

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA Nos. 2651 to 2656/Mum/2022

(A.Ys.2008-09 & 2013-14)

Smt. Meena Dilip Doshi (Legal heir of Late Shri Dilip Hiralal Doshi) 171, Jawahar Nagar, Road No.-2, Goregaon West, Mumbai – 400062	Vs.	ITO, Circle 41(4)(1) Kautilya Bhavan Bandra East, Mumbai 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAPD5917B		
Appellant	..	Respondent

Appellant by :	Bharat Shah
Respondent by :	Abhishek Kumar Singh

Date of Hearing	08.03.2023
Date of Pronouncement	20.03.2023

आदेश / O R D E R

Per Bench:

These 6 appeals filed by the assessee from assessment order 2008-09 to 2013-14 are directed against the different order of NFAC, Delhi. Since common issue on identical facts are involved in these appeals filed by the assessee, therefore, these appeals are adjudicated together by taking ITA No. 2651/Mum/2022 as a lead case and its finding will be applied mutatis mutandis wherever applicable to the other appeals.

ITA No.2651/Mum/2022

- “1. Whether Assessing Officer was correct in law to reopen the assessment u/s 148 of the IT Act, 1961 when notice u/s 143(2) is not issued as per our records.

2. *Whether Commissioner of income Tax (Appeal) is correct in law and in fact in the completing the assessment u/s 143(3) r.w.s., u/s147 of the income tax act,1961 because:*
 - 2.1 *He has not disposed of the objection raised by the assessee on 08/03/2016.*
 - 2.2 *The assessing officer in response to objection raised by assessee on 11/03/2016 furnished the copy of statement of Shri. Bhawarlal Jain. However, assessing officer doesn't dispose of the objection raise by the assessee.*
 - 2.3 *Hence as decided by the Supreme Court in case of GKN Dirveshaft (1) Pvt. Ltd. the assessment is not valid.*
3. *Whether Commissioner income Tax (Appeal) is correct in law and in fact in considering the loan of Rs. 15, 32,918/- received from Malhar Exports, Prop. Shri Virendra Vijayvaargia, as unexplained cash credit u/s 68 because*
 - 3.1 *Loanee has furnished loan confirmation as per his books, bank statement, acknowledgment of Income tax return filed, Balance Sheet and Profit and Loss account to assessee.*
 - 3.2 *Assessing officer has not issued summons u/s 133(6) and not verified genuineness of loan.*
 - 3.3 *There is no statement on record from Malhar Export Prop. Shri Virendra Vijayvaargia or Mr Bhawarlal Jain that he has given accommodation loan to the assessee.*
 - 3.4 *The loan has been assessed during A.Y. 2011-12 when assessment u/s 143(3) was done and interest payment has been accepted.*
4. *Whether Commissioner of income Tax (Appeal) is correct in law and in fact in confirming the reopening of the assessment only on basis of information received from DDIT (Inv.) Unit-IX(2). No specific enquiry has been done by assessing office before arriving to the conclusion that income chargeable to tax has: escaped assessment and there is no statement on record of assessing office from Mr. Virendra Rajendra Vijayvargia proprietor of M/s Malhar Exports that he has given. benami loan to the assessee. On the contrary Mr. Bhawarlal Jain has said that loan has been given to builders known to them.*
5. *The assessee craves leave to add, amend and /or alter any of the above grounds of appeal.”*

2. The fact in brief is that return of income declaring total income of Rs.2,70,431/- was filed on 29.09.2008. The return was processed u/s 143(1) of the Act. Subsequently, the case was reopened on the basis of information received from the office of Director General of Income Tax (Inv), Mumbai that Shri Bhanwarlal Jain & group was involved in providing accommodation entries of unsecured loan on the basis of information gathered from the search action carried out in the case of

Shri Bhanwarlal Jain & group on 10.03.2013. The A.O stated that assessee was one of the beneficiary who had obtained accommodation entries of unsecured loans totaling to Rs.15,29,527/- during the assessment year 2008-09 through M/s Malhar Exports. During the course of assessment the assessing officer noticed that assessee had shown unsecured loan of Rs. 15,29,527/- in the balance sheet as on 31.03.2018 from M/s Malhar Export (proprietary concern of Shri Virendra Kumar Vijayvargia) which was also one of the concern of Shri Shri Bhanwarlal Jain & group. During the course of search action undertaken in the case of Shri Bhanwarlal Jain on 10.03.2013 he had given the statement stating that M/s Malhar Export was one of his concern who had given accommodation entries of loan to the interested parties.

On query, in support of genuineness of loan taken the assessee furnished copy of acknowledgment of Income Tax return filed for assessment year 2008-09 of the lender i.e (a) Shri Virendra Kumar Vijay Varjia proprietor of M/s Malhar Export along with profit and loss gain and balance sheet for the assessment year 2008-09 (b) copy of loan confirmation of M/s Malhar Export as per assessee's books of account (c) copy of loan confirmation received from M/s Malhar Export as per their books of account. The assessee also submitted that loan has been accepted during the assessment year 2011-12 when assessment u/s 143(3) was done. The assessee also submitted that loan was received through account payee cheque only. The assessee also explained that loan was repaid to M/s Malhar Export in the assessment year 2015-16 through banking channel. The assessee also submitted copy of ledger account of Malhar Export in the books of assessee along with copy of bank statement highlighting the transaction of repayment.

However, the A.O had not accepted the submission of the assessee and stated that name of M/s Malhar Export from whom the assessee had taken loan entry of Rs.15 lac during the assessment year 2008-09 was mentioned at serial no. 29 of the list of 68 concerns of Shri Bhanwarlal Jain & group as per annexure-A of the statement. The A.O has also referred the statement of Shri Bhanwarlal Jain and his employees stating that accommodation entries of loan were provided to the various parties. Therefore, the unsecured loan received by the assessee including interest amount totalling to Rs.15,31,918/- was added to the total income of the assessee treating the same as unexplained cash credit u/s 68 of the Act.

3. 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 regarding reopening of the assessment as contested in ground no. 1 & 2 of the appeal filed by the assessee, the ld. Counsel contended that reason for reopening of the assessment was incorrect and the case of the assessee was reopened only on the basis of the statement of Shri Bhanwarlal Jain that he was involved in arranging accommodation entries of unsecured loans and advance. The ld. Counsel submitted that reopening of the assessment was done without verification of the information received from DDIT(Inv) and without examination of the fact of the case. The ld. Counsel also submitted that A.O has not disposed of the objection raised by the assessee on 08.03.2016.

5. On the other hand, the ld. D.R submitted that case of the assessee was reopened on the basis of detailed information along with explanation given by Shri Bhanwarlal Jain after referring the various document/electronic data seized during the course of search action. He further submitted that Shri Bhanwarlal Jain in his statement

categorically referred name of M/s Malhar Export as one of their concern indulged in providing accommodation entries. He further submitted that as per the information available the assessee was one of the beneficiary who had obtained accommodation entries from M/s Malhar Exports, therefore, objection raised against the reopening was unwarranted.

6. Heard both the sides and perused the material on record.

Ground No. 1 & 2: Reopening of Assessment:

7. The A.O had received information from DDIT(Inv) on the basis of search action conducted in the case of Shri Bhanwarlal Jain & their group that assessee had obtained accommodation entries of bogus unsecured loan through one of their concern namely M/s Malhar Export which was engaged in providing accommodation entries of loan to the interested parties. The name of M/s Malhar Export from whom the assessee had taken loan entries during the assessment year 2008-09 was mentioned at serial no.29 of the list of 68 concern of Shri Bhanwarlal Jain. The case of the assessee was not subject to scrutiny assessment for the year under consideration and the return of income was only processed u/s 143(1)(a) of the Act. Inter alia at the stage of reopening of assessment in the case of the assessee there was sufficient material available with the A.O as discussed supra to believe that there was escapement of income through the modus-operandi of accommodation entries obtained from the alleged concerns of Shri Bhanwarlal Jain & Group. The assessee has not filed any objection against the reason recorded till 08.03.2016 and filed objection just at the time of completion of the assessment. In spite of the fact that A.O has provided the copy of reason recorded to the assessee well in advance. In the light of the above facts and material on record we consider that there is no infirmity in the action of the assessing officer

for reopening of the assessment after taking into consideration the tangible material gathered from the search action carried in the case of Shri Bhanwarlal Jain & group pertaining to having loan transactions with M/s Malhar Exports which was alleged to be engaged in providing accommodation entries. Therefore, ground No. 1 & 2 of the assessee stand dismissed.

Ground No.3: On merit of addition:

8. During the course of appellate proceedings the ld. Counsel vehemently contended that the assessing officer has simply made the addition without verifying the genuineness of the loan. The ld. Counsel also submitted that assessee has furnished all the relevant supporting evidences i.e loan confirmation, bank statement, acknowledgment of income tax return filed, balance sheet and profit and loss account but the A.O has not disproved these relevant material. The ld. Counsel also contended that there was no statement given by Shri Bhanwarlal Jain specifically referring that the assessee has obtained non genuine loan from M/s Malhar Export. The assessee also submitted that no opportunity for cross examination was provided to the assessee.

On the other hand, the ld. D.R supported the order of lower authorities.

9. Heard both the sides and perused the material on record. The case of the assessee was reopened u/s 147 of the Act on the basis of information gathered that assessee had obtained accommodation entries in the form of unsecured loan from M/s Malhar Export one of the concern of Shri Bhanwarlal Jain group on the basis of information received from the office of the DGIT(Inv), Mumbai that the said concern was engaged in providing accommodation entries to the beneficiaries. The assessing officer treated the loan taken by the assessee from the said concern along with interest paid on the said loan as unexplained

cash credit u/s 68 of the Act. During the course of assessment the assessee has provided copies of acknowledgment of Income Tax return filed for assessment year 2008-09 by M/s Malhar Export along with copy of loan confirmation of M/s Malhar Export. The copy of bank statement showing that loans were received through account payee cheques only and same were repaid to M/s Malhar Export in assessment year 2015-16. The A.O had not controverted these material facts and evidences and the entire addition was made relying solely upon the statement of Shri Bhanwarlal Jain. The sole basis of the A.O to make addition was the statement of Shri Bhanwarlal Jain which had been retracted by him by filing affidavits before the Income Tax authorities. During the course of assessment the assessee has also requested the assessing officer to provide copies of relevant document and statement of Shri Bhanwarlal Jain and also requested to provide an opportunity of cross examination of Shri Bhanwarlal Jain & other, however, the same was not provided to the assessee. The assessee has claimed that the identity of the creditors have been established on the basis of PAN Card, the return of income, confirming genuineness of the transaction have been established on the basis of account confirmation and bank statement where all the loans 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. However, the A.O had not brought any materials and evidences on record to controvert these material facts. After taking into consideration these fact and findings, we find that Id. CIT(A) is not justified in sustaining the impugned addition, therefore, ground No. 3 of the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is partly allowed.

ITA No. 2652/Mum/2022

Ground No. 1 & 2:

11. These grounds of appeal are similar to the grounds of appeal no. 1 & 2 of the ITAT 2651/Mum/2022 as adjudicated supra therefore after applying the finding of ITA No. 2651/Mum/2022 mutatis mutandis these grounds of appeal stand dismissed.

Ground No. 3 & 4:

12. Since these grounds of appeal are based on similar facts on identical issues as the grounds no. 3 & 4 we have adjudicated vide ITA No. 2651/Mum/2022 as supra therefore disallowance of interest paid of Rs.1,80,000/- is allowed after applying the finding of ITA No.2651/Mum/2022 vide ground No. 3.

ITA No.2653/Mum/2022

Ground No. 1 & 2:

13. These grounds of appeal are similar to the grounds of appeal no. 1 & 2 of the ITAT 2651/Mum/2022 as adjudicated supra therefore after applying the finding of ITA No. 2651/Mum/2022 mutatis mutandis these grounds of appeal stand dismissed.

Ground No. 3 & 4:

14. Since these grounds of appeal are based on similar facts on identical issues as the grounds no. 3 & 4 we have adjudicated vide ITA No. 2651/Mum/2022 as supra therefore disallowance of interest paid of Rs.1,80,000/- is allowed after applying the finding of ITA No.2651/Mum/2022 vide ground No. 3.

ITA No.2654/Mum/2022

Ground No. 1 & 2:

15. These grounds of appeal are similar to the grounds of appeal no. 1 & 2 of the ITAT 2651/Mum/2022 as adjudicated supra therefore after applying the finding of ITA No. 2651/Mum/2022 mutatis mutandis these grounds of appeal stand dismissed.

Ground No. 3 & 4:

16. Since these grounds of appeal are based on similar facts on identical issues as the grounds no. 3 & 4 we have adjudicated vide ITA No. 2651/Mum/2022 as supra therefore disallowance of interest paid of Rs.1,80,000/- is allowed after applying the finding of ITA No.2651/Mum/2022 vide ground No. 3.

ITA No.2655/Mum/2022

17. Ground No. 1 of the assessee pertaining to disallowance of interest payment of Rs.1,80,000/- is allowed after applying the finding of ITA No.2651/Mum/2022 vide ground no. 3 as mutatis mutandis.

ITA No.2656/Mum/2022

18. Ground no. 1 regarding reopening of the assessment is dismissed after applying the finding of ITA No. 2651/Mum/2022 vide ground no. 1 & 2 as mutatis mutandis.

19. Ground No. 2 regarding disallowance of interest payment of Rs.1,80,000/- is allowed after applying findings of ITA No. 2651/Mum/2022 vide ground No. 3 as mutatis mutandis.

20. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 20.03.2023

Sd/-

(Vikas Awasthy)
Judicial Member

Place: Mumbai

Sd/-

(Amarjit Singh)
Accountant Member

Date 20.03.2023

Rohit: PS

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

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

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