

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
MIS MADHUMITA ROY, JUDICIAL MEMBER
Virtual Hearing**

**ITA No.443/Ind/2018
Assessment Year:2012-13**

Pushpa Developers Indore (Appellant)	<u>बनाम/</u> Vs.	ACIT-1(1) Indore (Respondent)
P.A. No.AAMFP5870H		
Appellant by	Shri Tribhuvan Sachdeva & Harsh Vijayvargiya, ARs,	
Revenue by	Shri P.K. Mitra, CIT-DR	
Date of Hearing:	06.12.2021	
Date of Pronouncement:	24.01.2022	

आदेश / O R D E R

PER MANISH BORAD, A.M:

The above captioned appeal at the instance of Assessee is directed against the order of Commissioner of Income Tax (Appeals) (in short CIT(A))-1, Indore dated 05.02.2018 which is arising out of the order u/s 143(3) of the Income Tax Act

1961(In short the 'Act') dated 21.11.2017 framed by ACIT-1(1)
Indore.

The assessee has raised following grounds of appeal:

“That on the facts and in the circumstances of the case Ld.CIT(A) has erred in making an addition of unsecured loans of Rs.3,09,00,000 U/s 68 where identity, creditworthiness and genuineness of these loan creditors was demonstrated by appellant beyond any doubt during the assessment stage itself and assessee is not required, as per judicial pronouncements, to prove source of source of the credit.

That on the facts and in the circumstances of the case Ld.

CIT(A) has erred in making an addition of interest on said unsecured loans of Rs. 24,54,755 U/s 68 where identity, creditworthiness and genuineness of these loan creditors was demonstrated by appellant beyond any doubt during the assessment stage itself. Also, all payments of interest were made after deducting applicable TDS on the same.

That the order so passed is bad in law and wrong since the whole proceeding of reopening the case U/s 147 and issuance of consequent notice u/s 148 and proceedings thereafter is also bad in law since Such reopening/reassessment of concluded assessment U/s 143(3) in the past is based on the 'change of opinion' of Ld. AO and judicial pronouncements in such cases had knocked down the notices itself U/s 148.

ii) Impugned assessment order was passed by Ld. AO against the assessee ignoring the established judicial pronouncements which says that Ld. AO should have allowed 4 (Four) weeks time to the assessee to seek their legal remedies after rejection of the objections of the assessee.

iii) Reasons of reopening recorded by Ld. AO alleging that the said unsecured loans are bogus based on the investigation of some other company made by DCIT 4(3)(1), Mumbai are not said to be judicious and are based on preconceived notions and surmises.

That the. assessee craves your honors leave to add, amend, alter or delete any of the grounds of appeal.”

2. Brief facts of the case as culled out from the records are that the assessee is a partnership firm engaged in the business of building construction and contract business. Income of Rs.9,98,042/- declared in the e-

return of income filed on 26.09.2012. Case of the assessee was selected for scrutiny through CASS followed by issuance of notice u/s 143(2) & 142(1) of the Act. Necessary information as called for by the ld. AO were submitted by the assessee. Ld. AO examined the issue of increase unsecured loan and also examined the evidences explaining the source of unsecured loan and after making certain disallowance of the expenditure at Rs.1,50,000/-. Income assessed at Rs.11,48042/- vide assessment order u/s 143(3) of the Act dated 30.09.2014.

3. Subsequently, based on the information received from DCIT-4(3)/(1), Mumbai regarding assessment proceedings in the case of company namely M/s. Jay Jyoti India(P) Ltd. it was revealed that some of the companies were alleged to be bogus and paper companies which have invested in the share capital of M/s. Jay Jyoti India (P.) Ltd. and the alleged companies have also given loans to the assessee. Based on this information notice u/s 148 of the Act dated 17.08.2016 was served upon the assessee. Return in compliance thereto was filed. Assessee was also provided the reasons for reopening. Assessee raised objections before Ld. AO for reopening and the same were duly disposed off by ld. AO vide order dated 06.11.2017. For carrying out the

assessment proceedings notice u/s 143(2) of the Act was served upon the assessee. Ld. AO based on the information as well as the details received from the assessee during the assessment proceedings carried out for A.Y. 2013-14, came to a conclusion that unsecured loan taken from five cash creditors at Rs.3,09,00,000/- should be added u/s 68 of the Act and the interest paid on these unsecured loans at Rs. 24,54,755/- deserves to be disallowed.

4. Though the assessee made detailed submissions submitting that all the alleged five companies are assessed to tax, audited financial submission and bank statements were filed and the interest paid these companies was subjected to TDS, but ld. AO was not satisfied and made the addition for unsecured loan of Rs.3,09,00,000/- and disallowance the interest expenditure of Rs. 24,54,755/- in the case of the following five companies, assessing income at Rs.3,45,52,800/-

Name of company	Unsecured loan	Interest paid
HNJ Stock Broking Ltd.	Rs.28,00,000/-	Rs.5,93,012/-
Packswell Combine Ltd.	Rs.1,15,00,000/-	Rs.7,99,520/-
Tutor Investment & finance Pvt. Ltd.	Rs.1,05,00,000/-	Rs.7,10,262/-
Precel Solution Pvt. Ltd.	Rs.55,00,000/-	Rs.3,09,945/-

Shubham Investment & Finance Pvt. Ltd.	Rs.6,00,000/-	Rs.42,016/-
Total	Rs.3,09,00,000/-	Rs.24,54,755/-

5. Aggrieved assessee preferred an appeal before Ld. CIT(A) only challenging the addition made for unexplained cash credit u/s 68 of the Act at Rs. 3,09,00,000/- and interest disallowance of Rs. 24,54,755/-. In the appellate proceedings before the Ld. CIT(A) assessee again filed all the relevant documents to establish the identity and creditworthiness of the cash creditors and the genuineness of the transaction of the loan taken for business purpose. It was also stated that the assessments of most of the alleged cash creditors has been completed under scrutiny proceedings u/s 143(3) of the Act. Documents were file in support of the fact that the transaction with these cash creditors have been carried out through banking channels that all the companies are registered with the registrar of companies and duly assessed to tax and regular transactions are taking place through banking channels and loans have been repaid. Thus assessee pleaded that no addition u/s 68 of the Act was called for and in support to this contention reliance was placed on various decisions mentioned in the impugned order mainly included the decision of this Tribunal in the case of *ACIT vs. Karan*

Mittal (2017) 32 ITJ 60 (I.T.A.T., Indore), ACIT vs. Mittal Appliances Ltd. (2016) 27 ITJ 120(I.T.A.T.,Indore), Kantadevi Garg vs. ITO (2016) 28 ITJ 400(I.T.A.T., Indore) and also the judgment of jurisdictional High Court in the case of *Pr. CIT vs. Mahakaushal Sugar & Power Ind. Ltd. (2017) 30 ITJ 316 .*

6. However, these submissions made by the assessee could not satisfy Ld. CIT(A) and he appreciated the fact observed by the ld. AO and also placed reliance on various decisions which mainly included the judgment of Hon'ble Delhi High Court in the case of *CIT vs. Nova Promoters and Finlease (P) Ltd. (2012) 342 ITR 169 (Del)* and *CIT vs. N.R. Portfolio Pvt. Ltd. (2014) 264 CTR 258 (Del)* and came to conclusion that the assessee company failed to discharge its onus to prove the identity and creditworthiness of the alleged cash creditors and the genuineness of transactions and accordingly confirmed the addition made u/s 68 of the Act at Rs.3,09,00,000/- and also confirmed the disallowance of interest expenditure of Rs. 24,54,755/- on account of interest paid to the alleged cash creditors.

7. Aggrieved the assessee is now in appeal before this Tribunal raising various grounds but they can be summarized into two categories:

- i. Legal ground challenging the issuance of notice u/s 148 of the Act and also challenging the assessment proceedings carried out u/s 147 of the Act.
- ii. On merits raising ground that Ld. CIT(A) erred in confirming the addition of unsecured loan u/s 68 of the Act at Rs.3,09,00,000/- and disallowance of interest paid on such unsecured loan at Rs. 24,25,755/-

8. Ld. counsel for the assessee vehemently argued referring to the detailed written submissions placed at pages 1 to 34 of the paper book dated 03.09.2021, and also taking us through the paper book pages no.35 to 96. Ld. counsel for the assessee also referred to audited financial statements of all the five cash creditors placed in paper book dated 25.10.2021 containing 69 pages and also referred to the assessment orders passed in case of four of the cash creditors for the immediately succeeding assessment year framed u/s 143(3) of the Act.

9. As far as the legal issue is concerned challenging the issuance of notice u/s 148 for reopening and the assessment framed thereafter it was stated the change of opinion is not sustainable, reassessment orders were passed before expiry of four weeks of passing the order of objections. Ld. AO did not apply his mind judicially for reopening. Assessment orders being passed in violation of the principles of natural justice and without giving adequate opportunity to the appellant and in support of

these contentions Ld. counsel for the assessee has relied on plethora of judgments mentioned in the written submission placed at pages 1 to 34 of the paper book dated 13.09.2021.

10. As regards the merits of the case apart from referring to various documents to prove identity, creditworthiness of the cash creditors and genuineness of the transactions. Reliance was placed in the case of *ACIT vs. Girish Kumar Sharda (2014) 23 ITJ 701 (I.T.A.T. Indore)*, *ACIT vs. Pravin Mittal (2016) 28 ITJ 473(I.T.A.T.,Indore)* & *ACIT vs. Pramod Kumar Sethi (2019) 34 ITJ 39 (I.T.A.T. Indore)*.

11. Per contra, Ld. DR vehemently argued supporting each and every finding of the Ld. AO as well as detailed finding of Ld. CIT(A) and the judgments and decisions referred in the impugned order.

12. We have heard rival contentions and perused the records placed before us. Through this appeal assessee has challenged the reopening of the assessment by taking legal grounds and also challenged the finding of Ld. CIT(A) confirming the addition for unexplained cash creditors u/s 68 of the Act and disallowance of interest paid to the following cash creditors:-

Name of company	Unsecured loan	Interest paid
HNJ Stock Broking	Rs.28,00,000/-	Rs.5,93,012/-

Ltd.		
Packswell Combine Ltd.	Rs.1,15,00,000/-	Rs.7,99,520/-
Tutor Investment & finance Pvt. Ltd.	Rs.1,05,00,000/-	Rs.7,10,262/-
Precel Solution Pvt. Ltd.	Rs.55,00,000/-	Rs.3,09,945/-
Shubham Investment & Finance Pvt. Ltd.	Rs.6,00,000/-	Rs.42,016/-
Total	Rs.3,09,00,000/-	Rs.24,54,755/-

13. We will first take up the legal issue which have been raised in ground no.3 of the assessee's appeal. We find that the notice u/s 148 of the Act dated 17.08.2016 was issued within a period of four year from the end of the assessment year 2012-13. Assessee's case was assessed u/s 143(3) of the Act for A.Y. 2012-13 vide order dated 30.09.2014 wherein Ld. AO made disallowance of expenses at Rs. 1,50,000/- in the returned income of Rs.9,98,040/-.

13.1 We notice that the reopening was based on specific input received by the Ld. AO and the same is appearing in the reasons recorded placed at pages 42 to 48 of the paper book. As per the reasons it was an inquiry in the case of assessee namely Shri Naval Kishore Garg who has taken unsecure loan from company namely M/s Jay Jyoti India Pvt. Ltd. Information was sought from the Ld. Assessing Officer of M/s Jay Jyoti India Pvt. Ltd. and

from the copy of the assessment order passed in the case of this company and the statement recorded during the course of assessment proceedings, it was found that four companies namely HNJ Stock Broking Ltd., Packswell Combine Ltd., Tutor Investment & finance Pvt. Ltd., Precel Solution Pvt. Ltd. and Shubham Investment & Finance Pvt. Ltd. have made investment in the form of share capital and security premium in M/s Jay Jyoti India Pvt. Ltd. Certain inquiries and investigation were carried out by the Ld. AO at Mumbai which came to a conclusion that all the above stated four companies which have invested into the share capital and security premium of M/s Jay Jyoti India Pvt. Ltd. are paper entities. Further Ld. AO of the assessee also noticed that the income earned by the alleged cash creditors are very meager. Based on these information and giving detailed reasons the case of the assessee was reopened. Objections were raised by the assessee against reopening and the same has been duly disposed of by the assessee. Though the assessee has relying plethora of judgments in support of the contention that notice issued u/s 148 of the Act should be cancelled and the assessment carried out u/s 147 of the Act to be annulled, we do not find any force in these contentions. Based on our observations that the reopening was made within four years, there was a specific information from the

department, that few of the alleged cash creditors are paper entities. Information was also received from assessment proceedings in assessee's own case for A.Y. 2013-14. This information and details were not before the Ld. AO at the time of concluding the original assessment proceeding and was therefore well within his jurisdiction to reopen the case of the assessee by issuing notice u/s 148 of the Act and carrying out reassessment proceedings. We will like to add here that simply issue of notices cannot be construed that the addition will be made in the hands of assessee because it is merely beginning of the reassessment proceedings and assessee has all rights under the Act to file necessary documents to discharge its onus and to rebut the allegations made in the notice so issued. We, therefore, dismiss the legal ground no.3 raised by the assessee.

14. Now we take up grounds raised on merit through which the assessee has contended that with support of various documents and material placed on record, the identity and creditworthiness of the alleged cash creditors and the genuineness of the transactions is proved beyond doubt and therefore no addition for unexplained cash credit u/s 68 of the Act and no disallowance for interest paid of the following unsecured

loans was called for:-

Name of company	Unsecured loan	Interest paid
HNJ Stock Broking Ltd.	Rs.28,00,000/-	Rs.5,93,012/-
Packswell Combine Ltd.	Rs.1,15,00,000/-	Rs.7,99,520/-
Tutor Investment & finance Pvt. Ltd.	Rs.1,05,00,000/-	Rs.7,10,262/-
Precel Solution Pvt. Ltd.	Rs.55,00,000/-	Rs.3,09,945/-
Shubham Investment & Finance Pvt. Ltd.	Rs.6,00,000/-	Rs.42,016/-
Total	Rs.3,09,00,000/-	Rs.24,54,755/-

14.1. We notice that the assessee has produced the copy of income Tax return, confirmation of loans, copy of PAN card, bank statement the assessments order of the alleged lender companies and also filed proof of deduction of tax at source on the interest paid to the alleged cash creditors and proof of the payment of loan through banking channel. It is noteworthy that Ld. AO has not disputed the genuineness and correctness of all these documents filed by the assessee. Ld. AO has merely relied on the submission of third parties and the theory of meager income earned by the alleged cash creditors as the basis for making impugned addition and disallowances.

14.2. One more fact which we noticed while going through the impugned order that Ld. CIT(A) while

dealing with the grounds raised on merits by the assessee as per which the dispute was with regard to unsecured loan received from five Pvt. Ltd. companies and the interest paid on such loans.

14.3. However, Ld. CIT(A) while inching towards the end of the finding referred to various decisions wherein share application money was in dispute and further held that assessee failed to prove the identity, creditworthiness of the alleged shareholders and genuineness of transactions. Though section 68 of the Act deals with unexplained cash creditors which may include any type of credit but even each issue needs to be examined in light of the facts of case. In other words if cash credit is in the form of share capital the adjudication of fact is different and in case of the cash credit in the form of unsecured loan again the process of examining the fact is different. In the instant case assessee has taken unsecured loan through banking channel, paid interest on these loans, deducted tax at source and subsequently repaid the loan. It cannot be equated to share capital/security premium taken by assessee which forms part of its capital which is never repaid back. In the instant case, Ld. CIT(A) had to deal with the issue of unsecured loan but landed up dealing with the alleged cash credit as share capital which in itself is a faulty finding.

14.4 Now coming to the documents filed in the case of alleged cash creditors we find that assessee has filed audited financial statements Income tax Return, bank statement of all the five cash creditors namely, HNJ Stock Broking Ltd., Packswell Combine Ltd., Tutor Investment & finance Pvt. Ltd., Precel Solution Pvt. Ltd. & Shubham Investment & Finance Pvt. Ltd. There is no finding of Ld. AO that cash has been deposited just before the issue of cheques. Similar type of loans are given to other parties also.

14.5 Perusal of the audited financial statement shows that in the case of Tutor Investment & Finance Pvt. Ltd. the share capital and accumulated reserves and surplus as on 31.03.2012 is around Rs.88 cr. as against which unsecured loan of Rs.1.05 cr there is a positive income during the year and the revenue from operation are around Rs.142 lacs. Next is Parcels Solutions Pvt. Ltd. which also has accumulated share capital and reserves and surplus of Rs.1 cr and have also unsecured loan taken from other companies at Rs.10.6 cr against which unsecured loan of Rs. 55 lac has been given to the assessee. In the case of another cash creditors namely Subham Investment & finance Pvt. Ltd. accumulated share capital reserves and surplus are around Rs. 46 cr.

and the loan given to assessee is only Rs.6 lac. In the case of Packswell Combine Pvt. Ltd. accumulated share capital and reserves and surplus are around 57 cr against which unsecured of loan of Rs.1.15 cr. is given to assessee. In the case of cash creditor namely HNJ Stock Broking Ltd against share capital and reserves and surplus of around Rs. 22 cr approx. loan given to assessee is Rs.28 lac.

14.6 We further notice that assessment u/s 143(3) of the act for A.Y. 2013-14 have been framed in the case of four cash creditors namely Packswell Combine pvt. Ltd., HNJ Stock Broking Ltd., Tutor Investment & finance Pvt. Ltd., Precel Solution Pvt. Ltd. and perusal of the assessment orders placed at page 3 to 23 pages dated 06.12.2021 shows that during the course of assessment proceedings in case of all these companies there is appearance of the counsel on behalf of the assessee, various details have been filed and the assessment have been completed and the assessing officer are mostly from Mumbai and there is apparently no adverse finding with regard to the genuineness of the business being carried out by these companies.

14.7 We further notice that under similar set of facts and circumstances and the nature of documentary evidences filed by the assessee, this Tribunal in the case of *Girish*

Kumar Sharda (2014) 23 ITJ 701 held in favour of the assessee thereby deleting addition made u/s 68 of the Act and the head note of this judgment is mentioned below:

AO asked assessee to prove the identity, genuineness and credit-worthiness of the loan – Assessee filed confirmation letter, audited accounts, Copy of Return and PAN and Bank accounts – AO still doubted the transaction and made addition u/s. 68 – Addition was also made in the case of “L” group on the basis that they were unable to establish the source of investment – CIT(A) deleted the addition holding that addition should be made in the hands of the lenders and not in the hands of the assessee; double addition was not warranted – Department contended that merely because addition is made in the hands of “L” group, assessee could not be left as it has been held in Asstt. CIT Vs. Narmada Extrusion Ltd. (2012) 19 ITJ 202 (Trib.-Indore) that addition is to be made in the hands of beneficiaries and merely if the wrong person, lender, has been taxed, the right person cannot be left – HELD – On the merits of addition, assessee has been able to prove the identity, genuineness and credit-worthiness – AO has not been able to bring any material to establish that the credits are not genuine – The loan from these parties were repaid much prior to the date of search – No addition is called for.

14.8 Similar view was also taken in the case of *ACIT vs. Pravin Mittal* (supra) by this tribunal dealing with the unsecured loan received and the head note of this decision is mentioned below.

Unexplained Credit – Section 68 of the Income-tax Act, 1961 – Assessee taken loan from certain companies and repaid during the year itself – AO treated these companies as bogus companies and made the additions – CIT(A) satisfied with genuineness of transaction and creditworthiness of those companies, deleted the said additions – HELD – In *Girish Kumar Sharda*, (2014) 23 ITJ 701 (Trib.-Indore) it was held that the impugned companies are genuine – Following that decision as well as detailed finding of CIT(A) which is uncontroverted by Revenue as no material evidence has been placed to prove anything contrary – ITAT does not find any infirmity in the finding of CIT(A) in deleting the addition.

14.8 Recently this tribunal in the case *ACIT vs. Pramod Kumar Sethi (2019) 34 ITJ 39* followed the decision in the case of *Girish Kumar Sharda (supra)* upheld the contention of the appellant in this case where triggering of notice was happened due to assessment in case of some Naval Kishore Garg who has taken loan from Jay Jyoti India Pvt. Ltd. and five unsecured loan creditors have given share application money to Jay Jyoti India Pvt. Ltd. The head note of this decision for read reference:

Unexplained Credit – Section 68 of the Income-tax Act, 1961 – Assessee taken loan from certain companies and repaid during the year itself – AO treated these companies as bogus companies and made the additions – CIT(A) satisfied with genuineness of transaction and creditworthiness of those companies, deleted the said additions – HELD – In *Girish Kumar Sharda, (2014) 23 ITJ 701 (Trib.-Indore)* it was held that the impugned companies are genuine – Following that decision as well as detailed finding of CIT(A) which is uncontroverted by Revenue as no material evidence has been placed to prove anything contrary – ITAT does not find any infirmity in the finding of CIT(A) in deleting the addition.

14.9 Under these given facts and circumstances of the case respectfully following the decisions of this tribunal adjudicating similar issue almost identical facts and also taking note of the fact that the assessee has successfully

discharged its onus to prove identity and creditworthiness of the alleged five cash creditors and genuineness of the transaction by placing sufficient material on record and also proof of repayment of the unsecured loan, filing the copy of the assessment orders in four out of the five cash creditors, Income of Return, Bank statement, confirmation of all audited financial statements and also there been no material evidence brought on record by the ld. AO directly linked with the assessee to prove that the alleged cash creditor are bogus or paper entities engaged in providing accommodation entities. We, are thus, of the view that Ld. AO erred in making addition u/s 68 of the Act for Rs.3,09,00,000/- and further Ld. CIT(A) erred in confirming the finding of Ld. AO. We accordingly reverse the finding of Ld. CIT(A) and delete the addition made u/s 68 of the act for Rs.3,09,00,000/- and consequently the interest disallowance of Rs. 24,54,755/- is also deleted. Thus, ground no.1 & 2 raised by the assessee are allowed.

15. In the result, appeal of the assessee in ITANo.443/Ind/2018 is partly allowed.

Order was pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 24.01.2022.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 24/01/2022

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore