

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

I.T.A. No. 3953/Mum/2019 (A.Y. 2011-12)
I.T.A. No. 3954/Mum/2019 (A.Y. 2012-13)

DCIT, Central Circle 6(4) Room No. 1925, 19 th Floor Air India Building Nariman Point Mumbai-400 021.	Vs.	M/s. Landmark Realty 501, Harikrupa Opp. Shri Sagar LT Road, Borivali West Mumbai-400 092. PAN : AADFL8005H
(Appellant)		(Respondent)

Assessee by	Shri Mani Jain & Prateek Jain
Department by	Shri Manoj Kumar Sinha
Date of Hearing	05.12.2022
Date of Pronouncement	07.12.2022

O R D E R

Per Bench :-

Both the appeals filed by the Revenue are directed against the orders passed by the learned CIT(A)-54, Mumbai and they relate to A.Y. 2011-12 & 2012-13. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the additions made by the Assessing Officer under section 68 of the I.T. Act and also in deleting the disallowance of interest expenditure claimed on the above said loans.

2. Facts relating to the above said issues are stated in brief. The assessee is a builder and developer. The Assessing Officer noticed that the assessee has received loan of Rs. 7.69 crores and Rs. 1 crore respectively in the years relevant assessment years 2011-12 & 2012-13 from a concern named M/s. Centre Point Gems Pvt. Limited. The Assessing Officer took the view that the loans taken from the above said concern is bogus in nature. Accordingly, he reopened the assessment of AY 2011-12 and made the addition u/s 68 of the

Act and also disallowed interest claimed on the above said loan. In AY 2012-13, the AO carried out regular assessment u/s 143(3) by making addition of loan amount and disallowing interest expenditure.

3. The background facts, which led the AO to entertain the belief that the loans taken from M/s Centre Point Gems P Ltd are bogus in nature, are stated in brief. The Revenue carried out search and seizure operations on Cosmos group, wherein one of the directors of that concern named Shri Manish Mehta had admitted that he could not justify unsecured loans taken from these twenty seven entities. The Ld D.R submitted that the Cosmos group has surrendered the loans in their Settlement application. The revenue also carried out survey operations under section 133A of the Act in one of the associate concerns of Cosmos group named M/s. Vinay Unique Developers. The assessee herein is one of the partners of the above said concern. During the survey proceedings, documents relating to the loan taken by the assessee from M/s. Centre Point Gems Pvt. Limited were found. In connection with the same, a statement was taken from a person named Shri Piyush Mehta, who stated that the transactions are actual unsecured loans. Since the assessee was connected to Cosmos group through M/s Vinay Unique Developers and since Cosmos group has surrendered the loans as their income, the AO took the view that the loan taken by the assessee from M/s Centre Point Gems P Ltd is also bogus. Accordingly, he reopened the assessment of AY 2011-12 and the return filed for AY 2012-13 was taken up for scrutiny.

4. During the course of assessment proceedings, the Assessing Officer asked the assessee about the loans taken by it from M/s. Centre Point Gems Pvt. Limited. The assessee submitted that the loans were genuine. However, the Assessing Officer did not agree with the submissions made by the assessee and accordingly added the same as income of the assessee u/s 68 of the Act in both the years under consideration and also disallowed interest

claimed thereon. The relevant observations made by the Assessing Officer in A.Y. 2011-12 are extracted below :-

"The assessee was show caused as to "why unsecured loans pertaining to M/s Center Point Gems P. Ltd of Rs. 7,69,00,000/- and interest paid of Rs. 13,8437s/- should not be added to total income of the assessee. The assessee vide its letter dt. 20.04.2016 have filed its reply to the said Show Cause and the gist of the same is reproduced as below

- "(i) Confirmation of loan party
- (ii) Reply u/s 133(6) from Center Point Gems P. Ltd
- (iii) Genuineness of the transaction
- (iv) Channel from which loan has been taken"

However, the reply of the assessee is not accepted. A statement u/s. 131 was recorded on 03.03.2015 of Shri Piyush Ashok Mehta. Shri Piyush Mehta could not prove the identity, genuineness & creditworthiness of the loans taken from M/s. Centre Point Gems Pvt. Ltd. Since the loan taken from M/s. Centre Point Gems Pvt. Ltd. is non genuine i.e. only an accommodation entry hence the interest paid for the said loan is also non genuine and needs to be disallowed. Considering the above facts the unsecured loan taken from M/s Center Point Gems P. Ltd of Rs. 7,69,00,000/- and interest paid to the Centre Point Gems Pvt. Ltd. of Rs. 13,84,975/- is disallowed and added to the assessee income as unexplained cash credit under section 68 of the Act."

5. The assessee challenged the additions made by the Assessing Officer in both the years by filing the appeal before the learned CIT(A). In the appellate proceedings the learned CIT(A) called for a remand report from the Assessing Officer and also confronted the same with the assessee. After examining the case fully the learned CIT(A) deleted the additions with the following observations :

"7.2 In view of the objections raised by the Id.Counsel, the matter was - remanded to the Ld.AO vide this office letter dated 29.05.2017 and the Ld.AO vide letter dated 10.11.2017 has furnished his remand report. Copy of the remand report was provided to the assessee for a rejoinder, if any. The Id.Counsel for the appellant vide his letters dated 06.03.2019 and 12.03.2019 filed the rejoinder. The rejoinder filed vide letter dated 12.03.2019 is as under:

5.	"Query by Your Honour	Whether any enquiry made u/s. 133(6) of the Act with the concerned parties who had advances the loans under consideration and the details of reply/documents submitted by such parties along-with a copy of the same.
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	Reply by the Assessing Officer in the remand report	Notice u/s. 133(6) of the Act was sent to M/s. Center Point Gems P. Ltd and copy of reply received is enclosed herewith.
	Response of the appellant	The notice u/s. 133(6) of the Act issued by the Assessing Officer was served on the aforesaid party. The party has confirmed the transactions entered into by it with the appellant before the Assessing Officer by filing reply to notice u/s. 133(6) of the Act. As can be seen from the reply submitted by the said party, it had submitted copy of loan confirmation, copy of acknowledgment of Income Tax Return, copy of Balance Sheet and Pro/it & Loss Account and copy of it's bank statement. No further investigation was undertaken by the Assessing Officer.
6.	Query by Your Honour	Whether Shri Piyush A. Mehta at any time had accepted in his statement or otherwise that the unsecured loans consideration were not genuine / bogus, if yes, then a copy of the same.
	Reply by the Assessing Officer in the remand report	Shri Piyush Mehta in his statement u/s. 131 of the Act failed to prove the genuineness and creditworthiness of the loans taken from Cartier Gems and Center Point Gems.
	Response of the appellant	<p>As already pointed out in para (1), Shri Piyush Mehta has stated that the transactions entered into by the appellant with M/s. Centre Point Gems Pvt. Ltd. are genuine. Thus, the Assessing Officer in the remand report has failed to establish that Shri Piyush Mehta has accepted in his statement or otherwise that the unsecured loans were bogus.</p> <p>The relevant portion of the statement of Shri Piyush Mehta is reproduced hereunder for ready reference: "Q. 11 The list of 27 entities shown above are paper entities not doing any business activity and are merely being used to provide accommodation entries in the nature of bogus unsecured loans, bogus share capital etc. Please comment on the same.</p> <p>Ans. I am not aware of the same and as far as I am concerned the above transactions are actual unsecured loans.</p> <p>Q. 12 A search action u/s. 132 was carried out on the Cosmos Group on 24.09.2014. In the statement recorded u/s. 132(4) on 27/09/2014, Shri Manish Mehta, Director of Cosmos Group, was shown the list of 27 entities as shown above, Shri Manish Mehta, in his statement dated</p>

		<p>27.09.2014, confirmed that he could not justify the unsecured loans taken from these entities with regards to the identity, genuineness and creditworthiness and offered the same for taxation. Please comment on the same.</p> <p>Ans. Sir I have gone through the statement of Shri Manish Mehta. As far as I am concerned, all my unsecured loans are taken through proper banking channels."</p>
		<p>Without prejudice to the above, it is submitted as under:</p> <p>i. Shri Piyush Mehta is not a partner of the appellant firm and is not involved in the business affairs of the appellant and therefore his statement, being a third party statement, has no relevance in the case of the appellant.</p> <p>ii. Even otherwise, the failure to prove the genuineness and /or creditworthiness by Shri Piyush Mehta does not amount to acceptance of allegation that the transaction is bogus. Even-otherwise, Shri Piyush Mehta being a third party cannot be asked to prove the genuineness and/or creditworthiness of the transactions entered into by the appellant and the same would be an exercise in futility.</p> <p>iii. The appellant has during the course of assessment proceedings submitted cogent and reliable documentary evidence establishing the identity, genuineness and creditworthiness of M/s. Center Point Gems.</p>
7.	Query by Your Honour	Submit a copy of statement recorded u/s. 131 of the Act on 03.03.2015 of Shri Piyush Mehta on which reliance has been placed in the assessment order.
	Reply by the Assessing Officer in the remand report	Copy of Statement of Shri Piyush Mehta is enclosed
	Response of the appellant	Already explained hereinabove at para (6)

2. Hope Your Honour finds the above in order."

7.3 The reasons recorded for re-opening, the submissions of the Id.Counsel, remand report and rejoinder to the remand report have been considered carefully. It is seen from the assessment order that the Ld.AO had show caused the assessee to show why unsecured loans pertaining to

M/s. Centre Point Gems Pvt. Ltd. of Rs.7.69 crores and interest paid of Rs.13,84,975/- should not be added to the total income of the assessee. The assessee filed its reply vide letter dated 20.04.2016 and had furnished confirmation from the lender, reply u/s.133(6) from M/s. Centre Point Gems Pvt. Ltd., bank statement etc. However, the Ld.AO remarked that the reply of the assessee is not accepted. According to him, Shri Piyush Mehta could not prove the identity, genuineness and creditworthiness of the loan taken from Centre Point Gems Pvt. Ltd. He concluded that the loan from Centre Point Gems Pvt. Ltd. is only an accommodation entry and made the disallowance. However, the assessment order is silent as to why the evidences filed by the assessee are not accepted and how Shri Piyush Mehta could not prove the identity, genuineness and creditworthiness of the loan and how he has concluded that the loan taken are non-genuine.

7.4 Firstly, the assessee had provided all the documents required to prove the identity, genuineness and creditworthiness of the transaction. Once these are furnished, the primary onus which was on the assessee stands discharged. Now, onus shifts to the Ld.AO. The Ld.AO had issued notice u/s.133(6) to Centre Point Gems Pvt. Ltd. which had responded confirming the transaction. In spite of that the Ld.AO concludes that the transaction is not genuine. There is no further inquiry made by the Ld.AO and no evidence contrary to what has been submitted by the appellant has been brought on record by him. No addition can be made merely on the ground of suspicion and presumption. There is not an iota of evidence against the assessee which the Ld.AO could procure to make the disallowance/addition. It has been held by the Hon'ble Bombay High Court in the case of Orient Trade Co. Ltd. vs. CIT [49 ITR 723] and Madras High Court in the case of CIT vs. Gani Silk Palace [71 ITR 373] and other courts that *once the assessee explains its case with evidences, the burden shifts to the Assessing Officer to show that as to why the assessee's case cannot be accepted.* In this case, the Ld.AO has not discharged the burden which shifted to him after the assessee furnished evidences to prove the genuineness of the transaction.

7.5 Also, the Ld.AO had relied upon the statement given by Shri Piyush Mehta. Firstly, Shri Piyush Mehta is not a partner in the appellant firm and has no locus stand to give a statement on behalf of the assessee. Even assuming that he had admitted to the loan being bogus transaction, the same will have no relevance as he is not connected to the appellant's firm. But it is noteworthy to mention that Shri Piyush Mehta has done nothing of this sort and has confirmed in his statement that the loans taken are genuine. Nowhere has he admitted that the loans were non-genuine, therefore, the Ld.AO's statement that Shri Piyush Mehta could not prove identity, genuineness and creditworthiness of the loans taken has no substance. This is a case where the assessee has done everything to prove the identity, genuineness and creditworthiness of the transaction and the Ld.AO had done nothing to disprove the same but has merely brushed aside all evidences without giving any reason to make an addition. In view of the above discussion, such addition cannot be sustained. Therefore, addition of Rs.7,96,00,000/- towards the loan received is deleted.

7.6 As the loan of Rs.7,96,00,000/- has been considered genuine in the preceding paras, the interest paid on the said loan to the tune of Rs.13,84,975/-on which TDS has also been made by the assessee is also considered genuine. The Ld.AO is directed to delete the interest addition on the same. These grounds of appeal are Allowed.”

6. The revenue is aggrieved by the decision rendered by Ld CIT(A) in both the years.

7. The Learned DR submitted that M/s. Centre Point Gems Pvt. Ltd. has been identified as a concern providing accommodation entries. The Cosmos group has surrendered loan taken from the above said concern as their income. Hence the AO has considered the loan taken by the assessee from the above said concern as not genuine. He further submitted that the financial condition of M/s. Centre Point Gems Pvt. Ltd. is not commensurate with the amount of loan given by the assessee. He submitted that the capital available with the lender is meager and the profit earned by it is also very low. The above said company (lender) has borrowed loans from other persons and used the same for giving loan to the assessee. Hence, the loan given by the above said company cannot be considered to be genuine. Accordingly, he contended that the learned CIT(A) should not have granted relief to the assessee. In support of his submission learned DR placed his reliance on the following case laws :

- (a) Pavankumar M. Sanghvi (2017) 81 taxmnn.com 308 (Ahd)
- (b) PCIT Vs. NRA Iron & Steel (P) Ltd. (2019) 412 ITR 161

8. The Learned AR, on the contrary, submitted that the AO has made addition u/s 68 of the Act. The assessee has discharged the onus placed upon it by furnishing relevant details before the Assessing Officer. In particular, the assessee has furnished financial statements of the lender-company, copy of bank statement, Income tax return copies and also confirmation letter obtained from the above said company. He further submitted that the assessee has also deducted tax at source on the interest paid to M/s. Centre Point Gems Pvt. Ltd. He further submitted that the AO,

during the course of assessment proceedings, issued notice under section 133(6) of the Act to the above said lender and it has duly replied to the queries raised by the Assessing Officer. He submitted that the Assessing Officer has not found fault with any of the documents furnished by the assessee and also with the replies given by the lender. Hence, there is no reason to suspect the genuineness of the loan given by M/s. Centre Point Gems Pvt. Ltd. to the assessee. He submitted that the assessee has discharged the primary onus placed upon it u/s 68 of the Act and hence the Assessing Officer was not justified in making the additions under section 68 of the Act in both the years. In this regard, the learned AR placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of CIT Vs. Oasis Hospitalities Private Limited (2011) 333 ITR 119 (Del).

9. The Learned AR further submitted that the Assessing Officer has relied upon some third party information in order to come to the conclusion that the loan taken from M/s Centre Point Gems P Ltd was not genuine. He submitted that the surrender, if any, made by some third party cannot be a ground to suspect otherwise genuine transaction. He further submitted that the revenue has carried out survey operations at the business premises of a concern, wherein the assessee is one of the partners. A statement was taken from a person named Mr. Piyush Mehta during the course of survey, in which nothing adverse on the loan taken by the assessee from M/s. Centre Point Gems Pvt. Ltd was mentioned. Hence there was no material available with the Assessing Officer to doubt the genuineness of the loan taken from the above said company to make addition under section 68 of the Act in both the years. He also submitted that the AO did not have any material to support his belief of escapement of income in AY 2011-12.

10. With regard to the case laws relied upon by Ld D.R, the Learned AR submitted that the issue in the case of NRA Iron and Steel (P) Ltd. (supra) was related to the share capital/premium collected by the assessee and it was found that the investor companies were non-existent. In the case of

Pavankumar M. Sanghvi (supra), the Tribunal has expressed the view that the onus placed upon the assessee does not get discharged by filing confirmatory letters or demonstrating that the transactions are done through banking channel or by filing assessment particulars. It was further held that since the assessee was not able to produce lender for verification, the alleged loan transaction was brought to tax under section 68 of the Act holding the same as non-genuine. The Learned AR submitted that the above said decisions have been rendered on the basis of facts prevailing in those cases. Since there is no parity for the facts between above said case laws and the assessee herein, the above said decisions are not applicable to the facts of the present case.

11. In the rejoinder, learned DR, submitted that the provisions of section 68 of the Act are applicable to both the share capital/premium collected and loan taken. Hence, it cannot be said that the decision rendered by Hon'ble Supreme Court in the case of NRA Iron & Steel (P) Ltd. is not applicable to the instant case.

12. We have heard the rival contentions and perused the record. The Assessing Officer has reopened the assessment for A.Y. 2011-12 in order to verify the loan taken by the assessee from M/s. Centre Point Gems Pvt. Ltd. The return of income filed for A.Y. 2012-13 was taken up for scrutiny mainly for the purpose of examining the loan taken by the assessee from the above said concern in that year. The facts, which triggered the Assessing Officer to do so, have been explained in earlier paragraphs i.e. since the Cosmos Group have surrendered the loans taken from various concerns, the Assessing Officer has entertained the belief that the M/s. Centre Point Gems Pvt. Ltd. is also a bogus concern. In this process, we noticed that the Assessing Officer has completely disregarded the information and explanations furnished by the assessee and also disregarded the results of his own inquiry.

13. There is no dispute with regard to the fact that the assessee has furnished complete financial details of M/s. Centre Point Gems Pvt. Ltd., viz.,

financial statements, copy of bank statement, copy of income tax statement and confirmation letter. We noticed that the Assessing Officer himself has conducted an independent inquiry by issuing notice under section 133(6) of the Act to M/s. Centre Point Gems Pvt. Ltd and the said notice has been duly replied by the lender. We noticed that the Assessing Officer has not found fault with any of the information and explanations furnished both by the assessee and lender.

14. Under section 68 of the I.T. Act, initial onus to prove the cash credit is placed upon the shoulders of the assessee i.e. the assessee has to prove the three main ingredients namely – identity of the creditor, creditworthiness of the creditor and genuineness of the transactions. In the instant case it is not the case of the Assessing Officer that the assessee has failed to discharge the initial onus placed upon it. It is also settled law that, once the assessee has discharged onus placed upon him, onus to disprove the evidences furnished by the assessee would shift to the shoulders of the Assessing Officer. In the instant case, admittedly, the Assessing Officer has not found any fault with the evidences furnished by the assessee and the lender. However, the AO did not bring any material on record to controvert the evidences furnished by the assessee, meaning thereby, the Assessing Officer has failed to discharge the onus shifted upon him under the provisions of section 68 of the Act.

15. The Learned DR submitted that the financial position of the lender is not commensurate with the loan amount given by it. In this regard he invited our attention to the capital owned by the lender as well as profit earned by it. However, a perusal of the Balance-sheet of the lender would show that the lender was having enough funds in the form of its own funds and also by way of loans taken by it from others. Hence the lender was having sufficient funds for giving the impugned loan to the assessee. It is not the case of the Assessing Officer or learned DR that the borrowings disclosed in the balance sheet of the lender are bogus in nature. Hence, the source for giving loan to

the assessee has been duly explained by the lender and cannot be doubted with.

16. We notice that the Ld CIT(A) has passed a detailed order, which is extracted above, after duly verifying the facts prevailing in this case. The Ld CIT(A) has called for a remand report from the AO and in the remand report also, the AO could not point out any deficiency in the information and explanations furnished by the assessee. Hence, there is no reason for making addition u/s 68 of the Act and accordingly, we are of the view that the learned CIT(A) was justified in deleting the additions made u/s 68 of the Act as well in deleting the interest disallowances in both the years under consideration. Accordingly, we confirm the orders passed by the learned CIT(A) in both the years.

17. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 07.12.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

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

Mumbai; Dated : 07/12/2022

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

PS