

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

(Hearing through Video Conferencing Mode)

आयकर अपील सं/ I.T.A. Nos. 7410 & 7411/Mum/2019
(निर्धारण वर्ष / Assessment Years: 2012-13 & 2013-14)

Rajesh Suresh Jain 2902, Sumer Trinity, Tower, 2A, New Prabhadevi Road, Mumbai-400025.	बनाम/ Vs.	DCIT, Central Circle-2(3) 8 th Floor, Room No.803, Old CGO Bldg, Pratistha Bhawan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADPJ3143J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vijay Mehta
Revenue by:	Ms. Neha Thakur (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 11/11/2021
घोषणा की तारीख /Date of Pronouncement: 05/01/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the order dated 20.09.2019 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Ys. 2012-13 & 2013-14.

ITA. NO.7410/Mum/2019

2. The assessee has filed the present appeal against the order dated 20.09.2019 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.



3. The assessee has raised the following grounds: -

“1 On the facts and circumstances of the case and in law, the Id. AO erred in making additions u/s 68 of the I. T. Act, 1961 of loan amounting to Rs.30,00,000/- from Esmail Mandasaurwala, treating the same as non-genuine. The applicant prays that the said addition may kindly be deleted.”

4. The brief facts of the case are that a search and seizure action u/s 132 of the I. T. Act, 1961 was initiated on Emco Group on 09.02.2017 by the DDIT (Inv.), Unit No. 7(4), Mumbai. The notice u/s 153C of the Act dated 30.11.2017 was issued after recording satisfaction u/s 153C and served upon the assessee. In response to the said notice, the assessee filed return of income on 16.12.2017 declaring total income to the tune of Rs.45,64,345/-. Subsequently, the notice u/s 142(1) of the Act dated 08.12.2018 was issued and served on the assessee. The assessee has taken the loan of Rs.30,00,000/- from Esmail Mandasaurwala. The assessee was asked to prove the identity, genuineness and creditworthiness of the person whom he had taken the loan. During the relevant year under consideration, the assessee submitted reply to the query vide letter dated 27.12.2018. The assessee submitted the ITR acknowledgement, balance-sheet and bank statement in support of his claim. The assessee's claim was not found justifiable, therefore, the AO raised the addition of Rs.30,00,000/- u/s 68 of the I. T. Act. The total income of the assessee was assessed to the tune of Rs.75,64,350/-. Feeling aggrieved, the assessee has filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1



5. Under this issue the assessee has challenged the addition of Rs.30,00,000/- in view of the provisions u/s 68 of the Act. The assessee has taken the loan in sum of Rs.30,00,000/- from Esmail Mandasaurwala. At the very outset, the Ld. Representative of the assessee has argued that the issue in question has duly been covered by the judgment of his family members titled as **Shailesh Jain Vs. DCIT in ITA. No.7412/Mum/2019 for the A.Y.2012-13 dated 31.08.2021** in which the claim of the assessee was allowed on the basis of similar facts and circumstances. The copy of order dated 31.08.2021 is on the file in which the relevant finding has been given in para no. 5 as under: -

“5. After hearing the Id. Counsels of rival parties and perusing the material on record, and after referring to various evidences filed in the paper book, we observe that it is only the creditworthiness which is in doubt and not the identity of the lender and genuineness of the transaction. We note that on page 1 of the paper book assessee has filed the ITR acknowledgement for A.Y.2012-13. On Page 2, the assessee has relied the statement of affairs as on 31/03/13 which showed that lender has assets worth Rs.2,24,65,288/-On page No.3 the bank statement of the lender is filed showing credit balance of Rs. 1,65,16,317.23 as on 28/03/2012. The lender issued cheque on 29/03/2012 of Rs.30,00,000/to the assessee and thereafter, the balance left in the bank account was Rs.1,35,16,317,23 and on 30/03/2012 the lender issued cheque to Orbit Corporation Ltd., of Rs.1,34,22,375/-. On page 4, we note that in the bank statement of the assessee, the loan taken is duly reflected. After examining the facts and documents, we are of the considered opinion that the creditworthiness of the lender is sufficiently proved and therefore we are not in agreement with the conclusion drawn by the by the Id. AO as well as Id. CIT(A) on the



issue of lack of creditworthiness of the lender. It is pertinent to state that the genuineness of the transaction is not at all doubted. So far as creditworthiness is concerned the assessee has proved the source of funds as well as source of source. In view of these facts and circumstances, we set aside the order of the ld. CIT(A) and direct the ld. AO to delete the addition of Rs.30,00,000/- by holding that the lender has creditworthiness to lend this amount to the assessee.”

6. In the instant case also, the assessee has filed the ITR acknowledgment of the Esmail Mandasaurwala for the A.Y.2013-14. The assessee has also filed the bank statement starting from 01.04.2012 to 30.06.2012 in which the transaction of Rs.25,00,000/- showed. The statement of affairs as on 31.03.2013 is also on the file which speaks about actual acceleration of the lender in sum of Rs. 22,465,288/-. The bank statement of Smt. Farzana Esmail Mandasaurwala has also been filed in which the transaction has been showed and subsequently the amount was transferred through cheques. The facts of the present case are quite similar to the facts of the case as in **Shailesh Jain (supra)**. Everything in connection with the identity of the lender and genuineness of the transaction and creditworthiness is on record. Accordingly, we set aside the finding of the CIT(A) on this issue and direct the AO to delete the addition in question. Accordingly, we decide this issue in favour of the assessee against the revenue.

ITA. NO.7411/Mum/2019

7. The facts of the present case are quite similar to the fact of the case as narrated above while deciding the ITA. No.7410/M/2019, therefore, there is no need to repeat the same. However, the figure is different. In the instant case also, the assessee has filed the ITR acknowledgment of the Esmail



ITA Nos. 7410 & 7411/M/2019
A.Ys.2012-13 & 2013-14

Mandsaurwala for the A.Y.2012-13. The assessee has also filed the bank statement starting from 01.04.2011 to 31.03.2012 in which the transaction of Rs.230,00,000/- has been showed. The statement of affairs as on 31.03.2013 is also on the file which speaks about actual acceleration of the lender in sum of Rs. 22,465,288/-. The bank statement of Smt. Farzana Esmail Mandsaurwala has also been filed in which the transaction has been showed and subsequently the amount was transferred through cheques. The facts of the present case are quite similar to the facts of the case as in **Shailesh Jain (supra)**. Everything in connection with the identity of the lender and genuineness of the transaction and creditworthiness is on record. Accordingly, we set aside the finding of the CIT(A) on this issue and direct the AO to delete the addition in question. Accordingly, we decide this issue in favour of the assessee against the revenue.

8. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 05/01/2022

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 05/01/2022

Vijay Pal Singh/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA Nos. 7410 & 7411/M/2019
A.Ys.2012-13 & 2013-14

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**