

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.98/SRT/2020

निर्धारण वर्ष/Assessment Year: (2012-13)

(Physical Hearing)

Income Tax Officer, Ward-1(1)(3), Room No.113, Aaykar Bhavan, Majura Gate, Surat- 395002	Vs.	M/s. Hi-Choice Processors Pvt. Ltd., 264, GIDC, Sachin, Surat- 394230.
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AAACH7062E		

निर्धारिती की ओर से /Appellant by	Shri Ashok B. Koli, CIT(DR)
राजस्व की ओर से /Respondent by	Shri Mehul Shah, CA
सुनवाई की तारीख/Date of Hearing	31/03/2023
घोषणा की तारीख/Date of Pronouncement	18/04/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short “the Id. CIT(A)”], in Appeal No. CIT(A),-3/10948/2015-16, dated 17.01.2020, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 31.03.2015.

2. The grounds of appeal raised by the Revenue are as follows:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT-(A) is justified in deleting the disallowance made on account of general expenses claimed by the assessee and also restricted the disallowance of travelling expenses from 20% to 10%, without appreciating the fact that the assessee had not submitted necessary documentary evidence to substantiate its allowability in accordance with the provision of section 37(1) of the Income Tax Act, 1961.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT-(A) justified in restricting disallowance from 20% to 10% made on account of vehicle and telephonic expenses by A.O, without appreciating the fact that the

assessee had failed to establish that the said expenditure had been incurred only exclusively for business purpose ?

3. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of unsecured loans of Rs.3,52,75,000/- without appreciating the fact that assessee has failed to establish the identity, genuineness and creditworthiness of the lenders as required under the provisions of section 68 of the IT. Act?

4. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest of Rs.39,01,339/- on loan of Rs.3,52,75,000/- ignoring the fact that the assessee has failed to establish the identity, genuineness and creditworthiness of the loan on which the interest was paid and claimed as expenses.”

3. First, we shall take ground No.3 and 4 raised by the assessee. Brief facts *qua* ground nos. 3 and 4 are that assessee before us is a Private Limited Company and filed its return of income in respect of AY 2012-13, declaring loss of Rs.22,50,315/- on 29/09/2012. The return of income was processed by accepting the returned income. Consequent to selection of the case for scrutiny, statutory notice u/s 143(2) of the I.T. Act dated 12/08/2013 was issued to the assessee. A notice u/s 142(1) dated 03/07/2014 was issued calling for basic documents and details to facilitate preparation and issue of a questionnaire. During the course of assessment proceedings, assessee was required, vide questionnaire dated 26.11.2014, to furnish details with supporting material to establish the genuineness of source and creditworthiness in respect of receipt and refund of unsecured loan during the year. In response, the assessee, vide his submission dated 26.12.2014, furnished confirmations of the parties of unsecured loans taken during the year along with photocopy of ITRs and bank statement of 15 parties.

4. The Assessing Officer has gone through the submission of the assessee and observed that in respect of the following parties, who have advanced unsecured loan to the assessee, their creditworthiness is not established due to their low return of income, insufficient bank balances, lack of income earning business activities etc.

Sr.no	Name of the unsecured loan giver	Address of loan giver	Loan amount given during the period	Interest on unsecured loans claimed
1	Falcon Complex Pvt Ltd	167/4, Lenin Sarani, Kolkata	1000000	377465
2	Jinvani Trading & Investment Co Ltd	1, Crooked Lane, Kolkata	1000000	138934
3	Muktanand Commercial Pvt Ltd	167/4, Lenin Sarani, Kolkata	1500000	213934
4	S.L. Trades & Finance (India) pvt Ltd.	167/4, Lenin Sarani, Kolkata	2500000	353484
5	Sofra Vinimay Pvt Ltd	P-21/22, Radha Bazar Street, Ist Floor, Kolkata	2000000	6000
6	Trishla Vyapaar Pvt Ltd	167/4, Lenin Sarani, Kolkata	3300000	428055
7	Mankunwar Devi Bajaj	4C, Ravtej Apartment, Opp. Louds Convent School, Athwalines Surat.	2000000	42368
8	Narayan Das Bajaj	4C, Ravtej Apartment, Opp. Louds Convent School, Athwalines Surat.	3840000	227447
9	Narayan Das Jaikumar	4C, Ravtej Apartment, Opp. Louds Convent School, Athwalines Surat.	3900000	285231
10	Narbada Devi Bajaj	4C, Ravtej Apartment, Opp. Louds Convent School, Athwalines Surat.	1000000	99530
11	Gopi Das Durga	802, Meghmayur Apartment, Opp. Lodus Convent School, Athwalines, Surat	2550000	384854
12	Jethmal Gopal Das Textiles Pvt Ltd	2 nd Floor, Sree Balaji Tex Market, Ring Road, Surat.	110000	155226
13	Aumgene Biosciences Pvt Ltd	Plot No. 8201/5, Road no.8, GIDC, Sachin, Surat.	500000	0
14	Jai Kumar & Sons	3 rd Floor, Vekharia Textile, Ring Road, Surat.	1000000	125820
15	Jai Vijay Synthetics Pvt Ltd	2 nd Floor, Shree Balaji Tex Market, Ring road, Surat.	650000	61650
16	Krishan Kumar Bajaj	801, Nidhivan Apartment, Parle Point, Surat.	1000000	127869
17	Raj Kumar Bajaj	15, Pageya Patty Street, Kolkata	500000	678769
18	Sarla Dujari	24/25A P K Tagore Street, Kolkata	125000	24350
19	Shree Radha Madhav Textile Pvt Ltd	3 rd Floor, Vakharia Textile Market, Ring Road, Surat.	6800000	116353
	Total		35275000	3901339

5. Therefore, vide assessing officer's show-cause notice dated 27.03.2015, the assessee was asked as to why the unsecured loan to the tune of Rs.3,52,75,000/- claimed as received by the assessee from these parties should not be treated as unaccounted income of the assessee. Despite the specific query in questionnaire dated 26.11.2014 the assessee has not been able to furnish the details and supporting evidence i.e. Copies of ITRs, confirmation of loan givers, Bank account statement, copy of ledger account etc. to establish the genuineness of source and creditworthiness in respect of unsecured loans. Therefore, the assessing officer noted that very existence and the identity of the alleged loan

giver are not established. It is prima facie construed that the creditworthiness of said lenders is not established. Under this circumstance, the assessing officer held that unsecured loan and the corresponding interest paid is unaccounted income of the assessee. Accordingly, a sum of Rs.3,91,76,339/- was added to the total income of the assessee company.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has allowed the appeal of the assessee, observing as follows:

“Ground No. 5 & 6 pertains to unsecured loan received from 19 parties of Rs.3,52,75,000/- and interest claimed of Rs 39,01,339/-. The appellant has received loan through account payee cheque and has paid interest to all the parties (except 1 party namely Aumgene Biosciences Pvt. Ltd. wherein the loan is taken as well as repaid during the year in short span). All the parties are assessed to tax and TDS is also duly deducted on the interest paid. The appellant has also submitted account confirmation, contra confirmation, bank statement, balance sheet and the copy of the return of income with the computation of income (supra). Further the supporting documents filed during assessment proceedings are tabulated below:

Sr. No.	Name of the lender	Whether confirmation filed?	Whether ITR/Financial Statement and Bank statement filed?	Whether opening balance accepted in past scrutiny?	Whether repayment made	Cash deposit before loan?	Relationship ?
1.	Aumgene Biosciences Pvt. Ltd.	Yes	Yes	No	Yes	No	Anand Kumar Daga-Relative to Key management
2.	Gopi Das Daga	Yes	Yes	Yes	Yes	No	Director
3.	Jaikumar & Sons HUF	Yes	Yes	No	Yes	No	Relative to Key management
4.	Jai Vijay Synthetics Pvt. Ltd.	Yes	Yes	No	Yes	No	Gopi Das Daga-Common Director
5.	Jethmal Gopaldas Textiles Pvt. Ltd.	Yes	Yes	Yes	Yes	No	Narayan Das Bajaj-Common Director
6.	Krishna Kumar Bajaj	Yes	Yes	No	Yes	No	Director
7.	Mankunwar Devi Bajaj	Yes	Yes	Yes	Yes	No	Relative to Key management
8.	Narayandas	Yes	Yes	Yes	Yes	No	Director

	Bajaj						
9.	Narayandas Jaikumar HUF	Yes	Yes	Yes	Yes	No	Relative to Key management
10	Narbadadevi Bajaj	Yes	Yes	Yes	Yes	No	Relative to Key management

	Bajaj						
11	Rajkumar Bajaj	Yes	Yes	Yes	Yes	No	management Relative to Key management
12	Sarla Dujari	Yes	Yes	Yes	Yes	No	Relative to Key management
13	Shree Radhamadha v Textiles Pvt. Ltd.	Yes	Yes	Yes	Yes	No	Narayan Das Bajaj – Common Director
14	Falcon Complex Pvt. Ltd.	Yes	Yes	Yes	Yes	No	NBFC
15	Jinvani Trading & Investment Company Pvt. Ltd.	Yes	Yes	No	Yes	No	NBFC
16	Muktananda Commercial Pvt. Ltd.	Yes	Yes	No	Yes	No	NBFC
17	S.L. Trade and Finance(India)	Yes	Yes	No	Yes	No	NBFC
18	Trishal Vyapaar Pvt. Ltd.	Yes	Yes	Yes	Yes	No	NBFC
19	Sofra Vinimay Pvt Ltd.	Yes	Yes	No	Yes	No	NBFC

The AO has not conducted any independent inquiry which can prove that amount taken as loan represents any unaccounted income of the assessee. He has simply rejected the claim of the appellant without any verification being conducted. The appellant had filed all details during the assessment proceedings.

In case of related concerns, the return of income and bank statement filed proves the creditworthiness of the lenders. All the Related concerns are having substantial taxable income and net-worth.

In case of loan taken from 6 NBFC's, in none of the cases, there is any / statement of the third party or any allegation that the lender is involved in / providing any accommodation entry. The MCA records show that the companies are active and compliant to form INC 22A which proves the address of the companies.

Further, most of the lenders have opening balance which is accepted in scrutiny orders of earlier years and majority of the loans have been repaid by the appellant at regular intervals and the case is squarely covered by CIT vs Ayachi Chandrashekhar Narsangji [42 taxmann.com 251] wherein it was held that "Where the Department had accepted repayment of loan in subsequent year, no addition was to be made in current year on account of cash credit."

In view of the above facts and discussions, it is held that the AO has considered the unsecured loans from all the lenders as cash credit based on wrong appreciation of facts and law. Hence, the addition made u/s 68 of Rs.3,91,76,339/- is deleted which includes the unsecured loans of

Rs.3,52,75,000/- and the interest amount of Rs.39,01,339/- and the ground of appeals 5 and 6 are allowed.

6. In the result, this appeal is partly allowed.”

7. Aggrieved by the order of the Ld. Id. CIT(A), the Revenue is in appeal before us.

8. The Learned Departmental Representative (Ld. DR) for the Revenue submitted that on verification of the huge unsecured loan claimed of Rs.3,52,75,000/-and its related interest payment up to Rs.39,01,339/- it was noticed by the Assessing Officer that, the assessee has mainly taken loan from 19 parties in which most of the parties belongs to Kolkata, whose credentials are dubious. The assessee was asked to provide the necessary details as required under the section 68 of the Act to prove the *bona fide* of the transactions such as evidence regarding identity of the lenders, genuineness and creditworthiness of the transactions. However, the assessee has failed to produce the required details fully. The Assessing Officer has noticed that confirmation from lenders, contra account statement, ledger accounts etc. were not furnished by the assessee. On verification of the income of the lenders, it was also noticed that, they have only meager income and not having sufficient bank balances and also no earning from business activities too. Hence, according to the Assessing Officer, the assessee has failed to establish the identity, genuineness and credit worthiness of the transactions beyond doubt under section 68 of the Act. Hence, the total unsecured loan along with its related interest expenses claimed by the assessee was disallowed and added to the income of the assessee u/s 68 of the Act.

9. On the other hand, Shri Mehul Shah, Id Counsel for the assessee, argued that account confirmation, contra confirmation, bank statement, copy of return of income, etc. were provided to the Assessing Officer along with the details of TDS deducted from the interest paid to Lenders. Each party is assessed to tax regularly. The Ld. CIT(A) has observed that without any independent enquiry or verification, the Assessing Officer has simply rejected the claim of the assessee. The Assessing Officer has no information regarding these parties that they were

involved or connected with any entry providers. The return of income (ROI) of every party shows they have creditworthiness to advance such loan to assessee and more important that these companies are active still as per MCA records. Further, most of these lenders have opening balance, which is accepted by the Department in the scrutiny orders of earlier years and majority of the loan have been repaid in regular intervals. Hence, the case is squarely covered by the decision of Hon'ble Gujarat High Court in the case of CIT Vs Ayachi Chadrasekher Narsangi wherein, it was held that "*where the department had accepted the repayment of loan in subsequent years, no addition was to be made in current year on account of cash credits.*". By relying on the above facts and the decision quoted above, the Ld. CIT(A) has deleted the entire addition of Rs.3,91,76,339/- made on account of unsecured loans including interest on the same. Thus, Id Counsel pointed out that there is no infirmity in the conclusion reached by Id CIT(A), hence the order of Id CIT(A) may be upheld.

10. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that all lenders are assessed to tax. The ITR of lenders are accepted by Department u/s 143(1) of the Act and even the interest income offered by them is subjected to tax which is duly paid and hence no adverse view is called for. The loans are taken through banking channels and interest is paid to all the lenders and on which TDS is deducted. There is no finding of cash deposit in bank account of the lenders. The Confirmation of all lenders were filed during assessment proceedings and no further enquiry were deemed necessary by the Assessing Officer. Out of the 19 parties, 13 parties are directors or their relatives or sister concern from whom the assessee had also taken loan in the past which was always accepted during scrutiny assessment of earlier years. The Assessing Officer has made addition u/s 68 of the Act because he has doubted the creditworthiness of the certain Pvt. Ltd. companies from whom assessee has taken loans. However, it is submitted that the said companies are NBFCs and

hence their purpose of the business itself is granting of loans and hence the creditworthiness is proved even if the NBFCs may be having lower income. This is because the basic criteria for NBFCs is to have minimum net worth of Rs.2 crore, which is fulfilled and the source of these credits is already certified while making an application to RBI while forming NBFCs and the Companies have obtained the certificate of registration after fulfilling requirement of Section 45-IA of the RBI Act, 1934. Further, on perusal of the Audit Report of these companies, it can be seen that they have followed all the RBI guidelines and prudential norms issued by RBI as certified by the auditors in the notes to accounts. It is to be appreciated that the status is “Active-Compliant” and not just Active which means that the Companies have filled the latest Form INC-22A which was introduced to track down inactive companies or companies with dummy address. Thus, the status of NBFC being Active Compliant very much proves the existence of address of party. It is submitted that all the loans are repaid through account payee cheques in subsequent years. The Chart of Repayment in subsequent years is filed by assessee at Pg no.8 & 9 of Paper Book-I. In fact, in the subsequent year also, i.e., AY 2013-14, there was scrutiny assessment and bank statements were filed before the assessing officer and the repayment of loan were also reflected in the Tax Audit Report and the Revenue has accepted the repayment of loan. Thus, when the Assessing Officer has not disputed the repayment of loan in subsequent assessment years, no addition should be made of loan taken during the year. We have gone through the order of Id CIT(A) and noted that the conclusions arrived at by the Id CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismissed ground nos. 3 and 4 raised by the Revenue.

11. In the result, ground Nos. 3 and 4 raised by the Revenue are dismissed.

12. Ground Nos. 1 and 2 raised by the Revenue relate deleting the disallowance made on account of general expenses claimed by the assessee and also restricted the disallowance of travelling expenses from 20% to 10%, and Ld. CIT(A) erred

in restricting disallowance from 20% to 10% made on account of vehicle and telephonic expenses by Assessing Officer respectively.

13. As regards the disallowance of various expenses, Ld DR pointed out that assessee has failed to establish that these expenses were incurred exclusively for business purpose and also could not provide the necessary documentary evidences such as authentic bills/ vouchers which supports its claim. Further majority of the expenses were incurred in cash. Hence, the Assessing Officer has correctly disallowed 20% of such expenses, therefore, addition made by the Assessing Officer should be upheld.

14. On the other hand, ld Counsel submitted that expenses were restricted to 10% or deleted fully in earlier assessment years by ld CIT(A), therefore the same ratio is applicable to the current assessment year. The ld Counsel stated that ld CIT(A) has passed a reasoned and speaking order therefore, the same should be upheld.

15. We have heard both the parties and perused the materials available on record. We note that during sample verification of various direct and indirect expenses claimed by assessee in respect of the year under consideration, the claims of following expenses were not found to be entirely or adequately supported by documentary evidence:

Sr. No.	Details of Expenses	Amount of Expenses (Rs.)
1	Cooly & Cartage Expense	26,77,135/-
2	Repairs & Maintenance Expense For Others	2,03,186 /-
3	Repairs & Maintenance for Building	38,22,401/-
4	Travelling Expense	1,37,658/-
5	General Expense	94,497/-
	TOTAL	69,34,877/-

During the assessment proceedings, assessee submitted ledger accounts and vouchers, however assessing officer observed that were furnishing of the copy of the ledger accounts and part submission of vouchers would not prove that the

expenditure has been incurred wholly and exclusively for the purpose of the business. Accordingly, an amount of Rs.13,86,975/- being 20% of the above mentioned expenses of Rs.69,34,877/- was disallowed.

16. It was also observed by Assessing Officer that expenses of Rs.4,32,973/- has been incurred in respect of vehicles used during the course of business of Assessee. These vehicles include cars which are used mainly by the directors of the company and are managed and maintained under their control. The vehicles expenses comprise expenses on fuel, repair and maintenance expenses, insurance and claim of depreciation. In facts and circumstances of the case use of the vehicles for personal purposes of the directors not related to the business of assessee company cannot be ruled out. In the light of these facts, it was being considered as reasonable to disallow a sum equal to 1/5th of the vehicles related expenses as having been incurred for purposes other than business.

17. It was also noted by Assessing Officer that it is not possible to bifurcate fuel expenses and repair and maintenance expenses. The overall vehicle expenses come to around Rs.4,32,973/-. The 1/5th of the same which comes to **Rs.86,595/-, which was disallowed.**

18. It was also observed by Assessing Officer that amount of Rs.1,71,677/- has been claimed towards telephone expenses. The circumstances of telephone expenses are identical to those of vehicles expenses as discussed above and personal use of mobiles and telephones unrelated to business cannot be ruled out. On the same logic as applying to vehicles expenses, 1/5th of the telephone expenses are also disallowed by considering the same to be unrelated to business purposes. The 1/5th of the same which comes to Rs.34,335/-, which was disallowed as expenses unrelated to the business of the assessee.

19. On appeal, Id CIT(A) restricted the addition from 20% to 10% observing as follows:

“The ground of appeal- Ground No. 2 pertains to disallowance of Rs. 13,86,975/- being 20% of total expenses of Rs.69,34,877/-. On perusal of details submitted by the appellant and the scrutiny assessment of AY 2011-12 and AY 2010-11, it is observed that: no additions were made in respect of cooly &

*cartage, repairs & maintenance expenses others, repairs and maintenance for building and general expenses. However, the disallowance of 20% was made in case of travelling expenses which was reduced to 10% only by the Id. CIT(A) in preceding A.Y. Further, the Chart submitted by appellant expressing the expenses as percentage of turnover shows that there is no inflation in expenses and the same are in lines with earlier year. **Considering the same, disallowance of travelling expenses is reduced to 10% being Rs.13,765/- out of Rs.1,37,658/- and the total disallowance in respect of other expenditures of Rs.13,59,445/- are held to be incurred for the purpose of business and are allowed. The ground of appeal is partly allowed.***

The ground of appeal- Ground No. 3 pertains disallowance of Rs.86,595/- on account of vehicle expenses. The appellant has placed reliance on the decision of Honourable Gujarat High Court in case of Sayaji Iron & Engg. Co. v/s. CIT - 253 ITR 749 (Guj.). No such disallowance was made under scrutiny assessment in A.Y. 2010-11 & 2009-10. Further even scrutiny assessment of A.Y. 2011-12, disallowance of 20% was made in case of vehicle expenses which was reduced by the Id. CIT (A) to 10% only. Considering the same, disallowance of vehicle expenses is reduced to 10% and the same comes to Rs.43,298/-. The ground of appeal is partly allowed.

The ground of appeal- Ground No. 4 pertains disallowance of Rs.34,335/-on account of telephone expenses. The appellant has placed reliance on the decision of Honourable Gujarat High Court in case of Sayaji Iron & Engg. Co. v/s. CIT - 253 ITR 749 (Guj.). No such disallowance was made under scrutiny assessment in A.Y.2010-11 & 2009-10. Further even in scrutiny assessment of A.Y. 2011-12, disallowance of 20% was made in case of telephone expenses which was reduced by the Id. CIT(A) to 10% only. Considering the same, disallowance of telephone expense is reduced to 10% and the same comes to Rs.17,168/-. The ground of appeal is partly allowed.”

20. We note that assessee incurred the expenses on account of cooly & cartage, repairs, travelling and general expenses of Rs.69,34,877/- during the year. The proper entries for the various expenses have been recorded in the books of accounts which are supported by bills/vouchers. Wherever the vouchers are not available, there is a proper system of authorization for incurring the expenses and internal vouchers are prepared and approved. So, all the expenses are supported by necessary evidence. Out of the total expenditure of Rs.69,34,877/- incurred on account of the above items only expenditure of Rs.11,70,654/- have been incurred in cash which are also supported by bills or internal vouchers. The expenses are very reasonable as compared to last year and looking to the turnover of the assessee. However, the disallowance of 20% was made in case of travelling expenses which was reduced by the Id. CIT(A) to 10% only. In A.Y. 2010-11 also even in scrutiny assessment, no disallowance of

expenses was made in regard to all the above items of expenses. Considering this factual position, we note that Id CIT(A) has passed a reasoned and speaking order. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

21. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 18/04/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 18/04/2023

SAMANTA /Dkp Outsourcing Sr.P.S

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat