

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 15/Mum/2021
(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s Nikunj Eximp Enterprises Pvt. Ltd. 4 th floor, Sri Joravar Bhavan, 93, M. K. Road, Marine Lines, Mumbai-400 020	बनाम/ Vs.	ACIT Cen. Cir,- 2(4), R. No. 802, Pratistha Bhavan, Old CGO Annexe, M. K. Marg, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCN0991K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Vijay Mehta, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Dr. Mahesh Akhade, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	13.09.2022
घोषणाकीतारीख / Date of Pronouncement	:	31.10.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 28.10.2020, passed Ld. CIT(A)-58, Mumbai for the quantum of assessment passed u/s 143(3) r.w.s. 153A for AY 2012-13. The assessee has raised the following grounds:-

1. *The Learned Commissioner of Income Tax (Appeals) was not justified in confirming the assessment under section 153A of completed assessments in absence of any incriminating material for the year found during search and not restricting the proceedings only to the seized/material evidence found during the search.*

2. *The Learned Commissioner of Income Tax (Appeals) erred in conforming the order of AO, wherein the additions were made based on the alleged findings of the Investigation Wing. The findings were just allegations and there were no corroborative evidences to support the same. Your appellants submit that additions cannot be made on assumptions without any actual finding by the AO.*

3. *Without Prejudice to the above grounds, The Learned Commissioner of Income Tax (Appeals) erred in confirming the action of Ld. AO of treating loan taken from Rapport Holding & Commercial Pvt Ltd. amounting to Rs.11,50,000/- as unexplained cash credit u/s. 68 of the Act without appreciating the following facts:*

- i) That the nature and source of the loan was established by the documents submitted during the assessment proceedings.*
- ii) That the loan was repaid during the same financial year.*

iii) That the details of the loan taken were also submitted at the original assessment proceedings u/s. 143(3) and no addition was made on that account.

4. The Appellants pray that:

i) The order us/. 153A is without jurisdiction and ought to be quashed;

ii) The details submitted for creditworthiness of the borrower ought to be accepted and the addition u/s.68 be directed to be deleted

iii) Any other relief Your Honours may deem fit.

2. At the outset, the appeal of the assessee is delayed by 9 days and the petition for condonation of delay; assessee has submitted that it has to be filed within 60 days from the date of receipt of order for expiry on 28.12.2020. However, the appeal was filed on 05.01.2021. It has been submitted that due to extensions issued by the Government post Covid-19, the due date of filing appeal was extended to 31st March 2021 as per section 3(1) (b) of Taxation & Others Laws (relation of certain provisions) Ordinance 2020. In view of the above ordinance, the delay of 9 days is condoned.

3. The facts in brief qua the issue are that, assessee has filed its return of income at Rs. 2,92,86,290/- on 30.09.2012. The said

return was duly processed u/s 143(1) on 21.02.13. Accordingly, assessment order was passed u/s 143(3) vide order dated 10.03.2015 whereby income of assessee was computed at Rs. 3,03,89,193/- after making disallowance on account of foreign travel expenses. Thereafter, a search and seizure action u/s 132 was carried out in the case of M/s Nickunj Group on 16.11.2017 wherein assessee was also covered.

4. In response to the notice u/s 153A, assessee has filed its return of income on 28.08.2019. Ld. AO noted that during the course of search proceedings, certain findings were recorded by Investigation Wing that certain companies including M/s Rapport Holding and Commercial Pvt. Ltd. were managed and controlled by M/s Nickunj Group and these companies were only a paper companies and was under the control of Shri Nickunj Shah, one of the director and they have no business activity whatsoever and are basically used for rotating unaccounted funds back to the main companies of the Nickunj Group. Based on statement of one Shri Santosh Sawant u/s 132(4) wherein details of loan transaction from these companies to the main companies were given. Accordingly, it

was deduced that the loans are fictitious and it was proposed that the additions have been made in the case of these companies on protective basis. Accordingly, Ld. AO issued the show cause notice to the assessee and following reply was filed by the assessee before the AO:-

"In this regard, we reiterate, we have submitted following documents-

Your honour has stated that creditworthiness of Whiton Chem Pvt. Ltd., Sanchana Leasing & Finance Ltd., Rapport Holding & Commercial Pvt. Ltd and Deluxe Barter (India) P. Ltd., is not proved by the documents submitted.

In this regard, we reiterate, we have submitted following documents —

Whiton Chem Pvt Ltd.

- a. Ledger account confirmation,*
- b. Acknowledgement of return of Income,*
- c. Balance Sheet for A. Y. 2012-13 and A. Y. 2013-14. (Loan Squared up during A. Y. 2013-14).*
- d. Bank statement reflecting the loan transactions.*

The loan balances are as follows;

Opening balance of loan as on 01/04/2011 is 17,46,968/- '

Loan received during the Asst. year 2012-13 is 1,16,33,032/-

Loan repaid during the Asst year 2012-13 is NIL

Closing balance of loan as on 31/03/2012 is 1,33,00,000/

The source of the funds from which loan is given for Asst Year 12-13 is as per balance sheet as on 31/3/2012 as under;

Shareholders fund -

<i>Share Capital</i>	<i>1,00,000/-</i>
<i>Profit and Loss Account</i>	<u><i>Rs.97,85,646/-</i></u>
<i>Total</i>	<u><i>Rs.98,85,646/-</i></u>
<i>Loan Funds</i>	<u><i>Rs. 130284/-</i></u>
<i>Total :</i>	<i>Rs. 1,00,15,930/-</i>

Therefore loan taken from the said party during the Asst year 2012-13 is Rs. 1,16,33,032/-which is covered by the source of funds of the lender as shown above and this has been justified along with complete documentary evidence as stated above.

Therefore, the said loans cannot be added as unexplained cash credit u/s 68 of the Act.

Rapport Holding & Commercial Pvt. Ltd.

In this regard, we reiterate, we have submitted following documents -

- a. Ledger account confirmation*
- b. Acknowledgement of return of Income,*

c. Balance Sheet for A.Y. 2012-13 of Rapport Holding & Commercial Pvt. Ltd. (Loan Squared up during A. Y. 2012-13).

The loan balances are as follows;

Opening balance of loan as on 01/04/2011 is Rs. 49,36,341/-

Loan received during the Asst year 2012-13 is Rs. 11,50,000/-

Loan repaid during the Asst year 2012-13 is Rs. 60,86,341/-

Closing balance of loan as on 31/03/2012 is NIL

The source of the funds from which loan is given for Asst Year 12-13 is as per the Balance Sheet as on 31/3/2012 as under;

Shareholders fund is as under -

Share Capital	Rs. 1,00,00,000/-
Profit and Loss Account	<u>Rs. (1,85,544/-)</u>
Total	<u>Rs. 98,14,456/-</u>

The Loan taken from the said party is Rs. 11,50,000/- only and which is covered by the source of funds of the lender as shown above and this has been justified along with complete documentary evidence as stated above.

Therefore, the said loans cannot be added as unexplained cash credit u/s 68 of the Act.

Sanchana Leasing & Finance Ltd.

With regard to said Company, it is submitted that during the A. Y. 2012-13 to A. Y. 2018-19 - No fresh Loans are taken by assessee

Company and Therefore, question of invoking provisions of Section 68 of Income Tax Act, 1961 does not arise.

Deluxe Barter (India) P. Ltd.

With regard to said Company, it is submitted that during the A.Y. 2012-13 to A.Y. 2018-19 -No fresh Loans are taken by assessee Company and Therefore, question of invoking provisions of Section 68 of Income Tax Act, 1961 does not arise.

Your honor is requested to kindly specify which documents are required in addition to above to prove genuineness of the said loans ".

5. However, the Ld. AO rejected the assessee's explanation on the following grounds:-

- Investigation wing has given a very clear finding that assessee has floated 3 dummy companies namely Rapport Holding, Deluxe Barter and Sanchana Leasing for introducing funds in the main companies of Nickunj group.
- During the year under consideration assessee has accepted Rs.11,50,000/- from Rapport Holding.
- For AY 2012-13 Rapport Holding has filed a return for loss of Rs.2,05,071/-. It can be seen that Rapport Holding has not earned any substantial income at all so that its proceeds can be advanced as loan to assessee company.

- Further looking into balance sheet of Rapport Holding one realizes that there is not revenue from operations. It strengthens the fact that this company is not carrying out any real business but is only Paper Company floated to provide accommodation entries to assessee.

- From ledger confirmation submitted by the assessee it is evident that no interest is paid by the assessee on these transactions. Had this been genuine transaction assessee would have paid interest and deducted TDS on it.

- Further assessee was very clearly asked to submit bank statements of this dummy company. However, assessee has chosen not to submit bank statement of this company. Assessee claims that this loan is advanced by dummy company out of its own share capital. However, it has not submitted any details regarding who has introduced this share capital in this dummy company. Due to non-submission of bank statement by the assessee, it cannot be verified whether any outside entity has infused funds in this dummy company in order to provide accommodation entries to assessee companies. Hence creditworthiness of dummy company is not proved.

6. Thereafter, he strongly relied on the decision of Hon'ble Delhi High Court in the case of PCIT vs. Bikram Singh and concluded that the total loan amount of Rs. 11,55,000/- received from one company namely, M/s Rapport Holding and Commercial Pvt. Ltd.

He made the addition u/s 68. For other companies, he did not made any addition.

7. Before Ld. CIT(A), assessee has challenged the additions on the ground that there was no incriminating document or material found during the course of search relating to loan taken from the said company M/s Rapport Holding and Commercial Pvt. Ltd. It is based on certain investigation report and the statement of one person does not incriminating at all. However, Ld. CIT (A) after detail discussion and considering the various judgments rejected the said legal plea that the addition is beyond the scope of section 153A. However, nowhere, he has controverted this fact that this addition is based on certain incriminating material found during the course of search albeit he has held that wide interpretation of incriminating material has to be given. On merits, he has confirmed the action of the AO after observing and holding as under:-

6.3 I have considered the facts of the case. During the appellate proceedings, the hearing notices dated 23.01.2020 and 16.10.2020 were issued and served on the assessee. The assessee in its submission made vide letter dated 31.01.2020 has stated that, "the company named Rapport Holding and Commercial Pvt Ltd had

a capital balance of Rs. 1,00,00,000/- so it has the capacity to fund an amount of Rs. 11,50,000/-. Merely because the assessee has shown a loss of Rs. 2,05,071/- does not show that, the assessee did not had the capacity to give a short term loan to the assessee" Further, the assessee has claimed that, it had provided all necessary documents in support of the loan taken before the AO. However, it can be noticed that, the assessee has failed on its part to submit the bank account statement before the AO during the assessment stage, which plays an important role to cross-check the transactions made during the concerned period. During the assessment proceedings, the AO has very clearly asked the assessee, to file the bank account statement, in spite of this the assessee failed to submit the same. Even during the appellate proceedings, the assessee has not provided bank account statement so that, to enable the undersigned to verify the clean picture of transactions made during the relevant period. I am of the view that though the assessee has claimed that, the company named Rapport Holding and Commercial Pvt Ltd had a capital balance of Rs. 1,00,00,000/- so it has the capacity to fund an amount of Rs. 11,50,000/-and the entire amount of loan was repaid by the assessee during the year itself, but it does not discharge the onus cast upon the assessee. The Assessing Officer has also discussed all the evidences before him at assessment stage in the light of submissions made by assessee. To further strengthen the genuineness of transaction the assessee could have submitted the bank account statement, income tax return and

sources of income before me, but it failed to do so. In the appellate proceeding also, the assessee has reiterated the same old arguments submitted before the A, which does not inspire any confidence.

6.4 Further, it is seen that, the assessee has not complied with various notices issued by the AO as mentioned in foregoing paras also notice u/s. 153A of the act dated 01.01.2019 which was issued and served upon the assessee, wherein assessee was given 30 days time to file the return of income. In response to this notice, the assessee filed return of income on 28.08.2019 after a delay of 8 months. It shows the casual approach of assessee towards the statutory notices issued from the department. In view of overall facts discussed as above, the contention of the assessee in this regard is rejected. Therefore, ground no.2 taken by the assessee is dismissed.

8. Before us, Ld. Counsel for the assessee submitted that here in this case already assessment u/s 143(3) was completed in the case of assessee wherein all these loans stood disclosed and accepted by the AO. Thus, the assessment for AY 2012-13 had attained finality on the date of search 16.11.2017. Apart from that, he submitted that there was no single evidence or material found during the course of search and there is no inquiry about any rotation of money. He further submitted that assessee had taken loan from

other companies also which is evident from the submission before the AO and loan amount of Rs. 1.16 crores taken from Whiton Chem Pvt Ltd. has been accepted. It is only with regard to loan amount of Rs. 11,50,000 taken from M/s Rapport Holding and Commercial Pvt. Ltd, Ld. AO has made the addition. He submitted that AO has accepted the opening balance of the loan and it was brought to the notice that the loan was repaid during the year itself including the loan taken in the earlier years and as on 31st March 2012, the closing balance of loan was NIL. Apart from that, assessee has given the details of funds which were in the form of share capital. The only reason given by the AO was that M/s Rapport Holding and Commercial Pvt. Ltd. has rendered of loans and there is hardly any revenue from operations and lastly, assessee had not submitted the bank statement. Before us, the assessee has filed the additional evidence in the form of bank statement stating that it was the old record and the bank statement was not easily traceable. He also drew our attention to the statement of Shri Santosh Sawant which are at page no. 99-106 of the paper book and pointed out that nowhere he has stated that it was either an accommodation entry or it is a bogus loan. He has only stated that except for M/s

Whiton Chem Pvt Ltd., these companies do not have much activity. The entire addition is based on some investigation report without any seized or incriminating documents. Thus, the addition cannot be said to be based on any incriminating documents.

9. On merits, he submitted that assessee has received loan from these companies in earlier years also and same had been accepted u/s 143(3) for which he has given the following details:-

ASSESSMENT YEAR	AMOUNTS RECEIVED	ASSESSMENT U/s
2005 -06	22,50,000	143(3)
2006 -07	10,00,000	143(3)
2010-11	4,13,85,000	143(3)
2011-12	4,25,000	143(3)

10. Another important fact he placed on record was that in the case of M/s Rapport Holding and Commercial Pvt. Ltd., assessment u/s 143(3) was completed on 30.01.2015 for AY 2012-13 and no adverse inference has been drawn wherein in the balance sheet, it was clearly stated that assessee has taken loan out of the funds and source available with it. AO has neither conducted any inquiry nor has gathered any material to show that the loan transaction is

non-genuine. The statement cannot be held to be incriminating when there is no corresponding material found during the search. Thus, he submitted that the loan is genuine.

11. On the other hand, Ld. DR submitted that from the perusal of the statement of Shri Santosh Sawant, it can be seen that he has admitted that he was a dummy director and these companies were dummy companies, this itself constitutes incriminating material wherein it was found that these are bogus companies and paper companies. He further submitted that there was no source of income of this company and the return was filed in loss, therefore it had no creditworthiness.

12. We have heard the rival submissions and also perused the relevant findings given in the impugned order as well as material placed of record before us. We find that the entire premise of the AO is based on investigation report which in turn is based on statement of certain persons who were alleged to be dummy directors managing and controlled the various companies including M/s Rapport Holding and Commercial Pvt. Ltd. and it was deduced that these companies were used as conduit for getting loan to the

various ground companies including the assessee company. Apart from that it has also been observed that it has only share capital fund of Rs. 1 crore and no business activity or profit or income to give such amount to the assessee company.

13. From the perusal of the assessment order and also the reply of the assessee as quoted above, we find that assessee has taken loan from the 2 companies namely, M/s Whiton Chem Pvt Ltd. of Rs. 1,16,33,032/- and M/s Rapport Holding and Commercial Pvt. Ltd. of Rs. 11,50,000/-. The AO was satisfied with the documents and evidence filed with respect to M/s Whiton Chem Pvt Ltd. However, with regard to M/s Rapport Holding and Commercial Pvt. Ltd., he has disbelieved the transaction of loan. From the perusal of ledger account of loan given by M/s Rapport Holding and Commercial Pvt. Ltd., it is seen that there was opening balance of Rs. 49.36 lakhs which shows that in earlier years, assessee had received loans which is also evident from the chart of loan received in various years as incorporated above. During the year, assessee has repaid the entire loan including the loan taken in this year. In the closing balance, there was no outstanding loan. Apart from that, we find

that in the case of M/s Rapport Holding and Commercial Pvt. Ltd., assessment was completed u/s 143(3) and nowhere the loan given to the assessee has been adversely viewed. Thus, it cannot be held that loan is non-genuine or there can be any doubt about any identity or genuineness.

14. From the perusal of the bank statement which has been challenged before us in the form of additional evidence, we find that there was redemption of mutual fund on 20 January 2012 of Rs. more than Rs. 6.43 lakhs and also there was RTGS inward of Rs. 5.08 lakhs from Franklin Templeton Mutual Fund. Thus, the source of fund was 11.51 lakhs out of which loan of Rs. 11.50 lakhs was given to the assessee on 11th February 2012. Thus, it cannot be held that some unaccounted money has been routed through bank account of M/s Rapport Holding and Commercial Pvt. Ltd. In view of the aforesaid situation, *firstly*; already assessment u/s 143(3) has been completed in the case of lender company wherein giving of loan has been accepted and there is no doubt about identity of genuineness of the transaction; *Secondly*; from the perusal of the bank statement, it is quite evident that the source of funds for

getting the loan was out of the redemption of mutual fund for sums aggregating to Rs. 11.51 lakhs; and *lastly*; there is no inquiry conducted by the AO during the course of assessment proceedings to rebut the evidences filed by the assessee. Accordingly, we accept the genuineness of the loan of Rs. 11,50,000/- and addition is accordingly deleted.

14. Since we have deleted the addition on merits, therefore we are not going into the aspect whether the same is based on any incriminating material.

15. In the net result, the appeal filed by the assessee stands **allowed.**

Orders pronounced in the open court on 31st October, 2022.

Sd/-

Sd/-

(S. RIFAUR RAHMAN, AM)

Accountant Member

मुंबई Mumbai;दिनांक Dated : 31/10/2022

Sr.PS. Dhananjay

(AMIT SHUKLA)

Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai