

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

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos. 1992 to 1994/Mum/2022
(A.Ys.2009-10, 2011-12 and 2012-13)**

Mahendra Poonamchand Angara, Shop No. 3, 1 st Parsiwada Lane, 9 Coover Bldg. Nanu Bhai Desai Road, V.P. Road, Parsiwada, Mumbai – 400004	Vs.	Circle 19(2) Matru Mandir Building, 1 st & 2 nd Floor, Nana Chowk, Bhatia Hospital Lane, Javji Dadaji Marg, Grant Road West, Mumbai - 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAJPA1300L		
Appellant	..	Respondent

Appellant by :	Bharat Kumar
Respondent by :	Mahita Nair

Date of Hearing	20.10.2022
Date of Pronouncement	30.11.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The assessee has filed these appeals against the order passed by NFAC, Delhi for AYs. 2009-10, 2011-12 and 2012-13. Since, issues involved in these three appeals are identical and based on similar fact, therefore, for the sake of convenience these appeal are adjudicated together by taking ITA No. 1992/Mum/2022 as a lead case and its finding will be applied to other two appeals as mutatis mutandis. The assessee has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred confirming reopening of the case which is bad in Law.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming addition u/s 68 on account of unsecured loan of rs.25,00,000/-.
3. On the facts and in the circumstances of the case 2 and in law, the Ld. CIT (A) erred in confirming addition on account of Interest of Rs. 7,43,055/-.
4. The assessee craves leave to add, alter or amend N the existing grounds of appeal on or before the date of hearing.”

2. The fact in brief is that return of income declaring total income at Rs.27,27,501/- was filed on 30.06.2010. The return was processed u/s 143(1) of the Act. The case was reopened u/s 147 of the Act by issuing of notice u/s 148 dated 23.03.2016. The assessee was engaged in the business of trading in ferrous and non ferrous metals. On the basis of the search and seizure action conducted on Bhanwarlal Jain and his Group concerns on 03.10.2013, information was received by the A.O that assessee has obtained accommodation entry for unsecured loans from the following concern of Bhanwarlal Jain Group during the F.Y. 2008-09 relevant to assessment year 2009-10:

Sr. No.	Name of the entry issuer	Amount
1.	MEENAXI DIAMONDS PVT. LTD.	Rs.12,80,162/-
2.	KOTHARI & CO.	Rs.25,27,095/-
3.	MOULI GEMS	Rs.43,22,920/-
	Total	Rs.81,30,177/-

The A.O observed that assessee has taken accommodation entries to the amount of Rs.81,30,177/- from the parties as mentioned above during the year under consideration. On query the assessee replied that the loan from Kothari & Company of Rs.25 lac was pertained to assessment year 2009-10 whereas the loan taken from other two parties were pertained to earlier years. The AO has given the detailed information obtained by the DGIT(Investigation) from the search action carried out in the case of

Bhawarlal Jain Group that the group concern were engaged in the business of issuing of non genuine purchase bills and also unsecured loan accommodation entries to various parties. In view of the aforesaid information assessment in the case of the assessee was reopened. On the basis of information obtained from the search action in the case of Bhawarlal Jain group. The Assessing Officer treated the amount of Rs. 25 lac received from Kothari & Company as unexplained and added u/s 68 of the Act to the total income of the assessee. The A.O has also disallowed the interest of Rs.7,43,055/- claimed as deducted on the aforesaid loan amount.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us, the ld. Counsel submitted that loan was genuinely availed from Kothari & Company and A.O had not made any independent inquiry by issuing of notice u/s 133(6) as well as issuing of summon u/s 131 of the Act. He also contended that assessee has also submitted copy of income tax return, bank statement and annual accounts of Kothari & Company. He submitted that there was no immediate cash deposit and withdrawal in Kothari & Company bank account. The ld. Counsel further submitted that unsecured loan along with interest were repaid on 14.12.2009 and assessee has also deducted TDS on the interest paid. The ld. Counsel submitted that on similar issue and identical facts the ITAT number in various decisions have deleted the addition of unsecured loan made only on the basis of statement of Shri Bhanwarlal Jain. The various decision referred are as under:

- “1. Naresh Hiran Vs. ITO-30(2)(4) (ITA No.1235/Mum/2017 for A.Y. 2012-13)
2. Shri Naresh Hiran Vs. ITO-30(2)(4) (ITA No.1236/Mum/2017 for A.Y. 2010-11)
3. DCIT-25(1) Vs. YRV International (ITa No.1414/Mum/2017 for A.Y.2007-08)
4. M/s Reliance Corporation Vs. ITO, Ward-32(3)(2) (ITA No.1069 to 1071/Mum/2017 for A.Y. 2008-09 to 2010-11)

6. DCIT, Circle -5(2)(2) Vs. M/s Manish Flour Mills Pvt. Ltd. (ITA No.6729/Mum/2016 for A.Y. 2012-13)

On the other hand the ld. D.R has supported the order of lower authority.

5. Heard both the sides and perused the relevant material available on record. Without retreating the fact as elaborated above, the case of the assessee was reopened u/s 148 of the Act on the basis of information gathered that assessee had taken accommodation entries in the form of unsecured loan from the concern managed and operated by Shri Bhanwarlal Jain in whose case a search action was conducted on 30.10.2013 by the investigation wing of the department. The sole basis of the A.O to make addition was the statement of Shri Bhanwarlal Jain which had been retracted by him by filings affidavits before the Income Tax authorities. The assessee has claimed that identify of the creditors has been established on the basis of PAN Card, return of income, account confirmations, genuineness of the transactions have been established on the basis of account confirmations and bank statements where all the loan were taken by account payee cheques and creditworthiness of the creditors were established on the basis of balance sheet and bank statement of the parties. The A.O had not controverted these material facts with any relevant evidences. In the case of Nemichand Jain Vs. DCIT,CC-1(3), Mumbai, vide ITA No. 2641/Mum/2018 on similar facts and identical issue addition on

account of unsecured loan taken from companies controlled and operated by Shri Bhanwerlal Jain and his associate was made wherein also the assessee has filed various details in order to prove genuineness of transaction i.e confirmation letter, PAN, ITR acknowledgment , bank statement, affidavit etc. in the backdrop of admission of Shri Bhanwerlal Jain in his statement recorded u/s 132(4) of the Act. In the case of the assessee the facts are also similar and assessee has also filed the similar detail and copies of document as were filed in the case of Nemichand Jain. In the Nemichand Jain case the coordinate bench of the ITAT held that the assessee had discharged initial burden by filing various documents to prove identity, genuineness of transactions and creditworthiness of the parties and held that the A.O was erred in making addition towards unsecured loans u/s 68 of the Act. On similar facts and identical issues, the ITAT Mumbai in the case of Naresh Hiran vs. ITO Mumbai vide ITA No. 1235/Mum/2017 dated 31.10.2019 after following the decision of M/s Rose Impex held as under:

“6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in Ground No.1 of the appeal has challenged addition of Rs.64,00,000/- on account of alleged non-genuine unsecured loans from M/s. Navkar Diamond and M/s. Surya Diam. The addition in the hands of assessee has been made primarily on the basis of statement of Shri Bhanwarlal Jain recorded under section 132(4) & 131 of the Act.

7. Reassessment proceedings for assessment year 2012-13, were initiated by the Assessing Officer on the ground that assessee has taken accommodation entries on account of unsecured loans from the following entities of Bhanwarlal Jain group:

- (i) M/s. Rose Impex - Rs. 25,00,000/-*
- (ii) M/s.Navkar Diamond - Rs. 50,00,000/-*
- (iii) M/s.Surya DiamRs. 14,00,000/-*

During reassessment proceedings the Assessing Officer found that unsecured loan of Rs 25,00,000/- from pertaining to assessment year 2010-11. Since the aforesaid amount was added in assessment year 2010-11, no addition was made in the assessment year under appeal. Thus, the addition was made only in respect of alleged unsecured loans from M/s. Navkar Diamonds & M/s. Surya

Diam. The Id. Authorized Representative of the assessee has furnished copy of the Tribunal order in assessee's own case for assessment year 2010-11 in ITA No 1236/Mum/2017 dated 20/04/2018(supra), wherein addition made on account of unsecured loan from M/s. Rose Impex was deleted by the Co- ordinate Bench. The relevant extract of the findings of the Tribunal on the issue reads as under:-

“7. We have heard the rival contentions, and perused the record. The Assessing Officer has made impugned addition u/s. 68 of the Act on the ground that loan of Rs. 25 lakhs taken from Rose Impex was bogus since Rose Impex belonged to Mr. Bhanwarlal Jain group and Mr. Bhanwarlal Jain has accepted that his group was providing only accommodation entries. On the contrary, we noticed that the assessee has furnished all documents necessary to discharge burden of prove placed upon it u/s. 68 of the Act. It is well settled proposition of law that the assessee has to prove three main ingredients in order to discharge burden of proof placed upon him u/s 68 of the Act ie, the assessee has to prove the identity of creditor, creditworthiness of the creditor and genuineness of the transactions. In the instant case, the assessee has furnished confirmation obtained from Rose Impex, which contained PAN and address of the creditor. The assessee has also furnished copies of return of income filed by the creditor These documents prove the identity of creditor. The assessee has also furnished bank account of Rose Impex and also it's own bank account in order to show that the loan transaction has been carried out through banking channel. Though, the learned CIT(A) has observed that there was huge transfer of fund before giving loan to the assessee, perusal of the bank account of Rose Impex would show that the funds have been transferred were through banking channels only and not by way of depositing cash. The assessee has also furnished bank statement to show that the above said loans have been repaid on 25.3.2013 Since transactions of taking loan and repayment of loan have taken place through banking channel, in our view, the genuineness of transaction also stands proved. The assessee has furnished financial statement of Rose Impex. Perusal of the balance sheet would show that the loan of Rs. 25 lakhs given to the assessee is duly reflected in the balance sheet of the assessee. Further, it can be noticed that Rose Impex has taken loans from various persons, which formed source for giving loan to the assessee. Hence, it cannot be said the Rose Impex was not having funds for giving loan to the assessee, meaning thereby, creditworthiness of the creditor also stands proved Hence, there is merit in the contention of the learned AR that the assessee has discharged primary onus placed upon it u/s. 68 of the Act. The Hon'ble Gujarat High Court has held in the case of Sachital Communications (2014) 227 Taxman 219, that if identity of creditor and capacity of the creditor is proved and the transactions have been carried out through banking channel, then no addition could be made on account of unsecured loan. Identical view was expressed by Hon'ble Gujarat High Court in the case of Patel Ramniklal Hirji (2004) 222 Taxamn 15.

8. We noticed that the Assessing Officer did not examine various documents furnished by the assessee and did not show that the said documents are not reliable. Instead the Assessing Officer has totally

placed reliance on the statement given by Mr. Bhanwarlal Jain, which is claimed to have been retracted. Since the addition has been made u/s. 68 of the Act and since we have noticed that the assessee has discharged burden of proof placed upon its shoulders u/s. 68 of the Act, we are of the view that the learned CIT(A) was not justified in confirming the addition by simply placing reliance on the statement given by Mr. Bhanwarlal Jain. The various documents furnished by the assessee, in fact, militate against the statement given by Shri Bhanwarlal Jain. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the addition of Rs. 25 lakhs and also disallowance of interest of Rs. 22,192/-

8. *The Id. Authorized Representative of the assessee has brought to our notice that unsecured loan from M/s. Navkar Diamond was repaid by the assessee in the subsequent assessment year i.e. assessment year 2013-14. In support of his contention Id. Authorized Representative for the assessee has referred to bank statement of the assessee at pages 28 to 31 of the paper book. A perusal of the same reveal that the assessee has repaid Rs.50,00,000/- to M/s. Navkar Diamonds on 25/03/2013 through RTGS transaction. Apart from above, we observe that M/s. Navkar Diamond in its books for the year ending 31/03/2012 has shown loan advanced to the assessee under the head 'Loans and Advances' Rs.50,00,000/-. The said firm has also filed confirmation supporting assessee's claim of unsecured loans. The authorities below have simply brushed aside the documents furnished by the assessee, which inter-alia, includes confirmation from the lending parties, copy of bank statement of the assessee, copy of acknowledgement of return of income of lenders, etc. furnished by the assessee during the assessment proceedings. The authorities below have made addition merely on the basis of statement of Bhanwarilal Jain without there being any corroborative evidence. Even the said statement was retracted by Bhanwarlal Jain. In our considered view, the addition on account of unsecured loans from M/s. Navkar Diamond is unsustainable.*

9. *As regards unsecured loans from M/s. Surya Diam is concerned, the assessee has filed confirmation from the lender, the same is at page-20 of the paper book. The assessee has also filed copy of audited accounts of the said firm at pages 22 to 26 of the paper book. The name of the assessee appears in the books of M/s. Surya Diam in Schedule-D of Balace Sheet as on 31/03/2012 under the head 'Loans and Advances'. We observe that unsecured loans from M/s. Surya Diam is on the same footing as loan from M/s. Rose Impex, the Tribunal has deleted the addition vide order dated 20/04/2018 (supra). The relevant extract of the finding of Tribunal has already been reproduced above. On account of parity of transactions, the finding given by the Co-ordinate bench would 'mutandis mutatis' apply in the present set of transactions as well. The ground No.1 of appeal stands allowed and the findings of CIT(A) on this issue are set-aside."*

In the case of the assessee A.O has also failed to controvert the submission of the assessee supported with the relevant material. In the

light of the facts and findings of coordinate bench in the Nemichand Jain case, Naresh Hiran and M/s Rose Impex we find that the issue raised before the Tribunal in this year pertaining to the case of cases, it would not be appropriate for us to deviate from the view taken in earlier cases without pointing out any material change in the facts and circumstances of the case of the assessee. Therefore, after taking into consideration the facts and findings and the relevant supporting material as discussed above, the findings given by the coordinate bench would 'mutatis mutandis' apply in the present set of transactions as well. Therefore, the grounds of appeal of the assessee are allowed.

6. The appeal of the assessee is allowed.

ITA Nos. 1993 & 1994/Mum/2022:

7. As the facts and the issue involved in both these appeals are the same as supra in ITA No. 1992/Mum/2022, therefore, applying the same findings mutatis mutandis, these appeals of the assessee are allowed

8. In the result, all these appeals of the assessee are allowed.

Order pronounced in the open court on 30.11.2022

Sd/-

(Aby T. Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 30.11.2022

Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.