

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI

BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1697/Mum/2020 (A.Y: 2007-08)

ITA No.1696/Mum/2020 (A.Y: 2013-14)

ITA No.1695/Mum/2020 (A.Y: 2014-15)

Pine Tree Consultants Pvt Ltd, No.104, Raheja Centre, 1 st Floor, Free Press Journal Marg, Nariman Point, Mumbai -400 021	Vs.	DCIT, Circle – 3(2)(2) Aayakar Bhavan, MK Road, Mumbai -400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCP8816F		
Appellant	..	Respondent

Appellant by :	Mr.Neelkanth Khandelwal.AR
Respondent by :	Ms.Deepika Arora.DR

Date of Hearing	23.11.2022
Date of Pronouncement	22.12.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These are the three appeals filed by the assessee against the separate orders of the Commissioner of Income Tax(CIT(A))-8 Mumbai passed under sec250 of the Act

2. Since the issues in these appeals are common and identical, hence are clubbed, heard and consolidated order is passed. For the sake of convenience, we shall

take up the ITA No.1697/Mum/2020 for the A.Y. 2007-08 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal:

1. The Commissioner of Income-tax (Appeals) - 8, Mumbai (hereinafter referred to as the CIT(A)) erred in upholding the action of the Deputy Commissioner of Income-tax 3(2)(2), Mumbai (hereinafter referred to as the Assessing Officer) in issuing notice under section 148 of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the issue of notice by the Assessing Officer under section 148 is without jurisdiction, bad in law and hence, the CIT(A) ought to have quashed the same.

The appellants further, contend that the reasons recorded by the Assessing Officer are insufficient, vague and without application of mind and hence, the notice issued under section 148 is bad in law and consequently, the CIT(A) ought to have quashed the impugned assessment order.

The appellants further, contend that the notice issued on 29th March, 2014 under section 148 by the Assessing Officer is void ab initio inasmuch as the Assessing Officer while recording the reasons for re-opening only considers the statement on oath of Mr Pravin Kumar Jain obtained during the course of search proceedings, which is later retracted by him on 15th May, 2014 and filed with the CBDT on even date.

2. The CIT(A) erred in confirming the action of the Assessing Officer in making the impugned addition of Rs 4,37,00,000 under section 68 of the Act on the basis that the loan creditors are shell companies.

The appellants contend that on the facts and in the circumstances of the case and in law, the impugned addition is made on patently erroneous facts and hence, not tenable and requires to be quashed.

The appellants further, contend that on the facts and in the circumstances of the case and in law, the impugned addition ought to have been deleted by the CIT(A) inasmuch as the Assessing Officer has allowed the interest paid to the impugned loan creditors, which is debited to the profit and loss account of the year under reference.

The appellants crave leave to add to, alter or amend the aforestated grounds of appeal.

3. The brief facts of the case are that the assessee company is engaged in the business of financial consultants and share trading. The assessee has filed the return of income for the A.Y 2007-08 on 12.09.2007 disclosing a total income of Rs. 1,53,88,285/-. Subsequently, the case was reopened by issuing notice u/s 148 of the Act on 29.03.2014. Whereas the assessee was provided reasons for reopening and the assessee has filed the objections. Subsequently the Assessing Officer (AO) has issued notice u/s 143(2) and 142(1) of the Act and in compliance, the Ld. AR of the assessee has appeared from time to time and submitted the details. The AO has provided the reasons for reopening of assessment

and dealt on facts of search case pertaining to shri praveenkumarjain & group on 01.10.2013, the A.O. found that the group is engaged in the business of providing accommodation entries in the nature of bogus unsecured loans. The DGIT(Inv) found that the assessee is a beneficiary and has obtained the unsecured loans from the five companies of jain group. The AO has called for the details/information to explain the transactions and produce the loan/lender parties with supporting sources of funds and bank statements of lenders. Further the notice u/s 133(6) of the Act was issued on the loan creditors and was returned un-served by the postal authorities..

4. Further, the AO has provided an opportunity to the assessee to establish the identity, creditworthiness and genuineness of the loan parties/creditors. The assessee has filed the detailed submissions explaining the transactions duly supported with the bank statements, loan confirmations and ledger accounts and also affidavit and retraction statement of Shri Praveen Kumar Jain. The AO having dealt on the details, facts and has issued notice u/sec133(6) of the Act on the loan creditors and were returned un-

served and therefore the A.O. has called for the additional information from the assessee. Whereas the AO has dealt on the information and the evidences filed has observed that the assessee has not discharged obligation of proving the identity, creditworthiness and genuineness of the loan creditors. The assessee has filed the details vide letter dated 02.03.2015 dealt at Para 6 of the order as under:

6. The assessee vide letter dated 2.3.2015 submitted the details of the above loan creditors which inter alia included copy of 1) M/s. Ostwal Trading India Pvt. Ltd. ledger account, ROI of M/s. Ostwal Trading India Pvt. Ltd. Copy of audit Report and annual accounts of M/s. Ostwal Trading India Pvt. Ltd. Copy of bank statement of Ostwal Trading India Pvt. Ltd. and copy of Loan confirmation. Similar details were provided in the case of 2) New Planet Trading Co. Pvt. Ltd., 3) Capetown Mercantile Company Ltd. 4) Fast Stone Trading Company Ltd. 5) JPK Trading Pvt. Ltd. The AR

of the assessee instead of producing the loan creditors merely filed the copy of Affidavit-Retractation of Mr. Praveen Kumar Jain dated 15.5.2014.

5. The assessee has submitted the details i.e confirmation of lenders, bank account statements and financial statements etc to substantiate genuineness, identity and creditworthiness of the loan creditors. Further, the assessee

has paid interest on loan and also the loan was repaid to the lender and was confirmed by the parties. But the AO was not satisfied with the information and explanations and observed that the assessee has not satisfied the ingredients required u/s 68 of the Act and made an addition of Rs.4,57,00,000/- as unexplained cash credit and further denied the claim of deduction U/sec80G of the Act and assessed the total income of Rs.5,93,53,380/- and passed the order u/s 143(3) r.w.s. 147 of the Act dated 22.03.2015.

6. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) has considered grounds of appeal, findings of scrutiny assessment. The assessee has filed the submissions on the disputed issue of validity of reassessment proceedings and unsecured loans referred at page 7 Para 4 of the order read as under :

During the course of appellate proceeding, the AR of the appellant company has filed written submission, the relevant portion of the same is quoted below:

"Re-Ground of appeal no 2- Re-opening of assessment

The re-opening of assessment to be successful has to be tested on the touchstone of 'reason to believe' on the basis of tangible material that income has escaped

assessment. There should be a live link between the tangible material and the formation of belief on the basis of the reasons recorded that income has escaped assessment. The Assessing Officer has miserably failed in developing that link inasmuch as he only mentions the transaction that has been carried out between the appellants and various companies, alleged to be part of Praveen Kumar Jain group. The appellants submit that it is trite law that the reasons should be exhaustive and should mention as to how income has escaped assessment that is, there should be a nexus between the material received from extraneous sources and the formation of belief on the basis of the reasons recorded that income has escaped assessment, which it is submitted has not been done.

It appears from the records that the material on the basis of which the Assessing Officer has formed an opinion that income chargeable to tax has escapement assessment is a report from the Investigation Wing of the Department. The Investigation Wing has reported that Mr Pravin Kumar Jain is an entry provider and that he has provided such accommodation entries to several parties. Further, a statement of Mr Pravin Kumar Jain has been recorded by the Investigation Wing of the Department and in that statement he has accepted that he is engaged in the business of providing accommodation entries. Merely, on this the Assessing Officer has re-opened the assessment of the appellants. The appellants submit that it is trite law that the reason to believe that income chargeable to tax has escaped assessment and the same is liable to be re-opened has to be viewed from the standpoint of the Assessing Officer. The least that the Assessing Officer could have done was to independently apply his mind to ascertain that the information provided by the Investigation Wing of the Department is sufficient and

conclusive for drawing a reasonable inference that the income of the appellants has escaped assessment rather than recording reasons without application of mind.

The appellants submit that section 147/ 148 requires the Assessing Officer to have a 'reason to believe' and not a reason to suspect. The reasons as recorded by the Assessing Officer are only reason to suspect that income chargeable to tax has escaped assessment and hence, the notice issued by the Assessing Officer is bad in law and consequently, the impugned assessment order is bad in law.

Further, and in any view of the matter, it would not be out of place to mention that the said statement of oath on the basis of which the assessment has been reopened has since been retracted by an Affidavit dated 15th May, 2014 furnished to the CBDT, and a copy of the said Affidavit has been submitted to the Assessing Officer under cover of letter dated 2nd March, 2015-refer page nos 199 to 203 of the paper book for the copy of Affidavit.

In view of the above, the appellants contend that the re-opening of assessment is bad in law, as the reasons recorded are vague and insufficient, and consequently, the assessment order ought to be annulled.

Re Ground of appeal no 3 - Addition under section 68-Rs 4,37,00,000

The appellants have obtained loan from the following corporate entities, which have been considered by the Assessing Officer for making the impugned addition under

section 68 of the Act-

<i>Name of the loan creditor</i>	<i>Amount of addition</i>	<i>Interest debited on the loan availed</i>	<i>Amount repaid together with interest</i>	<i>Amount repaid subsequent years</i>
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			during the year under consideration	
JPK Tradin	1,38,00,000	2,40,600	1,40,40,600	
Oswal Trading	1,12,00,000	1,49,550	1,13,49,550	
Faststone Trading Co. P	80,00,000	74,000	80,74,000	
New Planet Trading co	15,00,000	2,97,750	90,66,815	62,30,935
Capetown Mercantile	92,00,000	2,25,625	1,20,50,630	81,74,995
Total	4,37,00,000			

The companies from whom the loans have been obtained by the appellants are corporate entities incorporated under the Companies Act, 1956 and hence, the identity stands proved. The transaction is through M banking channels and are supported by the various documents of the lender companies - photo copy of loan confirmations, acknowledgement evidencing filing of return of income, audited annual accounts, bank statement, and so on - all these documents indicate the creditworthiness of the lender companies - All the said documents are on the records of the Assessing Officer - refer letter dated 2nd March, 2015 of R.S. Khandelwal & Associates, Chartered Accountants filed with the Assessing Officer page nos 30 to 203 of the paper book.

Thus, the genuineness of the transactions and creditworthiness of the lending-companies is proved. The appellants therefore, submit that they have furnished all the details to prove the identity of the lending-companies as also their creditworthiness and the genuineness of the transactions.

It is therefore, contended that the impugned addition under section 68 ought not to have been made in view of the fact that the three litmus tests of section 68 namely,

identity, creditworthiness and genuineness of the transaction have all been proved by the appellants.

4.3 If the Assessing Officer after having the aforesaid materials on record, was of the opinion that the impugned transactions are not genuine, he, having enormous powers under the Income-tax Act ought to have issued summons to Mr Praveen Kumar Jain or the Directors of the lending-companies and ought to have brought enough positive material on record to support his conclusion that the transactions are not genuine, but he has failed to discharge his duty and has brushed aside all the positive evidences filed by the appellants and has come to the conclusion on the basis of assumptions and presumptions, which Courts have held have no place in framing an assessment under the income-tax Act.

4.4 Further, the appellants should have been allowed to cross-examine the Directors of the lending-companies and/ or Mr Praveen Kumar Jain, inasmuch as they are the witness of the Department.

4.5 Further, there is no allegation by the Assessing Officer that equivalent amount of cash has been transferred from the coffers of the appellants to the lending-companies to get the equivalent amount of cheque; there is not an iota of evidence in this respect.

Thus, the impugned addition could not have been made in the hands of the appellants.

4.6 It would be pertinent to mention that the appellants have repaid the entire loan together with interest-refer the table above

4.7 The Assessing Officer has not even verified whether any addition has been made in the assessments of the lending-companies. If addition is made in their assessments, addition again cannot be made in the

assessment of the appellants. If no addition is made in their assessments, then there is no reason or justification to make the impugned addition in the case of the appellants.

4.10 The appellants thus, submit that impugned addition has been made merely on the basis of assumptions and presumptions; the appellants contend that assessment cannot be based on assumptions and presumptions. Reliance is placed on the decision of the Honourable Apex Court in *Umacharan Shaw & Bros (37 ITR 271)* at page 272 in clause (v) has held that no addition could be made on presumption; suspicion however, strong, cannot take place of evidence.

In view of the above, the appellants contend that the impugned addition made by the Assessing Officer under section 68 of the Act ought to be deleted.

5. Re Ground of appeal no 4- Disallowance under section 35AC - Rs 1,11,000/- and disallowance under section 80G-Rs 1 54 000

5.1.1 The Assessing Officer has disallowed Rs 1,11,000 being amount claimed as deduction under section 35AC

5.1.2 The Assessing Officer in para 13 of the assessment order mentioned that-

The assessee has not provided the proof of payment of donation of Rs I, 11,000 to Narayan Seva Sanlhashtan Trust and the assessee has reduced the same in the computation of total income which is not permissible as per Income Tax Law.

Hence this amount of Rs 1,11,000 is added to the total income "

5.1.3 The appellants submit that the observations of the Assessing Officer are incorrect inasmuch as photo copy of

the receipt is filed with the Assessing Officer refer letter dated 9 111 March, 2015 0: R.S. Khandelwal & Associates, Chartered Accountants filed - page nos 204 to 209 of the paper book.

5.2.1 The Assessing Officer has disallowed Rs 1,54,000 being amount claimed as deduction under section 80G.

5.2.2 The Assessing Officer in para 13 of the assessment order has observed that- "Further the assessee has clinical 50% exemption for donation of Rs. 1,54,000/-

The assessee has not proved any evidence for its exemption. Therefore 80G deduction is not allowed...

5.2.3 The appellants submit that the observations of the Assessing Officer are incorrect inasmuch as photo copy of the receipt are filed with the Assessing Officer refer letter dated March, R.S. Khandelwal & Associates, Chartered

Accountants filed-page nos ad 205, 210 to 215 of the paper book.

In view of the above, the appellants contend that the impugned deductions claimed by the appellants in their return of income which have been disallowed by the Assessing Officer be allowed.

Re Ground of appeal no 6- Not allowing TDS credit Rs 2,68, 196

The Assessing Officer, while computing the tax liability of the appellants, has not allowed the credit of tax Rs 2,68,196 deducted at source and claimed by them in their return of income.

The appellants submit that this is a mistake apparent from record and a suitable direction may be given to the Assessing Officer in this behalf.

7. Whereas, the CIT(A) was not satisfied with the submissions and material information has upheld the validity of assessment and affirmed the action of A.O. and sustained the addition of unsecured loans and granted partial relief in other grounds of appeal and partly allowed the assessee's appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Honble Tribunal.

8. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the addition u/s 68 of the Act irrespective of the fact that the assessee has filed the details in respect of the loans and submitted the confirmation of the loan creditors along with other details. Further, the Ld. AR submitted that the assessee maintains the regular books of accounts and has obtained unsecured loan from genuine creditors. Whereas, the assessee has furnished before the CIT(A), the confirmation of loans, bank statement of both the assessee and loan creditors, audited financial statements to substantiate the genuineness, identity and creditworthiness of the loan creditors. Further, the assessee has paid interest on loans and

was confirmed by the parties and also the assessing officer has allowed the interest on loan creditors in the assessment proceedings. The Ld.AR supported the submissions on the disputed issues with the evidences in the factual paper book and judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

9. We have heard the rival submissions and perused the material on record. The Ld. AR submitted that the CIT(A) has erred in sustaining the addition u/s 68 of the Act of unsecured loans though the assessee has filed the requisite details before the lower authorities. We find that before the Assessing Officer, the assessee has submitted information in respect of unsecured loan creditors and the A.O. has issued notice u/s 133(6) of the Act. On perusal of the assessment order, the assessee has submitted the documentary evidences but the A.O has overlooked the vital documents in respect of the sources filed by the assessee. The assessee has submitted the written submissions before the CIT(A) and the confirmation of loan creditors, PAN, Bank account details and the Income Tax returns. We find that the assessee has to

satisfy the 3 ingredients with respect to identity, creditworthiness and genuineness of the transaction. The CIT(A) has discussed on the provisions of the Act but has confirmed the action of the A.O. We are of the opinion that the assessee has discharged the burden of proof in filling the documents. Whereas the A.O and the CIT(A) has taken a different view and overlooked the explanations of the assessee. The judicial decisions relied by the Ld.AR are as under:

- 1. CIT Vs. Lovely Exports P Ltd, 216 ITR 196 (SC)*
- 2. CIT Vs. Divine Leasing and Finance Ltd, 158 Taxman 440 (Del)*
- 3. Hindustan Inks & Resin Ltd Vs. DCIT, 60 DTR/8 (Guj) Jagruti Hitesh Mehta ITA Nos. 64 to 67/Mum/2022 15*
- 4. DCIT Vs. GP International Ltd 325 ITR 25 (P&H)*
- 5. PCIT Vs. Adamine Construction Pvt ltd (2018) 99 taxmann.com 44 (Del)*
- 6. PCIT Vs. Hitech Residency P Ltd, (2018), 96 Taxmann.com 402/257 Taxmann 390 (Del).*

10. Further the assessee has cooperated in submitting the information in the assessment proceedings, whereas the A.O has ignored the information, evidences and audited financial

statements and unilaterally made addition u/sec68 of the Act. The Ld. AR emphasized that the assessee has discharged its burden by submitting the financial statements of the lenders where the payment is made through banking channel and identity, creditworthiness and genuineness of the lender company was proved in the assessment proceedings. Further the assessee has submitted the audited financial statements, confirmations, Bank statements, copy of the income tax returns and the repayment details to substantiate the genuineness and credit worthiness of loan creditors, which are placed at page 30 to 214 of paper book and chart. The Ld.AR demonstrated the copy of bank statements reflecting the repayment of unsecured loans in the paper book which is not disputed by the revenue. Further, the A.O has failed to make further enquiries and relied on the statement recorded, overlooking the factual aspects that the assessee has discharged the initial burden placed by furnishing the details. The information submitted by the assessee satisfied the three ingredients of provisions of Sec. 68 of the Act. Further the A.O. has allowed the interest on

unsecured loans in the F.Y.2012-13, while the loan transactions are not believed and alleged as non genuine and treated as unexplained cash credit U/sec68 of the Act and these unsecured loans were repaid through account payee / banking channels in the current financial year and subsequent year which is not disputed. The Ld.AR submitted that the assessee has substantiated the stand by submitting the details before the A.O. and CIT(A) and discharged the burden. We considering the facts, circumstances and judicial decisions set-aside the order of the CIT(A) and direct the Assessing officer to delete the addition of unsecured loans and allow this ground of appeal in favour of the assessee.

11. Since we have decided on the merits of the case, the grounds of appeal with respect to validity of re-assessment proceedings raised by the assessee becomes academic and are left open.

ITA.No.1966/Mum/2020, A.Y 2013-14

12. As the facts and circumstances in the appeal is identical to ITA No. 1697/Mum/2020 on the disputed issue of unsecured loans (except variance in figures)

and the decision rendered in above paragraph no.9&10 will apply mutatis mutandis to this appeal also. Accordingly, the grounds of appeal are allowed in favour of the assessee.

ITA.No.1695/Mum/2020, A.Y 2014-15

13. The only disputed issue in this appeal, that the A.O has disallowed the interest on unsecured loans. Since we have directed the A.O to delete the addition of unsecured loans in the above Para no9&10, therefore the interest on the unsecured loans cannot be disallowed. Accordingly, we direct the A.O to delete the addition of interest claim on the unsecured loan creditors and allow the grounds of appeal in favour of the assessee

14. In the result, the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 22.12.2022.

Sd/-

(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 12.12.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai