

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 470/MUM/2023**  
**Assessment Year: 2014-15**

Dy. CIT-2(3)(1),  
R.No. 552, Aayakar  
Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant**

M/s Systematix Holding  
Pvt. Ltd,  
**Vs.** 2<sup>nd</sup> floor, J K Somani Bldg.  
British Hotel Lane, Fort,  
Mumbai-400 001.  
**PAN No. AAICS 4642 M**  
**Respondent**

**Assessee by** : Mr. Gaurav Kabra  
**Revenue by** : Dr. Koshor Dule, CIT-DR

Date of Hearing : 04/05/2023  
Date of pronouncement : 22/05/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the Revenue is directed against order dated 29.08.2022 passed by the Ld. Commissioner of Income-tax – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2014-15, raising following grounds:

- 1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in holding that the addition of Rs.21,92,50,000/- u/s 68 of the Act is not*



- sustainable ignoring the fact that the assessee has not been able to justify the creditworthiness of the lenders.*
2. *The Ld. CIT(A)'s order is contrary in law and on the facts and deserves to be set aside.*

2. At the outset, on perusal of the record, it is seen that this appeal has been filed with delay of 111 days. The Ld. Departmental Representative (DR) submitted that delay in filing the appeal occurred due to change of jurisdiction of the Pr. Commissioner of Income-tax and transfer and posting of the Assessing Officer holding the charge of the jurisdictional Assessing Officer. He submitted that there was a bona fide reason for not filing the appeal on time and therefore, delay should be condoned and matter might be decided on merit.

3. We have heard rival submission on the issue of condonation of the delay in filing the appeal. In our opinion, there was no malafide in delay in filing the appeal and the reasons stated being sufficient cause, we condone the delay and admit the appeal for adjudication.

4. Briefly stated, facts of the case are that the assessee filed its return of income electronically on 24.03.2015 declaring total income at Rs. Nil. The return of income filed by the assessee was subjected to scrutiny proceedings u/s 143(3) of the Act and in the assessment, order passed u/s 143(3) of the Act on 29.12.2016, the Assessing Officer disallowed the long term capital loss amounting to Rs.11,87,26,561/- determining total income at Rs.5,29,73,730/-.



4.1 Subsequently, the Assessing Officer on the basis of the information received from Dy. Director of Income-tax Investigation, Kolkata, recorded reasons to believe that income escaped assessment and issued notice u/s 148 of the Act on 28.09.2017. In the reasons recorded, the Assessing Officer noted that assessee had received bogus accommodation entries from company namely M/s Bridge & Building Construction Co. Pvt. Ltd., which was controlled and managed by Shri Ajit Kumar Jindal, who accepted on oath the fact of providing bogus bills of accommodation entries. In the reassessment proceedings, the Assessing Officer along with the issue on which the assessment proceedings were reopened, also added unsecured loans obtained by the assessee during the year under consideration as unexplained cash credits u/s 68 of the Act. The Assessing Officer asked details in respect of following six unsecured loan parties:

<b>S. No.</b>	<b>Name of the company/firm</b>	<b>Amount of loan received (Rs.)</b>
1.	Magiclone Trading Company Pvt. Ltd.	69,50,000/-
2.	Goldlife Trading Co. Pvt. Ltd.	3,11,50,000/-
3.	Nikhil Khandelwal	1,10,00,000/-
4.	Goldflag Exports Pvt. Ltd.	1,50,000/-
5.	Excel Money Management Services Pvt. Ltd.	15,65,00,000/-
6.	Wonder Dream Realtors Pvt. Ltd.	1,35,00,000/-

4.2 In response to the query by the Assessing Officer, the assessee filed details of the borrowing including confirmation copy of ledger account, their financial statement etc. The Assessing Officer issued



notice u/s 133(6) of the Act to all the six unsecured loan parties. Out of which three parties responded and filed the details as called for by the Assessing Officer. Regarding the remaining three parties, it was stated by the assessee that those parties duly responded to notice u/s 133(6) issued in the original assessment proceedings. The assessee filed copy of their replies filed during original assessment proceedings. However, the Assessing Officer observed that few loan parties were sharing address with the assessee. He also observed huge inflow and outflow of fund in their balance sheet without having any business income in their hands. The Assessing Officer concluded that assessee was engaged in routing of black money through multiple layers for avoiding payment of genuine tax liability. Accordingly, in the order passed u/s 147 r.w.s. 143(3) on 27.12.2018, he held that closing balance of loan parties amounting to Rs.33,21,00,000/- as unexplained cash credit in terms of section 68 of the Act.

4.3 On further appeal, the Ld. CIT(A) deleted this addition. Aggrieved the Revenue is before the Tribunal by way of raising grounds as reproduced above.

5. Before us, the Ld. Counsel of the assessee filed a Paper Book containing pages 1 to 101.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in



dispute involved is regarding addition u/s 68 of the Act for unexplained cash credit. The Ld. CIT(A) noted that there was an arithmetical error in the quantum of addition. He further noted that the Assessing Officer has rectified the amount of unexplained cash credit to Rs.21,92,50,000/- in his rectification order u/s 154 of the Act dated 11.02.2019. Thus, the dispute is related to the additions of Rs.21,92,50,000/- having details of parties as under:

1.	Magicline Trading Company Pvt. Ltd.	69,50,000/-
2.	Goldlife Trading Co. Pvt. Ltd.	3,11,50,000/-
3.	Nikhil Khandelwal	1,10,00,000/-
4.	Goldflag Exports Pvt. Ltd.	1,50,000/-
5.	Excel Money Management Services Pvt. Ltd.	15,65,00,000/-
6.	Wonder Dream Realtors Pvt. Ltd.	1,35,00,000/-
	<b>Total</b>	<b>21,92,50,000/-</b>

6.1 Before us, the assessee submitted that persons from whom loans have been taken are group entities/relates parties and all the documents in respect of those parties including copy of their ITR, financial statement, confirmation and bank statement etc. in respect of identity, creditworthiness and genuineness of the transactions were duly filed. It was further submitted that the Assessing Officer also carried out inquiry u/s 133(6) which were also duly responded by those parties and therefore, there is no reason for Assessing Officer to disregard the unsecured loan received entries is as unexplained cash credit. The Ld. CIT(A) after considering the submission of the assessee and assessment order, deleted the addition as under:



*“6.5 In the light of the above discussion, the issue in hand is being adjudicated. With respect to the identity of the six persons, it is found that the appellant has furnished the details such as copy of ITs, financial statements, confirmation of accounts and the bank statements etc. The parties have also submitted the details in response to notices issued us 133(6) during the course of original assessment proceedings and the present reassessment proceedings. One person is an Individual ieSh Nikhil Khandelwal who is a director and the share holder of the appellant company. Other persons are sister concerns/related entities of the appellant company. From the above, there remains no doubt that the identity of the loan parties is in dispute, as it has been proved beyond doubt.*

*6.6 With respect to the genuineness of transactions, it has been noted that the appellant has submitted that all the transactions were carried out through banking channel and in support has furnished the copy of bank statements showing the transactions and the same were transferred out of funds available in the bank accounts. In the given facts and circumstances, the genuineness of the transaction cannot be doubted.*

*6.7 Coming to the third condition the creditworthiness of the lender. The AO held that the credit worthiness of the lenders has not been established merely on the basis that income declared by the lenders is not commensurate to the amount of loan advanced by them. The amount of income declared in return of income may be important ingredient to decide the creditworthiness but same solely cannot be the criteria. It is quite possible that one party in particular has earned less income but have accumulated considerable funds out of previous earnings or may have other assets or funds from loan or gift or any other sources which are not part of income declared in return. The AO has not carried out necessary examination to establish that the lenders have not the capacity to lend the amount to the appellant. Therefore in absence of necessary examination the primary evidences submitted by the appellant to establish creditworthiness cannot be rejected summarily.*



6.8 The appellant has duly provided all the details of the lenders however the AO was not satisfied with credit worthiness of the lenders. In that situation the Assessing Officer has to conduct inquiry into the creditworthiness of the lender. The AO had issued notice u/s. 133(6) of the Income Tax Act, 1961 to all the lenders and called for the details. The AO has stated in the assessment order that M/s. Goldlife Trading Co.Pvt. Ltd., Mis. Goldflag Exports Pvt. Ltd. and M/s. Wonderdream Realtors Pvt. Ltd. have replied to the notices issued u/s. 133(6) of the Act. All the other companies had replied to the notices issued u/s. 133(6) of the Act issued during the course of the original assessment proceedings u/s. 143(3) of the Act. In the Assessment Order, the AO has stated that three companies have same addresses as that of the appellant company. The AO stated the theory of the transactions between sister concerns /related companies for routing money. The appellant had already submitted that all these three companies are group entities. Further, the Income Tax Act never restricted any person or companies to operate from the same registered office. The Act also does not restrict that the sister concerns cannot lend/take unsecured loans to/from each other. Therefore, the adverse inference drawn by the AO, on account of same address or transactions between sister concerns is not sustainable in law.

6.9 The adverse inference on the issue that the companies are not engaged in any substantial business and majority of the business is of receiving and giving loan to related concerns therefore these transactions are bogus is also not acceptable as the AO has to consider the creditworthiness of the lender by its financial statements and not whether they are doing any business or not. Therefore the contention of the appellant, that if the lenders did not carry out any substantial business activities, how any addition could have been made u/s. 68 in the hands of the appellant, has substance. Apparently, the persons have adequate sources to provide the loans to the appellant as reflected in Their financial statements and also recorded by these persons in their books of accounts.

6.10 In addition to the above, the Hon'ble Jurisdictional ITAT Mumbai in the case of Shalimar Hosing & Finance Ltd. on the similar facts has held as under:



16. The documents mentioned above with regard to all the lenders are also submitted before us, by way of paper book. We note that the identity of the lenders is duly proved. They have duly responded to assessing officers notice issued us 133(6) and have made due compliances. It is not even the case of the assessing officer that these parties are non-existent. The lending companies are also active companies as evident from the documents furnished from the website of Ministry of Corporate Affairs. The bank statement of the lending companies have also been furnished. Loan is granted through bank. No adverse inference has been noted by the assessing officer from the bank statement. 17. The grievance of the assessing officer is that these companies do not have substantial income and hence are not capable of giving loans. He has also expressed doubt about the position of reserves and fund position without brining on record any cogent material from any further enquiry made by bench. We find that the funds position of the companies as noted by the Id. CIT (A) is quite capable of granting loans. The adverse inference drawn from the financial statement of lending companies is only a surmise by the assessing officer without making any enquiry. In this regard, we note that honorable jurisdictional High Court in the case of Pr.CIT vs Veedhata Tower Pvt. Ltd, orderdated 21.04.2018 has held that when all the necessary details of the fund provider was available with the assessing officer, he was free to make the necessary enquiry and addition under section 68 in the hands of the recipient were unjustified. Furthermore, assessee has also paid interest to the lenders. It has also deducted tax at source. Loan have been duly repaid, some part has been repaid even in the present assessment year. In these circumstances, in our considered opinion assessee has discharged the onus. The assessing officer has not brought on record any cogent material to make the addition as unproved cash credit. Hence, the addition made by the assessing officer is not sustainable."



6.11 *Be that as it may be, the undisputed facts regarding the six parties which have provided the loans to the appellant that some have opening balances, some have received back some money from the appellant during the year as repayment. Thus. looking to the ledger accounts it can be said that the impugned transactions were the business transactions between the appellant and the loan parties. In this regard, it is pertinent to refer the judgment of the Hon ble Gujarat High Court in case CIT vs.Ayachi Chandrashekhhar Narsangji reported in 42 taxmann.com 251 where it was held as under;*

*"It is required to note that as such an amount of. Rs. 1,00,00,000 vide chequeNo. 102110 and an amount of Rs. 60 lakhs vide cheque No. 102111 was given to the assessee and out of the total loan of Rs. 1.60 crores, Rs. 15 lakhs vide cheque no. 196107 was repaid and therefore, an amount of Rs.1,45,00,000 remained outstanding to be paid to IA. It has also come on record that the said loan amount has been repaid by the assessee to 'IA' in the immediately next year and the Department had accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible, there was no reason to interfere with the impugned order passed by the Tribunal. [Para 6]"*

6.12 *In view of the above facts and circumstances, the identity and genuineness of transaction and creditworthiness of all these persons stands substantiated by the appellant. This clearly shows that the addition has been made by the AO merely on the basis of surmises anti conjectures.*

6.13 *Further, it is observed that the appellant during the course of the filed reassessment proceedings submitted all the details called for by the AO i.e. copy of ITs, financial statements, confirmation of accounts and the bank statements to substantiate the identity, creditworthiness and genuineness of the transactions. In the appellant's case regular assessment us 143(3) was passed hence the contention of the appellant that all these details were also submitted during the original assessment proceedings u/s. 143(3) cannot be denied. It is an*



*undisputed fact that in the original assessment order the AO did not draw any adverse inference on the details of unsecured loans from these persons. The case was reopened on the information received from the Investigation Wing, Kolkata which related to other concern i.e. transaction with M/s. Bridge and Building Construction Pvt. Ltd. however, the AO did not restrict himself to the said transaction but went into detailed scrutiny of other unsecured loan transactions with the six persons mentioned supra. Further, from the catena of decisions/judgment cited by the appellant supra it can be safely concluded that any attempt by the assessing officer to deal with the issue which was already considered in, the original assessment proceeding again in re-assessment proceedings, by conducting fresh inquiry again, without any contrary material already available on record, would have amounted to review of the original assessment order, which is impermissible. Thus, it can be seen that the addition made by the AO is clearly on the basis of the change of opinion and such a review is not permissible as per law.”*

6.2 We have perused the finding of the Ld. CIT(A). We find that the assessee has filed a copy of ITR, financial statement confirmation of the accounts and bank statement etc. The Assessing Officer has not pointed out any defects in those documents filed by the assessee. Further the Assessing Officer also carried out inquiries u/s 133(6) of the Act. All the notices issued u/s 133(6) duly served upon the secured loan parties and not a single noticed returned unserved. Further few parties responded to the notice issued u/s 133(6) and filed all the relevant information. In respect of other parties, it was submitted by the assessee that they had responded to the notice u/s 133(6) of the Act issued in original assessment proceedings. Regarding the observation of the Assessing Officer that few unsecured loan parties weresituated at address , as that that of the



assessee. The Ld. CIT(A) has observed that there is no restriction for operating from the same registered office particularly when the unsecured loan parties are related to the assessee. Regarding no or low business income in the hands of the unsecured loan parties the Ld. CIT(A) has held that there are enough resources for extending the loan to the assessee which is evident from the financial statement filed by those unsecured loan parties. In our opinion, finding of the Ld. CIT(A) on the issue in dispute is well reasoned and we do not find any infirmity in the same. The ground of appeal of the Revenue is accordingly dismissed.

7. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 22/05/2023.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

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

Mumbai;  
Dated: 22/05/2023  
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**