

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2691/Mum/2019
(A.Y: 2014-15)

DCIT, CC-15(2)(1) Room No. 357, 3 rd floor Aayakar Bhavan, M.K Road, Mumbai – 400 020	Vs.	M/s Indian Institute of Excellence & Consultancy Pvt Ltd 4 th Floor, Gaurav Plaza, RRT Road, Mulund (W)-Mumbai- 400 080.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCI1667D		
Appellant	..	Respondent

Appellant by :	Mr.V. Tripathi.DR
Respondent by :	Mr.Virag Shah.AR

Date of Hearing	12.01.2022
Date of Pronouncement	02.02.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of CIT(A)-24, Mumbai and passed u/s 143(3) and 250 of the Act. The revenue has raised the following grounds of appeal:

“1) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of unsecured loans amounting to Rs.3,82,90,000/-, made under section 68 of the Income Tax Act, holding that the appellant has proved

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the genuineness of the transactions in the form of confirmations, PAN, return of income, bank statement etc, thereby ignoring the recent decision of the Hon'ble Supreme Court of India in the case of Navodaya Castle (P) Ltd. [2015] 56 taxmann.com18 (SC), wherein the Apex Court has upheld the Delhi High Court decision holding that certificate of incorporation, PAN etc., were not sufficient for purpose of identification of subscriber company."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the interest paid on loan amounting to Rs.10,88,550/- without appreciating the fact that the unsecured loan itself have not been proved to be genuine.

3. "The appellant prays that the order of the CIT(A), Mumbai on the above directions be set-aside and that of the assessing officer be restored."

4. The appellant craves leave to amend or alter any of the aforesaid grounds or add."

2. The Brief facts of the case are that the assessee company is engaged in the business of providing training to agents and developments officers in India. The assessee has filed the return of income for the A.Y 2014-15 on 29.11.2014 with a total income of Rs.Nil and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and filed the explanations as called for

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and the case was discussed. On perusal of the financial statements, the assessee company has obtained a loan from Deepak Joshi, HUF of Rs. 3,82,90,000/-. The A.O to test check the identify, creditworthiness and genuineness of the transactions has issued a show cause notice and called for bank statement, auditor's report, financial statements. The assessee has filed the information on 25.11.2016 and 28.11.2016 referred at Para 5.3 of the order. Further, the A.O has issued notice to Mr. Deepak Joshi, HUF on 01.12.2016 to provide the following information:

“1. Detailed not of the nature of your business and sources of your earing.

2. Kindly provide the full year Bank statement and give the narration of all the debit and credit entries.

3. Kindly provide the list of all the persons from whom loans has been taken and also provide their confirmation along with their ITR, Computation and full year bank payments highlighting all the transaction and their ledger confirmation for A.Y 2014-15.

4. ITRV, Computation, of A.Y 2013-14 & 2014-15 along with all the schedules with their break-up.

Deepak Joshi HUF vide dated 26.12.2016 and 28.12.2016 has furnished the reply to the above notice.”

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3. Whereas, the A.O was not satisfied with the explanations and the observed that the assessee has not discharged its burden of proof in respect of the three criteria's i.e identity, creditworthiness and genuineness of the transactions and other facts and relied on the judicial decisions and treated it as unexplained cash credits u/s 68 of the Act. Similarly the A.O. made disallowance of interest claimed as expenses on unsecured loans of Rs. 10,88,550/- and assessed the total income of Rs.3,82,90,000/- and passed order u/s 143(3)of the Act dated 30.12.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O. The assessee has submitted the details referred at Para 3.3 of the order as under:

"3.3 The appellant has further submitted vide letter dated 28/11/2016 as under:

'In addition to explanation and submission made in our previous letter dated. 25.11.20-1¹6, we would further like to submit the Balance sheet, Profit and Loss account of Deepak Joshi HUE We would like to highlight that where the assessee submits the name, address, PAN and confirmation of the

creditors, the onus under section 68 of the Act gets discharged and no addition can be made. This view has been upheld in various case laws. One such case is cited for your reference: M/s.jaico TextiIcs Pvt. Vs. /TO (Mumbai) (201 6-T!OL- 188).

5. The CIT(A) has considered the findings and dealt on the submissions, relied on the judicial decisions and observed on the various lega aspects and granted the relief and partly allowed the assessee's appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal before the Honble Tribunal.

6 At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in deleting the addition as the assessee has not filed the sufficient information at the time of assessment and further all the material were only filed before the CIT(A). The A.O has issued notice u/s 133(6) of the Act on the party and the loan creditor could not satisfy the three ingredients of identity, creditworthiness and genuineness of the transaction. Similarly, the revenue has contested that the interest amount in respect of the unsecured loans which was disallowed but the CIT(A) has deleted and prayed for restoring the order of the A.O.

7. Contra, the Ld. AR submitted that the assessee has submitted the details referred at Para 3.3 of the order and the TDS was deducted on interest. Further it was brought on record that in the assessee's own case for A.Y.2015-16 and A.Y. 2016-17, the assessment was completed under 143(3) of the Act. The assessee company has not obtained the loan from Deepak Joshi HUF for the first time but even in the earlier years and subsequent years, the said loan amount is outstanding and the assessee has satisfied all the ingredients of section 68 of the Act and the CIT(A) has deleted the addition of loan amount and interest component considering the genuineness of the transactions and prayed for dismissal of the revenue appeal.

8. We heard the rival submissions and perused the material available on record. The sole crux of the disputed issue envisaged by the Ld.DR that the CIT(A) has erred in deleting the addition made by the A.O with respect of loan from Deepak Joshi HUF, who is a managing director of the assessee company in the individual capacity. We Find the loan creditor

Deepak Joshi HUF has submitted the loan confirmation duly signed with the supporting documents. The assessee has submitted the balance sheet, profit and loss account for the F.Y.2012-13,2013-14,2014-15 and 2015-16 in the proceedings reflecting the loan in the balance sheet and interest component in the profit & loss account. The loan creditor/ Deepak Joshi Huf is filling the return of income regularly and the Income Tax return Acknowledgement for A.Y.2013-14 to 2016-17 are provided except for A.Y.2014-15 where the TDS deducted covers the income. The assessment of the assessee company for the A.Y 2015-16 and A.Y 2016-17 has been completed u/s 143(3) and the same A.O has accepted the loan transaction from the Deepak Joshi HUF during the A.Y 2015-16. We considering the facts and the provisions of Sec. 68 of the Act observe that the assessee has discharged its burden by submitting the details as enumerated by the CIT(A) in his order. At this juncture, we find it appropriate to refer to the observations of the CIT(A) at Para 5.1 to 5.2.2 as under:

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5.1 I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

5.2.1 Grounds NO. 1 to 4 are raised against the AO's action in making addition of Rs. 3,82,90,000/-. The appellant company has taken loan from Deepak R Joshi HIJF. Mr. Deepak R Joshi in his individual capacity is Managing Director of the Company which is not disputed by the Assessing Officer. Therefore, it cannot be said that the identity of the loan creditor is not proved. The loan creditor Deepak R Joshi HUF has submitted loan confirmation duly signed and confirming that the HUF has given loan to the Company. It is further stated that the loans are received by Account Payee Cheques and the bank statements produced before the Assessing Officer. The AG has stated that this is not a loan but entry. However, he has failed to prove and demonstrate how this loan to be mere an entry. The LA AR argued that the Ld AG having made the allegation could not prove so. The AR has submitted the balance sheet, profit and loss account of Deepak R Joshi HUF for F. Y. 2012-13, 2013-14, 2014-15 and 2015-16 The loan account of the Appellant reflected in the balance sheet and amount of loan is tallied with the loan shown in the balance sheet of the Appellant. The AR further submitted that Deepak R Joshi HUF is maintaining regular books of accounts. The said HUF is filing the return of income regularly and iT acknowledgments for A. Y. 2013-14 to 2016-17 except A. Y. 2014-1 are filed perused and kept on record. The statement of income for A.Y.2014-15 was filed, wherein income is Rs.4.00 lakhs and tax payable is covered by TDS credit.. The said HUF has provided the list of loan taken by HUF from various parties which is a source of loan given to the Appellant. The list of loans, loan confirmation of all the 'parties and bank statements were filed before the Assessing Officer vide submissions dated 26' December, 2015. The genuineness of the loan transactions has thus been proved.

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The AR had argued that the AO at best could have informed to the AO of the HUF for verification of loan transactions taken by HUF if he is not satisfied. However, the AO has failed to do so. Further, the assessment of the appellant company for F. Y. 2015-16 and A.Y. 2016-17 have been completed u/s 143(3) of the Income Tax Act and copies of the assessment orders are placed before me. The AR submitted that the same AO who has added loan of HUF u/s 68 of the Income Tax Act has accepted the loan transactions from the said HUF during A. Y. 2015-16. He has accepted the same as genuine. He has himself reversed his own finding in the A. Y. 2015-16. The loan transactions with Deepak R Joshi HUF were also accepted as genuine by another Assessing Officer in A.Y. 2016-17. The outstanding loan position from Deepak R Joshi HUF for various years are as under :

	<i>As on</i>		<i>Amount</i>
1.	<i>31st March 2013</i>	<i>:</i>	<i>Rs. 7,87,786/-</i>
2.	<i>31st March, 2014</i>	<i>:</i>	<i>Rs. 3,88,11,195/-</i>
3.	<i>31st March, 2015</i>	<i>:</i>	<i>Rs. 4,09,00,542/-</i>
4.	<i>31st March, 2016</i>	<i>:</i>	<i>Rs. 3,90,29,402/-</i>

The Appellant had loan transactions in all the above years and loan transactions have not been accepted in A. Y. 2014-15 but the same loan transactions are accepted for 31st March, 2015 and 31st March, 2016 u/s 143(3) of the Income Tax Act.

The Ld AR and the appellant relied on various judgments which are part of the paper book. However, I would like to refer relevant extract from the judgment of Bombay High Court in the case Orient Trading Company Limited Vs Commission of Income Tax (49 ITR 723 Born.). The following para is reproduced

*Cash credit— Burden of proof— Cash Credit in the name of third party — When the entry stands in the name of third party, the Assessee satisfies the ITO as to the identity of the third party and also supplies such other evidence which will show, prima facie that the entry is not fictitious, the initial burden which lies on him can be said to have been discharged by him and it will not thereafter, be for the assessee to **explain further how or in which circumstances the third party obtained money and how or why he came to make a deposit of the same with the Assessee - The burden thereafter shifts on to the Revenue to show that the entry represented Assessee's suppressed income***

Department has to be in possession of sufficient and adequate material in order to reach to such conclusion.

The appellant has provided all the material required to prove that the loan given to appellant company is genuine. There was no clinching evidence in present case nor had AG been able to prove that money actually belonged to none but appellant itself Action of AO was based on mere suspicion. Considering the facts of the case and legal position of the issue, I am inclined to agree with the appellants' contention and consider that the addition is not required to be made and hence the AO directed to delete the addition made u/s 68 of the IT Act. Accordingly, these grounds are allowed.

5.22 Ground No.5 is raised against the addition of Rs, 10,88,550/- being disallowance of interest paid on the loan received from Deepak Joshi, HUF. The same was disallowed by the AG. as the loan was considered as unexplained cash credit, Since the loan addition u/s 68 has been deleted in this order vide the above ground, the disallowance of interest on the above loan does not stand. In view of the same, being con-

sequential, the disallowance of interest is deleted and the appellant gets the relief accordingly. This ground is allowed.

9. The Ld. DR relied on the order of the A.O, but could not substantiate or controvert the findings of the CIT(A) with any new cogent material or information. We find that the CIT(A) in respect of loan confirmation has dealt exclusively on the provisions of law, judicial decisions and facts and findings of the A.O. The contentions raised by the Ld.AR on the facts that the Mr.Deepak Joshi in his individual capacity is a managing director of the assessee company and the loan has been reflected in the audited balance sheet, which cannot be overlooked. Further the CIT(A) has elaborately dealt and discussed the facts and also the revenue has accepted the loan and interest component subject to TDS in the earlier and subsequent years. Since the addition of unsecured loan was deleted by the CIT(A) therefore the disallowance of interest on the unsecured loans cannot be sustained and the CIT(A) has taken a reasonable view by deleting the disallowance of interest. Accordingly we do not find

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any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

10. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 02.02.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 02.02.2022

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	18.01.2022		PS
2.	Draft placed before author	25.01.2022		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			