

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)**

**ITA No. 864/MUM/2022**  
**Assessment Year: 2017-18**

Dy. CIT CC 1(1),  
9<sup>th</sup> flr., 903, Pratishta Bhavan,  
Old CGO Bldg. (Anneexe),  
M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** M/s Manan Trading  
Company Pvt. Ltd.,  
325 Amrut Diamond House,  
Tata Road No. 1, Opera  
House,  
Mumbai-400 004.  
**PAN No. AADCM 5896 J**  
**Respondent**

**Assessee by** : Mr. Mani Jain/  
Mr. Prateek Jain, AR  
**Revenue by** : Ms. Richa Gulati, DR

Date of Hearing : 20/04/2023  
Date of pronouncement : 26/04/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the Revenue is directed against order dated 23.02.2022 passed by the Ld. Commissioner of Income-tax (Appeals)-47, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2017-18, raising following grounds:

1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the estimated income @ 1% of the total turnover without*



*appreciating the fact that the books of accounts so produced during the course of assessment proceeding were rejected elaborating the facts of rejection of the same and correct estimation of income relying on the decision of the Hon'ble ITAT in the assessee own case for Assessment Year 2011-12"*

2. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in allowing the appeal filed by the assessee and deleting the addition of Rs.4,98,00,000/- being the addition made us 68 of the I.T. Act 1961\* though the identity, creditworthiness of the parties from whom the share application money was received and genuineness of the said transaction were not proved"*
3. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the contents in the remand report of the AO and allowed the appeal of the assessee without considering the remand report of the AO.*

2. Briefly stated, facts of the case are that the assessee filed its return of income electronically on 30.10.2017 declaring loss of Rs.10,26,279/-. As per the return of income, the assessee claimed to have engaged in trading of diamond. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. In the scrutiny proceedings, the Assessing Officer rejected the claim of diamond trading and held the assessee as engaged in providing of accommodation entry and made addition of Rs.20,92,631/- as net profit earned @ 1% on business turnover/sales of Rs.20,92,63,170/-. The Assessing Officer also made addition u/s 68 of the Act in respect of creditor namely M/s Jayant Oil Products Ltd. amounting to Rs.4,98,00,000/-.



3. On further appeal, the Ld. CIT(A) allowed relief to the assessee on both the issues.

4. Aggrieved, the Revenue is in appeal before the Tribunal raising grounds as reproduced above.

5. Before us, the Ld. Departmental Representative (DR) has filed a Paper book containing pages 1 to 52 alongwith copy of statement of sh Vinayk Gopal More dated 27.11.2019 as additional evidences.

6. The ground No. 1 of the appeal relates to deletion of the estimated income @ 1% of the total turnover made by the Assessing Officer. The facts qua the issue in dispute are that the assessee claimed to have engaged in the business of trading of diamonds whereas, according to the Assessing Officer, the assessee was only an accommodation entry provider and following his predecessor in assessment year 2011-12, he estimated the net profit @ 1% on the business of providing accommodation entries. The Ld. CIT(A) however, deleted the addition following the finding the Tribunal in the case of the assessee for assessment year 2008-09, where the Tribunal deleted the estimated rate of profit of 0.50% restricted by the Ld. CIT(A) as against the net profit rate of 1% estimated by the Assessing Officer. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“5.3 I have carefully considered the submission of the appellant in the light of facts on record and the decisions of the Hon'ble ITAT, in the appellant's own casefor AY*



2008-09 and that of Ld. CIT(A) for AY 2011-12. From the assessment order it is found that the AO has followed the decision of AY 2011-12, while making the impugned disallowance of Rs. 44,60,433/-. No new fact has been brought on record. In all these years, commission income of 1% has been worked out with respect to alleged bogus purchases from entities connected to Praveen Jain group. The Hon'ble ITAT, vide order dated 11.09.2014, in ITA no. 5956, 6036/Mum/2011 for AY 2008-09 has allowed the appeal of the appellant by deleted the commission income of 1% estimated by the AO and restricted to 0.5% by the CIT(A).

5.4 It is further observed that the Ld. CIT(A), while deciding the appeal for AY 2011-12, has deleted the commission income @ 1% by following the decision of the Hon'ble ITAT for AY 2008-09, in the following words-

"5.1 In Grounds no. 1, 2 & 3, the appellant has averred that the AO has erred In holding that the appellant was engaged in providing accommodation entries and In rejecting the books of account and estimating Income @1%. In the impugned order the AO noted that Shri Ashok Mahawar and Shri Dilkhush Babel were two main executive directors of the appellant company. The AO further noted that Shri Ashok Mahawar in his statement recorded on 31.03.2008 admitted that he and Shri Babel were mere office assistants working for Shri. Jitendra Jain, who had made them dummy directors of the company. The AO noted that search action was carried out by the Department in the case of Shri Praveen Jain and Shri Jitendra Jain receipt of information from the Sales Tax Department that these persons were engaged in bogus billing. The AQ observed that this fact had been admitted to in the statement of Shri Praveen Jain as well. The AO also observed that enquiry letters sent to the purchase parties of the appellant company had returned unserved and that subsequently, the confirmations filed by the appellant contained the unique and suspicious feature that in all accounts the appellant's balance was shown as Nil. The AO



further observed that other than stated imports of diamonds worth Rs.2,41,28,948/- the appellant did not produce any supporting documents like purchase orders, invoices, payment details, bank statements etc. and that if the import purchases were excluded, the remaining purchases and sales of the appellant were almost equal in value. The AO noted that no proof of merchandise allegedly bought and sold by the appellant was furnished. The AO further noted that books of accounts were also not produced by the appellant during assessment proceedings. In light of these facts, following the assessments made in preceding years, the AO held that the Audit Report in the case of the appellant could not be taken as satisfactory. The AO then observed that commission rates in the trade ranged between 0.5% and 1.5% and proceeded to reject the books of account of the appellant before estimating commission income @ 1%.

5.1.1 In appeal It has been submitted that the AO has followed the assessments in earlier years in rejecting the books of accounts and estimating commission income @1%. Copy of order of the ITAT in the appellant's own case for AY 2008-09 (TTA 5956 and 6036/M/11 dated 11.09.2014) wherein such rejection of books of account and estimation of Income was deleted, has been furnished. Accordingly it has been argued that as there is no distinguishing feature, following the order of the ITAT, the addition made by the AO should be deleted.

5.1.2 On perusal of the order of the Hon'ble Tribunal cited supra it is seen that the ITAT has held as under:

"5... We have considered the rival contentions and carefully gone through the orders of authorities below and found from record that similar issue was dealt with by the Tribunal in a number of decisions cited hereinabove, copy of which are also placed on record wherein addition sustained has been deleted



by the Tribunal. The observations of the Tribunal in the case of *M/ Riddhi Siddhi Multirate P. Ltd.* (supra) was as under:

*"We observe that id CIT(A) has himself stated in para 9 that AC has estimated the income without reference to any cogent material and the estimation was made on the basis of statement of Shri Pravin Kumar Jain and as far as assessee is concerned, no such statement was ever made by anyone on its behalf. Ld CIT(A) stated that in the impugned order that it is seen from the record that no specific defect was pointed out by the AO in the books of account. Further, we observe that id CIT(A) has sustained the addition 0.5% of the total turnover by rejecting books of account merely on the ground that the income shown by the assessee is meager. Ld CIT(A) has not brought on record any defects in the books of account of the assessee. Ld. CIT(A) has also not brought on record anything that assessee was engaged in the business of providing accommodation entries. In view of above, we hold that above addition sustained by Id. CIT(A) by rejecting books results of the assessee is not based on cogent material and accordingly, same is deleted. Hence, grounds of appeal taken by assessee is allowed."*

*6. We find that the facts and circumstances of the case during the year under consideration are para material, therefore, respectfully following the decision of the Tribunal in other group cases, we delete the addition sustained by estimating the income at % of the turnover. We direct accordingly." Thus respectfully following the above decision of the Tribunal the addition on account of estimated income is deleted and Grounds 1, 2, and 3 raised in appeal are allowed."*

*5.5 It is also observed that Hon'ble Tribunal has also confirmed the above observation of the Ld. CIT(A) in its order passed for the relevant year. Since facts remain the same, I donot have any reason to differ with the decision*



*taken by Ld. CIT(A) in AY 2011-12, which is confirmed by the Hon'ble ITAT. Hence, the impugned addition of Rs. 20,92,631/- is deleted. The AO is directed accordingly. The ground of appeal no. 1 and 2 are allowed.”*

7. Before us, the Ld. Departmental Representative (DR) submitted that there is a change in facts as compared to the assessment year 2008-09. She submitted that Mr. Vinayk Gopal More, director of the assessee company in the statement recorded u/s 131 of the Act on 27.11.2019 himself has admitted that assessee was engaged in providing accommodation entry and no business of 'diamond trading' was carried out in the year under consideration. The Ld. DR accordingly submitted a copy of the statement recorded u/s 131 of the Act and submitted that may be admitted as additional evidence.

8. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. We find that the Ld. CIT(A) has followed the finding of the Tribunal in assessee's own case for assessment year 2008-09, wherein it is held that allegation of providing accommodation entries is not correct and deleted the addition made by the Assessing Officer/sustained by the Ld. CIT(A). However, before us the Ld. DR has filed anew fact/additional fact, according to which the assessee director of the assessee company itself has admitted that assessee company was engaged in providing accommodation entry in his statement dated 27.11.2019 recorded u/s 131 of the Act. The Ld DR has requested



that the issue need to be reexamined in the light of the additional evidence filed. Before us the Ld Counsel of the assessee submitted that statement of Sh Vinayak Gopal More was recorded on 26/11/2019 and therefore same pertained to AY 20-21 and not relevant for year under consideration. Further, the ld Counsel submitted that without prejudice, the addition for 1% net profit on business turnover has been estimated in addition to the gross profit declared by the assessee in books of account. He submitted that Assessing Officer cannot blow hot and cold simultaneously and assess the gross profit declared on diamond trading and add the profit @ 1 % assuming that business activity of the assessee was of providing accommodation entries. We concur with the submission of the Ld Counsel as both gross profit returned on account of diamond trading as well as estimation of profit assuming that assessee was engaged in providing accommodation entries can't be made simultaneously. The Assessing officer has to take a firm stand in his finding, and keep income from one business either of diamond trading or accommodation entry, as income of assessee. Accordingly, we set aside the finding of the ld CIT(A) on the issue in dispute and restore the matter back to the file of the Assessing officer for deciding to assess income from one business either diamond trading or accommodation entry and if the gross profit declared on diamond trading is more than the profit estimated on accommodation entry, then there is no requirement of making separate addition in respect of income from accommodation entry.



The ground No. 1 of the appeal of the Revenue is accordingly allowed for statistical purposes.

9. The ground No. 2 of the appeal relates to deletion of addition of Rs.4,98,00,000/- which was made by the Assessing Officer u/s 68 of the Act. The facts qua the issue in dispute are that from financial statement of the assessee, the Assessing Officer observed unsecured loan of Rs.4,98,00,000/- received from M/s Jayant Oil Products Ltd. and therefore asked the assessee to file necessary documentary evidence in support of identity, creditworthiness and genuineness of the transaction. The Ld. Assessing Officer observed that the assessee failed to submitted the details called for except submission of the assessee that said loan was advance for sale of shares and as the sale of the shares did not happen the money was returned back. The Ld. Assessing Officer accordingly rejected the contention of the assessee and made the addition of Rs.4,98,00,000/-.

10. On further appeal before the Ld. CIT(A), the assessee submitted that it has already filed all the documents before the Assessing Officer for discharging its onus u/s 68 of the Act. It was also submitted before the ld CIT(A) that the Assessing Officer also carried out inquiry u/s 133(6) of the Act and the concerned party has also filed documentary evidence in response to notice u/s 133(6) of the Act issued by the Assessing Officer. The Ld. Authorised representative of the assessee before the ld CIT(A)



submitted that the Ld. Assessing Officer ignored those documentary evidences while adjudicating the issue. The Ld. CIT(A) issued a letter to the Assessing Officer for confirming the above facts of the assessee, however the Ld. CIT(A) noted that in view of no reply or comment from the Assessing Officer, he decided the issue on merit. The relevant observations of the Ld. CIT(A) are as under:

*“6.7 It is observed that the assessment order is completely silent about various details submitted by the appellant as well as received by the AO u/s 133(6) from M/s. Jayant Oil Products Ltd., as claimed above. Accordingly, a letter is issued to the AO on 09.02.2022, requesting him to examine the assessment records about various details received during the assessment proceedings as claimed by the appellant. Appellant's submissions produced before the undersigned were also forwarded for verification of the AO. In spite of necessary follow up by this office, no reply or comment is received from the AO. Hence, I donot have any option but to decide the present appeal based on merit and documents submitted during the appellate proceedings.*

*6.8 I find that during the assessment proceedings, the appellant company has submitted before the AO, various documents in support of it's claim made above i.e., share sale agreement, board resolution, ledger confirmation, bank statement evidencing receipts, etc. It was also clarified that the said receipts are not in unsecured loans but were in-fact advances in lieu of sale of shares. These documents establish the genuineness of the transaction entered into by the appellant with M/s. Jayant Oil Products Ltd. Furthermore, the said transaction was independently confirmed by the said party in response to the notice issued us 133(6) by ld. AO during the course of assessment proceedings. There is no substance in the observation of the AO that PAN details were not submitted by the appellant, which was very much available in the reply received in response to notice issued u/s 133(6) to M/s. Jayant Oil Products Ltd.*



*6.9 In my considered opinion, there is no reason for the AO not to consider these evidences during the assessment proceedings. The appellant has also claimed that these details were duly submitted at least 10 days before the date of passing of the assessment order. The documents submitted by the appellant as well as concerned M/s. Jayant Oil Products Ltd. clearly establish the identity, credit worthiness and genuineness of the party. No doubt has been raised on the veracity of the said transaction. Even the AO has failed to avail the opportunity granted by the undersigned to pin point any discrepancy in the submission made by the appellant during appellate proceedings. Considering the totality of the facts and circumstances of the issue involved, the addition of Rs. 4,98,00,000/- deserved to be deleted. Thus, the ground of appeal no. 3 is allowed.”*

11. Before us, the Ld. DR referred to the Paper Book and submitted that the Ld. CIT(A) has provided only a period of seven days for responding to the letter issued by him. She referred to the letter of the Assessing Officer seeking further time for filing remand report , which is available on page 13 to 14 of the Paper Book. She submitted that the assessee did not respond to the letter issued by the Assessing Officer in the year under consideration during remand proceedings and therefore, the Assessing Officer could not submit response within the stipulated time of seven days. She submitted that the Ld. CIT(A) is not correct in observing that no reply or comment sent by the Assessing Officer whereas she referred to the remand report filed by the Assessing Officer on 08.03.2022 [which is after the date of the passing of the impugned order by the Ld. CIT(A)]. Accordingly, she submitted that the finding of the Ld. CIT(A) on the issue in dispute might be set aside and



matter may be restored back to the file of the Ld. Assessing Officer for deciding afresh in the light of the evidences furnished by the assessee and inquiries carried out in the remand proceedings.

12. On the other hand, the ld. Counsel of the assessee submitted that no additional evidences were filed by the assessee before the Ld. CIT(A) and therefore there is no violation of the principle of natural justice or rule 46A of income tax rules, 1962. He submitted that the assessing officer suppressed the facts in his order and omitted to refer the documents filed by the assessee and the response filed by the loan party to the notice u/s 133(6) of the Act. Hence, the objection of the ld. DR might be rejected and the Ld. CIT(A) has already decided the issue on merit after considering documentary evidence filed by the assessee in support of claim of advance received from M/s Jayant Oil Products Ltd. for sale of the shares by the assessee.

13. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the Ld. CIT(A) had sent the letter to the Assessing Officer for verification whether the documents for discharging its onus under section 68 were filed by the assessee and the loan party had also filed documents in response to notice u/s 133(6) of the Act. The Assessing officer in the remand report filed has not disputed this fact. In such circumstances, the documents in question filed by the assessee before ld CIT(A) and forwarded by the ld CIT(A) to the



Assessing officer are not in the nature of additional evidence under Rule 46A of income-tax Rules. 1962 and therefore there is no violation on the part of the Id CIT(A) as far as rule 46A of the Income-tax Rules is concerned. The Ld. CIT(A) proceeded and decided the issue on merit after taking into consideration of documents filed by the assessee in support of identity, creditworthiness and genuineness of transaction and also taking into consideration the response of notice u/s 133(6) of the Act by the said unsecured loan party. The relevant finding of Id CIT(A) on the issue in dispute is reproduced as under:

*“6.8 I find that during the assessment proceedings, the appellant company has submitted before the AO, various documents in support of its claim made above i.e., share sale agreement, board resolution, ledger confirmation, bank statement evidencing receipts, etc. It was also clarified that the said receipts are not in unsecured loans but were in-fact advances in lieu of sale of shares. These documents establish the genuineness of the transaction entered into by the appellant with M/s. Jayant Oil Products Ltd. Furthermore, the said transaction was independently confirmed by the said party in response to the notice issued u/s 133(6) by Id. AO during the course of assessment proceedings. There is no substance in the observation of the AO that PAN details were not submitted by the appellant, which was very much available in the reply received in response to notice issued u/s 133(6) to M/s. Jayant Oil Products Ltd.*

*6.9 In my considered opinion, there is no reason for the AO not to consider these evidences during the assessment proceedings. The appellant has also claimed that these details were duly submitted at least 10 days before the date of passing of the assessment order. The documents submitted by the appellant as well as concerned M/s. Jayant Oil Products Ltd. clearly establish the identity,*



*credit worthiness and genuineness of the party. No doubt has been raised on the veracity of the said transaction. Even the AO has failed to avail the opportunity granted by the undersigned to pin point any discrepancy in the submission made by the appellant during appellate proceedings. Considering the totality of the facts and circumstances of the issue involved, the addition of Rs. 4,98,00,000/- deserved to be deleted. Thus, the ground of appeal no. 3 is allowed.”*

13.1 The finding of Id CIT(A) on the issue-in-dispute is well reasoned. In our opinion, there is no error in the finding of the Id CIT(A) on the issue in dispute and accordingly, we uphold the same.

14. In the result, the appeal of the Revenue is allowed partly for statistical purposes.

**Order pronounced in the open Court on 26/04/2023.**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 26/04/2023  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**