

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.2410/M/2022
Assessment Year: 2014-15**

Shri Manish Kumudchandra Mehta, 14, Hanvant Bhavan, 80E, Napeansea Road, Mumbai – 400 006 PAN: AADPM9184G	Vs.	Income Tax Officer- 19(2)(3), Matru Mandir, 2 nd Floor, Grant Road, Mumbai – 400 007
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Krishna Kumar, D.R.

Date of Hearing : 15 . 11 . 2022
Date of Pronouncement : 22 . 11 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Manish Kumudchandra Mehta (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 27.07.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2014-15 on the grounds inter-alia that :-

“1. The learned CIT(A) failed to take into consideration the facts of the case and the detailed submissions filed along with the all evidences supporting the claim of the Assessee and has made an addition purely on the basis of baseless presumption of nexus between Bhanwarlal Jain Group and impugned Loan Creditors.

2. The learned CIT(A) erred in confirming an addition of Rs. 22,15,857/-being interest paid to Maximus Gems (Unsecured Creditor), which has erroneously been treated as a provider of accommodation entries.”

2. Briefly stated facts necessary for adjudication of the issues at hand are: in the survey action conducted in case of Bhanwarlal Jain and others by DGIT (Investigation), Mumbai on 03.10.2013 it was found that name sake dummy directors, partners, proprietors of various persons belonging to the native place of Bhanwarlal Jain & family in Rajasthan are into the business of providing accommodation entries of the M/s. Gems and assessee is one such person who has taken accommodation entries of Rs.2,68,36,485/- from M/s. Maximus Gems a hawala party. Then after necessary approval notices under section 142(1) & 143(2) of the Income Tax Act, 1961 (for short ‘the Act’) dated 29.09.2015 were issued and served upon the assessee and one LD Joshi, CA appeared on his behalf. On the basis of admission made by name sake directors/partners/proprietors admission of facts by Bhanwarlal Jain group and on the basis of the fact that the assessee has failed to prove the identity and creditworthiness of the loan creditors and also genuineness of the transactions in order to discharge its onus under section 68 of the Act and held the loan amount of Rs.2,25,87,732/- received by the assessee from M/s. Maximus Gems in A.Y. 2012-13 as mere accommodation entry. The assessee has debited interest on the aforesaid loan to the tune of Rs.22,15,857/- during the year under consideration and as such the Assessing Officer (AO) made addition thereof to the total income of the assessee by framing assessment under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition made by the AO by dismissing the appeal. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. Notices were sent to the assessee through RPAD twice which were not received back served/unseved and presumed to have been served on the assessee but the assessee has not preferred to prosecute the present appeal by putting in appearance. So I have decided to dispose of the present appeal on the basis of material available on record and with the assistance of the Ld. D.R. for the Revenue.

5. Undisputedly, as per para 10.6 of the AO alleged loan taken by the assessee to the tune of Rs.2,25,87,732/- from M/s. Maximus Gems in A.Y. 2012-13 was treated as accommodation entry in the assessment order passed for A.Y. 2012-13. It is also not in dispute that the present addition of Rs.22,15,857/- for A.Y. 2014-15 is on account of interest debited by the assessee during the year under consideration on the aforesaid loan of Rs.2,25,87,732/- taken from M/s. Maximus Gems in A.Y. 2012-13.

6. In the backdrop of the aforesaid undisputed facts when I have examined the impugned order passed by the Ld. CIT(A), the assessee has made categorical submissions which have been extracted at page 9 & 10 of the impugned order, wherein the assessee has made following submissions:

“1. After considering all the evidences filed before your Honours, it is ample clear that no new loan was received by the appellant in A.Y. 2014-15.

2. *The appellant has paid interest to the M/s. Maximus Gems of Rs.22,15,857/- in A.Y. 2014-15.*

3. *We request your honour to kindly take up the hearing of the appellant for A.Y. 2011-12 and A.Y. 2012-13 first and then decide the appeal for A.Y. 2014-15. The appeal for addition of interest can be decided only when the issue is resolved of genuineness of loan in the appeal of A.Y. 2011-12.*”

7. From the aforesaid submissions it has come on record that when admittedly the addition made by the AO of Rs.22,15,857/- is on account of interest on the loan taken from M/s. Maximus Gems in A.Y. 2012-13 the assessee has made a categorical submission before the Ld. CIT(A) that since his appeals for A.Y. 2011-12 and A.Y. 2012-13 in which the AO has held, the amount of Rs.2,25,87,732/- as mere accommodation entry, are pending disposal before the Ld. CIT(A), this appeal may be decided thereafter.

8. I am of the considered view that when appeal as to the addition of Rs.2,25,87,732/- made by the AO in A.Y. 2012-13 treating the alleged loan taken by the assessee from M/s. Maximus Gems in A.Y. 2012-13 is pending before the Ld. CIT(A) the addition in question made by the AO for A.Y. 2014-15 on account of interest on said loan cannot be decided as the Ld. CIT(A) could not have arrived at the logical conclusion. So in these circumstances the Ld. CIT(A) is required to decide the appeal pertaining to A.Y. 2012-13 first and then to decide this appeal which is an offshoot of alleged loan treated as accommodation entry taken by the assessee from M/s. Maximus Gems in A.Y. 2012-13. Consequently, impugned order passed by the Ld. CIT(A) is hereby set aside and remitted back to the Ld. CIT(A) to decide

afresh after providing opportunity of being heard to the assessee in terms of the findings returned hereinbefore.

8. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.11.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 22.11.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.