

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2567/Mum/2022
(A.Y: 2012-13)

Hemang Goradia, Flat No. 602, Hemu Castle, Dadabhai Road, Vile Parle (West), Mumbai-400056.	Vs.	AC Circle – 25(2, Pratyakshakar Bhavan, C-10, BKC, Bandra (E), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACKPG6153G		
Appellant	..	Respondent

Appellant by :	Mr.Vimal Punmiya.AR
Respondent by :	Mr.Tejinder Pal Singh Anand.DR

Date of Hearing	15.12.2022
Date of Pronouncement	09.01.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/s 143(3) r.w.s 147 and U/sec 250of the Act. The assessee has raised the following grounds of appeal:

1. NOT GIVING PROPER OPPORTUNITY:

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1.1. *The Commissioner of Income Tax (Appeals) National Faceless Appeal Centre [the CIT (A)] erred passing order under section 250 of the Income tax Act, 1961 ('the Act') without giving sufficient, proper and adequate opportunity of being heard to the Appellant while passing the order.*

1.2. *It is submitted that in the facts and the circumstances of the case, and in law, the order be held as bad and illegal, having framed in breach of the principles of natural justice.*

WITHOUT PREJUDICE TO THE ABOVE:

2. RE.: REASSESSMENT:

2.1. *The ld. CIT(A) erred in confirming the action of the A.O whereby the A.O. had initiated reassessment proceedings and framed assessment of the appellant by invoking the provisions of Section 147 r.w.s 148 of the Act*

2.2. *While doing so, the ld. CIT (A) failed to appreciate that the case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act, as the necessary condition for initiation as well as completion thereof were not fulfilled.*

2.3. *It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void.*

2.4. The appellant prays that the assessment so framed be held as bad and illegal and be quashed.

3. ADDITION ON ACCOUNT OF UNSECURED LOANS:

3.1. The ld. CIT (A) erred in confirming the addition of Rs. 2,60,00,000/- made by the AO under section 68 of the Act whereby the A.O. had treated the unsecured loans received by the Appellant from following parties namely:

Sr. No	Name of the Loan Parties	Amount Rs.
1	Atharv Business P. Ltd	65,00,000
2	Olive Overseas P Ltd	65,00,000
3	Viraj Mercantile P. Ltd	40,00,000
4	Casper Enterprises P Ltd	15,00,000
5	Duke Business P. Ltd	20,00,000
6	Josh Trading Co. P. Ltd	55,00,000

as unexplained cash credit in terms of section 68 of the Act.

3.2. While doing so, the CIT (A) failed to appreciate that:

(i) the loans were taken by the Appellant in its regular course of business through proper banking channels;

(ii) the Appellant had produced the details, including bank statements, confirmations along P.A. No. of the lenders to prove genuineness of the loans received by it, during the assessment and appellate proceedings; and

(iii) the loans were repaid together with the interest thereon during the subsequent years.

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3.3. *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

4. *DISALLOWANCE OF INTEREST EXPENSES:*

4.1. *The ld. CIT (A) erred in confirming the action of the A.O. whereby the A.O. had disallowed the deduction of Rs. 6,39,452/-, claimed on account of interest paid to the parties from whom loans of Rs. 2,60,00,000/- were taken.*

4.2. *While doing so, the CIT (A) failed to appreciate that:*

(i) the interest on loans was paid by the Appellant in its regular course of business; and (ii) the interest was paid after deducting taxes at source at the prevailing rates.

4.3. *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

5. *LIBERTY*

The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.

2. The brief facts of the case are that the assessee is an individual and proprietor of M/s Evan Constructions and is engaged in the business of construction of flats and real-estate works. The assessee has filed the return of income for the A.Y 2012-13 on 28.09.2012 disclosing a total income of

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Rs.86,68,592/-. subsequently the Assessing officer (AO) has received information from DGIT (Inv) that there was a search and seizure operations u/s 132 of the Act conducted on Shri Praveen Kumar Jain & Group and they are engaged in the business of providing accommodation entries against the transactions and the assessee is one of the beneficiary of obtaining unsecured loans from six group companies/entities aggregating to Rs. 2.40 crore. The A.O. has reason to believe that the income has escaped the assessment and issued notice U/sec148 of the Act. In compliance to the notice, the assessee has filed a letter dated 03.04.2018 to treat the return of income filed on 28.09.2012 as due compliance to notice u/s 148 of the Act. Further, the AO has issued notice u/s 143(2) and 142(1) of the Act along with the questionnaire and the reasons for reopening of assessment was provided to the assessee and the assessee has filed objections and the same were disposed by separate letter dated 26.09.2018 by the A.O. In the assessment proceedings, the Ld. AR of the assessee appeared from

time to time and submitted the various details/information and the case was discussed.

3. The A.O. has perused the financial statements and dealt on the transactions of unsecured loans obtained in the F.Y.2011-12 and found that the transactions are not genuine and dealt on the facts, statements, survey operations of Shree Praveen Kumar Jain & Group and has issued notice to the assessee to explain the sources and genuineness, creditworthiness and identity of the unsecured loan creditors. Whereas the assessee has furnished the submissions/details vide letter dated 22.10.2018 and was dealt at Para 6.16 of the order as under:

6.16 The has in response furnished a submission dated 22.10.2018 which is carefully perused and placed on record. The relevant portion of the reply is as under:

i. Since our client has taken the loans from the said private Ltd. Companies, the burden of proof is on our client to prove the genuineness of the said transaction.

ii. We submit herewith the loan confirmation of the said paties along with the copies of their bank statements for given loans by them, and receipt of the said loan with interest by them. Thus from the said submissions the identity and the creditworthiness of the said companies are proved. iii. To prove the genuineness of the

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transactions, it is evident from the bank statement that there is no cash deposit by the said parties when they advanced loan to our client. Further, when the said loan was repaid, there is no cash deposit by our client.

iv. From the above submission, it is duly proved the genuineness of the said transactions. However, if your goodself has any materials in your possession which can prove that the said loan transaction is not genuine one, the same may be provided to our client.

v. Further, no addition can be made on a general statement of any person, as our client has submitted the loan-confirmation, copy of ITR and copies of bank statements of the persons from whom he has taken the loans and has thus discharged the onus cast upon him. In his submission, assessee stated that our client has submitted

4. Whereas the AO is of the opinion that the assessee has not discharged the burden of proof and issued notice u/s 133(6) of the Act on the parties and the said notices were returned back by the postal authorities. The assessee has submitted the details i.e confirmation of lenders, bank account statements and Audited financial statements etc to substantiate genuineness, identity and creditworthiness of the loan creditors. 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.2.60,00,000/- as unexplained cash credits and disallowed the interest on unsecured loans of Rs.6,39,452/- and assessed the total income of Rs.3,53,02,040/- and passed the order u/s 143(3) r.w.s 147 of the Act.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O Whereas, the CIT(A) was not satisfied with the submissions and material information has upheld the validity of assessment and sustained the addition of unsecured loans and interest payments and dismissed the assessee's appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Honble Tribunal.

6. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the addition of unsecured loans 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 vital details. Further, the Ld. AR submitted that the assessee maintains the

regular books of accounts and has furnished the confirmation of loans, bank statement of both the assessee and loan creditors, audited financial statements and retraction statement of Shri Praveen Kumar Jain to substantiate the genuineness, identity and creditworthiness of the loan creditors and the assessee has paid interest on loans and was confirmed by the parties. The Ld.AR supported the facts with the evidences in the paper book, submissions, and judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

7. 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 over looked the vital

documents/details in respect of the sources filed by the assessee. The assessee has submitted the written submissions before the CIT(A) on 11.05.2022 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 transactions and the unsecured loans were obtained and repaid in the regular course of business through proper banking channels and the Interest have been paid regularly after deducting TDS and the assessee has also filed quarterly TDS returns and also the Copy of re-traction statement filed by Shri Praveen Kumar Jain placed at page354 of the paper book. The CIT(A) has discussed on the provisions of the Act but has confirmed the action of the A.O and prima facie 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 over looked the explanations of the assessee. The catena of judicial decisions relied by the Ld.AR are as under:

1. *ITO 4(3)(4) Vs. M/s. Suchitra Fabtex Pvt. Ltd.
I.T.A. No. 2979/Mum/2017 (Assessment Year 2008-09)
I.T.A. No. 2980/Mum/2017 (Assessment Year 2011-12)*

2. *Shri Ashok Kumar A. Banthia Prop. Of M/s. A.B. Enterprises vs. I.T.O24(1)(2)*
ITA NOS. 2192/MUM/2018, 2193/MUM/2018, 2194/MUM/2018, 2196/MUM/2018, 2197/MUM/2018 & 2198/MUM/2018 (A.Ys: 2008-09, 2009-10, 2010-11, 2012-13, 2013-14 & 2014-15)
3. *ITA No. 6099/Mum/2016 DCIT(CC)-1(3) vs. M/s Jainam Investments*
4. *TA No. 1414/Mum/2017 DCIT 25(1) vs. M/s. YRV International*
5. *ITA No. 2100/Mum/2016 and ITA No. 1645/Mum/2017 Shri Ashok Nagraj Mehta vs. ACIT Circle 19(1)*
6. *ITA No. 7079/Mum/2016 Asst CIT-19(1) vs. Shri Dilip Chimanlal Gandhi*
7. *ITA No. 7049 & 7050/Mum/2016, Jitendra M Kitawat vs. ITO 18(1)(5)*
8. *ITA No. 7047/Mum/2016 Jitendra M Kitawat (HUF) vs. ITO 18(1)(5)*
9. *ITA No.3017/Mum/2018 Smt. Ritu Kamal Singal vs ITO 24(3)(4)*
10. *ACIT Vs. M/s Shree Ganesh Developers ITA No. 1477/Mum/2017*
11. *ACIT Vs. Shri Ramesh Ramswarupdas Jindal I.T.A. No. 3091 to 3096/Mum/2017*
12. *ACIT VS. H. K. Pujara Builders I.T.A. No. 930/Mum/2017*
13. *ITO Vs. Smt. Sarita Devi Choudhary L.T.A.4771/MUM/2017*
14. *Indumati M Bansal Vs. ITO I.T.A. Nos. 3842/Mum/2017*
15. *ITO VS. M/s Shreedham Construction Pvt. Ltd. I.T.A. No. 3754 to 3756 & 2948/Mum/ 2017*
- 16.. *ACIT VS. DNH Spinners Pvt. Ltd. I.T.A. No. 1225/Mum/2018*

17. Shree Shankar Sarees Vs. ITO ITO ITA No. 2751/Mum/2019.

8. In the assessment proceedings, the assessee has cooperated in submitting the information, whereas the A.O has ignored the information, evidences and audited financial statements and unilaterally made addition u/sec68 of the Act only on the basis of statement provided by third party without any iota of evidences discrediting the evidence furnished by the assessee and the Statement of Shri Praveen Kumar Jain has been retreated which cannot use as reliable evidence. 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 40 to 312 of paper book. The Ld.AR demonstrated the copy of bank statements reflecting

the repayment of unsecured loans in the paper book a 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 not allowed the interest on unsecured loans in the F.Y.2011-12, as 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.

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9. On the second disputed issue, 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-7, therefore the interest on the unsecured loans are to be allowed. Accordingly, we direct the A.O to delete the addition and allow the interest claim of the assessee on the unsecured loan creditors.

10. 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.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 09.01.2023.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 09.01.2023

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