

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA Nos.461 & 462/SRT/2018**

**(निर्धारणवर्ष / Assessment Years: (2013-14 to 2014-15)**

**(Virtual Court Hearing)**

M/s. Rajlaxmi Prints Pvt. Ltd Plot No. 246/1, GIDC, Pandesara, Surat-394221.	<b>Vs.</b>	The DCIT, Circle-2(1)(1), Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCR1036R</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by : Shri Manish Malpani, CA

Revenue by : Ms Anupama Singla, Sr. DR

**सुनवाईकीतारीख/ Date of Hearing : 23/11/2021**

**घोषणाकीतारीख/Date of Pronouncement: 10/01/2022**

**आदेश / O R D E R**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned two appeals filed by the assessee, pertaining to Assessment Years (AYs) 2013-14 and 2014-15, is directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-2, Surat [in short “the ld. CIT(A)”] in Appeal Nos. CAS/2/69/2016-17 and CAS/2/718/2016-17 dated 22.05.2018 and 25.05.2018 respectively, which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”].

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.461/SRT/2018, for assessment 2013-14, have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by the assessee in lead case in ITA No.461/SRT/2018 for assessment 2013-14, are as follows:

*“1) That on the facts and in the circumstances of the case as well as in law, the ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.33,30,000/- u/s. 68 of the Income Tax Act, 1961 (the Act), by assuming the unsecured loans received by the assessee company of Rs. 30,00,000/- and interest paid on the same of Rs.3,30,000/- as non-genuine and by treating the same as unexplained cash credits.*

*2) That the reasons and basis mentioned by ld. Assessing Officer and ld. Commissioner of Income Tax (Appeals) for making/sustaining above addition of Rs.33,30,000/- are wrong, invalid, unjustified, unsustainable and contrary to the settled law.*

*3) That ld. Assessing Officer and ld. Commissioner of Income Tax (Appeals) have erred in making/sustaining above addition of Rs.33,30,000/- by ignoring and not considering the vital evidences submitted and case laws relied upon by the assessee.*

*4) The assessing officer craves leave to add, alter, delete or modify any ground of appeal.”*

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee company filed its return of income for assessment year 2013-14 on 29.09.2013, declaring total income of Rs.57,90,650/-. The return of income was selected for scrutiny and accordingly notice under section 143(2) of the I.T. Act was issued on 04.09.2014. During the assessment year under consideration, the assessee was engaged in the business of Processing Art Silk Fabrics into Dyed and Printed Sarees and Dress Materials on Job Work Basis. During the course of assessment proceedings, it was noticed by assessing officer that in financial year 2012-13, the assessee company has received unsecured loans. The detail of unsecured loan received during the year under consideration (i.e. A.Y. 2013-14) is as under:

<b>Sr. No.</b>	<b>Name and address of the company</b>	<b>Amount of Loan received during the year</b>
1	M/s. Zircon Infracon Pvt. Ltd., 33/1, 7 <sup>th</sup> , Floor, Room No. 768, N.S. Road, Kolkata-700001.	30,00,000/-

The assessing officer during the assessment proceedings found that assessee has received unsecured loans from Kolkata based company namely Zircon Infracon Pvt. Ltd. of Rs.30,00,000/-. The assessing officer during the assessment proceedings obtained the financial details of the lender company and found that this concern was not carrying out any business activity and had almost no revenue generation and neither any income. The assessing officer analyzed the bank statement of the lender company and found that amounts were being credited through cheques/RTGS/NEFT and was immediately transferred out. The analysis of the bank statement at the fourth level showed that cash deposits of Rs.6,60,000/- has been made in one of the accounts through which the funds have been transferred to the assessing company, via Zircon Infracon Pvt. Ltd. The inquiries conducted by the assessing officer showed that lender company had two directors namely Prakashchandra Mishra and Abadh Narayan Jha who were also directors in various companies which were controlled by two known entry providers namely Shri Jivendra Mishra and Sajjan Kumar Garg as per the inquiries conducted by the Investigation Wing, Kolkata. In the statement on oath, Shri Jivendra Mishra had admitted before the Investigation Wing, that he is in the business of providing accommodation entry and was operating from the various addresses through bogus paper companies. In view of the above facts, assessing officer made addition to the tune of Rs.30,00,000/- of unsecured loans u/s 68 and disallowed the interest of Rs.3,30,000/- paid on the unsecured loans.

5. Aggrieved, the issue was taken up before the first appellate authority for relief. However, Id CIT(A) has confirmed the action of the assessing officer.

6. Aggrieved, the assessee has come up with the present appeal.

7. Shri Manish Malpani, pleads before the Bench that all the transactions were duly supported by confirmations, acknowledgement of return of income, audited financial statements, bank statements, MOA and AOA of the Lender. It was contended that transactions have been made through proper banking channels and the investor company is registered with ROC and is active company as per

ROC records and the confirmations had been filed before the assessing officer. Besides, Id Counsel relied on several case laws in support of his contention regarding the genuineness of the unsecured loans. Thus, Id Counsel argues that considering these documents and evidences, the addition made by the assessing officer may be deleted.

8. On the other hand, Learned DR for the Revenue submits that assessing officer during the assessment proceedings obtained the financial details of the lender company and found that this concern was not carrying out any business activity and had almost no revenue generation and neither any income. In the statement on oath, Shri Jivendra Mishra had admitted before the Investigation Wing, that he is in the business of providing accommodation entry and was operating from the various addresses through bogus paper companies. Therefore, Id DR prays the Bench that order passed by the assessing officer may be confirmed.

9. In this background, the rival Counsels have been heard and the relevant material perused. We note that ground nos.1 to 3 raised by the assessee pertain to making addition of Rs.33,30,000/- u/s 68 of the Act, by treating unsecured loan of Rs.30,00,000/- as unexplained cash credit and disallowing interest of amount of Rs.3,30,000/- paid on unsecured loan. We note that main grievance of the Id Counsel for the assessee is that assessing officer has disregarded all the facts and evidences placed on record as to the genuineness, identity and creditworthiness of the unsecured loan and made additions purely on hypothesis and assumptions without bringing any adverse or nexus on record. We note that during the assessment proceedings, assessee has submitted the following documents and evidences:

- (1) Copies of Account Confirmation,
- (2) Bank Statements, showing that all transaction were done through banking channel.
- (3) Copy of Income Tax Return

(4) Audited financial statements (Balance Sheet and profit and loss account) of Lender for the year under appeal.

(5) PAN Card and address of Lender company.

(6) Copy of Ledger account for Lender company of subsequent year along with bank statement evidencing that loan has been repaid in F.Y.2014-15.

(7) Master data of Lender Company as per ROC Portal along with Press Release made by Ministry of Corporate Affairs about identification and striking off of shell companies. Lender company is having 'active' and 'active compliant' status with ROC till to-date, as is evident from their master data on MCA website. Hence, suspicion of ld. A.O. about these companies being paper/shell companies is misplaced.

10. Based on these documents and evidences, Learned Counsel claimed that assessee company has proved the 'triple marker test' of Identity, Creditworthiness and Genuineness of Transactions which are the ingredients of Section 68 of the Act to prove the genuineness of cash credits received by the assessee. The ld Counsel argues that where assessee proved loan transactions from various parties by producing details like copy of PAN card, copy of return of income, balance sheet and copy of bank accounts of creditors, the addition made by the assessing officer should be deleted.

11. We note that Assessing Officer has alleged during the course of assessment proceedings that Assessee Company has received accommodation entry in the form of Loan from M/s Zircon Infracon (P) Ltd. Further, it has been alleged in the remand report that directors of M/s Zircon Infracon (P) Ltd, are also directors of other companies controlled by one Jivendra Mishra and Sajjan Kumar Garg. It is also mentioned that the said Jivendra Mishra and Sajjan Kumar Garg are entry operators. However, the A. O. has failed to bring evidence on record that assessee company had taken any loan from the alleged entry operators or whether the directors of M/s Zircon Infracon (P) Ltd has ever admitted that

they are namesake directors for Jivendra Mishra or Sajjan Kumar Garg. There is no finding that the said alleged entry operators were in any way connected to the assessee. Further, no specific statement has been recorded of the directors of M/s Zircon Infracon (P) Ltd. which could lead to a conclusion that assessee has entered into such bogus transactions. The A.O. has stated that Shri Sajjan Kumar Garg is an entry operator but has not brought any evidence on record to justify his allegation and hence the allegation made by AO is baseless. We note that notice issued u/s 133(6) of the Act were duly served on the loan creditor through post. The loan creditor is a company incorporated under companies Act. The transactions were made through banking channels and duly reflected in the bank statements of the company. We note that company has given loan to the assessee, a small amount, out of its huge share capital and free reserves.

12. We note that Hon`ble Gujarat High Court in the case of Apex Therm Packaging (P.) Ltd, [2014] 42 taxmann.com 473 (Gujarat), held that where name, address, PAN, copy of IT Returns, balance sheet, profit and loss account of all creditors/lenders as well as their confirmation had been furnished, Assessing Officer could not make addition on account of unsecured loan and interest thereon. The findings of the Hon`ble Court is reproduced below:

*“6. We are in complete agreement with the reasoning given by the CIT(A) as well as the ITAT. When full particulars, inclusive of the confirmation with name, address and PAN Number, copy of the Income Tax Returns, balance sheet, profit and loss accounts and computation of the total income in respect of all the creditors/lender were furnished and when it has been found that the loans were received through cheques and the loan account were duly reflected in the balance sheet, the Assessing Officer was not justified in making the addition of Rs. 33,55,011/-. Under the circumstances, no question of law, much less substantial question of law arises in the present Tax Appeal. Accordingly, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.”*

13. We note that Assessee Company under consideration has repaid the loan in subsequent year; therefore addition should not be made in the hand of the assessee company. For this reliance can be placed on the judgment of the jurisdictional Hon`ble High Court of Gujarat in the case of Ayachi Chandrashekhar Narsangji, [2014] 42 taxmann.com 251 (Gujarat), wherein it was

held that where department had accepted repayment of loan in subsequent year, no addition was to be made in current year on account of cash credit. The findings of the Hon`ble Court is reproduced below:

*“6. Having heard Shri Pranav Desai, learned Counsel appearing on behalf of the revenue and on perusal of the order passed by the CIT(A) confirmed by the ITAT, it appears that CIT(A) was satisfied with respect to the genuineness of the transaction and creditworthiness of Shri Ishwar Adwani and, therefore, deleted the addition of Rs.1,45,00,000/- made by the Assessing Officer. It is required to be noted that as such an amount of Rs.1,00,00,000/- vide cheque no. 102110 and an amount of Rs.60 lakh vide cheque no. 102111 was given to the assessee and out of the total loan of Rs.1.60 crore, Rs.15 lakh vide cheque no. 196107 was repaid and, therefore, an amount of Rs.1,45,00,000/- remained outstanding to be paid to Shri Ishwar Adwani. It has also come on record that the said loan amounts been repaid by the assessee to Shri Ishwar Adwani in the immediate next financial year and the Department has accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the ITAT has held that the matter is not required to be remanded as no other view would be possible, we see no reason to interfere with the impugned order passed by the ITAT. No question of law, much less substantial question of law arises in the present Tax Appeal. Hence, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.”*

14. **Conclusion:** From the above facts of the assessee`s case it is vivid that during the course of hearing, assessee filed the confirmation from the loan creditors with their name; address and Income tax file number and thus discharged the primary onus lying on him. All the loans were taken through account payee cheques and the copies of bank statements were also on record. We note that statement of the alleged entry operators were recorded at the back of the assessee and no opportunity to cross examine was provided to the assessee. We note that in case statement of third parties were recorded by the assessing officer at the back of the assessee, if no opportunity of cross examination is provided, then no addition should be made. The assessee is entitled to cross examine any person whose statement has been recorded by the assessing officer and such statement is proposed to be used by the assessing officer, for this reliance can be placed on the judgment of the Hon`ble Calcutta High Court in the case of - CIT v. Eastern Commercial Enterprises 210 ITR 103 (Cal.). Besides, the said loan has been repaid by the assessee company in subsequent year, therefore the genuineness of the transaction should not be doubted. Thus, based on the facts

narrated above, and the precedents applicable to these facts, we delete the additions ( both the assessment years, 2013-14 and 2014-15), made by the assessing officer.

15. In the result, appeals filed by the assessee (In ITA No. 461 and 462/SRT/2018) are allowed.

Order is pronounced on 10/01/2022 by placing result on notice board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सुरत /Surat / दिनांक/ Date: 10/01/2022

*SAMANTA*

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS  
ITAT, Surat