identity, creditworthiness of the lenders and genuineness of the transactions. We also find that the issue is squarely covered by the order of co-ordinate Bench of the Tribunal in the case of sister concern case Shri Sumati Kumar Kasliwal vs. ACIT, Central-1, Indore in ITA(SS) No.181, ITA 472/Ind/2017 & ors. order dated 30.04.2019. The operative part of the said order is as under:

7.15 As regards the applicability of recent judgement of Hon'ble Supreme Court in the case of PCIT vs. NRA IRON & STEEL PVT. LTD. (supra) heavily relied by Learned Departmental Representative, we observe the Principles laid down in para 11 of the said judgment are not applicable to the facts of the case at hand as would be evident from the following analysis :

Principles laid down by the Hon'ble Supreme Court	Facts of the present case
1. Principles are for sums of money credited as Share Capital/Share Premium	1. The issue is of business loans which were duly repaid in 2 months with interest and tds was deducted therefrom. This is not a case of investment received.
2. Assessee is under an obligation to prove genuineness, creditworthiness and the identity of the investors and the	2. This was not an investment but a loan. Nevertheless the identity, creditworthiness and genuineness was

investment in question.	duly proved and also the creditors were duly repaid in 2 months.
3. AO is duty bound to investigate	3. No investigation has been made by the AO as has been demonstrated in the preceding paras.
4. High Share premium is a capital building exercise	4. Not a case of share capital or share premium. No capital building since all amounts were duly repaid in 2 months with interest. This was a case of genuine business loans.

Thus the ratio of the Hon'ble Supreme Court's decision in PCIT v. NRA Iron and Steel Pvt. Ltd. is not applicable to the facts of the present case.

7.16 In the light of above judgments and given facts and circumstances of the case are of the considered view that the appellant i.e. the assessee has been successful to prove the genuineness, creditworthiness and identity of the alleged cash creditors on account of the fact that all the relevant details and supporting documents are placed on record. Further no incriminating material was found during the course of search which could clearly prove that the alleged transaction of receiving loan was an accommodation entry. The assessee's case further finds support the fact that the alleged loans were taken for a period of two months and have been repaid back with interest. Tax has also been deducted at source on the interest paid. The alleged transaction of receiving loan and being repaid back has been duly acknowledged by the cash creditors in the affidavit. These transaction of receiving loan cannot be equated to a capital formation exercise. Alleged transaction purely looks to be a normal business transaction in which short term loan has been taken for business purposes and have been repaid back after having sufficient funds. The documents filed in support of identity, creditworthiness and genuineness i.e. Profit & loss accounts, income tax returns, audit reports, affidavit of the cash creditors and identity proof have not been disputed by the revenue authorities at any stage. Ld. A.O seems to have made the addition without making any investigation after the loan was taken. The finding given in the impugned assessment order about the investment is during the period prior to taking the loan. We therefore in the given facts and circumstances of the case and respectfully following the judgments in the preceding paragraphs are of the considered view that the addition for unexplained cash credit of Rs.1,80,00,000/- needs to be deleted. We therefore set aside the finding of both the lower authorities and allow this issue of unexplained cash credit raised by the assessee in Ground No. 3 to 9."

8. Since the facts of the present case before us are materially same vis-à-vis the facts of the case in the case of sister concern as discussed above, we therefore respectfully following the co-ordinate Bench decision as discussed above, uphold the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 01.10.2021.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 01.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.