

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.3992/Mum./2019
(Assessment Year : 2013-14)

J.V. Shah
D/11, 105-106, Mahavir Apartment
S.P. Nagar, Mulund (West) Appellant
Mumbai 400 080 PAN – AAGFJ1357H

v/s

Income Tax Officer
Ward-29(1)(5), MumbaiRespondent

Assessee by : Shri Aditya Ramchandran
Revenue by : Smt. Smita Nair

Date of Hearing – 23/06/2022

Date of Order – 15/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 15/03/2019, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals)-40, Mumbai, [*"learned CIT(A)"*], for the assessment year 2013-14.

2. In its appeal, the assessee has raised following grounds:

"1. The Ld CIT(A) has erred in confirming addition made by Ld A.O of Rs.2500000/- u/s 68 of Income Tax Act 1961 by treating genuine unsecured loans as accommodation entry/unexplained cash credit.

2. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming additions made by AO and stating that the Appellant has indulged in bogus transaction and the Appellant could not establish the loan transaction to its genuineness, identity, creditworthiness of the transaction.*

3. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming and treating the genuine loan of Rs2500000/- from M/s. Navkar Diamond as alleged accommodation entry without appreciating the fact that the appellant had received the unsecured loan through banking channel and during the course of assessment proceeding the appellant has submitted all the details in respect of identity creditworthiness and genuineness of the loan.*

4. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition made by the Ld. Assessing Officer without considering the fact that such addition of genuine loan is made solely on the basis of the findings of Investigation Wing Mumbai in the case of Bhanwarlal Jain group with whom the appellant had no transaction.*

5. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition made by the Ld. Assessing Officer without considering the fact that such addition is made by Ld. A.O without any corroborative evidence to prove that the appellant has paid the cash against the cheque and without stating the fact whether any of the partner of the firm M/s Navkar Diamond also gave the statement to that effect.*

6. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition made by the Ld. Assessing Officer without considering the fact that such addition of genuine loan is made by Ld A.O solely on the basis of statement of Shri Bhanwarlal Jain given before Investigation Wing Mumbai without giving opportunity of cross examination of Bhanwarlal Jain and also without providing copy of statement to the appellant.*

7. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition made by the Ld. Assessing Officer without considering the fact that the Ld. A.O. failed to appreciate the fact that the appellant has paid interest on loan taken on which TDS has been deducted and deposited to the credit of Central Government".*

3. At the outset, learned Authorised Representative ('learned AR') appearing for the assessee wish to only press grounds No. 1 and 6 raised in the appeal. Accordingly, all the other grounds raised in appeal are dismissed as not pressed.

4. The only grievance of the assessee in the present appeal is against addition of Rs. 25,00,000, made under section 68 of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a partnership firm and is engaged in the business of trading in shares, bonds, securities, debentures, units and mutual funds. For the year under consideration, assessee e-filed its return of income on 27/09/2013, declaring loss of Rs. 3,87,008. Information was received from DDIT (Investigation), Mumbai that during the year under reference, the assessee had been the beneficiary of accommodation entries to the tune of Rs. 25,00,000, through Bhanwarlal Jain group of cases. As per the aforesaid information, during the course of search action in the case of Bhanwarlal Jain group, it has been established that Shri Bhanwarlal Jain along with his sons are operating and managing 70 benami concerns in the names of their employees through which they provided accommodation entries of unsecured loans and bogus purchases to various beneficiaries. The assessee has been identified as one of the beneficiaries of such modus operandi. Shri Bhanwarlal Jain and his sons provided the list of companies in which they are director and list of companies which are managed and controlled by them. The name of M/s Navkar Diamonds appeared in the list of companies controlled, managed and operated by Shri Bhanwarlal Jain, with which the assessee was engaged in financial transaction. Accordingly, notice under section 148 of the Act was issued on 04/02/2015, after recording reasons. During the course of reassessment proceedings, independent enquiries have been carried out by issuance of notice under section 133(6) of the Act to M/s Navkar Diamonds to ascertain the genuineness and creditworthiness of the alleged transaction. However, M/s Navkar Diamonds did not file the details, except copy of bank

statement and acknowledgment return. The Assessing Officer vide order dated 23/03/2016 passed under section 143(3) r/w section 147 of the Act came to the conclusion that onus lies on the assessee to prove the genuineness and creditworthiness of all the transactions to the satisfaction of the Assessing Officer. In the absence of any material being brought on record by the assessee to controvert the findings recorded by investigation wing of the income tax department, the Assessing Officer held that the party from whom assessee has shown to have taken unsecured loan is hawala party, who have been doing business of providing accommodation entries. Accordingly, the Assessing Officer made an addition of Rs. 25,00,000 treating the same as cash credit under section 68 of the Act. The relevant findings of Assessing Officer, are as under:

"4.3 Independent enquiries have been carried out by issue of notice u/s, 133(6) of the I.T. Act to the above mentioned party to ascertain the genuineness and creditworthiness of the alleged transactions. In response to the letter us. 133(6) M/s. Navkar diamonds did not filed details except copy of bank statement and acknowledgment return. Therefore, the assessee was asked to produce the party alongwith complete books of accounts, sale bills, purchase bills bank statements for the period relevant to A.Y. 2013-14, but the assessee has failed to do so inspite of enough opportunities been sought. Further, the assessee did not make any efforts to controvert the finding recorded by investigation wing of Income-tax department. The said dealer / seller had already accepted before the authorities of investigation wing of Income-tax department about their modus operandi of providing accommodation entry on commission basis. During the period relevant to the assessment under consideration, the assessee has engaged in financial transactions of Rs 25,00,00/- duly supported by ledger account, copy of bank statement, etc. The said financial transaction been taken from one M/s. Navkar diamonds, one of the concerns controlled, managed and operated by Shri Bhanwarlal Jain. During the course of assessment proceedings, assessee has furnished written as well as oral submission in support of his claim of genuineness of alleged transactions. The said submission has been perused and given due consideration in the light of the facts that the above mentioned alleged party has given statement duly recorded on oath that they have not been engaged in the business of actual exchange/ delivery of goods with any of alleged transacting party.

4.4 *The primary onus is on the assessee to establish the genuineness of the purchases/ transactions lined by it. In terms of provisions of section 101, 102 and 106 of the Evidence Act, the onus lies in the assessee to prove the genuineness & creditworthiness of all the transactions to the satisfaction of the Assessing Officer, which has not been discharged, as the assessee has failed to produce the party from whom the transaction were made. Since the primary facts are in the knowledge at the assessee, it is the assessee's duty in provide the correct address and contact modes of the alleged transacting party Mere filing of confirmation etc, in support of transactions and payment routed through account payee cheques cannot be conclusive in a case where genuineness and creditworthiness of the transactions are in doubt Payment by account payee cheque is not sacrosanct and is not sufficient to establish the genuineness of the transitions. Thus, the undisputed fact is that the transactions claimed to have been made from the above party remained unverified. The genuineness of the transactions could be decided on the basis of primary facts on records and the revenue is not required to lead a clinching evidence to prove that the purchases are bogus, it is well settled law that strict rules of evident do not apply to Income-tax Act and the real test with regard to the genuineness is "preponderance of probabilities" and not "beyond reasonable doubt"*

4.5 *The facts mentioned in the preceding paras clearly indicates that the party from whom the assessee has shown financial transaction is hawala party who have been doing business of providing accommodation entries the assessee has engaged in these alleged transactions to hide actual status of transaction with malafide intention to evade the legitimate taxes In view of discussions of facts and circumstance of case, the above mentioned alleged transactions to the tune of Rs.25,00,000/- is hereby disallowed, treating the same as cash credits u/s.68 of the IT Act and therefore, the same is added back to the total income of the assessee. The disallowance under the head computes at Rs.25,00,000/- Penalty proceedings u/s 271(1)(c) of the IT Act is separately initiated for furnishing inaccurate particulars of income for year under reference."*

6. In appeal, learned CIT(A) vide impugned order dated 15/03/2019, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

7. During the course of hearing, learned AR by referring to the Ledger account of M/s. Navkar Diamonds, in the books of the assessee submitted that the loan and interest was repaid to the aforesaid entity. The learned AR also referred to the bank statement of M/s. Navkar Diamonds, in this regard. The

learned AR further relied upon the affidavit from sole proprietor of M/s Navkar Diamonds, confirming the transaction.

8. On the other hand, learned Departmental Representative (*'learned DR'*) by vehemently relying upon the orders passed by the lower authorities submitted that details as sought by the Assessing Officer under section 133(6) were not furnished by M/s Navkar Diamonds.

9. We have considered the rival submissions and perused the material available on record. In the present case, the reassessment proceedings were initiated under section 147 of the Act on the basis of information received from investigation wing regarding the beneficiaries of accommodation entries provided by companies managed and controlled by Bhanwarlal Jain group. As per the information, the assessee was identified as one of the beneficiaries of the accommodation entries provided by one such entity. In order to verify the identity, creditworthiness and genuineness of the transaction, the Assessing Officer issued notice under section 133(6) of the Act to M/s.Navkar Diamonds. As details sought were not furnished by M/s Navkar Diamonds, except copy of bank statement and acknowledgment return, the Assessing Officer asked the assessee to produce the party along with complete books of accounts, sale bills, purchase bills, bank statements for the year under consideration. However, as noted by the Assessing Officer the assessee failed to do so despite enough opportunities been sought. During the hearing before us, bank statement of M/s Navkar Diamonds, and affidavit of its proprietor, forming part of the paper book, were referred to substantiate the fact that the transaction

has undertaken through banking channel. Further, it is the claim of the assessee that the loan which was granted by M/s Navkar Diamonds, was repaid by the assessee along with the interest. In this regard, entries in the aforesaid bank statement were referred. Further, scheduled D to audited financial statement of M/s Navkar Diamonds, was also referred, wherein name of the assessee is appearing in schedule of loans and advances. From the perusal of the balance-sheet of M/s Navkar Diamonds, forming part of the audited financial statements, we find that the said entity has capital of only Rs. 2,11,586.13. Further the company has shown to have sundry creditors of Rs. 45,61,40,885 and sundry debtors of Rs. 28,34,37,570.

10. It is well settled that onus is on the assessee to prove the identity and creditworthiness of the creditor and genuineness of the transaction. In the present case, the very fact that M/s Navkar Diamonds, was owned and controlled by Shri Bhanwarlal Jain and his sons, which are held to be an accommodation entry provider in their own case, cast doubt on the genuineness of the transaction. Further, financial position of M/s Navkar Diamonds, as noted above, also raise doubts about the creditworthiness of the lender. Even during the hearing before us, no evidence has been brought on record to controvert any of the information received from the investigation wing of the income tax department, on the basis of which the reassessment proceedings were initiated in the case of the assessee. During the course of hearing, learned AR placed reliance upon the decision of coordinate bench of the Tribunal in Naresh Hiran vs ITO, in ITA No. 1235/Mum/2017, wherein, vide order dated 31/10/2019, addition on account of unsecured loan transaction,

inter-alia, with M/s Navkar Diamonds, was deleted. From the perusal of the aforesaid decision, we find that there is no allegation of absence of the party in response to notice issued under section 133(6) of the Act. We further find that there is also no allegation in the aforesaid decision that various details, as noted by the Assessing Officer in paragraph 4.3 of its order in the present case, were not furnished either by M/s Navkar Diamonds, or by the taxpayer. Therefore, we are of the considered view that aforesaid decision is distinguishable on facts. Further, reliance was placed on another decision of coordinate bench of the Tribunal in ITO vs Smt. Manjula B Hedpara, in ITA No. 4669/Mum/2017, wherein, the coordinate bench, vide order dated 17/05/2018, held that by not examining the lender and not issuing any notice whatsoever to the lender the Assessing Officer has committed fatal error. However, we find that in the present case the Assessing Officer has made independent enquiry by issuing notice under section 133(6) of the Act to the lender i.e. M/s Navkar Diamonds, and when the details, as sought from the aforesaid entity, were not received, the assessee was also asked to produce the details, as mentioned in the assessment order, who also failed to provide the complete details. Thus, we are of the considered view that this decision also does not support the case of the assessee. Therefore, in view of the aforesaid findings, we find no infirmity in the impugned order passed by the learned CIT(A). Further, no evidence has been brought on record to show that plea of the assessee, as raised in ground no.6, was denied by the Revenue. As a result, grounds No. 1 and 6, raised in assessee's appeal, are dismissed.

11. In the result, appeal by the assessee is dismissed.

Order pronounced in the open Court on 15/09/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 15/09/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai