

THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 4233/Mum/2018 (A.Y. 2013-14)

ITO-13(3)(3) Room No. 227 2 nd Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Vedartha Entertainment Ltd. 201, 2 nd Floor, Jaimala Apartment, Near Hotel Shimmers Link Road Malad East, Mumbai-400 064. PAN : AAECV0129N
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Vranda U. Matkarni
Date of Hearing	09.11.2022
Date of Pronouncement	28.11.2022

O R D E R

Per B.R.Baskaran (AM) :-

The appeal filed by the revenue is directed against the order dated 28-03-2018 passed by Ld CIT(A)-21, Mumbai and it relates to the assessment year 2013-14. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition of Rs.1,95,00,000/- made by the AO u/s 68 of the Act.

2. The facts relating to the above said issue are discussed in brief. The assessee company is engaged in the business of production of commercial and advertisement films. During the year under consideration, the assessee had availed loan from the following four persons:-

Mahalaxmi Gems Pvt Ltd	-	31.00 lakhs
Meenaxi Diamonds P Ltd	-	89.00 lakhs
Abhiman Gems P Ltd	-	10.00 lakhs
Look At Me Retail P Ltd	-	65.00 lakhs

195.00 lakhs
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The AO received information that the above said companies belong to Bhanwarlal Jain group, in whose case search action was taken and it was admitted by them that they were providing only accommodation entries by way of bogus unsecured loans etc. The investigation wing had given detailed report on the modus operandi adopted by Bhanwarlal Jain group and the assessing officer has extracted the same in the assessment order. The said report included the transactions of providing bogus loans, bogus purchase bills etc.

3. Hence the AO asked the assessee to prove the above said loans in terms of sec.68 of the Act and it is the case of the assessee that it has furnished all the required information in order to discharge the burden placed upon it u/s 68 of the Act by proving the three main ingredients, viz., the identity of the creditor, the credit worthiness of the creditor and the genuineness of the transactions.

4. The AO also issued summons u/s 133(6) of the Act to all the above said four loan creditors, out of which two creditors, viz., Mahalaxmi Gems P Ltd and M/s Ahiman Gems P Ltd responded to the notices and furnished the relevant details called for by the AO. Since the investigation wing had taken the view that these companies are bogus companies, the AO also held that these two companies are bogus companies.

5. The assessee submitted that Shri Bhanwarlal Jain was not related to the companies, viz., M/s Mahalaxmi Gems P Ltd, M/s Meenaxi Diamonds P Ltd and M/s Look at me Retail P Ltd. Accordingly, it was submitted that the statement, if any, given by Shri Bhanwarlal Jain shall not have any impact on these three companies. The assessee also requested the AO to provide for a copy of statement given by Shri Bhanwarlal Jain and also requested him to provide an opportunity to cross examine Shri Bhanwarlal Jain. The assessee again contended that it has discharged the onus placed upon it u/s

68 of the Act by providing all the required information. However, the AO rejected the request of the assessee with the following observations:-

“The assessee has also requested for the cross examination of the parties on whose statement department is relied on. The AR of the assessee vide this office order sheet noting dated 22/3/2016, explained that the onus is on the assessee to prove the genuineness of the transactions carried out by him, he is the witness of the assessee not of the department, department is relying on the investigation carried on him and relied on his statement. Hence, the opportunity of cross examination is not given....”

6. Then the AO discussed about the alleged general deficiencies noticed in the cases of Bhanwarlal Jain Group. The discussion pertained to the financial performance of the companies as well as the modus operandi of providing alleged bogus purchase bills, which are not relevant to the issue under consideration. After discussing all these details, the AO concluded as under:-

“Hence I hold that the assessee made impugned purchases out of books of accounts therein remained unexplained. The books of accounts of the assessee to the tune of Rs.1,95,00,000/- are rejected on the basis of explanation given in above paras. In view of the above, an amount of Rs.1,95,00,000/- the impugned unsecured loan and advances received remained unexplained and therefore is treated as unexplained credits in the books of the assessee and added to the income of the assessee u/s 68 of the IT Act, 1961.”

It can be noticed that the AO has confused himself regarding the nature of transactions, i.e., at one stage, he is referring the transactions to be bogus purchases. The fact remains that the amount of Rs.1,95,00,000/- represented loans taken by the assessee.

7. In the appellate proceedings, the Ld CIT(A) deleted the addition and hence the revenue has filed this appeal before us.

8. The assessee has filed written submissions before the Tribunal. The Ld D.R primarily placed her reliance on the order passed by the assessing officer. She further submitted that Shri Bhanwarlal Jain has confessed that

he had been giving only accommodation entries by way of loans etc., and hence these loans taken from companies belonging to him should be considered as bogus in nature.

9. We heard the parties and perused the record. We notice that the Ld CIT(A) has deleted the addition with the following observations:-

“I have considered the facts and circumstances of the case as transpires from assessment order, submission of the assessee and relevant judicial pronouncements as applicable to the facts of the case. The AO received an information from the Investigation wing that the appellant had taken accommodation entries of Rs. 1,95,00,000/- from the 4 companies operated by Shri Bhanwarlal Jain and group, in the form of loan transactions. The AO has not accepted the transactions as genuine and added Rs. 1,95,00,000/- to the total income of the assessee u/s. 68 of the IT Act for this assessment year. The appellant has stated that it had taken loan of Rs. 1,95,00,000/- from the said 4 companies through account payee cheque only.

From the assessment order, it transpires that the AO has solely relied upon the statements of Bhanwarlal Jain which has subsequently been retracted by Sh Bhanwarlal Jain. The AO did not carry out any worthwhile independent inquiry in the matter. He has totally ignored the documentary evidences submitted the appellant. The AO has not pointed out any defect in the above-mention documentary evidences submitted during assessment proceedings. With pointing out any lacuna in the evidences submitted by the appellant, the source and the genuineness could not be doubted. Once evidences relating to a transaction submitted before the AO, the onus shifts on him to prove these as non-genuine bogus. The AO has not discharged the onus cast on him by conducting independent enquiry. In my opinion, merely based on the statement of a t person without any corroborative evidence will not make the transactions question, as non-genuine or bogus transaction more so when even the statement on the basis of which the additions have been made, was found to be retracted such, in the absence of any contrary evidence placed on record, the transact cannot be treated as bogus or paper transaction.

As far as the question of validity of the transactions are concerned, even a some of the transactions entered into by the above parties are found to be not genuine, it does not lead to the conclusion that all the transactions entered into by the said parties were bogus or non-genuine including the transaction related to the appellant. The information received by the AO could be said to be sufficient to raise a doubt about genuineness of the transactions. However, further enquiry was required to be conducted to form an opinion or belief as to the transactions being non-genuine. A transaction which is supported by documentary evidences could not be treated as bogus or non-genuine merely on the basis of doubts raised

regarding the same. There is no evidence brought on record to prove the above conclusion drawn by the AO. The assessment proceedings were wide open and the AO could have carried out independent investigation to prove his argument regarding the transactions being non-genuine. No such investigation has been carried out by the AO. The outcome of investigation carried out in the case of Bhanwarlal Jain and the conclusions drawn therein cannot be applied ipso facto and in a sweeping manner to all other cases who have entered into transactions during that period without making any enquiry or investigation to examine the genuineness of the particular transaction which is under suspicion. Simply relying on the report of the Investigation wing, Mumbai and statement of Shri Bhanwarlal Jain, the AO cannot conclude that all transactions are bogus or have no value.

In view of the facts and circumstances mentioned above, in my opinion, the appellant has submitted sufficient evidences to prove the genuineness of the transactions during the year under consideration. The AD has solely relied upon the statements of Bhanwarlal Jain and did not carry out any worthwhile independent inquiry in the matter. He has totally ignored the documentary evidences submitted by the appellant. The AO has not pointed out any defect in the above-mentioned documentary submitted during assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant or bringing any adverse findings on record through independent enquiry as to the genuineness of transaction, the sources and the genuineness cannot be rejected, unless and until proved otherwise by the AO, which he has failed to do. Further the appellant had submitted the confirmation from the respective companies in respect of loans received in the relevant assessment year, their PAN, their audited financial statements of relevant year, their bank statements and the acknowledgement of return of income filed by them. The loans were duly received through account payee cheque. It is also submitted that the loans were repaid in the subsequent years. The AO has not discredited these evidences submitted by the appellant. In view of the facts and circumstances of the case, I am of the considered opinion that the appellant had discharged its onus to establish the identity, genuineness and creditworthiness of the transaction/creditor. The AO has not brought anything on records to discredit the evidences submitted by the appellant. The documentary evidences available on records cannot be ignored unless the same is disproved. Without pointing any defect and lacuna in these evidences submitted during the course of assessment proceedings, the AO was not justified in rejecting the same. Once the evidences relating to a transaction is submitted before the AO, the onus shifts on him to prove that the same as non-genuine or bogus and in the present case the AD has failed to discharge the onus casted on him. In absence of any evidence to the contrary the transactions under consideration have to be considered as genuine. In view of the facts and circumstances of the case, the decisions of the Hon'ble ITAT Mumbai relied on by the appellant especially the decision in the case of *Reliance Corporation vs. ITO* (ITA No. 106961071) of 2017 is applicable in the appellant case. Thus, the decision of the AO treating the loans as bogus or non-genuine transactions is not

justified. Therefore, the AO is accordingly directed to delete the addition of Rs 1.95,00,000/- Ground Nos. 1 & 2 are accordingly allowed.”

10. In the instant case, the addition has been made u/s 68 of the Act, wherein cash credits, which are essentially capital receipts, are deemed to be revenue receipts by legal fiction, if the assessee fails to prove the nature and source of cash credits. “Nature of cash credit” would mean that the assessee is required to show that it is not of revenue nature. In order to prove the sources, the assessee should discharge initial burden to prove the cash credits placed upon his shoulders of the assessee u/s 68 of the Act, the assessee is required to prove three main ingredients, viz., the identity of the creditor, the genuineness of the transactions and the credit worthiness of the creditor. If the assessee discharges the initial burden, then the burden would shift to the shoulders of the assessing officer, i.e., it is the responsibility of the AO to disprove the claim of the assessee by bringing evidences on record.

11. We shall now examine the facts prevailing in the instant case. It is noticed that it is not the case of the AO that the assessee did not discharge the initial burden placed upon it with regard to the four loans availed by it. The assessee has furnished all the details relating to the four creditors in order to discharge the burden placed upon it u/s 68 of the Act. In fact, the AO went ahead and issued notices u/s 133(6) of the Act, out of which two creditors have responded and confirmed the loan transactions. However, the AO has refused to admit those loans as proved, only for the reason that these companies have been categorized by the investigation wing as bogus companies. We are unable to understand as to why the AO issued notices u/s 133(6) of the Act, when he has already taken the view that these four companies are bogus companies and has decided to give no credence to their replies. We notice that the Ld CIT(A) has also observed that the AO has not pointed out any defect in the documents furnished by the assessee to prove the cash credits. The assessee has also contended that three out of four

companies do not relate to Bhanwarlal Jain, on whose statement the AO had placed reliance. We notice that the AO has not disproved the said claim of the assessee.

12. The AO has heavily relied upon the statement given by Shri Bhanwarlal Jain in order to come to the conclusion that these companies were providing only accommodation entries. Since the AO was relying upon the statement so given by Shri Bhanwarlal Jain, the assessee asked for an opportunity to cross examine him. We noticed earlier that the AO did not provide the opportunity to cross examine Shri Bhanwarlal Jain, but proceeded to hold that Shri Bhanwarlal Jain is the witness of the assessee and hence there is no requirement of providing opportunity of cross examination. In our considered view, the above said stand taken by the AO is against the principles of natural justice. Thus, we notice that the assessing officer has failed to rebut the proofs adduced by the assessee with regard to the above said cash credits.

13. In the written submissions, the assessee has also relied upon the decision rendered by the co-ordinate bench in the assessee's own case in ITA No.4169/Mum/2019 dated 25.11.2021 relating to AY 2014-15, wherein the Tribunal had confirmed the decision of Ld CIT(A) in deleting the addition of Rs.3.45 crores made u/s 68 of the Act. In that year also, the assessee had taken loans from three companies aggregating to Rs.3.45 crores. The relevant observations made by the co-ordinate bench are extracted below, for the sake of convenience:-

“8.....However, we observed that in the given case, assessee has taken unsecured loans and submitted all the relevant information in support of the sum credited in the books for which assessee has offered explanation in respect of the nature and source of the same and in the given case assessing officer is not satisfied due to the fact that none of the principal officers of the lender companies appeared before him. The assessing officer merely issued show cause notice to the lenders and apparently stopped without making any further verification. He cannot merely reject all the detailed submissions

and supporting documents which were submitted before him and further he has not pointed out any defect in the documentary evidences submitted by the assessee before him and made addition merely because none appeared before him for explanation.

8.1. After considering the detailed findings of Ld CIT(A), we do not see any reason to interfere with his findings and in our view the assessing officer treated the unsecured loans as unexplained credit under section 68 even though all the documentary evidences were submitted before him. Therefore, we are inclined to dismiss the grounds raised by the revenue.”

14. In our view, the assessee stands in a better footing in the instant year. There is no dispute that the assessee has discharged its burden placed upon it u/s 68 of the Act by furnishing all relevant documents. As pointed out by Ld CIT(A), the AO has not found fault with those documents. We also noticed that two creditors have responded to the notices issued by the AO u/s 133(6) of the Act, but the AO has refused to consider them at all. Hence, it appears to us that the AO was swayed by the generalised findings given by the investigation wing and hence did not proceed the matter on the merits of each case. Our observation is further strengthened by the fact that the AO has refused to afford opportunity of cross examination to the assessee. On the contrary, the AO has shifted the burden to disprove the statement of Shri Bhanwarlal Jain upon the assessee, which is against the principles of natural justice. Hence, in the facts and circumstances of the present case, we have to hold that the AO has made the impugned addition on suspicions, surmises and conjectures only.

15. The Ld D.R submitted that these creditor companies belong to Bhanwarlal Jain and he has admitted that he and his companies were providing accommodation entries. However, copy of those statements, if any, was not either placed before us nor it was confronted with the assessee. We are of the view that the above said information would not be of any help to the issue under consideration. First of all, it appears to be a generalized admission without pointing out the transactions which were actually

accommodation entries. Secondly, it is not shown that the transactions entered with the assessee herein have been admitted to be accommodation entries. Thirdly, even if it is assumed for a moment that Shri Bhanwarlal Jain has identified the impugned loan transactions as bogus, still his statement cannot be relied upon unless an opportunity of cross examination is provided to the assessee herein. Fourthly, the addition, in the instant case, has been made u/s 68 of the Act, wherein the responsibility of the assessee is to discharge the initial burden of proof placed upon his shoulders. We noticed that the assessee has discharged the same with regard to the loans taken by it. Hence, under the above discussed facts, we are of the view that the statement, if any, given by Shri Bhanwarlal Jain cannot be taken cognizance of.

16. In view of the foregoing discussions, we are of the view that the order passed by Ld CIT(A) does not call for any interference.

17. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 28.11.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 28/11/2022

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,

(Assistant Registrar)
ITAT, Mumbai

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