

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.125/RPR/2018

निर्धारण वर्ष / Assessment Year : 2013-14

The Assistant Commissioner of Income Tax,
(Central Circle)-1, Raipur (C.G.)

.....अपीलार्थी/Appellant

बनाम / V/s.

M/s. Mahavir Infracon Private Limited
C/o. Sumeet Fabrics, Jai Stambh Chowk,
Rajnandgaon (C.G.)

PAN : AAHCM7501J

.....प्रत्यर्थी / Respondent

Assessee by :Shri Amit M Jain, Advocate
Revenue by :Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing :27.07.2022

घोषणा की तारीख / Date of Pronouncement :23.09.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the department is directed against the order passed by the CIT(Appeals)-II, Raipur, dated 27.04.2018, which in turn arises from the order passed by the A.O under Sec 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 31.03.2016 for assessment year 2013-14. Before us the department has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the CIT(A) erred in deleting the additions u/s.68 of the Income Tax Act, 1961 of Rs.2,70,00,000/- being unexplained cash credits in the form of unsecured loans without appreciating the fact that the lender companies are primarily Kolkata based with low capital, high reserves, high turnover and no income which are typical traits of sheet companies.

2. On the facts and in the circumstances of the case, the CIT(A) erred in not appreciating the outcome of the investigation and enquiries conducted by the high-level team of the department on the addresses of the aforesaid companies wherein it is categorically stated that the above companies were not available at the given addresses and the no information was available with respect to the identity & genuineness of these companies.

3. On the facts and in the circumstances of the case, the CIT(A) erred in relying upon the decision in the cases of R.K Transport & Construction P Ltd. and R.K Ferro Alloys P Ltd. and without appreciation the HC decision on similar issue in N Tarika Properties Investment P Ltd. (2013) 40 taxmann.com 525 (Delhi HC), NR Port folio P Ltd. 214 taxmann.com 291 and Nipuna Builders & Developers P. Ltd. (2013) 30 taxmann.com 292 (Delhi HC).”

2. Succinctly stated, the assessee company which is engaged in the business of trading in land and that of a builder had e-filed its return of income for A.Y.2013-14 on 31.10.2013, declaring an income at Rs.10,48,760/-. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee company had during the year under consideration claimed to have received loans from seven Kolkata based companies amounting to Rs.3,07,50,000/- (wrongly mentioned by the A.O as Rs.2.70 crore), as under:

S. No.	Name of the company	Amount of loan
1.	Apnapan Mercantile Pvt. Ltd.	Rs.37,50,000/-
2.	Bhimal Nirmal Pvt. Ltd.	Rs.50,00,000/-
3.	Confident Vinimay Pvt. Ltd.	Rs.25,00,000/-
4.	Goodfaith Infra Pvt. Ltd.	Rs.25,00,000/-
5.	Star Land Procon Pvt. Ltd.	Rs.1,25,00,000/-
6.	Suryakiran Tradecom Pvt. Ltd.	Rs.25,00,000/-
7.	Vinishar Commercial Pvt. Ltd.	Rs.20,00,000/-
	Total	Rs.2,70,00,000/-

As is discernible from the assessment order, the A.O in order to verify the authenticity of the loan transactions is stated to have constituted a team which was sent to Kolkata to make necessary verifications as regards the authenticity of the aforesaid loan transactions. However, as stated by the A.O, the aforesaid team had therein reported that as none of the aforesaid lender companies were found at their respective addresses, therefore, necessary enquiries about the veracity of the loan transactions could not be carried out. On being confronted with the aforesaid fact the assessee denied the allegation. It was claim of the assessee that as all the aforesaid lenders were holding corporate identity numbers and were duly registered under the Companies Act, 1956 and were regularly filing their returns with the registrar of companies, therefore, it was absolutely incorrect fact that the whereabouts of the said companies could not be located. It was further submitted by the assessee that complete details of the aforesaid companies, viz. names, corporate addresses, registration numbers, corporate identity numbers, e-mail id's, details of the previous years board meetings, audited balance sheets, details of the directors a/w. the dates of appointment of the directors were duly available at the website of the Ministry of

Corporate Affairs. Copy of the aforesaid details were filed by the assessee with the A.O. Also, it was stated by the assessee in its reply that all the aforementioned lender companies were holding PAN and were regularly filing their respective returns of income. It was the claim of the assessee that now when the aforementioned lender companies had sufficient financial means a/w. regular source of income, therefore, no adverse inferences as regards their creditworthiness could have been drawn. It was further submitted by the assessee that the loans in question were received from the aforementioned companies out of their respective bank accounts and copies of the same were filed before the A.O.

3.1 However, the A.O was not persuaded to subscribe to the claim of the assessee of having raised genuine loans from the aforementioned companies. It was observed by the A.O that a perusal of the documents filed by the assessee revealed that the companies from whom loans were claimed to have been raised were in fact paper companies as their physical presence could not be established. As regards, the bank account of the aforementioned companies from where loans were claimed to have been received by the assessee, it was observed by the A.O that a perusal of the same revealed that

immediately prior to the advancing of the loan to the assessee company amounts were transferred in the respective bank accounts of the said lenders. Accordingly, the A.O after relying upon the judgment of the Hon'ble High Court of Delhi in the case of CIT Vs. Sofia Finance Limited (1994) 205 ITR 98 (Del) and that in the case of CIT Vs. CIT Vs. Oasis Hospitality Limited (2011) 333 ITR 119 (Del) held the unsecured loans raised by the assessee amounting to Rs.3,07,50,000/- (wrongly mentioned by the A.O as Rs.2.70 crore) as unexplained cash credits u/s.68 of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) after deliberating at length on the contentions advanced by the assessee before him concurred with him that the loans in question raised from the seven parties could not have been held as unexplained cash credits u/s.68 of the Act. It was observed by the CIT(Appeals) that a perusal of the assessment record did not make any mention about any enquiry carried out by the A.O as regards the lender companies as was relied upon by him for drawing adverse inferences as regards the very existence of the aforesaid companies. It was noticed by the CIT(Appeals) that there was no whisper in the assessment order about the details of enquiry

conducted and places which were visited by the team that was stated to have been deputed to carry out enquiries as regards the lender companies. The CIT(Appeals) observed that the assessee company had duly substantiated the source of source of the lender companies on the basis of the details which were filed in the course of the assessment proceeding. The CIT(Appeals) further taking cognizance of the 'balance sheets' of the seven lenders companies observed, that the same duly substantiated their financial credibility for advancing the respective loans to the assessee company. It was observed by the CIT(Appeals) that the fact that all the loans were advanced through cheques and/or RTGS duly established the genuineness of the respective loan transactions in question. Also, it was observed by the CIT(Appeals) that the assessee had duly filed the copies of the returns of income of the lender companies for the year under consideration. It was further noticed by the CIT(Appeals) that the confirmations of all the lender companies were submitted by the assessee before the A.O as well as before him. On a perusal of the respective confirmations, it was observed by the CIT(Appeals) that the respective lender companies had duly confirmed the source from which the loans were advanced by them to the assessee company

a/w. the complete details of their tax credentials and addresses. Also, it was observed by the CIT(Appeals) that in the confirmations of the lenders the company master data as was extracted from the official website of the Ministry of Corporate Affairs was mentioned. Apart from that, it was observed by the CIT(Appeals) that all the loans in question that were raised by the assessee from the aforementioned seven parties had been repaid a/w interest @12% p.a (on which tax was deducted at source) by the assessee in the immediately succeeding year i.e. during the period relevant to A.Y.2014-15. The CIT(Appeals) after considering the bank statements of the lender companies and their financial statements was of the view that their creditworthiness i.e. availability of sufficient funds with them for advancing the respective loans was duly evidenced. Apart from that, it was observed by the CIT(Appeals) that the assessee company which was one of the group companies of “Bohra Group” was subjected to search proceeding u/s.132 of the Act on 11.03.2016. It was observed by the CIT(Appeals) that though assessments were framed in the case of the assessee company pursuant to the foresaid search proceedings for the period i.e A.Y.2010-11 to A.Y.2016-17 u/ss.153A/143(3) of the Act, but no

adverse inferences qua the issue in hand were drawn by the A.O. Considering the aforesaid facts, it was observed by the CIT(Appeals) that the factum of repayment of loan by the assessee company to the aforementioned lender companies in the immediately succeeding year i.e. A.Y.2014-15 was accepted in the course of post search assessment and no adverse inferences qua the said issue was drawn in the hands of the assessee. Also, it was observed by the CIT(Appeals) that though the assessee had duly substantiated the identity and creditworthiness of the lender companies, and also the genuineness of loan transaction in question, but the A.O had summarily drawn adverse inferences without carrying out any verifications and taking recourse to the provision of section 133(6) or Section 131(1) of the Act. Relying upon the judgment of the Hon'ble High Court of Chhattisgarh in the case of Pawan Kumar Agarwal, Tax Case No.24 of 2011 dated 04.04.2017, it was the claim of the assessee before the CIT (Appeals) that now when it had discharged the onus that was cast upon it as regards proving the authenticity of the loan transactions in question, then, that a mandatory obligation was cast upon the A.O to have for rebutted the genuineness of the transaction as had been substantiated by the assessee on the basis

of documentary evidence before him by carrying out verifications and taking recourse to the provisions of section 133(6) or Section 131(1) of the Act. The CIT(Appeals) considering the totality of facts involved in the case before him was of the view that as the assessee had duly discharged the onus that was cast upon it as regarding proving the identity and creditworthiness of the lenders, and also the genuineness of the loan transactions in question, which, however, had not rebutted by the AO, therefore, dubbing of the loans aggregating to Rs.3,07,50,000/-by him as unexplained cash credits u/s.68 of the Act could not be sustained and was liable to be vacated.

5. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. AR to drive home his contentions.

7. Admittedly, it is a matter of fact borne from record that the assessee had during the year under consideration raised loans aggregating to Rs.3,07,50,000/-(approx.) from the aforementioned seven Kolkata based companies. At the very outset, we may herein observe that though the A.O had held the interest bearing loans in question that were raised by the assessee from the aforementioned parties as bogus, however, he had not drawn any adverse inferences as regards the interest that was claimed by the assessee company in its profit & loss account to have been paid to the said respective lenders @12% per annum during the year. On a perusal of the orders of the lower authorities, it transpires that as observed by the CIT(Appeals) and, rightly so, though the A.O had drawn adverse inferences based on his observation that the team which was constituted to carry out verifications about the authenticity of the loans that were claimed by the assessee to have been raised from aforementioned seven lender companies had reported that the whereabouts of the said companies could not be located, but there is no whisper in his order about any such report a/w. details of enquiries which were conducted by the said team and also the places that were visited by them as regards the aforesaid parties. Also, we

find that it is a matter of fact borne from the record that though the assessee company in the course of the assessment proceedings had filed before the A.O substantial documentary evidence to substantiate the authenticity of the loan transactions in question, viz. companies master data, ledger accounts of the lender companies, bank account/statement of the assessee company, copies of returns of income of the lenders, audited financial statements of the lenders, sources out of which the lender companies had advanced loans, confirmations of the lender companies, bank account statements of the lender companies, memorandum of association and article of association of the lender companies, but strangely no reference of the same is discernible from the order passed by the A.O. Also, as regards the creditworthiness of the aforementioned lender companies, the Ld. Authorized Representative (for short 'AR') for the assessee during the course of the hearing of the appeal had taken us through the financial statements of the respective lender companies, which as noticed by the CIT(Appeals) duly substantiated their creditworthiness for advancing the respective loans to the assessee company by observing as under:

“In the case of Apnapan Mercantile Pvt. Ltd, Kolkatta I observe that the revenue from operations has been declared at Rs.2,65,78,946/-

plus other income of Rs.1,883,014/- totaling Rs.2,84,61,960/-. This company has given a loan of Rs.37.50 lakhs.

In the case of Bhimtal Nirman Pvt. Ltd. the revenue from operations is shown at Rs.18,308,671/- plus other income of Rs. 217,802/- totaling Rs.20,526,474/- out of which a loan of RS. 50,00,000/- has been given.

In the case of Confident Vinmay Pvt. Ltd the revenue from operations is shown at Rs.15,895,741/- plus other income of RS. 2,523,267/- totaling Rs.18,419,008/- out of which loan of Rs.25,00,000/- has been given.

In the case of Goodfaith Infra ventures Pvt. Ltd. the revenue from operations has been shown at Rs.4,115,478/- plus other income of Rs. 4,074,698/-and Rs.99,725/- totaling to Rs. 83,29,901/- out of which loan of Rs. 25,00,000/- has been given.

In the case of Star land Procon Pvt Ltd the revenue from sales has been shown at Rs.19,029,761/- plus interest income of Rs. 2,231,262/- totaling to Rs.21,261,023/- out of which a loan of Rs. 1.25 Crores has been given.

Coming to Suryakiran Tradecom Pvt. Ltd the turnover has been shown at Rs. 19.89 crores and loan given is of Rs.25,00,000/-

In the case of Vinsher Commercial Pvt. Ltd. the revenue from operations has been shown at Rs.23,165,442/- plus other income of Rs.17,272/- totaling Rs.23,182,714/- out of which loan of Rs. 20,00,000/- has been given.”

As observed by the CIT(Appeals) and, rightly so, the respective lenders had not only confirmed the loan transactions in question but had also substantiated the source of source i.e. the source out of which the respective loans were advanced by them. Admittedly, the bank accounts of the respective lenders though reveals credit of amounts through RTGS/transfers prior to advancing of the respective loans by them to the assessee company, but in case of

neither of the lender company there is either any cash deposit prior to advancing of the respective loans, nor any of such receipt is found to be in the nature of an amount that was received by the lender company as an accommodation entry; or as an entity forming part of a chain of accommodation entry providers/operators. In our considered view, the mere allegation of the A.O that the advancing of the respective loans by the aforesaid lender companies was preceded by certain credits in their bank account by no means would at all suffice for drawing of adverse inferences as regards the authenticity of the loan transactions in question.

8. Be that as it may, we find that in case of majority of the lender companies the authenticity of the loan transactions have duly been substantiated by the assessee by placing on record details as regards the source out of which loans were advanced by them to the assessee company, which fact as is discernible from the records to which our attention was drawn by the Ld. AR are for the sake of clarity culled out as under:

(Apnapan Mercantile Pvt. Ltd.)

Source of fund for F.Y.2012-13

Date	Particulars	Amount(Rs.) paid	Source of fund	Nature of Account
11/02/2013	Mahabir Infracon Pvt Ltd	8,50,000.00	1. Ranu Trading & Company 2. Panna lal & Sons HUF	1. Sundry Debtor 2. Sundry Debtor
12/02/2013	Mahabir Infracon Pvt Ltd	28,00,000.00	1. Ranu Trading & Company 2. Panna lal & Sons HUF	1. Sundry Debtor 2. Sundry Debtor
01/03/2013	Mahabir Infracon Pvt Ltd	1,00,000.00	1. Lords Mark Papers and Polymers Pvt Ltd.	1. Loans (Liability)

(Bhimtal Nirmal Pvt. Ltd.)

E. Source of Fund : that the fund was received from Mr. Sachin Deshmukh towards refund of Loans:

Amount	Name	Address	PAN
5000000/-	Sachin Deshmukh		

(Goodfaith Infra Ventures Private Limited)

5. Source of Fund : that the money for loan given to M/s. Mahavir Infracom Pvt. Ltd. was received from M/s. CountrywideTradecon Pvt. Ltd. against sale of shares:

Date	Amount	Name	Address	PAN
01-02-13	2500000/-	Countrywide Tradecon Pvt. Ltd.	62, Nalini Seth Road, Ground Floor, Kolkata-700 007	AADCC0385J

(Starland Procon Private Limited)

- Source of Fund : That the fund was received from following:

Date	Amount	Name	Address	PAN
13-10-12	1,00,00,000/-	Terminal Vincom Pvt Ltd	33, C R Avenue, 9 th Floor, Kolkata – 700012.	AADCT2680H
27-12-12	40,00,000/-	Amarkantak Infracon Pvt Ltd	49A, Strand Road, 3rd Floor Kolkata-700007	AAKCA5395B
04-01-13	23,00,000/-	Valentino Tradecom Pvt Ltd	24/25 Becharam Chowdhury Lane, 5th Floor, Howrah-711101	AACCV4509L
04-01-13	11,00,000/-	Crest Vanijya Pvt Ltd	41, Shivtolla Street, Kolkata-700007.	AADCC5615P
04-01-13	16,00,000/-	Pleasant Sales Pvt Ltd	62 Nalini Seth Road, Kolkata-700 007	AAECP2157L

9. As regards the remaining three lenders, viz. (i) Confident Vinimay Pvt. Ltd.; (ii) M/s. Surya Kiran Tradecon Pvt. Ltd.; and (iii) M/s. Winsher Commercial Pvt. Ltd., we find that though the supporting details as regards the source out of which loans were advanced by the lenders to the assessee company had been not filed by them, but a perusal of their respective confirmations a/w. bank statements out of which loans were given by them to the assessee company reveals a similar set of facts. On a perusal of the bank accounts of all the aforementioned lender companies, it transpires that the respective amounts in question were advanced by the lender companies out of the funds which were received by them through RTGS/bank transfers and not by way of any cash deposits. No material had been placed on record by the A.O which would reveal that any amount credited in the bank account of either of the lender

was in the nature of an amount received to facilitate providing of an accommodation entry. In fact, it is not even the case of the department before us that either of the aforementioned seven lender companies is a blacklisted company. Another aspect which duly substantiates the authenticity of the loan transactions in question is the fact that majority of amounts of the outstanding loans had been repaid by the assessee company through banking channels prior to selection of its case for scrutiny assessment vide notice issued u/s.143(2), dated 02.09.2014. The details of the repayment of the outstanding loans by the assessee company to the aforementioned lender companies is culled out as under:

Sr. No.	Particulars	Amount
1.	Apnapan Mercantile Pvt. Ltd. Loan repaid (including interest) on 01.06.2013	Rs.38,72,364/-
2.	BhimtalNirman Private Limited Loan repaid (including interest) on 31.03.2014	Rs.51,36,895/-
Note :	The amount of Rs.8,63,105/- was in fact advanced by the assessee company to the aforementioned party during the year in which, thereafter was received back by the assessee in the succeeding year on 10.03.2015	
3.	Confident Vinimay Private Limited Loan repaid in two tranches (including interest) (i) 25.11.2013 (ii) 27.11.2013	Rs. 14,00,000/- Rs.13,11,094/-
	Total	Rs.27,11,094/-
4.	Good Faith Infra Ventures Pvt. Ltd. Loan repaid in three tranches (including interest) (i) 26.11.2013 (ii) 27.11.2013 (iii) 27.11.2013	Rs. 8,00,000/- Rs.14,22,178/- Rs.5,00,000/-
	Total	Rs.27,22,178/-
5.	Starland Procon Private Limited Loan repaid in six tranches (including interest) (i) 18.06.2013 (ii) 13.07.2013 (iii) 27.08.2013 (iv) 30.08.2013 (v) 02.09.2013 (vi) 31.03.2014	Rs.12,09,340/- Rs.4,35,000/- Rs.50,00,000/- Rs.25,00,000/- Rs.25,00,000/- Rs.15,00,000/-
	Total	Rs.1,31,44,340/-
Note :	Balance amount of Rs.3,27,047/- was repaid in the succeeding year on 16.02.2015	
6.	Surya Kiran Trade Com. Loan repaid (including interest) on 23.11.2013	Rs.27,17,428/-
7.	Winsher Commercial Ltd. Loan repaid (including interest) on 29.04.2013	Rs.20,54,500/-

On the basis of the aforesaid facts, we are of a strong conviction that the authenticity of the aforesaid loan transactions in question stands duly substantiated.

10. Apart from that, we concur with the view taken by the CIT(Appeals) that now when the assessee company had by placing on record irrefutable documentary evidences substantiated the identity and creditworthiness of the lender companies, as well as the genuineness of the loan transactions in question, therefore, as held by the Hon'ble High Court of Chhattisgarh in the case of Pawan Kumar Agrawal (supra) though the A.O remained under a statutory obligation to have carried out necessary verifications by exercising the powers vested with him u/s.133(6) or u/s.131 of the Act for disproving the assessee's claim of having raised genuine loans from the aforementioned parties, but we find that nothing had been done by the AO in the case before us. In fact, we would mince no words in observing that there had been no attempt on the part of the AO in even carrying out any exercise to dislodge the authenticity of the loan transactions in question. Also, our aforesaid view that in case the A.O had any doubts as regards the authenticity of the loan transactions under consideration then he ought to have exercised

the powers vested with him u/s.131 of the Act and summoned the said lenders and made requisite enquiries from them is supported by the judgment of the Hon'ble High Court of Karnataka in the case of G. Shubha Devi Vs. ITO, 307 CTR 536 (Kar.).

11. On the basis of our aforesaid deliberations, we concur with the view taken by the CIT(Appeals) that as not only the assessee had duly substantiated the authenticity of the transaction to the hilt on the basis of supporting corroborative documentary evidences, but it is also a fact to which we cannot be oblivion that the A.O in the present case before us had except for harping upon certain unsubstantiated allegations, had however, failed to placed on record any such material which would have refuted the authenticity of the documents that were placed on record by the assessee before him to drive home its claim of having raised genuine loans in question. In fact, we are pained to find that the A.O had not even thought it fit to refer to the material which was placed on record by the assessee in support of his aforesaid claim of having raised authentic loans from the aforementioned lenders. Accordingly, on the basis of our aforesaid observations, we, finding no infirmity in the view taken by the CIT(Appeals) who had rightly vacated the characterization of the

loans of Rs 3,07,50,000/- raised by the assessee company from the aforementioned seven lenders as unexplained cash credits u/s.68 of the Act, uphold the same. Thus, the **Grounds of appeal No.(s) 1 to 3** raised by the revenue are dismissed in terms of our aforesaid observation.

12. Resultantly, the appeal filed by the revenue is dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd September, 2022

**SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The Pr. CIT-II, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.