

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"C" BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**  
**AND**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

Sr. No.	ITA/IT(SS)A	Asstt. Year	Name of Appellant	Name of Respondent
1.	ITA No.2517/Ahd/2016	2012-13	DCIT Circle-1(1)(1), Ahmedabad-380015	J. P. Fincorp Services Pvt. Ltd. Iscon House, Opp Associated Petrol Pump, Off C G Road, Ahmedabad-380009 <b>PAN:AABCJ8599F</b>
2.	C.O. No. 199/Ahd/2016	2012-13	Ambe Tradecorp Pvt. Ltd. [Formerly known as J. P. Fincorp Services Pvt. Ltd. "Iscon House", Opp. Associated Petrol Pump, Off. C. G. Road, Ahmedabad- 380015 <b>PAN:AABCJ8599F</b>	DCIT Circle-1(1)(1), Ahmedabad-380019

(Applicant)		(Respondent)
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Assessee by	:	Ms. Nupur Shah, CA
Revenue by	:	Shri Ajay Pratap Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 20/12/2021  
घोषणा की तारीख /Date of Pronouncement: 28/01/2022

**आदेश/ORDER**

**PER WASEEM AHMED, AM:**

The instant appeal filed by the Revenue is directed against the order dated 18.07.2016 passed by the Ld. CIT(A)-2, Ahmedabad arising out of the order dated 27.03.2015 passed by the ITO, ward-2(1)(2), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to "the Act") for A.Y. 2012-13. The assessee has also filed a Cross Objection against the said appeal.

2. The Revenue has raised the following grounds of appeal:

*"That the Id.CIT(A) erred in law and on facts in deleting the addition of Rs. 32,20,00,000/- made u/s 68 of the I.T.Act on account of unexplained Cash Credit."*

3. The facts in brief are that the assessee in the present case is a Private Limited Company and engaged in the business of Trading and investing in shares. The assessee in the year under consideration has obtained fresh loan of Rs. 66.81 crores from various parties including the parties as discussed below:

- |     |                             |                    |
|-----|-----------------------------|--------------------|
| i.  | M/s. JA Infracon Pvt. Ltd.  | Rs. 8,50,00,000/-  |
| ii. | M/s. Satya Retail Pvt. Ltd. | Rs. 23,70,00,000/- |

4. The assessee in support of the fresh loan obtained from the above parties has furnished the copy of the ledger, contra confirmation, and bank statement of the lender party, return of income and the balance sheet of the lender parties. Accordingly, the assessee contended that it has satisfied all the ingredients of the provisions of Section 68 of the Act.

5. The assessee during the assessment proceedings also contended that the amount of loan was taken by it for the purpose of the business which was repaid in the subsequent assessment year. The assessee in support of his contention has filed the copy of the ledger account of both the parties where the details of the payment of the loan were reflecting.

6. However, the AO based on the details furnished by the assessee observed certain facts as detailed under:

**With respect to Satya Retail Pvt. Ltd.**

- i. The above company has filed the return of income declaring an income of Rs. NIL.

- ii. There was increment in the share capital and premium of Rs. 25.70 crores which was utilized for making the loan and advance to assessee. There was a credit entry in the bank account of the company against each debit entry which was shown as loans and advances to the assessee.
- iii. There was no substantial activity carried out by the company. Furthermore, the financial status of the company was very weak.
- iv. In the assessment under Section 143(3) of the Act of the above company for the year under consideration, the AO in his order dated 25<sup>th</sup> of March 2015 has given a clear-cut finding that the above company was engaged in the accommodation entries on which it was earning an income by way of commission at the rate of 0.5 to 1%. As such the assessment was framed at Rs. 25,70,000/- on the amount routed by it. Thus the amount of loan taken by the assessee for Rs. 23.70 crores represents the accommodation entries only.
- v. The bank account of the above company was operated by Shri Jayesh Kotak and Shri Jateen Gupta were also the directors of the assessee company. Thus it becomes evident that it was the own money of the assessee company which has been routed in the form of loan in order to avoid the payment of tax.

**With respect to M/s JA Infracon Pvt. Ltd.**

- i. The above company has filed the return of income declaring an income of Rs. NIL.

*ii.* There was a credit entry in the bank account of the company against each debit entry which was shown as loans and advances to the assessee.

*iii.* There was no substantial activity carried out by the company. Furthermore, the financial status of the company was very weak.

7. The AO time and again directed the assessee to produce the directors of the aforesaid loan parties but the assessee failed to do so.

8. The AO also found that there was the search operation under Section 132 of the Act at the premises of Shri Shirish Shah who was found managing/controlling the affairs of about 212 companies which were engaged in providing the accommodation entries. Both the aforesaid companies which have advanced loan to the assessee company, have taken accommodation entries by way of one time share capital along with premium from the group of companies controlled and managed by Shri Shirish Shah. There was the statement under Section 132(4) of the Act dated 13<sup>th</sup> April 2013 wherein Shri Shirish Shah admitted that M/s Satya Retail Pvt. Ltd. / J A Infracon Pvt. Ltd. have taken accommodation entry by way of share capital from the companies controlled and managed by him which were engaged in providing accommodation entries. The list of such company was also furnished which is appearing on page 8 of the order of the AO.

9. Both the companies which have advanced loan to the assessee have not filed the income tax returns for the assessment year 2013-14 and 2014-15.

10. The AO with respect to the repayment of the loan found that there was no bank statement furnished by the assessee evidencing that the loan has been repaid by the assessee. As such, merely the ledger copies are not sufficient enough to prove the repayment of the loan. As per the AO, even the repayment of the loan shall not provide any relief to the assessee. It is for the reason that under

the provisions of Section 68 of the Act, the assessee has to explain the credit entries in the manner as discussed above. But the assessee, failed to do so.

11. In view of the above, the AO concluded that the assessee failed to justify the identity, creditworthiness of the parties and genuineness of the transactions as provided under the provisions of Section 68 of the Act. Thus the AO treated the entire amount of loan and advances shown by the assessee for Rs. 32.2 crore being Rs. 23.7 crore and 8.5 respectively from M/s Satya Retails Pvt. Ltd. and M/s JA Infracon Pvt. Ltd. as unexplained cash credit and added the same to the total income of the assessee.

12. Aggrieved assessee preferred an appeal to the Ld. CIT-A.

13. The assessee before the Ld. CIT-A submitted that the AO has made the addition treating the unsecured loan as unexplained cash credit on the basis of the information received from the Assessing Officer of Ward 4(1)(1), Ahmedabad, statement of Shri Shirish C. Shah under Section 132(4) of the Act and the assessment order in the case of loan parties. However, none of the details as discussed above was provided to the assessee before making the assessment.

13.1 Both the loan parties have responded to the notice issued to them under Section 133(6) of the Act by admitting to have advanced loan to the assessee. Likewise, the companies also furnished the evidences such as ledger account, bank statement, and return of income. But the AO without pointing out any defect in such details has rejected all the details filed by the assessee.

14. The assessee also contended that the loan was obtained for the purpose of the business which was returned in the subsequent year. In support of repayment of the loan, the assessee has also furnished the bank statement of the Citibank and Allahabad Bank.

15. The assessee also contended that all the details of the loan parties to establish the genuineness of the transaction, identity and creditworthiness of the parties were duly furnished during the assessment proceedings which has been elaborately discussed in the preceding paragraph. Furthermore, no defect of whatsoever was pointed out by the AO in the details furnished by the assessee. Accordingly the assessee contended that there was compliance of the provisions of Section 68 of the Act.

16. It was further submitted that it is not the duty of the assessee to furnish the details of the source of source of the funds in the hands of the loan parties. In other words, the assessee has discharged its onus by furnishing the details about the source of funds in its hands. If there is any doubt about the source of fund in the hands of the loan parties, the same can be added in the hands of the loan parties and not in the hands of the assessee.

17. The Ld. CIT-A after considering the submission of the assessee deleted the addition made by the AO by observing as under:

*"3.13 On going through the detailed submissions, it is found that the main reason for making the addition by the AO was the source of the loans taken by the appellant company from both the companies. As per the information received from ITO, Ward - 4(1)(1), Ahmedabad regarding the accommodation entries claimed to have been taken by the lender companies from the group companies of Shri Shirish Shah and subsequently, the lender companies have given the loan to the appellant company as a final beneficiary is without any basis. First of all, the appellant company has taken the loans from both the companies which has been given by them out of their sources which is duly explained from their bank account statements. As per the appellant and the lender companies, the source of lending was out of the share capital and share premium received by them from other companies is sufficiently proved the genuineness of the loans taken by the appellant from the lender companies. Whether the share capital and share premium was genuine or not would not call for any adverse inference in the hands of the appellant. Nowhere it has been brought on record in the statements recorded of Shri Shirish Shah & group persons about any unexplained money/cash received by them from the appellant company for making the investment as a share capital and share premium in the lender companies which finally routed as the loans and advances to the appellant company. For the sake of argument even if it is assumed that both the lender companies have taken the accommodation entries from Shirish Shah group of companies but the same only warrant the adverse view in the hands of the lender companies but in no way it can be adversely viewed in the hands of the appellant.*

*3.14. It has also been noticed that firstly, the addition have been made for the accommodation entries, if any, in the form of share capital and share premium taken in*

*the case of M/s. Satya Retail Pvt. Ltd. and M/s. J. A. Infracon Pvt. Ltd. and subsequently the addition have also been made in respect of utilization of such share capital and share premium on the loans received in the hands of appellant company. In other words, for the same money, double additions have been made firstly in the hands of the lender company and subsequently in the hands of appellant company which is not tenable in the eyes of law.*

*3.15. Even the lender companies in their reply to notice u/s. 133(6) of the I. T. Act have submitted the requisite information and have admitted of giving the loans to the appellant company. There is nothing on record from the lender companies admitting the loans given in the nature of accommodation entries to the appellant company or the same have been channelized out of the undisclosed income of the appellant company. Nowhere it has been proved that the lender companies were in chain in the accommodation entry cycle and the final beneficiary was the appellant company. As per the allegation of the AO, had the appellant was the final beneficiary of the accommodation entries, then no repayment of the said loans would have been made by the appellant to both the lender companies. On the contrary, their accounts have been settled and squared up in the subsequent year as discussed in the preceding paras of this order, which itself disproved the allegation of the Assessing Officer.*

*3.16. So far as identity of the lender companies is concerned, the complete address and their PAN No. besides Income Tax Return and computation along with audited final accounts have been submitted, therefore, the same does not remain in doubt. With regard to the genuineness of the unsecured loans, the lender companies have provided their bank account statements highlighting the withdrawals towards the account payee cheque given as a loan to the appellant company. Therefore, the same cannot be doubted. Further, with regard to the creditworthiness, the lender companies have submitted the details with regard to sources of the lendings given to the appellant out of the share capital and share premium received from the other companies which have been credited in their bank accounts. Thus, the immediate sources of the lendings to the appellant company have been duly explained by the lender companies. The AOs observation that these companies did not have any business activity and filing the return of income at Nil will not be relevant for the reason that the sources of the lendings have been duly explained by them out of their collection from share capital and share premium. The aforesaid lender companies have shown the outstanding balance of the lendings in their balance sheet which was verifiable. Therefore, in view of the aforesaid discussion, the identity, creditworthiness and genuineness of the borrowings have been proved from the details and evidences submitted in the assessment proceedings and does not call for any adverse inference."*

18. Being aggrieved by the order of the Ld. CIT-A, the Revenue is in appeal before us:

18.1 The learned DR before us contended that the assessee failed to justify the creditworthiness of the loan parties on the basis of documentary evidence. Likewise, the assessee cannot be given any benefit on the reasoning that the loan received by the assessee was returned back in the subsequent year. As such, the

onus lies upon the assessee to justify the creditworthiness of the loan parties in the year of receipt of loan and therefore no inference can be made on the repayment of the loan in the subsequent year. The learned DR vehemently supported the order of the AO.

18.2 On the contrary the learned AR before us filed a paper book running from pages 1 to 310 and contended that the onus cast upon the assessee under the provisions of section 68 of the Act has been duly discharged. It was the contention of the learned AR that all the documents with respect to the identity, creditworthiness of the parties and genuineness of the transactions have been duly furnished which are available in the paper book. Similarly, the assessee has returned the money of the loan in the subsequent year which evidences that the amount of loan never belonged to it. The learned AR vehemently supported the order of the learned CIT-A.

19. We have heard the rival contentions of both the parties and perused the materials available on record. The provision of Section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the cash credit entries under Section 68 of the Act by the Hon'ble Calcutta High Court in the case of CIT Vs. Precision Finance (P) Ltd. reported in 208 ITR 465 wherein it was held as under:

*"It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. "*

20. Now first we proceed to understand the identity of the party. The identity of the party refers existence of such party which can be proven based on evidences. As such the identity of a party can be established by furnishing the name, address and PAN detail, bank details, ITR etc.

21. The next stage comes to verify the genuineness of the transaction. Genuineness of transaction refers what has been asserted is true and authentic. A genuine transaction must be proved to be genuine in all respect not merely on a piece of a paper. The documentary evidences should not a mask to cover the actual transaction or designed in way to present the transaction as true but same is not. Genuineness of transaction can be proved by submitting confirmation of the party along details of mode of transaction but merely showing transaction carried out through banking channel is not sufficient. As such the same should also be proven by circumstantial surrounding evidences as held by the Hon'ble supreme court in case of Durga Prasad More reported in 82 ITR 540 and in case of Smt. Sumati Dayal reported in 214 ITR 801.

21.1 The last stage comes to verify the creditworthiness of the parties. The term creditworthiness as per Black Law Dictionary refers as:

*"creditworthy, adj. (1924) (Of a borrower) financially sound enough that a lender will extend credit in the belief default is unlikely; fiscally healthy-creditworthiness."*

21.2 Similarly in The New Lexicon Webster's Dictionary, the word "creditworthy" has been defined as under:-

*"creditworthy, adj. of one who is a good risk as a borrower."*

22. It the duty of the assessee to establish that creditor party has capacity to advance such loan and having requisite fund in its books of account and banks. The capacity to advance loan can be established by the showing sufficient income, capital and reserve or other fund in the hands of creditor. It required by the AO to find out the financial strength of the creditor to advance loan with judicious approach and in accordance with material available on record but not in arbitrary and mechanical manner.

23. In the light of the above discussion, we proceed to adjudicate the issue in hand. With respect to the identity of the party, we find that the AO in his order

has given categorical finding that the assessee has furnished the details such as copy of ledger account, bank statements, income tax return, balance sheet etc. It is also pertinent to note that based on such information notice under Section 133(6) of the Act was issued to the above parties which was duly responded by them. From the above, there remains no doubt that the identity of the loan parties is not in disputed, as it has been proved beyond doubt.

24. With respect to the genuineness of transaction, we note that the assessee has submitted that all the transaction are carried out through banking channel and in support has furnished the copy of bank statement showing the transaction and the same were transferred out of fund received by those company as share capital. However, it is important to highlight that in the assessment of the loan parties, genuineness of the fund received by them were not established. In other words, the loan parties were held as engaged in the activity of accommodation entry provider in consideration of commission income. As such these companies were acting as a conduit to convert the unaccounted money into accounting form. In the given facts and circumstances the genuineness of the transactions is not free from doubts.

25. In the given facts and circumstances, once the genuineness of the transaction is not free from doubt, it is implied that the creditworthiness of the parties was not satisfactory so as to advance the loan to the assessee.

26. Be that as it may be, the undisputed fact that the amount of loan received by the assessee was refunded to the loan parties. It implies that the assessee was not the beneficiary of the loan received by it as alleged by the AO. Though the loan has been repaid by the assessee in the subsequent year, but it is difficult to hold that the assessee was the ultimate beneficiary of the impugned amount. Thus, we can assume that the impugned transaction was the business transactions between the assessee and the loan parties.

27. It is also pertinent to note that there was a response from the loan parties in response to the notice issued under Section 133(6) of the Act wherein it was confirmed that these companies have advanced loan to the assessee. This reply of the loan parties cannot be brushed aside merely on the ground that the directors were not produced by the assessee during the assessment proceedings. It was the revenue which wanted to verify the directors of the loan companies. For this purpose, lot of powers were available with the revenue such as issuing notice under Section 131 of the Act for inviting the personal attendance of the directors. But the AO has not exercised such power in the given facts and circumstances. We also feel pertinent to refer the judgment of the Hon'ble Gujarat high court in case CIT vs. Ayachi Chandrashekhar Narsangji reported in 42 taxmann.com 251 where it was held as under:

*It is required to note that as such an amount of Rs. 1,00,00,000 vide cheque No. 102110 and an amount of Rs. 60 lakhs vide cheque No. 102111 was given to the assessee and out of the total loan of Rs. 1.60 crores, Rs. 15 lakhs vide cheque no. 196107 was repaid and therefore, an amount of Rs. 1,45,00,000 remained outstanding to be paid to IA. It has also come on record that the said loan amount has been repaid by the assessee to 'IA' in the immediately next year and the Department had accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible, there was no reason to interfere with the impugned order passed by the Tribunal. [Para 6]*

28. Before we conclude, we are conscious about the fact that the provisions of Section 68 of the Act are deeming provisions which implies that there are certain transactions which are not the income of the assessee but these are deemed as income under the relevant provisions of the Act. Thus, we have to see the deeming provisions beyond the facts available on record. However, the question arises for the adjudication whether only the credit entries should only be considered for the purpose of cash credit entries as provided under section 68 of the Act after ignoring the debit entries. To our mind the debit entries cannot be set aside for determining the income of the assessee.

29. In view of the above, we are of the opinion that, though the transactions of the loan received by the assessee are not free from any doubt but in either of the case, once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries were carried out in the later years. Thus, in the given facts and circumstances, we hold that there is no infirmity in the order of the Ld. CIT-A. Hence, the ground of appeal of the revenue is hereby dismissed.

30. In the result, the appeal filed by the Revenue is hereby dismissed.

**Coming to the CO. No. 199/AHD/2016, raised by the assessee**

31. At the outset we note that the assessee in the CO filed by it has supported the order of the Ld. CIT-A. Accordingly, we hold that no separate adjudication is required for the CO filed by the assessee. Hence, we dismiss the same as Infructuous.

32. In the result, the CO filed by the assessee is dismissed as infructuous.

33. In the combined results, the appeal filed by the Revenue is dismissed and the CO filed by the assessee is also dismissed.

**Order pronounced in the Court on 28/01/2022.**

Sd/-  
**(RAJPAL YADAV)**  
**VICE PRESIDENT**

Sd/-  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

(True Copy)  
Ahmedabad; Dated 28/01/2022  
*Tanmay*