

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

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

ITA Nos. 6505 & 6508/Mum/2019

(A.Ys.2009-10 & 2012-13)

ACIT-22(3) 305, 3 rd Floor, Piramal Chambers, Lal Baug, Parel, Mumbai – 400 012	Vs.	M/s Rukhana Enterprises Centrum House, 8 th Floor Kalina, Santacruz (East), Mumbai – 400 055
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACFR6072M		
Appellant	..	Respondent

Appellant by :	Smt. Mahita Nair
Respondent by :	Shri Bhupendra Shah

Date of Hearing	13.01.2023
Date of Pronouncement	31.03.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These two appeals filed by the revenue are directed against the common order of CIT(A)-34, Mumbai, dated 11.07.2019. Since common issue on identical facts are involved in these two appeals filed by the revenue, therefore, these appeals are adjudicated together by taking ITA No. 6505/Mum/2019 as lead case and its finding will be applied to ITA No. 6508/Mum/2019 mutatis mutandis.

ITA No.6505/Mum/2019

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.3,26,00,000/-made on bogus and non genuine loan and the proportionate disallowance of interest of Rs.21,96,699/- on the said loan ignoring the fact that the assessee completely failed in substantiating the loan the loan taken from the parties who are involved in providing accommodation entries only.*

2. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in ignoring the latest decision of the Hon. Indore Bench of ITAT in the case of Agarwal Coal Corpn.(p) Ltd Vs Asst CIT 63 DTR 201.*
3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the bogus loans and the interest there on ignoring the fact that the parties from whom the assessee has obtained loan are bogus paper companies, ignoring the decisions wherein decisions in favour of Revenue existed which held that the addition made in the hands of the assessee under section 68 is sustainable, as decided recently in Hon. Delhi High court in the case of CIT VS NR Portfolio Pvt Ltd (Delhi High Court) also validates the addition made u/s 68 on bogus paper companies.*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate the fact that onus is on the assessee to explain and substantiate the genuineness and true nature of loan transactions.*
5. *The appellant prays that the order of the CIT(A) on the above ground be reversed and that of the Assessing officer be restored.*
6. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

2. The fact in brief is that return of income declaring total income of Rs.50,30,890/-. Subsequently, the case was reopened u/s 147 on the basis of information received from the DGIT(Inv), Mumbai that assessee has availed accommodation entries of loans from Bhanwarlal Jain Group. Therefore, the case of the assessee was reopened by issuing of notice u/s 148 of the Act on 23.03.2016. The A.O stated that a search and seizure action was conducted on Bhawarlal Jain and his group concerns on 03.10.2013 by the DGIT(Inv), Mumbai. During the course of search it was found that group concern of Bhawarlal Jain were engaged in providing accommodation entries in the form of unsecured loans and bogus sales bills to the interested parties.

It was noticed that assessee has received unsecured loan from the following parties during the financial year relevant to assessment year 2009-10.

Sr. No.	Name of the concern	Loan Amount
1.	Pushpak Gems	10000000
2.	Meenakshi Exports	11000000

3.	Parvati Exports	5000000
4.	A2Jewels	3000000
5.	Impex Gems	3600000
	Total	32600000

The assessee was asked to establish identity, creditworthiness and genuineness of the aforesaid transaction. In response the assessee submitted that they have paid interest on loan taken from the aforesaid concerns and TDS was deducted as per the provisions of the Act. The loan was received through account payee cheque and claim of the interest in the earlier years has been accepted by the department. The loan was taken from the above parties in normal course of business and same was received through banking channels. The assessee also claimed that the aforesaid parties have provided genuine loan to the assessee. The assessee also explained that aforesaid concern were assessed to income tax and regularly filed return of income. The assessee has also submitted that the loan confirmation letters, ITR acknowledgment of the lenders and bank statement along with audit report. The assessee has also requested the A.O to provide the copy of statement of person on whose statement the assessing officer has relied. The assessee has also submitted that opportunity of cross examination should also be provided to the assessee. However, the AO has not agreed with the submission of the assessee and stated that as per the information received from the DGIT(Inv), Mumbai Bhawarlal Jain and his group was exclusively engaged in the business of issuing non genuine purchase bills and also providing unsecured loan accommodation entries to various interested parties. The A.O further stated that it was established from the search and seizure action that the alleged concerns were of paper companies with no real business activity operated solely for providing accommodation entries in the form of loan to the interested parties. Thereafter the A.O has mentioned the detailed report of

investigation being pertaining to the search action conducted in the case of Shri Bhawarlal Jain and his group. The A.O further stated that investigation wing had carried out thorough investigation and established beyond doubt that the transaction were bogus. The A.O further stated that mere filing of evidence such as copies of bank statement showing payment through account payee cheques cannot be conclusive in a case where genuineness of transaction were in doubt. Therefore, the AO held that assessee failed to prove the identity creditworthiness and genuineness of the loan transaction, therefore, treated the amount of unsecured loan of Rs.3,26,00,000/- an unexplained cash credit u/s 68 of the Act and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has deleted the addition made by the assessing officer.

4. During the course of appellate proceedings before us the ld. D.R submitted that the ld. CIT(A) has deleted the addition after referring remand report received from the assessing officer but in the remand report it was not mentioned that transaction were genuine. She has referred different para of the assessment order. She referred 5.3 of the assessment order wherein A.O mentioned that on the basis of search conducted by the DGIT(Inv) in the case of Bhawarlal Jain and group concern it was revealed that said group was engaged in the business of issuing of non-genuine purchase bill. She has also referred different pages of paper book furnished by the assessee stating that lenders have less capital compared to the loan granted to the assessee. The ld. D.R placed reliance the following judicial pronouncements:

- “(i) *In the case of Pavankumar M. Sanghvi Vs. ITO, Ward 3(1)(2) (2017) 81 taxmann.com 308 (Ahd Trib)*
- “(ii) *The High Court of Delhi in the case of Jindal ITF Ltd. Vs, Union of India (2020) 116 taxmann.com 154 (Delhi)/*

(iii) *The High Court of Punjab & Haryana in the case of Sanjeev Kumar Vs. CIT (2017) 81 taxmann.com 96 (P & H)*”

On the other hand, the ld. Counsel referred page no. 30 of the order of CIT(A) wherein the ld. CIT(A) has placed reliance on the various judicial pronouncements:

- “(i) *The High Court of Gujarat in the case of Rohini Builders, 256 ITR 0360 (2001)*
- (ii) *The High Court of Gujarat in the case of Pratapbhai Virjibhai Patel (2014) 45 taxmann.com 151 (Gujrat)*
- (iii) *The Hon’ble Supreme Court in the case of Kishanchand Chellaram Vs. CIT (1980) 125 ITR 713.*
- (iv) *In the case of Cannon Industries Pvt. Ltd. [167 TTJ 82 (mum)]*
- (v) *In the case of H.R. Mehta Vs. ACIT [387 ITR 561 (Bombay)]*

He has also contended that the ld. CIT(A) has referred the matter to the A.O for submitting the remand report on verification of all the supporting document furnished by the assessee but A.O has not made any adverse remarks in the remand report. The ld. Counsel has referred the following judicial pronouncements:

- *“Smt. B. Jayalakshmi v. Assistant Commissioner of Income-tax, Salary Circle-II, Chennai [2018] 96 taxmann.com 486 (Madras)*
- *ACIT V. Nalgonda Dicoese Society (Hyd – Trib) ITA No.2063/Hyd/2017*
- *ITO V. Randhir Singh (SMC) (Chandigarh – Trib) ITA No.599/CHD/2017”*

The ld. Counsel further stated that in the assessee’s own case vide ITA No. 6506/Mum/2019 for the A.Y. 2010-11 the similar issue has been adjudicated in favour of the assessee.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above during the course of appellate proceedings the ld. CIT(A) called the remand report from the assessing officer to verify the correctness of the quantum of fresh loans and to verify the genuineness of the loan transactions. The A.O has sent remand report to the ld. CIT(A) on 02.05.2019. The ld. CIT(A) stated that in the remand report the AO has stated that assessee has submitted

various documents of the lenders parties i.e copy of balance sheet, ITR acknowledgment, bank statement etc. and these loans have been verified by the assessing officer. The ld. CIT(A) further stated that there was no negative remarks made by the assessing officer in respect of the fresh loans introduced by the assessee. The A.O also explained that in the case of Pushpak Gems incorrectly the opening balance of Rs. 1 crores was treated as a fresh loan during the year under consideration. The A.O also explained that in the case of A2 Jewels loan amount of Rs. 30 lacs was pertained to assessment year 2010-11 which was incorrectly shown as pertained to the year under consideration. The A.O also explained that the correct position of loan taken during the assessment year 2009-10 was Rs.2,46,00,000/- and not Rs.3,20,00,000/- as added in the assessment order. The ld. CIT(A) has also mentioned that A.O in his remand report submitted that sufficient documents were submitted which have been verified by the A.O during the remand proceedings and no adverse remarks has been made by the assessing officer in the remand report. The ld. CIT(A) further stated that A.O had solely relied upon the statement of Shri Bhawarlal Jain and had not carried out any worthwhile independent inquiry in the matter and he has ignored the documentary evidences filed by the assessee. The CIT(A) further stated that AO has not pointed out any defect in the documentary evidences submitted by the assessee during the course of assessment proceedings, therefore, the ld. CIT(A) stated that without pointing out any lacunae in the evidence submitted by the assessee the source and genuineness cannot be doubted. The relevant part of the decision of ld. CIT(A) is reproduced as under:

“5.1. I have carefully considered the facts of the case, AO's contentions and arguments and submissions filed during the appellate proceedings by the AR of the appellant. The grounds of appeal are decided as under.

5.2. Ground no. 2, 7, 8 and 9 are taken simultaneously since it pertains to same Issue of addition of unsecured loan of Rs. 3,26,00,000/- and Rs. 21,96,699/- on account of interest on the said unsecured loans.

5.3. In this case, the request for remand report was sent to the AO to verify the correctness of the quantum of fresh loans involved as well as to verify the genuineness of the loan transactions. The AO sent remand report dated 02:05 2019, the copy of which is enclosed herewith annexed to the order. The remand report sent by the AO clearly states that the appellant has submitted various documents of the lender parties. The copy of balance sheet, ITR acknowledgment, bank statements, etc and these loans have been verified by the AO. There is no negative remark made by the AO in respect of the fresh loans introduced by the Appellant. The AO in the remand report stated that the opening balance of Rs 1 crore in respect of loan taken from Pushpak Gems has been treated as a fresh loan made during the year which is not correct position. Not only this, the AO in his remand report has shown that loan from A2 Jewels Rs. 30,00,000/ is not pertaining to AY 2009-10, but pertains to AY 2010-11. Hence, the deduction of Rs 30,00,000 was required to be given being loan not pertaining to AY 2009-10. The AO in his remand report also has shown that a loan received from Navkar India Rs 50,00,000/ was fresh introduced during the year and hence was required to be added as fresh loan taken during the AY 2009-10. The AO pointed out that after making the above adjustments, the correct position of fresh loans taken during AY 2009 10 is Rs. 2,46,00,000/ and not Rs 3,26,00,000/- as added as income by the AO in his assessment order pertaining to AY 2009-10. The AO has further pointed in his remand report that the Appellant has submitted sufficient documents during remand proceedings which has been verified by him. No adverse remark has been made by the AO in the remand report.

5.4 It transpires that the AO has solely relied upon the statements of Bhanwarlal Jain and did not carry out any worthwhile independent inquiry in the matter. He has totally ignored the documentary evidences submitted by the appellant. The AO in the assessment order has admitted existence of these details in his order. The AO has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness cannot be doubted. Once evidences related to a transaction is submitted before the AO, the onus shifts on him to prove these as non-genuine or accommodation. In my opinion, merely based on the statement of a third person without any corroborative evidence will not make the transactions in question, as non-genuine or bogus transaction. As such, in the absence of any contrary evidence placed on record, the transaction cannot be treated as bogus or paper transaction.

5.5 As far as the question of validity of the transaction, even if some of the transactions entered into by the above parties are found to be not genuine, it does not lead to the conclusion that all the transactions entered into by these parties were bogus or non-genuine transactions. There is no evidence brought in the assessment order to prove the above conclusion, by the AO. The reassessment proceedings were wide open and the AO could have carried out independent investigation to prove his argument regarding the bogus or non-genuine transactions. No such investigation has been carried out by the AO. The outcome of investigation carried out in the case of Bhanwarlal Jain, the

conclusions drawn therein cannot be applied ipso facto to all other cases who have dealt in the transactions during that period. Simply relying on the report of the inv. Wing, Mumbai and statement the AO cannot conclude that all transactions are bogus or have no credential value.

5.6 In view of the facts and circumstances mentioned above, in my opinion, the appellant has submitted sufficient evidences during the assessment before the A.O. The assessment was reopened on the basis of Investigation report that appellant has taken accommodation entry of loan from Bhanwarlal Jain Group and solely relied upon the statements of Bharawarlal Jain. The A.O. did not carry out any worthwhile independent inquiry in the matter. He has totally ignored the documentary evidences submitted by the appellant Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness cannot be doubted. Moreover, it is well settled in law that the assessee has to fulfill three basic criteria as listed below so as to establish the nature and source of receipt of funds and the same has been duly complied with during the course of re-assessment proceedings.

1. *Proof of identity of creditor:* The identity has been already proved and submitted vide letter dated 06.12.2016.

2. *Capacity of creditor to lend money i.e., creditworthiness of lender:* In order to prove the creditworthiness of Pushpak Gems, Meenakshi Exports, Parvati Exports, Navkar India, A2 Jewels and Impex Gems, Income Tax Return Acknowledgment, audited financial statements and bank statements were submitted by the Appellant during the course of re assessment proceedings and remand proceedings All the above lenders have huge turnover and hence, they have the capacity to give the aforesaid loans to the Appellant.

3. **Genuineness of transaction:** Since the loan transactions were carried out via account payee cheque, interest was timely charged and paid, and there were no traces of cash in the bank statements, the unsecured loan is a genuine loan and not a bogus loan. The aforesaid loans were adequately recorded in the audited books of accounts of the Appellant as well as the lender (i.e. Pushpak Gems, Meenakshi Exports, Parvati Exports and Impex Gems) Moreover, interest was charged and paid @ 9% on the loan every year, and appropriate taxes were deducted as per the provisions of the Act. Also, the loans were fully repaid vide account payee cheques as mentioned in Para (b) on page no 5 of assessee's submission.

Hence, the Appellant has discharged its onus cast upon it by filing all the necessary details as called for by the AO to corroborate the transactions of borrowing the money and thereby satisfied all the three main ingredients i.e creditworthiness of the creditors, genuineness of the transactions and identity of the creditors by filing all the details as discussed above which proved that the identity of the creditors, genuineness of the transactions and creditworthiness of the creditors have been established by the Appellant

5.7. In view of the above, the decision of the AO treating the same as bogus or non-genuine transactions is not in order and cannot be justified The AO is accordingly directed to delete the addition of **Rs.3,26,00,00/- and Rs. 21,96,699/-.**"

We have further noticed that during the course of assessment as per para 10 of the assessment order the assessee has requested the assessing officer to provide the copies of relevant documents and statements of Shri Bhanwarlal Jain and also requested to provide an opportunity of cross examination of Shri Bhanwarlal Jain and others, however, the same were not provided to the assessee. The sole basis of the A.O to make addition was the statement of Shri Bhanwarlal Jain which have been retracted by him by filing the affidavits from the Income Tax authorities. The assessee has claimed that identity of the creditors has been established on the basis of PAN Card return of income, account confirmation, genuineness of the transaction has 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 parties. However, the AO have not controverted these material facts with any relevant evidences. We have further noticed that in assessee's own case for assessment year 2010-11 vide ITA No. 6506/Mum/2019 on similar fact and identical issue the appeal of the revenue was dismissed. The relevant part of the decision of ITAT is reproduced as under:

"3. We have heard rival submissions and perused the materials available on record. We find that the ld. AO had made an addition of Rs.3,31,00,000/- towards loans u/s.68 of the Act and made disallowance of interest of Rs.24,57,937/- in the assessment. During the course of first appellate proceedings, a remand report was called for by the ld. CIT(A). In the said remand report, the ld. AO himself had categorically stated that fresh loans received during the year under consideration was only Rs.30,00,000/- and the remaining sums represent only opening balance which was also added u/s.68 of the Act. The ld. AR in support of this proposition drew our attention to pages 34-41 of the order of the ld. CIT(A) wherein the entire remand report is reproduced by the ld. CIT(A). We hold that no addition could be made in respect of opening balance of loans u/s.68 of the Act. The ld. CIT(A) had granted relief to the assessee based on the remand report of the ld. AO by categorically stating that assessee had proved all the three necessary ingredients of Section 68 of the Act, viz., identity of loan creditors, genuineness of the transactions and creditworthiness of the loan creditors in respect of loans received during the year under consideration. Accordingly, the ld. CIT(A) had deleted the entire

addition made u/s.68 of the Act and correspondingly deleted the disallowance of interest paid on such loans. Since, the ld. AO in his remand report had categorically admitted the fact that fresh loans received during the year was only Rs.30,00,000/-, the Revenue ought not to have challenged the addition made u/s.68 of the Act in respect of opening balance of loans. Reliance in this regard is placed on the decision of Hon'ble Madras High Court in the case of B Jayalakshmi vs ACIT reported in 258 Taxman 318 (Mad), wherein it was held that where the Commissioner (Appeals) on the basis of remand report of Assessing Officer allowed the claim of the assessee, revenue was not entitled to maintain an appeal before the Tribunal against said order of Commissioner (Appeals). The ld. AR before us argued that if the remand report of the ld. AO is considered, then the tax effect of the amounts disputed by the Revenue before this Tribunal would fall within the monetary limit prescribed by CBDT for filing of appeal by the Revenue before this Tribunal. We have gone through the said pages 34-41 of the order of the ld. CIT(A) and are convinced that if the remand report is considered then the appeal filed by the Revenue squarely falls on the ground of low tax effect. Accordingly, the appeal of the Revenue would be liable to be dismissed on the ground of low tax effect itself as not maintainable. Apart from this, we also find that assessee had duly proved the three necessary ingredients of Section 68 of the Act in respect of loans received during the year. The ld. CIT(A) had also granted relief to the assessee on merits and categorically held that no addition u/s.68 of the Act could survive in the instant case. This finding of the ld. CIT(A) had not been controverted by the Revenue before us. Hence, even on merits, we do not find any infirmity in the order of the ld. CIT(A) granting relief to the assessee. Hence, appeal of the Revenue is dismissed."

We further consider that judicial pronouncements referred by the ld. D.R para materia is different from the fact of the case of the assessee as in the case of Sanjeev Kumar Vs. CIT (2017) 81 taxmann.com 96 (P & H), the assessee had failed to produce any documentary evidences. We noticed that in the case of Sanjeev Kumar Vs. CIT (P & H) the facts are different from the case of the assessee. The assessee has failed to furnish any evidence regarding source of deposit of the amount and no submission were made before the CIT(A). Similarly, in the case of Jindal ITF Ltd. Vs, Union of India (2020) 116 taxmann.com 154 (Delhi), wherein the identity of the loan depositor capacity of creditors to advance loan and genuineness of the loan transaction were in dispute the AO had carried out any independent investigation and verification to disprove the relevant material produced by the assessee. Similarly, the fact Pavankumar M. Sanghvi Vs. ITO, Ward 3(1)(2) (2017) 81 taxmann.com 308 (Ahd Trib) mentioned by the ld. D.R pertained to

different facts as in that case the A.O has made detailed verification and the assessee was not able to produce lender for verification whereas in the case of the assessee, the AO has not carried out any such verification, in spite of the fact that Id. CIT(A) has called Remand Report from the A.O to verify the genuineness of the loan transactions and the Id. CIT(A) has reproduced the remand report furnished by the A.O at para 4 of his order and held at para 5.3 of his order as reproduced supra at page 7 of this order that A.O in the remand report reported that the assessee has submitted sufficient documents during remand proceedings which has been verified by him and no adverse remarks have been made by the A.O in the remand report. Therefore, after taking into consideration the facts and finding along with supporting material as discussed above we don't find any error in the order of the CIT(A). Accordingly, we don't find any merit in the ground of appeal of the revenue, therefore, the appeal of the revenue stand dismissed.

ITA No. 6508/Mum/2019

6. As the facts and issues involved in this appeal is same in ITA No. 6505/Mum/2019 as supra, therefore, applying the same findings mutatis mutandis this appeal of the revenue is also dismissed.

7. In the result, the appeals of the revenue stand dismissed.

Order pronounced in the open court on 31.03.2023

Sd/-
(Aby T Varkey)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 31.03.2023

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,
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Mumbai.