

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 4495/Mum/2019 (A.Y. 2013-14)

Manmohan Didwania
M/s Hanuman Trading Corporation,
1-B-5 Rahul CHS, Marve Road,
Malad (W), Mumbai-400064.

PAN: AAEPD1249E

..... Appellant

Vs.

ITO- 30(2)(4),
Room No. 609, C-13,
Bandra Kurla Complex,
Bandra (East), Mumbai-400051.

..... Respondent

Appellant by	:	None
Respondent by	:	Sh. Chetan M. Kacha, Sr. DR
Date of hearing	:	18/07/2022
Date of pronouncement	:	10/10/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals)-41, Mumbai [hereinafter referred to as [‘CIT(A)’] dated 26.04.2019 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as [‘the Act’] for the Assessment Year (AY) 2013-14. The assessee has raised the following grounds of appeal:

	Grounds of appeal	Tax effect relating to each Ground of appeal (see note below)
1.	<p>On facts and circumstances of the case and law on the subject the learned Assessing Office erred in making addition of Rs.20, 00,000/- on account of unsecured loan as unexplained cash credit u/s 68 of the Income Tax Act, 1961 and the learned Commissioner of Income Tax (Appeals) erred in upholding addition of Rs. 20, 00,000/- u/s 68 of the Income Tax Act.</p> <p>On the facts and circumstances of the case and law on the subject, the addition made be deleted.</p>	Rs. 6,60,000/-
2.	<p>On facts and circumstances of the case and law on the subject the Ld. A.O erred in disallowing the interest expenses of Rs.2, 02,028/- u/s 37 of the I.T. Act and the learned Commissioner of Income Tax (Appeals) erred in upholding addition of Rs. 2, 02,028/- u/s 37 of the Income Tax Act.</p> <p>On the facts and circumstances of the case and law on the subject, the addition made be deleted.</p>	Rs. 66,669/-

2. Brief facts of the case are that the assessee is an individual engaged in the business of Manufacturing Industry-Textiles, handlooms, Power looms e-filed his return of income on 30.09.2013 declaring income of Rs. 55,20,030/-.

3. During the course of the assessment proceedings assessee was asked to furnish the details of purchases, unsecured loans and other huge expenses. Meanwhile information was received from DGIT (Investigation) (Mum) about the loan entry taken by the assessee in the form of unsecured loans from M/s Rajat Diamond Exim Pvt Ltd, this party M/s Rajat Diamond Exim Pvt Ltd as per dept data base was an accommodation entry provider without doing any actual business.

Based on this information assessee's case was reopened u/s 148. Assessee was asked to furnish details of unsecured loans. From the details filed it is seen that the assessee had taken unsecured loans of Rs 20,00,000/- from M/s Rajat Diamond Exim Pvt Ltd. The submission of the assessee Vis-a Vis the information provided by the office of DGIT (investigation) were matching in terms of names of beneficiary and unsecured loan entry provider.

4. Based on assessee's submission AO issued notice u/s 133(6) to M/s Rajat Diamond Exim Pvt Ltd. There was no response by the party namely M/s Rajat Diamond Exim Pvt Ltd in response to a notice issued u/s 133(6). Assessee also didn't produce the relevant person of M/s Rajat Diamond Exim Pvt Ltd for verification. Rather assessee filed a copy of ledger confirmation, copy of ITR with bank statement only. Assessee hasn't submitted the audited financial statements of M/s Rajat Diamond Exim Pvt Ltd. It is observed that the lender company has shown a very meagre amount of income and a negligible balance in the bank account. It is further observed that whatever may be the interest assessee was crediting to the account of lender was never paid to him. There is no formal agreement in writing produced to substantiate the transaction of unsecured loan amongst the parties.

5. For better understanding about the business, genuineness and creditworthiness of M/s Rajat Diamond Exim Pvt Ltd we are reproducing here in below the statement of Mr Dharmender Kumar Babel who is closely associated with Gautam Jain Group and his statement u/s 131 (1A) was recorded on oath during the search action u/s 132 was conducted at Gautam Jain Group of companies and in the premises of Mr Dharmender Kumar Babel as under:

“Q.53 You have mentioned in answer to Q No.33 that your business is carried out solely at 501, 5th floor, Parth Building, Mahidharpura, Surat. Please explain the correctness of this statement in light of the finding that the premise mentioned by you is not being used at all for any business activity?”

Ans. Sir I would like to state that factually there is no actual business of trading in diamond that is being carried out by me in the above stated three concerns namely M/s Rajat Diamond Exim Pvt. Ltd., M/s Frontline Diamond Pvt. Ltd. and M/s Rajan Gems and that is why during the course of search and seizure action u/s 132 of the I. T. Act on 03/10/2013, the business premises were found vacant and not being in use. Those addresses have been kept only for the purpose of registration of Company address, receiving any mails including Income Tax notices if any, bank verification etc. Sir, I hereby on my own declare that I am running these paper based companies with no real business activities at all.

Q.54 Please state the modus operandi in detail of the 3 concerns which are controlled by you?

Ans. Various brokers of the diamond market approach me regularly and they give direction from time to time to import diamonds in my books of A/c. Once the diamonds are received they are taken away by these brokers at whose direction these imports were made. For doing these activities, I get a commission. As a result of above, stock of diamonds are reflected in my books without any physical stock being there. Thereafter, at a certain commission I issue bogus sale bills of such diamonds which are appearing in my books as stock in the names of other interested parties/concerns, which is again arranged by these brokers. For this, I get commission. I also give bogus sale bills when there is no stock available in my books, by arranging bogus purchase bills from the local market from various concerns through various brokers. For this type of transaction, I get profit of differential commission received and paid by me. Also in case some person requires entry for unsecured loan, I give the entry by giving them cheque and in return I receive cash for the same. But most of the times it so happens that I have to pay this cash back to some parties to get cheque entry in my books again so as to maintain the balance in bank accounts. Normally, there is no surplus cash which remains available with me at any point of time. All the local purchases, local sales and loan entries appearing in my books of accounts of the above 3 concerns controlled by me are totally bogus entries which were done against cash taken/given against such entries. None of these entries reflect any genuine transaction at all.”

Q57 Please state whether all the sales shown by you in your books of accounts are not genuine?

Ans. Sir, I have already stated and again repeat that the complete sales shown in my books of accounts are not genuine and only bills have been issued to the interested parties as and when they approach me for the same."

From the above statement the following picture emerges. The so called supplier **M/s. Rajat Diamond Exim Pvt. Ltd.** is an entity run by Shri Dharmendra Kumar Babel, who is the director of the company and it is not doing any business in diamond. As a matter of fact it is not doing any business at all which can be called genuine business in the real sense of the word. As stated above, the so called supplier Shri Dharmendra Kumar Babel of **M/s. Rajat Diamond Pvt. Ltd.** never had any physical stock of diamonds, therefore, the question of selling any diamonds to the assessee Firm does not arise at all. It is crystal clear from the above statement that the so called supplier of diamonds, Shri Dharmendra Kumar Babel Proprietor of **M/s. Rajat Diamond Pvt. Ltd.** is only involved in giving accommodation entries to those who approach him for the purpose of obtaining such bogus entries by issuing bogus sale bills and unsecured loans.

It is observed from the affidavit filed before the Income Tax Authorities that Shri Dharmendra Kumar Babel has affirmed on 07.10.2013 that the statement given by him on 05.10.2013 before the Income Tax Department was given under tension and therefore it is clarified that the said statements ***"may not be fully correct"***.

The phrase 'may not be fully correct, goes to show that statement recorded on 05.10.2013 is partly correct. But it is not clarified as to which part of the statement is correct and which part is incorrect. In view of this fact it can be said that making of an affidavit by Shri Dharmendra Kumar Babel, after the statement is already recorded on oath u/s 131(1A) on 05.10.2013 before the 2 ADIT (Inv.), Unit-VIII(I); Mumbai, is only an attempt to safeguard the interest of those persons including assessee firm with whom Shri Dharmendra Kumar Babel has entered into bogus transactions. It is more of a general statement without specifying any particular part of the statement recorded on 05.10.2013. Therefore, the affidavit of Shri Dharmendra Kumar Babel made on 07.10.2013, being not free from doubt, cannot be relied upon.

In view of these facts, the only fair conclusion which can be drawn is that assessee is a beneficiary of the accommodation entries by way of unsecured loans of Rs 20,00,000/- given by the above named party **M/s. Rajat Diamond Exim Pvt. Ltd.** The facts mentioned above conclusively proves that the benami concerns of Gautam Jain and groups have given accommodation entry of loans and advances in exchange of cash to various beneficiaries whose names are appearing as loan parties in the regular books of accounts of the benami concerns managed and operated by the them. Penalty proceedings u/s 271(1)(c) are initiated for concealment of income."

6. The statement recorded on oath u/s 131(1A) during the course of search u/s 132 is irrevocable until unless something otherwise established by the assessee himself. In this case the lender party M/s Rajat Diamond Exim Pvt Ltd partially retracted from the earlier statement i.e. to without any corroborative evidence to substantiate the retraction. The statement of Mr Dharmender Kumar Babel along with the report of the investigation wing clearly established the modus operandi and so-called business model of the lender company. Moreover, M/s Rajat Diamond Exim Pvt Ltd. own ITR and bank statement rather confirms his statement and defeat the basic pillar of genuineness and credit worthiness.

7. We have gone through the order of AO, Ld. CIT(A) and submission of the assessee advanced along with judicial pronouncements relied upon by him. The similar situation has been dealt and discussed by the Hon'ble Supreme Court in the case NRA Iron and Steel Pvt Ltd (2019) 103 Taxmann.com-48(S.C)

"In the case of NRA Iron & Steel (P) Ltd, (2019) 103 taxmann.com 48 (SC), the Commissioner (Appeals) had deleted the addition made by the Assessing Officer on the ground that the respondent had filed confirmations from the investor companies, their Income Tax Return, acknowledgments with PAN numbers, copies of their bank account to show that the entire amount had been paid through normal banking channels, and hence discharged the initial onus under section 68, for establishing the credibility and identity of the shareholders. The decision was confirmed by the ITAT and the High Court.

The Supreme Court held that with respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge. Merely, proving the identity of the investors does not discharge the onus of the assessee, if the capacity or credit-worthiness has not been established. If the inquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by section 68.

In the present case, the creditworthiness of the creditor as well as the genuineness of the transaction has been proved to be dubious by the departmental inquiries. The creditors have meagre income in their books. That they have not indulged in genuine transactions has been proved beyond doubt. In such a scenario, merely because the assessee has filed the basic documents, would not mean that the onus on the assessee has been lifted.”

8. In the light above factual metrics and legal position applicable to such type of facts as confirmed by the hon’ble apex court in the case of **NRA Iron and Steel Pvt Ltd** supra we are of the firm view that assessee was failed to establish the genuineness and credit worthiness of the transaction amounting to Rs.20,00,000/- u/s 68. We are not inclined to interfere in the orders of the authorities below in this terms we confirm the order of Ld. CIT (A) and ground no-1 raised by the assessee is dismissed.

9. Ground No-2 raised by the assessee is consequential in nature and wholly dependent on outcome of Ground No-1. Hence We are not inclined to interfere in the orders of the authorities below in this terms we confirm the order of Ld. CIT(A) and ground no-2 raised by the assessee is also dismissed.

10. **In the result, appeal filed by the assessee is fully disallowed.**

Order pronounced in the open court on 10th day of October, 2022.

Sd/-

(ABY T VARKEY)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 10/10/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai