

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

AND

MS KAVITHA RAJAGOPAL, JM

ITA No. 2113/MUM/2022

(Assessment Year 2012-13)

**Blue Circle Organics Private Ltd
34, 1st Floor, Empire Building,
146, D.N.Road, Fort
Mumbai-400 001
(Appellant)**

**ACIT Circle-2(1)(1)
561, 5 th floor, Aayakar Bhavan,
M.K.Road, Mumbai400 020
(Respondent)**

PAN No. AACCB4918M

**Assessee by : Shri. Haresh P. Shah, AR
Revenue by : Shri. Chetan M. Kacha, DR**

**Date of hearing: 24.01.2023
Date of pronouncement : 15.02.2023**

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by M/s Blue Circle Organics Pvt. Ltd., (the assessee/ appellant) against Appellate order of National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 27th June, 2022 for A.Y. 2012-13, wherein the appeal filed by the assessee against the assessment order passed by the Asst. Commissioner of Income-tax, 2(1)(1), Mumbai (the learned Assessing Officer) under Section 143(3)/ 147 of the Income-tax Act, 1961 (the Act) dated 26th December, 2019, was dismissed.

02. The assessee is aggrieved with the same and has raised following grounds of appeal:-

“I. Reopening U/s. 147

On the facts and circumstances of the law, the Ld.CIT (A), National Faceless Appeal Centre (NFAC), Delhi [Referred as CIT (A)] erred in confirming reassessment disregarding the fact that the initiation was purely based upon surmises, conjecture and suspicion and in absence of any tangible material necessary and having direct nexus for the reassessment under the provisions of section 147 of the Act.

II. Addition of ₹ 3,00,00,000/- u/s. 68 as unexplained loans-

1. On the fact and circumstances and in law, the learned CIT(A) erred in confirming the addition of ₹ 3,00,00,000/- under the provisions of section 68 disregarding that Your Appellant has discharged prima-facie onus to prove the identity, genuineness, & creditworthiness of transactions by submitting all the necessary documentary evidences.

2. The learned CIT(A) failed to appreciate that the alleged parties had given confirmations in response to the notice u/s. 133(6) of the Act, that too was given categorically during the impugned reassessment proceedings i.e. precisely after the alleged statements allegedly recorded u/s. 132(4) and 131 of the Act.

3. The learned CIT(A) failed to appreciate that Your Appellant was never allowed to be confronted with the

alleged parties who had allegedly given statements based on which the learned Asst.CIT, Circle-2(1)(1), Mumbai [referred as "ACIT"] has made the alleged addition of ₹ 3,00,00,000/-.

4. Without prejudice to the above, the learned CIT (A) failed to appreciate that the onus was heavily casted upon the Dept., to prove and conclude that Your Appellant had taken alleged accommodation entries.

5. In addition to, other without prejudice and without admitting, the learned CIT(A) failed to appreciate that the alleged parties has given categorical statement of giving accommodation entries for share application money and LTCG whereas your Appellant had taken loans from the alleged parties and hence, it corroborates that the approach of the Dept., was based upon surmises, conjecture and suspicion.

6. On the facts and circumstances and in law, the learned CIT(A) failed to appreciate that the alleged addition was made without providing the alleged material and without giving any opportunity to cross-examine the alleged parties, which , in the interest of justice, was violative of the principles of natural justice, particularly in the light of the fact that the assessee had refunded the amount in the subsequent years.

7. Without prejudice to the above, the learned CIT (A) failed to appreciate that the learned ACIT has not established money trail which would conclusively establish the allegation that the alleged transactions were accommodation entries.

8. *On the facts and circumstances, it is prayed that the alleged addition of ₹ 3,00,00,000/- may be deleted.*

9. *Alternatively, in the interest of justice, it is humbly prayed that copies of material, including the alleged statements, relied upon may be provided with a proper and reasonable opportunity to explain coupled with an opportunity to cross-examine the parties.”*

03. Brief facts of the case shows that assessee is a company engaged in the business of export of intermediates for X-ray contrast media APIs and also manufacturing of chemical products Saccharin. The assessee filed its return of income on 31 September 2012 at a total income of ₹1,33,36,750/-. Assessment was completed under Section 143(3) of the Income-tax Act, 1961 (the Act) on 30 March 2015, determining the total income of the assessee at ₹1,37,09,500/-.
04. Subsequently, information was received and reasons were recorded to reopen the case of the assessee by issue of notice under Section 148 of the Act on 30 March 2019. Assessee on 27 April 2019 stated that original return filed might be treated as compliance. The reasons for reopening were provided to the assessee and subsequently, notice under Section 143(2) and 142(1) of the Act were issued.
05. Reasons for reopening states assessee has taken loan of ₹1,50,00,000/- from Mangalmayee Hirise Pvt. Ltd on 13th October, 2011 and ₹74 lacs, on 14th October, 2011 and ₹76 lacs on 14th October, 2011, from another company Khosboo Complex Pvt. Ltd. The information was received from DDIT (Inv), Unit-4(3), Kolkata as per letter dated 1st March, 2019 that on the basis of credible information in case of Mr. Chiranjit Mahanta, who is a director of several companies that bank account of these corporate entities have been used for high value transfer followed by withdrawal through RTGS and fund transfer



without any economic rational. It was also noted that same are operated by accommodation entry provider, who on oath under Section 131 of the Act admitted that he used to provide the accommodation entry to the beneficiaries. It is also noted that fund trail shows that assessee is reported to be one of the beneficiaries. In the bank account of the companies, who gave loan to the assessee company, received fund from those companies. Therefore, the companies wherefrom the funds were transferred in the above two companies who have in turn gave loan to the assessee company do not have creditworthiness to support such transfer. Therefore, the assessment to the extent of ₹3 crores have escaped assessment on account of failure to disclose fully and truly all material facts by the assessee. Therefore, the assessment was reopened under Section 147 of the Act.

06. During the course of assessment proceedings, assessee submitted a letter dated 4 December 2019 giving copy of bank statement stating refund of loan by the assessee company to those companies. Assessee has also submitted loan confirmation, copy of income tax return, copy of bank statement as well as the financial statements of lender companies. The learned Assessing Officer issued notice under Section 133(6) of the Act to both these companies on 7 November 2019. Those notices were duly served through ITBA, and through speed post, however, within the stipulated time information was not received. The assessee was asked to produce the parties along with the confirmation and supporting documents. In response to that assessee submitted confirmation of the above parties and also submitted compliances to the notices from the above said parties on 23rd December, 2019 and 24th December, 2019, which were received by the learned Assessing Officer also directly from the lender.
07. On perusal of the above detail, the learned Assessing Officer examined the same and after considering the statement of the accommodation entry provider noted that though the assessee has obtained the loan and has repaid, basic ingredient of Section 68 of the Act are not

proved. He noted that in case of Mangalmayee Hirise Pvt. Ltd., despite having huge turnover of ₹63.59 crore, it has shown meager income and has claimed a refund of ₹2,71,110/-. It has a huge reserves of ₹96.69 crore which is invested in current assets inventories loans and advances and therefore, the net worth of the lender company is fictitious. He also noted the similar pattern in case of Khusboo Complex Private Limited. He also held that the assessee has not proved the identity and creditworthiness and genuineness of the transactions and these companies are controlled by accommodation entry providers and further confirmation, bank statement, copies of financial statements to the return on income of the above said lender parties are circular transactions without having any business rational and has no creditworthiness, he made an addition of ₹3 crores under Section 68 of the Act by an assessment order passed under Section 143(3) of the Income-tax Act, 1961 (the Act) read with section 147 of the Act at ₹4,37,89,500/- against the assessed income under Section 143(3) of the Act order dated 30th March, 2015. The assessee aggrieved with that order preferred the appeal before the learned CIT (A).

08. The learned CIT (A) vide order dated 27th June, 2022 held that mere filing of ITR, Permanent Account Number transactions through banking channel, financial statements, confirmation, do not prove identity creditworthiness as well as the genuineness of the transaction and therefore, the addition was confirmed on the merit. On the issue of reopening in paragraph no.30, CIT (A) held that reassessment was based on information received from the office of DDIT (Inv), Kolkata vide letter dated 1st March, 2019, specifically mentioned the modus operandi adopted by accommodation entry provider. Therefore, reopening is valid. Thus, assessment order was confirmed on the issue of reopening as well as on the merits. The assessee is once again aggrieved and has preferred the appeal before us.
09. During the course of hearing, the assessee has submitted a paper book containing 81 pages, wherein the submissions made before the learned

Assessing Officer and learned CIT (A) were enclosed. It also contain the details with respect to the above two lenders submitting their confirmation, bank statement, their audited financial accounts, details of repayment, etc. to show that transactions of the assessee with these parties are genuine and assessee has discharged its initial onus cast upon it. During the course of hearing, the learned AR also submitted a written submission containing six pages.

010. The crux of the submission was that

- i. Reopening of assessment made by the ld AO is without any inquiry independent of information of DDIT Inv Department. Absence of inquiry before recording reasons clearly shows that it is a borrowed satisfaction. Where Assessing Officer had issued a reassessment notice on basis of intimation from DDIT (Inv.) about a particular entity entering into suspicious transactions, this was clearly in breach of settled position in law that re-opening notice has to be issued by Assessing Officer on his own satisfaction and not on borrowed satisfaction as held by Principal Commissioner of Income-tax-5 vs Shodiman Investments (P.) Ltd 422 ITR 337. Ad. CIT V DRM Enterprises [2015] 55 taxmann.com 181 (Bombay).
- ii. Assessee was originally assessed u/s 143 (3) of the act where all the details are verified by the ld AO. Now reopening on the basis of same information is merely change of opinion.
- iii. Assessee has discharged initial onus to prove the identity, creditworthiness and genuineness of the transaction. This onus has not been thrown back to the assessee by the learned Assessing Officer by making any enquiry; the addition deserves to be deleted.
- iv. Lenders have replied with respondent to notice under Section 133(6) of the Act directly to the learned Assessing Officer, It shows identity and creditworthiness of the lenders. For genuineness,



lenders are assessed to tax, filed confirmation and there is nothing to show that those are not genuine.

- v. Learned Assessing Officer did not have anything else other than the information received from DDIT, based on this information there is no enquiry made by the learned Assessing Officer and therefore, reopening of the assessment as well as the addition on the merit is not proper.
- vi. Lender companies have huge reserve and surpluses, huge turnover therefore; merely having low income do not show that these entities do not have creditworthiness.
- vii. Learned Assessing Officer does not have any material on record to show that the amount of reserve and surplus invested by these entities in the current assets such as inventories, stock-in-trade, loans and advances, are not existing.
- viii. Accounts of the lenders i.e. Balance sheets are audited and assessed by the Income Tax Department, therefore, the findings of the learned Assessing Officer does not have any basis. On the contrary, these parties are assessed as stated by LD AO about claim of refund.
- ix. The learned Assessing Officer without bringing any material on record has held that these were circular transactions. He submits that the circular transactions are not defined. The learned Assessing Officer did not explain what they are. The learned Assessing Officer also did not bring any material to show that how these transactions are circular transactions, which make them non-genuine.
- x. Learned Assessing Officer has heavily relied on the statement of accommodation entry provider. Neither that statement has put before the assessee, nor the opportunity for cross examination was given, the addition is wholly based on that statement without

having any further information with the learned Assessing Officer, in that circumstances, and therefore, the addition made in this circumstances is not correct. He extensively referred to several judicial precedents of the Hon'ble Bombay High Court to support his arguments.

011. The learned Departmental Representative vehemently supported the order of the lower authorities. It was submitted that based on the information received from the investigation wing gave the information about the accommodation entry provider and based on this there was valid information for reopening of the assessment. It was further stated that the learned Assessing Officer gave detail reason for confirming the addition. Accordingly, there is no infirmity in the order of the lower authorities.
012. We have carefully considered the rival contentions and perused the orders of the lower authorities. The ground no.1 of the appeal is against the reopening of the assessment challenging it that reopening has been made without any material having direct nexus for the reassessment. Ground no.2 is on the merits of the addition.
013. On careful consideration of the reasons recorded at para 4.1 of the assessment order, according to that the DDIT (Inv) Wing, Kolkata, had credible information in case of Chiranjit Mahanta, who is a director of Dreamland Plaza Limited, Linkpoint construction Ltd. Parmeshwar Merchandise Pvt. Ltd., Wellbuild Complex Pvt. Ltd, Suryamukhi Projects Pvt. Ltd. Blue Print Securities Ltd. In the bank account of these entities, there were high value transfers and withdrawals without any economic rationale. The statement of entry operators who controlled these companies was recorded on under Section 131 of the Act who admitted to provide accommodation entries. The fund trail from the above listed entities controlled by Chiranjit Mahanta, the name of the assessee was found. Thus, it was found that assessee has received loan from Mangalmayee Hirise Pvt. Ltd. of ₹1.5 crores in



single tranche and from Khusboo Complex Private Limited of ₹1.5 crores in two tranches. These funds were received by two lender companies, which found trail from these entities. Therefore, in the reasons recorded it was concluded that the assessee company has received through intermediate payments by circular transaction through the lenders in the assessee company. Accordingly, the assessee was assessed originally under Section 143(3) of the Act vide order dated 30th March, 2015 was issued notice under Section 148 of the Act holding that there is failure to disclose fully and truly all material facts by the assessee for A.Y. 2012-13. Therefore, the learned Assessing Officer issued notice us/ 148 of the Act on 30 March 2019. In this case, information received from the DDIT (Inv) by the learned Assessing Officer on 1 March 2019 and reopening was made by issue of notice under Section 148 of the Act on 30 March 2019. The reasons recorded does not show that the learned Assessing Officer has made any enquiry or verification based on the information received from investigation wing. The provisions of Section 148 of the Act clearly shows that if the information is received by the learned Assessing Officer, which is a tangible material, the learned Assessing Officer should apply the independent mind by making necessary enquiries and thereafter after satisfying himself about escapement of income reopened the case. Here in the impugned order, the reopening was made on very vague information. There is no reference that how and when the intermediary bank accounts of two lenders and from whom the money was received. It was merely sated that deposit through RTGS was made in the bank account of the lender companies from the entities controlled by accommodation entry provider and from those entities; the loan has been given to the assessee. There is no finding that whether these two lender companies are also operated by the accommodation entry provider or not. Further, whether the companies who have given a loan to the assessee is a beneficiary themselves or are merely pass through entities when the loans are repaid whether the source of the loans from which it is received are also has gone to



the source from which it emanated. Merely mentioning circular transaction does not show that the entities to provide the loan to the assessee company are shell companies. As held by the decision relied up of Honourable Bombay High court in case of Shodiman Investments and DRP enterprise [supra] clearly covers the issue as far as reopening is concerned.

014. On the merits also, we find that assessee has provided the confirmation, the audited financial statements, the bank statements, the income tax return and the proof of repayment of the above loan taken from these two entities before the learned Assessing Officer. The 133(6) notices were issued on ITBA portal as well as by 'speed post'. Replies to Such notices were not submitted in time on ITBA portal but complied with by reply through post by both the lenders. This fact is confirmed in the assessment order itself. Based on information supplied by the assessee, the learned Assessing Officer did not carry out any further independent enquiry. The learned Assessing Officer has merely relied upon the statement of the accommodation entry provider and analyzes the annual accounts of the lender companies. Despite having the huge turnover and huge current assets, the learned Assessing Officer itself discredited those financial statements.
015. In case of Khusboo Complex Private Limited the turnover of that company is ₹161 crores and ₹19.54 crores for year ended 31st march, 2011 and 31 March 2012. It has made purchase of ₹121 crores and 40 crores for the respective two assessment years. No doubt, they have shown lesser profits. However, the fact shows that they have traded in shares. The only accounts of the lender shows the inventory of ₹79 crores cash and bank account of ₹39 crores and loans and advances of 16.05 crores. The shareholders of the above company are two different entities i.e. private limited companies wherein not stated to be the companies belonging to an accommodation entry provider. The ICCI bank balances as on 31 March 2012 is ₹29 lacs. The inventory of shares of ₹79 crores and advances of ₹16 crores was not examined by the



learned Assessing Officer to show that these assets are non existing. The accounts of the assessee are audited, therefore, without any enquiry it cannot be stated that the assets of these companies are bogus and non-existing. Subsequent repayment of the loan in six tranches is also explained. This company is also stated to be assessed by ITO Ward 9(4), Kolkata. There is no enquiry from AO of The lender company about the existence of these entities. The bank statement furnished by the assessee also shows the repayment in the same bank account and has gone to different companies, which are not at all available in the statement or the reasons recorded by the learned Assessing Officer.

016. In case of Mangalmaye Hirse private limited assessee has submitted the confirmation of the account stating the permanent account number and the income tax officer where the assessee is assessed. Bank account of the lender is also submitted wherein on 11/10/2012 a sum of 150 lakhs issued in favour of the assessee company. Prior to the issue of the above check by the lender, in its bank account there was no credit from the companies mentioned in the statement of the accommodation entry provider but from other parties. The lender company is assessed with income tax officer Ward 8 (1) Kolkata. It has claimed a refund of Rs 2 71,110 which has been issued to that company. Audited accounts of the lender were furnished. The lender has recorded sales of approximately 63 crores for this year and 79 crores for earlier year. The purchase of the shares at 60 crores is shown in this year and 78 crores in the earlier year. Admittedly, the profit or loss shown by the assessee for respective two years is a small amount. However it cannot be discarded that assessee has traded in shares. Shares of this company were also held by different private limited companies. The shareholders of the lender company were not shown to be operated by the accommodation entry provider. The lender company has a closing stock of shares of 89 crores at the end of this year and 91 crores at the end of earlier year. Further, it has total



cash and bank balances of ₹ 13.05 lakhs as well as loans of ₹ 7.5 crores. The assessee has earned income of ₹ 17 lakhs. The learned AO did not show that the assets of the company are nonexisting by making a concrete enquiry into the investment of the shares as well as in the loans and advance. The loan is also repaid by account page, which is also reflected in the bank statement of the lender as well as the assessee. When the loans are repaid, the money has gone to Mangalmayee Realtors private limited and not to the companies specified in the statement.

017. It is a fallacy propounded by the ld AO that if the returned income is low, the creditworthiness of the lender is hampered. Creditworthiness needs to be assessed on holistic presentation of financial worth of the lender. In this case huge turnover, current assets, bank balance and the corresponding amount of loan, justifies the creditworthiness of the parties.
018. So far as genuineness is considered ld AO has not brought on record any independent material, by making an inquiry on his own to show the transaction is not real. The documentary evidences produced were not at all inquired.
019. When the assessee discharges its initial onus cast upon him by producing the confirmation, the bank statement, the annual accounts, the income tax returns as well as the details of repayment which is also confirmed by production of the bank account of the lender, the learned assessing officer is duty-bound to make an independent enquiry. Unless an independent enquiry is made by the learned assessing officer, onus does not travel back to the assessee. If the learned AO failed to throw onus back on the assessee, the addition cannot be made by him under section 68 of the act.
020. Further, the learned assessing officer has made the addition only on the basis of the statement recorded of the accommodation entry provided by the investigation wing. The learned assessing officer has



not examined the accommodation entry provider. The statement of the accommodation entry provider is also not given to the assessee. The statement has been used extensively by the AO for making an addition. In fact, the statement is the only basis on which the addition has been made by the learned AO. In absence of giving the assessee and opportunity to test veracity of the statement recorded of the accommodation entry provider, the addition cannot be made. If a statement is to be used of 3rd party, the learned assessing officer is duty-bound to provide the copy of the statement to the assessee and to provide cross-examination whenever demanded of such person who made statement against the assessee. In the present case when the copy of the statement itself has not been made available to the assessee, there is no question of providing any cross-examination of such persons. In such circumstances, reliance merely on the statement cannot be used for making an addition under section 68 of the act. In such situation, evidence on which the AO has relied, opportunity to rebut the same has not been given to the assessee, such evidence should be disregarded. Therefore, in all fairness the statement made by the accommodation entry provider before the investigation wing Kolkata deserves to be ignored. Other than that statement there is no evidence against the assessee to support the addition.

021. The learned CIT - A has not at all considered the explanation of the assessee, evidence produced by the assessee as well as the evidences available before the learned assessing officer to make the addition, it has merely confirmed the finding of the learned assessing officer without giving its own reason. It did not consider and reason the several judicial precedents relied upon by the assessee and how those decisions do not apply to the facts of the case of the assessee.
022. In the result on the issue of reopening of the assessment as well as the addition on the merit deserves to be decided in favour of the assessee. Accordingly, we allow appeal of the assessee, holding that reopening of



the assessment is on borrowed satisfaction and further even otherwise the addition on the merits of the case is not warranted.

023. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 15.02.2023

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 15.02.2023

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai