

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 270/Srt/2022 (Assessment Year 2011-12)
(Physical hearing)

Shri Ram Texolene Private Limited, B-704, President Plaza, Ring Road, Surat-395007 (Gujarat). PAN No. AADCS 3881 K	Vs.	I.T.O., Ward-2(1)(2), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Richa Tosniwal, AR
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	21/04/2023
Date of pronouncement	28/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 18/07/2022 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A) NFAC was not justified in dismissing the order without considering the facts of the case defying natural justice to the appellant.
2. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A) NFAC has erred in confirming the action of the ITO in reopening the assessment u/s 147 of the Act and issuing notice u/s 148 of the I.T. Act, 1961.
3. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A) NFAC has erred in upholding the addition of Rs. 9,50,000/- on account of unsecured loan taken treating such loan as unexplained income u/s 68 of the I.t. Act, 1961 without acknowledging the submission of the assessee.

4. *On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A) has erred in confirming action of Assessing Officer in making addition of Rs. 19,00/- on account of commission paid.*
5. *It is therefore prayed that addition made by the Assessing Officer and confirmed by CIT(A) may please be deleted.*
6. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that she is not pressing ground No. 1 and 2 of the appeal which relates to violation of natural justice and validity of reopening. Considering the submission of Id. AR of the assessee, the grounds No. 1 and 2 of the appeal are dismissed as not pressed.

3. Now advertent to the facts leading to main addition in the assessment order. Briefly stated facts of the case are that the case of assessee was reopened on the basis of information that a search operation was carried out on entry provider at Kolkata namely Shri Anand Kumar Sharma. His statement was recorded, who disclosed about managing of various entities for providing accommodation entry. The assessee is one of the beneficiary of such accommodation entry from the list of beneficiary from various entity managed by Anand Kumar. It was found that the assessee has received an amount of Rs. 9.50 lacs from Vandana Supplies Pvt. Ltd. managed by Shri Anand Kumar Sharma. The Assessing Officer after recording reasons that serving notice under Section 148 of the Income Tax Act, 1961 (In short, the Act) proceeded for assessment.

4. During the assessment, the Assessing Officer issued show cause notice and the assessee was asked to produce the Director of lender company who has given loan. The assessee was also asked to prove the identity, creditworthiness and genuineness of transaction by filing reply by 07/12/2018. The assessee filed reply dated 10/12/2018. The reply of assessee is scanned by the Assessing Officer on page No. 7 to 10 of the assessment order. In the reply, the assessee submitted that neither Anand Kumar Sharma is Director nor an authorised representative of the creditor and they may be allowed cross examination of such person. The assessee submitted that Assessing Officer is relying upon third party information without providing relevant material to him. The assessee furnished copy of PAN card, balance sheet and income tax return alongwith copy of bank statement and submitted that to prove the identity, provided PAN card, for genuineness of transaction the assessee submitted the transaction was through banking channel and the lender is regularly filing return of income and having creditworthiness. The assessee also relied on various case laws. The assessee specifically stated that the lender company has turnover of Rs. 16.31 crores which cannot be treated as a paper company. Shri Anand Kumar Sharma is nowhere stated that he has given unsecured loan to the assessee. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer after referring the report of Investigation Wing, Kolkata held that the assessee failed to prove that Investor Company is not an

entry provider and their creditworthiness. The Assessing Officer made addition of Rs. 9.50 lacs under Section 68 of the Act. The Assessing Officer also made addition of commission @ 2% of transaction value thereby added Rs. 19,000/- as unexplained expenditure.

5. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee made similar submission as made before the Assessing Officer. The submissions of assessee is recorded in para 5 of order of Id. CIT(A). The assessee in sum and substance submitted that the transaction of loan is genuine and that they have discharged their primary onus. The assessee submitted that the loan taken by the assessee was paid in subsequent year and no adverse view was taken in assessment for subsequent year. The assessee also filed copy of his bank statement showing repayment. To support their submission, the assessee relied on the decision of Hon'ble Jurisdictional High Court in CIT Vs. Ayachi Chandrashekhar Narsangji 42 taxmann.com 251, ITO Vs Shyam Sunder Jajodia (2008) 26 SOT 541 (Delhi) and CIT Vs M.K. Brothers 30 Taxman 547 (Guj). On the addition of unexplained expenditure on account of commission, the assessee explained that there is no evidence that the assessee obtained loan after giving commission. Even otherwise, the loan is genuine. The assessee also stated that the entire addition is based on investigation report without any independent analysis of material kept available on record.

6. The Id. CIT(A) after considering the submission of assessee, confirmed the addition under Section 68 of the Act by holding that the assessee failed to discharge burden of prove on assessee, on the other hand, the Assessing Officer has proved that the claim of assessee is incorrect. The investigation carried out by the department which is thoroughly analysed by the Assessing Officer and support his case. The assessee introduced bogus claim in its books of account by routing unaccounted income through tax evasion scheme. The evidence of the transaction itself found to be served as smoke screen to cover up the true nature of transaction. The assessee arranged transaction to introduce unaccounted income through entry provider and upheld the addition of Section 68 as well as 69C of the Act. Further aggrieved, the assessee has filed present appeal before this Tribunal.
7. I have heard the submissions of Id. AR of the assessee and the Id. Sr. DR for the revenue. The Id. AR of the assessee submits that the addition is based on third party information. The Assessing Officer has not made any independent investigation of fact. The assessee during the assessment, asked for the material on which the Assessing Officer relied and for cross examination of the person who was allegedly searched by investigation team of department and the basis on which the case of assessee was reopened and ultimately addition was made. The assessee during the assessment, furnished complete details of lender including their name, PAN, account confirmation, contra confirmation and bank

statement showing the loan received and loan paid. The assessee also furnished certificate issued by Ministry of Corporate Affairs wherein name of lender company was changed. The assessee also furnished the assessment order of lender company for A.Y. 2011-12 to 2018-19. The lender was having sufficient and surplus money for lending. The Id. AR of the assessee submits that unsecured loan was paid in A.Y. 2013-14 and no adverse view against repayment of loan by department in subsequent year. Once repayment of loan is accepted, no addition on account of unsecured loan can be sustained as has been held by the Hon'ble Jurisdictional High Court in CIT Vs. Ayachi Chandrashekhar Narsangji (supra). The Id. AR further submits that once the assessee discharged his onus by furnishing complete details like identity, creditworthiness and genuineness of transaction, the burden shifts on the revenue to make further investigation. No such exercise was made by Assessing Officer or by the Id. CIT(A). To support such submission, the Id. AR of the assessee relied upon the decision of Hon'ble Jurisdictional High Court in CIT Vs Ranchhod Jivabhai Nakhava 21 taxmann.com 159 (Guj).

8. On the addition of unexplained expenditure i.e. alleged commission of Rs. 19,000/-, the Id. AR of the assessee submits that there is no evidence on record that the assessee has made any commission rather the assessee has fully discharged his onus and proved that the loan was genuine which was paid and repaid through banking channel and has

been accepted by not taking any adverse view in A.Y. 2013-14. The Id. AR of the assessee submits that neither the addition under Section 68 of Rs. 9.50 lacs nor the addition on account of alleged commission payment is sustainable. The Id. AR of the assessee prayed to delete those additions.

9. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR for the revenue submits that the Assessing Officer in the assessment order has brought sufficient evidence on record that the lender company was managed by Anand Kumar Sharma. The lender company was managed by Anand Kumar Sharma who himself admitted in the statement recorded by the Investigation Wing under Section 134 of the Act. The Id. Sr. DR submits that the transaction through banking channel is always not sacrosanct. The Id. Sr. DR prayed for upholding both the additions.

10. I have considered the submissions of both the parties and perused the material on record. I have also perused the orders of the lower authorities carefully. I find that during the assessment the assessee furnished the name, address and PAN of lender, the assessee also filed copy of ITR of lender company. The assessee also furnished the bank statement of the lender and his bank statement. No comment was made by the assessing officer on such evidence. The assessee also sought the material on the basis of which the case of assessee was reopened and the material on the assessing officer was relying. No such material was

provided to the assessee. The assessing officer solely rely on the report of investigation wing without sharing copy of it to the assessee. I also find that no independent investigation of facts was carried out by the assessing officer. Before me, the Id. AR of the assessee vehemently submitted that impugned loan was repaid in A.Y. 2012-13 through banking channel. The bank statement showing repayment is also placed on record. I have verified that impugned loan was repaid on 29/03/2013. I also noted that no adverse view was taken by the department against repayment of loan, thus it was accepted. Hon'ble Jurisdictional High Court in CIT Vs. Ayachi Chandrashekhar Narsanghji (supra) held that where department has accepted repayment of loan in subsequent year no addition was to be made in the current year on account of cash credit. I further noted that during the assessment, the assessee furnished complete detail of loan transaction by furnishing, name, address, PAN, account confirmation, contra confirmation and bank statement, thus primarily discharged its onus. The Hon'ble Gujarat High Court in CIT Vs Ranchhod Jhivabhai Nakhava (supra) also held that where lender of assessee are income tax assessee, whose PAN have been disclosed, the Assessing Officer cannot ask assessee to further prove genuineness of transaction without first verifying such fact from income tax return of lender. It is the duty of Assessing Officer to ascertain from Assessing Officer of those lender, whether in their respective return, they have shown existence of such amount of money and have further shown that

amount of money had been lent to the assessee. I find that no such exercise was carried out by the Assessing Officer. Further, the Hon'ble Jurisdictional High Court in case of CIT Vs Rohini Builders 256 ITR 360 (Guj) also held that when assessee proved identity by giving complete addresses, GIR numbers/PAN as well as confirmation alongwith copies of assessment order wherever available and discharged his onus, no addition to be sustained. I further find that loan was received and was repaid through banking channel and there is no allegation that any cash was deposited before issuing cheque to the assessee, in the account of lender. I also find that lender has sufficiently owned money in the form of reserve and surplus of Rs. 11.94 crores. In view of aforesaid factual and legal discussion, I direct the Assessing Officer to delete the addition of unsecured loan of Rs. 9.50 lacs.

11. Considering the fact that, I have deleted the addition of Rs. 9.50 lacs, therefore, the addition of alleged commission paid made under Section 69C of Rs. 19,000/- is also deleted.

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

Order announced in open court on 28th April 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/04/2023
**Ranjan*

Copy to:

1. Assessee
2. Revenue / assessing officer
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat