

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "F" NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 346/DEL/2020 (A.Y 2017-18)

M/s. Parmesh Construction Co. Ltd., Plot No. 3 & 4, 2 nd Floor, Savitri Bhawan, A-Block Market, Preet Vihar, Delhi – 110 092. PAN No. AAACP8892Q (APPELLANT)	Vs.	DCIT, Central Circle : 1, New Delhi. (RESPONDENT)
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Assessee by	Dr. Rakesh Gupta, Adv.; & Shri Somil Agarwal, Adv.;
Department by	Shri T. Kipgen, [CIT] - D. R.;

Date of Hearing	01.12.2022
Date of Pronouncement	16.02.2023

ORDER

PER YOGESH KUMAR US, JM

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-IV [hereinafter referred to CIT (Appeals) Kanpur, dated 21.11.2019 for assessment year 2017-18.

2. The assessee has raised the following substantive ground of appeal:-

GROUND OF APPEAL NO.1

“The Hon’ble CIT (A) has erred in interpreting provision of Section 68 after considering facts and circumstances of the matter in respect of Unsecured Loans of Rs.11,2300,000/-, raising the following questions:-

i. WHETHER, 'First Proviso' of 'Section 68' of the Income Tax Act, 1961 is squarely covered transaction in the nature of 'Unsecured Loans' or shall restricted to credits on account of 'Share Application Money', 'Share Capital', Share Premium etc.?

ii. WHETHER, as per provisions of Section 68 of the Income Tax Act, 1961, the Assessee has not discharged its initial onus to prove:

(1) Identity of the Creditor Lenders;

(2) Credit-worthiness of the Creditor Lender; and

(3) Genuineness of the Transaction.

By submitting following set of documentation:

(i) Confirmation of Accounts;

(ii) Copy of PAN Card;

(iii) Acknowledgement of ITRs;

(iv) Financial Statement and Audit Report of the Year of Lending;

(v) Copy of Bank Statement;

(vi) Incorporation details of the Creditor Lenders.

iii. *WHETHER, sole criteria for assessment of 'Credit Worthiness' of the creditor lenders are their declared Income, ignoring 'Net Worth' of the Creditor Lenders?*

iv. *WHETHER, personal presence of 'Creditor Lenders' is must and most significant criteria to prove 'Genuineness' of the transaction as per the provision of Section 68, ignoring the documentary evidences, mentioned herein-above.*

Are these documents not sufficient to prove 'Genuineness' of the Identity and Genuineness of the Creditor Lenders?

v. *WHETHER, examination of 'Source of sources' comes under the purview of Ld.AO of the assessee, even in case, Creditor Lenders are Income Tax Assesseees and Assessment Details of such Creditor Lender has been submitted at the time of Assessment?*

vi. *WHETHER, payment of Interest on the Lent money and deduction of TDS and follow-up of other provisions as per provisions of Income Tax Act, 1961 and claims of such deducted TDS by the 'Creditor Lenders' is an ignorable fact and could not have weightage for assessment of 'Genuineness'?*

vii. *WHETHER, Repayment of Lent money back to 'Creditor Lenders' is an ignorable fact and could not have weightage for assessment of 'Genuineness'?*

GROUND OF APPEAL NO. 2

WHETHER, the Hon'ble CIT (A) erred in interpreting the provisions of Section 37(1) of the Income Tax Act, 1961 on appreciating the facts, in dis-allowing Interest Payment of Rs.1,17,10,2111- raising the following question:-

i) *THAT the Payment of Interest on the 'Unsecured Loans' could be considered 'Commission' and dis-allowable expenditure?*

ii) *THAT the 'Interest on Unsecured Loans' paid by the Assessee after abiding provisions of Income Tax Act, 1961 in this respect relating to TDS and TDS statements, in the event of such Unsecured Loans alleged to be fictitious, concocted and bogus in absence of conclusive evidence? "*

3. Brief facts of the case are that, a search and seizure operation has been carried out u/s 132 (1) of the Income Tax Act ('Act' for short) in case of Bhutani Group of Companies on 09/11/2016. Various residential and business premises of the Directors and Group Companies were covered under the search and survey operation. In view of the search operation and consequent to the same for the purpose of assessment, a notice u/s 142(1) of the Act was issued and in response the assessee submitted a copy of e-filed return declaring total income of the assessee at Rs. 2,10,174/-.

4. During the Assessment proceedings, the assessee company claimed to have raised unsecured loans from several parties out of which the Ld. A.O. has disbelieved the creditworthiness and genuineness of the transaction with respect of 8 parties and made addition u/s 68 of the Act. The details of the Company are hereunder:-

<i>S. No.</i>	<i>Name of the lender company</i>	<i>Amount of loan received</i>
1	<i>M/s Ablaze Tour & Travel Pvt. Ltd.</i>	<i>Rs. 1,50,00,000/-</i>
2	<i>M/s Accurate Buildwell Pvt. Ltd.</i>	<i>Rs. 1,67,00,000/-</i>
3	<i>M/s Bloom Texent Pvt. Ltd.</i>	<i>Rs. 45,00,000/-</i>
4	<i>M/s Direct Trading Company Pvt. Ltd.</i>	<i>Rs. 50,00,000/-</i>
5	<i>M/s Ice Globe Promoters Pvt. Ltd.</i>	<i>Rs. 1,03,00,000/-</i>
6	<i>M/s Master Piece Infocom Pvt. Ltd.</i>	<i>Rs. 2,20,00,000/-</i>
7	<i>M/s Tradelink Trading Pvt. Ltd.</i>	<i>Rs. 2,68,00,000/-</i>
8	<i>M/s Trendz Informatics Pvt. Ltd.</i>	<i>Rs. 1,20,00,000/-</i>
TOTAL		Rs. 11,23,00,000/-

The Ld. A.O. consequently made addition of Rs. 11,23,00,000/- u/s 68, disallowed interest of Rs. 1,17,10,211/- paid by the to the above eight parties on the above mentioned unsecured loan and also made other additions vide order dated 31/12/2018 by computing the income of the Assessee as under:

Total income as per return of income/system			Rs. 2,10,174/-
<u>Add</u> :	Addition/Disallowance on account of:		
1	Interest on TDS/service tax	Rs.55,348/-	
2	Disallowance of donation	Rs. 3,17,000/-	
3	Addition on account of unexplained unsecured loan u/s 68 of the Act	Rs.11,23,00,000 /-	
4	Disallowance of interest paid to creditors	Rs.1,17,10,211	Rs.14,65,91,367/-
	Additional business income as discussed in para 8 abvoe.	Rs. 2,20,74,808/-	Rs.14,68,01,541/-
	Disallowance u/s 14A of the Act	Rs. 1,34,000/-	
	Total Income		
		Or say Rs.13,50,91,330/-	

5. As against the assessment order dated 31/12/2018, the assessee has preferred an appeal before the Ld.CIT(A) . The Ld.CIT(A) vide order dated 21/11/2019, upheld the addition of Rs. 11,23,00,000/- made on account of unsecured loan u/s 68 of the Act and further upheld the disallowance of interest payment of Rs. 1,17,10,211/-.

6. Aggrieved by the order Ld. CIT (A) dated 21/11/2019, the assessee has preferred the present appeal on the grounds mentioned above. Though, the assessee has raised Ground No. 1 and 2 and its sub grounds only effective issues are against the addition of Rs. 11,23,00,000/- made by the A.O. u/s

68 on account of unsecured loan raised by the assessee from eight parties on the ground that the creditworthiness of the parties and genuineness of the transaction have not been proved by the assessee and also the disallowance of payment of interest those 8 parties.

7. The Ld. Counsel for the assessee vehemently submitted that, the assessee company has filed evidences in the form of confirmation of account PAN details, acknowledgement of ITRs, Financial Statement Bank Statement and MOA of lenders Companies which substantially proved that all the three ingredients of Section 68 i.e. identity and creditworthiness and the genuineness of the transaction were duly established by the assessee. Therefore, the Ld. A.O. could not have made addition. The Ld. Counsel had drawn our attention to the paper book wherein the documents produced before the Lower Authorities have been reproduced by the assessee and submitted that the entire approach of the Ld. CIT (A) in confirming the impugned addition is erroneous and taken us though the paper book and various Judgments.

8. Per contra the Ld. DR has relied on the Orders of the lower authorities and taken us though the findings of the CIT (A) and submitted that the Order of the Ld. CIT (A) requires no interference.

9. We have heard the parties, perused the material available on record and gave our thoughtful consideration. The issue involved in the present appeal is regarding the addition on account of cash credits & interest claimed thereon. Whether a particular credit appearing in the books of an assessee is genuine or not is a question of fact to be decided on the basis of material brought on record from both the sides. It is seen that the assessee company had claimed to have raised unsecured loan aggregating to Rs. 11,23,00,000/- from eight private limited companies, the details of which have been given by the Assessing Officer in the assessment order. It is seen that to establish the identity and capacity of the lender companies and genuineness of the loans transactions, assessee had filed documentary evidences such as confirmation of accounts from such lender companies confirming the loans given by them to the assessee company. The loans given by such lenders companies to the assessee were given through banking channel as is evident from the copies of bank statements of the lenders companies filed by the assessee. It is also seen that the lender companies are assessed to income tax which is evident from the PAN details and acknowledgment of their income tax returns placed on record. It is also noticed by us that the lenders companies' audited Financial Statements were also submitted along with Memorandum of Association to show the volume of operations of the lender companies. It is also seen that the unsecured loans raised by the assessee company were not interest free but were bearing interest. It is also noticed by

us that loan of Rs. 45,00,000/- raised from M/s Bloom Texent Pvt. Ltd. and Rs.50,00,000/- raised from M/s Direct Trading Co. P. Ltd. were repaid by the assessee. It was also noticed by us that loan raised from M/s Tradelink Trading P. Ltd. was also repaid to the extent of Rs. 28,00,000/-. It is also evident from the reading of the assessment order that the summons issued u/s 131 were issued but there is no finding that such summon were received back un-served which means that the summon issued stood served. It is also seen by us that AO himself has mentioned in para 8.2 of the assessment order that during post search enquiry summons were issued to the lender companies and in compliance to the summons, part compliance was made. Therefore, it has to be seen and decided as to whether the ingredients section 68 i.e. the identity and capacity of the creditors stood proved and as to whether genuineness of the loan transactions stood established.

10. Thus, it is found that all the eight lender companies were private limited companies incorporated under the provisions of the Companies Act, and whose books of accounts were audited. The loans transactions were made by these lenders companies through their bank accounts out of the funds available at the time of giving such loans. Such lender companies were borne on RoC records and income tax records. Such loan transactions have been confirmed by these lender companies. Therefore, as a matter of fact the identity and capacity and genuineness of the loan transaction were established.

11. The first adverse observation of the Assessing Officer that the lender companies though have advanced huge amounts but no interest income has been shown. We have referred to Page 26 and 29 of the paper book, which is profit and loss account of one of the lender companies M/s Ablaze Tour and Travels Pvt. Ltd. which shows interest income of Rs. 16,87,697/-Therefore, the observation of the Assessing Officer that no interest income has been shown by the lender company is not found correct. Similarly, we have seen the profit & loss account of another lender company M/s Accurate Buildwell P. Ltd. and it is found from Page 37 and page 40 of the paper book that interest income has been shown by such company at Rs. 12,45,948/-. Similarly, we have seen profit & loss account of other lender companies also enclosed in the paper book at Page 47, 50, in case of M/s Bloom Texent P. Ltd. showing interest income of Rs. 30,28,371/-. Similarly, we have seen profit & loss account of other lender companies also enclosed in the paper book and we find that such lender companies have earned interest of substantial amount which are being shown as income in their respective profit & loss account.

12. Similarly, we have gone through the financial statements of the lender companies to which our attention was drawn and it is seen that there are significant revenue from operations and there are significant amount of interest income. As to the said observation that amount was received by the lender company and immediately it was given to the assessee company, we do

not find any substance in this alleged adverse features in this approach of an entity as to the optimization of the financial resources. It is quite natural that if the lender company wanted to lend money, it would make necessary arrangements of funds from available sources at its command and would ensure that its funds do not remain idle. Therefore, nothing adverse can be read into this phenomenon. Regarding non-reply of notice u/s 133(6) or non-reply of the summon issued u/s 131, one thing which appears from the plain reading of the assessment order is that notices u/s 131 were served. That being so and if compliance has not been made by such persons, then as per the judicial decision of Hon'ble Allahabad High Court in the case of Nathu Ram Premchandvs. Vs. CIT 49 ITR 561, blame cannot be ascribed to the assessee. The relevant portion of the said judgment of the Allahabad High Court are as under:-

"It appears that Banarasidas was examined not in the assessment proceedings giving rise to this reference but in those relating to the assessment of Banarasidas. [Section 37\(1\)](#) of the Act confers on the Income-tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal the powers vested in a court under the Code of Civil Procedure when trying a suit in respect of the following matters, viz. :

"(a) Enforcing the attendance of any person including any officer of a banking company and examining him on oath."

The provisions of Order XVI of the Civil Procedure Code deal with the examination and attendance of witnesses. Rule 1 of Order XVI provides that by making an application any party to a suit may summon in court a witness whose attendance is required either to give evidence or to produce documents. In the present case the assessee was given dasti summons for the production of Banarasidas but his case was that Banarasidas refused to accept the same. In a situation like this, the provisions of Order XVI, rule 10, are attracted, which read as follows :

"10. (1) Where a person to whom a summons has been issued either to attend, to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another court, touching the service or non-service of the summons.

(2) Where the court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the court may, in its discretion, issue a warrant,

either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12 :

Provided that no Court of Small Causes shall make an order for the attachment of immovable property."

Admittedly, no such steps as are provided for by this statutory provision for the appearance of the witnesses were taken by the Income-tax Officer for the appearance of Banarasidas.

We are of the opinion that under these circumstances neither the Income-tax Officer nor the Income-tax Appellate Commissioner nor the Tribunal were justified in fastening the blame at the door of the assessee and disbelieving his version that the amount of Rs. 10,000 entered in his account books was the deposit made by Banarasidas on the ground that the former has failed to produce the latter. The assessee took all the steps that lay in his power to secure the presence of Banarasidas before the Income-tax Officer. In theses circumstances it appears to us that the Tribunal wrongly took into consideration the circumstances that Banarasidas had not been produced. On the material on the record there is nothing to refute the allegation of the appellant that this sum of Rs. 10,000 is the deposit of Banarasidas with the assessee firm. The Tribunal had before it no legal material on which it could come to a contrary conclusion."

13. In so far as Inspector Report, there is nothing in the assessment order which says that such reports were made available to the assessee. This has also been pleaded by the assessee that such reports surfaced for the first time

in the assessment order. In view of such facts, no adverse inference can be drawn against the assessee and for the said proposition we place reliance on the decision of Hon'ble Supreme Court decision in the Kishnichand Chellaram. CIT 125 ITR 713.

14. As to the observations of the authorities below that the evidences do not inspire confidence regarding the credit capacity of the creditors, it is seen that total net-worth of the lender namely M/s Ablaze Tour and Travels Pvt. Ltd. was to the tune of Rs. 68.99 Crores, which is far more than the amount advanced by the said company. Similarly, net-worth of another lender company namely M/s ICE Globe Promoters P. Ltd. was Rs. 66.40 Crores and that of yet another lender company namely M/s Master Piece Infocom P. Ltd. was to the tune of Rs. 12.30 Crores. These are evident from the copy of Financial Statements of these companies available at page 25-30, 90-95, 102- 107 of the paper book filed before us to which our attention was drawn. Even in respect of other companies, from the perusal of the financial statements, it is clear that their net-worth was more than the amount advanced by the lender companies to the assessee and there are significant amount of total revenue. This finding of fact is being recorded by us on the basis of Financial Statements of such lender companies filed before us to which our attention was drawn with the help of various pages of the paper book. We also note that there is no such requirement of law that a person / entity can make investment only if such person / entity have fixed assets. Observation of the Assessing Officer that the

address given by the lender companies were only postal address and such premises were occupied by Chartered Accountant is also without any basis, material or evidence. Therefore, having totality facts and circumstance of the case, it is found as a matter of fact that the identity and capacity of the lender companies and genuineness of loan stood established in the present case. It is also seen that despite search action having been taken against the appellant company, there is no material or evidence found in search or otherwise which could have remotely suggested that loans in question were not the genuine loans. Fact of the matter also is that these loans were partly repaid and these loans were on interest which also weigh in favour that the loans in questions were genuine loans raised by the appellant. The entire case made by the A.O. and CIT(A) was based on suspicion, surmises and conjectures. It is settled law that suspicion howsoever gave cannot partake the character of evidence. A.O. and CIT(A) have relied upon case various case laws whereas on the other hand, assessee has also relied upon various case laws which are mentioned in the case law compilation. As noted by us elsewhere also, the question about the genuineness of loans is a question of fact which has been decided based on appreciation of the evidence brought before us by both the parties and therefore, we can say that after taking into account the case laws relied upon by the both the parties to which we have adverted to, we hold that the loans for an aggregate amount of Rs. 11.23 crores are not unexplained income of the Assessee company and therefore, the interest of Rs. 1,17,10,211/- in respect of

these loans also could not been disallowed.

15. It is found that the Ld. AO had made the general observations in para 8 and 8.2 of the assessment order that different company of the Group was involved in real estate development and are engaged in tax evasion on the construction and sale of the flats and the company is engaged in taking unaccounted money in cash to suppress the actual receipt of the same consideration of the flats. This observation made in the assessment order first of all is not directed against the assessee company. In any case, such observation is without any basis, material or evidence and is purely bald and unsubstantiated. No addition on this score also could be found by us in the assessment order. No substantiation has been done by AO as to its observation made in para 8 & 8.2 of the assessment order.

16. Therefore, in view of the above made discussion, we allow the Ground No. 1 and 2 of the Assessee by deleting the addition made under section 68 of the Act and also by delete the disallowance of interest payment of Rs. 1,17,10,211/-

17. In the result, the Appeal filed by the Assessee is allowed.

Order pronounced in the Open Court on : 16 .02.2023.

Sd/-
(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 16/02/2023

MEHTA/R.N, Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI