

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.99/MUM/2021
Assessment Year: 2016-17**

Income Tax Officer, Ward 32(1)(1), Mumbai.	Vs.	M/s. Unique Gems, Unit A-101, Tanvis Diamoda Premises, Nr. HP Petrol Pump, S.V. Road, Dahisar (East), Mumbai. PAN No.AADFU 2587R
Appellant		Respondent

Assessee by : Shri Jintendra Singh.
Revenue by : Shri Vranda U Matkari. (D.R.)

Date of Hearing : 06.07.2022.
Date of pronouncement : 15.07.2022.

O R D E R

PER AMARJIT SINGH, A.M:

This appeal filed by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-44, Mumbai Dt.13.3.2020 for the Assessment Year 2016-17.

2. The assessee has raised the following grounds :

“ 1. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition u/s.68 of the Act and on account of loan received and credited in the books when credit worthiness of loan advancers was not proved.

2. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition on account of interest paid on loan taken which was disallowed u/s.68.*

3. *The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

4. *The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary."*

3. The facts in brief are that the assessee has filed Return of Income declaring total income of Rs.12,77,620 on 2.8.2016. The Return of Income was subject to scrutiny and notice u/s.143(2) of the Act was issued on 2.8.2017. During the course of assessment, the Assessing Officer noticed that the assessee obtained unsecured loan from related parties. To verify the genuineness of unsecured loan transaction, the Assessing Officer issued notices u/s.133(6) of the Act to such parties. The Assessing Officer has analysed the unsecured loan transactions as under :

Ankit Kalyanbhai Patel.

4. This party has shown unsecured loan of Rs.39,45,000 given to the assessee. The Assessing Officer was of the view that this fund was transferred to the account of this party from his sister concern and in the Balance Sheet of Shri Ankit Kalyanbhai Patel there was no entry of Rs.39,45,631 to establish that said amount was received from sister concern Paresh Gems. The Assessing

Officer also stated that there was no corresponding income in the Return of Income filed by him. Accordingly, the Assessing Officer has treated the unsecured loan transaction made by the assessee with this party as non-genuine.

Jayaben Odhay Patel

5. The Assessing Officer noticed that the assessee has obtained unsecured loan of Rs.7,99,000 from this party. From the transaction, the Assessing Officer noticed that the Jayaben Odhay Patel had no funds for giving loan and in her Balance Sheet there was no entry of Rs.8 lacs in respect of unsecured loan and there was no corresponding income in the Return of Income filed by her. Therefore the Assessing Officer treated this loan transaction as non-genuine as per provisions of section 68 of the Act.

Naranbhai G Patel, HUF

6. This party has shown unsecured loan of Rs.12,90,000 given to the assessee. Similarly, the Assessing Officer stated that this party had no fund for giving loan to others and in the Balance Sheet of this party, there was no entry of Rs.12,90,000 as unsecured loan. Therefore it was held that the transaction of unsecured loan made with this party was not genuine as per the provisions of section 68 of the Act.

Paresh V Patel, HUF

7. This party has shown unsecured loan of Rs.6,34,000 given to the assessee. The Assessing Officer was of view that this party had no funds for giving loan to others and fund was transferred to his account from others by cheque. The Assessing Officer also stated that in the Balance Sheet of Paresh G Patel, HUF, there was no entry of Rs.6,34,000 as unsecured loan or other income and there was also no corresponding income in this regard in the Return of Income filed by the assessee. Therefore the loan transaction made with this party by the assessee was treated as non-genuine as per the provisions of section 68 of the Act.

Dhirubhai G Patel, HUF

8. This party had shown unsecured loan of Rs.75,72,000 given to the assessee. Similarly, the Assessing Officer noticed that this party had no funds for giving loan to others and funds were transferred to their account from somewhere by cheque before giving loan to the assessee. The Assessing Officer was of the view that no corresponding income was shown in the Return of Income filed by this party. Therefore loan transaction with this party was also treated as non-genuine as per section 68 of the Act.

9. Therefore the Assessing Officer held that unsecured loan of Rs.1,48,64,555 received by the assessee from 5 related parties were not

genuine and same was added to the total income of the assessee as unaccounted income as per the provisions of section 68 of the Act.

10. Aggrieved the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) has deleted the entire addition along with addition on account of payment of interest on the said unsecured loan holding that nature and source of credit in the books of accounts of the assessee were explained by the assessee and the explanation was apparently not false, but the conclusions of the Assessing Officer were incorrect and erroneous.

11. During the course of appellate proceedings before us, the learned counsel filed Paper Book comprising copies of documents and details filed during the course of assessment and appellate proceedings before the authorities below. The learned counsel also referred to various pages of Paper Book i.e. copies of notices issued u/s.133(6) of the Act, details of commission made by the assessee, copies of ledger account of lenders in the books of account of the assessee and with the other parties, copy of Return of Income filed by the lenders, copies of their capital account, copies of bank account, etc. in support of his contention that the loan transactions were genuine. Further the learned counsel vehemently contended that these documents establish the genuineness of the unsecured loan transactions made with these parties. The learned counsel has also stated that subsequently, the assessee has also made the repayment of these loans to the respective parties.

12. On the other hand, the learned Department Representative has relied on the orders of the authorities below.

13. Heard both the sides and perused the material on record. The Assessing Officer had made addition on account of unexplained income in respect of unsecured loan received by the assessee from the above referred five related parties u/s.68 of the Act. After perusal of the case, it is observed that Mr. Ankit Kalyanbhai Patel who had given unsecured loan to the amount of Rs.39,45,000 to the assessee had made compliance to the Notice issued u/s.133(6) of the Act by the Assessing Officer. He had also filed copy of bank statement, copy of income tax acknowledgement, copies of balance sheets, etc. It was also stated that the source of such loan was out of the loan amount of Rs.51,15,000 returned back by M/s. Paresh V Patel HUF to Mr Ankit Kalyanbhai Patel and it was also explained that the assessee had also paid interest of Rs.57,931 during the year to the assessee. Similar details / documents and relevant supporting evidences of source of unsecured loan given by the other four parties were also furnished and explained.

After referring various pages of paper book it is also explained that the loan advance which was already repaid altogether during the year will not be

appeared as outstanding in the Balance Sheet for the year under consideration.

In view of the facts elaborated above and finding of the Id. CIT(A) as referred above, it is evident that the assessee had produced all relevant details in his possession viz. Name, PAN, IT Return, Bank Statement and Ledger Account and further the lenders have provided the relevant document as required by the Assessing Officer. Having regard to the facts and available details, the Assessing Officer could not prove contrary. Therefore we do not find any infirmity in the decision of Id. CIT(A). Accordingly, both the grounds of Revenue are dismissed.

14. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 15th July, 2022.

Sd/-

(ABY T VARKEY)

JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)

ACCOUNTANT MEMBER

Mumbai;

Dated: 15.07.2022.

** Reddy gp*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)

ITAT, Mumbai