

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2055/Mum/2020 (A.Y: 2014-15)
ITA No. 2056/Mum/2020 (A.Y: 2012-13)
ITA No. 2057/Mum/2020 (A.Y: 2013-14)

M/s. Saket Infra Projects Pvt Ltd., L3-308, the Summit Bay, Service Road, WE Highway Vile Parle (E) Mumbai – 400057.	Vs.	The DCIT Central Circle 1(4) Room No. 902, 9 th Floor, CGO Bldg, M.K.Road, Mumbai – 400020.
PAN/GIR No. : AAKCS4532L		
Appellant	..	Respondent

Assessee by :	Shri JP Bairagra, Shri Ashiskumar Bairagra & Shri Akhilesh Pevekar.AR
Revenue by :	Shri Dr. Kishor Dhule, CIT DR & Shri Neerja Sharma, Sr. AR

Date of Hearing	06.02.2023
Date of Pronouncement	24.04.2023

आदेश / O R D E R

PER BENCH:

The three appeals are filed by the assessee against the different orders of the Commissioner of Income Tax (Appeals)-47, Mumbai passed u/s 250 of the Act.

Since the issues involved in these appeals are common and identical, hence are clubbed, heard and

consolidated order is passed. For the sake of convenience, we shall take up the ITA No. 2056/Mum/2020 for the A.Y. 2012-13 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made by the AO amounting to Rs. 49,00,000/- being Loan received from Kriya Impex Pvt Ltd by treating the same as Unexplained cash credit u/s. 68 of the Income-tax Act, 1961 by ignoring the supporting filed merely on conjectures and surmises.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) also erred in confirming the addition to total income of Rs.7,28,467/-being Interest paid to the said Kriya Impex Pvt Ltd by treating the same as not genuine.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made by the AO to the total income merely on the basis of some information and without affording proper opportunity and without giving any statement on which he has relied and without producing any supporting containing evidence against your appellant and also without considering the fact of subsequent repayment by your appellant.

4. On the facts and circumstances of the case and in law, the learned CIT(A) erred in ignoring the request and not granting any opportunity of being heard i.e physical hearing or virtual hearing.

5. On the facts and circumstances of the case and in law the learned CIT(A) erred in overlooking/not considering the

additional evidence submitted vide letter dated 19th January 2017.

6. Your appellant craves leave to add to, amend, alter or delete any of the above grounds as may be advised

2. The brief facts of the case are that the assessee company is engaged in the business of civil contract works, construction of roads and undertakes Government contract works. The assessee has filed the return of income for the A.Y 2012-13 on 30.09.2012 disclosing a total income of Rs. 5,12,75,469/- and the return of income was processed u/s 143(1) of the Act. Subsequently, notice u/s 143(2) and 142(1) of the Act was issued. In compliance to notice, the Ld. AR of the assessee appeared from time to time and furnished the details. There was a survey operation u/s 133A of the Act in the case of M/s RPS Infraprojects Pvt Ltd., and it was found that the RPS group has other entities working from same premises. The information with the investigation wing, revealed that the M/s RPS Group have obtained accommodation purchase bills from various entities listed in the Sales Tax Website, Maharashtra. Whereas the AO considering the information found that during the F.Y 2011-12 there

are no bogus expenses claimed in the profit and loss account and the assessee has produced the books of accounts and other details in support of claims. Further the A.O. observed that the assessee has obtained accommodation entries of unsecured loan from M/s Kriya Impex Pvt Ltd of Rs.49 Lakhs and notice u/s 142(1) of the Act was issued. Whereas, the assessee has filed the details referred at page 3 of the order as under :

1. *Copy of Bank statement of the party reflecting the relevant transactions are enclosed.*
- 2) *Copy of Acknowledgement for Return of Income filed for A.Y. 2012-13 by the party is enclosed.*
- 3) *The party is assessed to Income Tax. Copy of PAN card is enclosed.*
- 4) *Copy of ledger confirmation of the party is enclosed.*
- 5) *Copy of Financials of Kriya Impex Pvt. Ltd. reflecting the amount receivable from the assessee is enclosed.*
- 6) *We would like to state that we have taken loans from the above mentioned party by RTGS Interest payments have been made by account payee cheques after deducting TDS Moreover, we have also deployed the funds obtained by us as per the details already given on records. The said loans have been repaid subsequently by accounts payee cheques*

7) We have not been given the information received by you from the Investigation Wing as specified by you in connection with alleged accommodation entries.

8) In any event since they are available and they are tax payers, we request produce them for our cross examination

3. Subsequently the AO has dealt on the facts of the loan transactions, interest payment and relied on the statement recorded u/sec 132(4) of the Act of the third party. Finally the AO came to a conclusion that the assessee has obtained unsecured loan were the ingredients of credit worthiness, identity and genuineness U/sec68 of the Act were not substantiated and made addition. Similarly, the A.O. has disallowed the claim of interest on unsecured loan of Rs. 7,28,467/- and assessed the total income of Rs. 5,69,03,940/- and passed the order u/s 143(3) of the Act dated 29.03.2015.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) has considered grounds of appeal, findings of scrutiny assessment. The assessee has filed the additional evidence with the retraction statement of the third party and submissions on the disputed issue of unsecured

loan and interest claim. Whereas, the CIT(A) was not satisfied with the submissions and material information and also rejected the additional evidence and has upheld the action of A.O. and sustained the additions and dismissed the assessee's appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Honble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the addition u/s 68 of the Act irrespective of the fact that the assessee has filed the details in respect of the loan and submitted the confirmation of the loan creditors along with other details. Further, the Ld. AR submitted that the assessee maintains the regular books of accounts and has obtained unsecured loan from genuine creditor. Whereas, the assessee has furnished the confirmation of loan, bank statement of both the assessee and loan creditors, audited financial statements to substantiate the genuineness, identity and creditworthiness of the loan creditor. Further, the assessee has paid interest on loans and was confirmed by the parties. The Ld.AR supported the submissions on the disputed issues with the

evidences in the factual paper book, notes and judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

6. We have heard the rival submissions and perused the material on record. The Ld. AR submitted that the CIT(A) has erred in sustaining the addition u/s 68 of the Act of unsecured loan and interest though the assessee has filed the requisite details before the lower authorities. We find that before the Assessing Officer, the assessee has submitted information in respect of unsecured loan creditor. On perusal of the assessment order, the assessee has submitted the documentary evidences but the A.O has over looked the vital documents in respect of the sources filed by the assessee. The assessee has submitted the written submissions before the CIT(A) and the confirmation of loan creditor, PAN, Bank account details and the Income Tax return. We find that the assessee has to satisfy the 3 ingredients with respect to identity, creditworthiness and genuineness of the transaction. The CIT(A) has dismissed the additional evidence and submissions and has confirmed the action of the A.O. We are of the opinion that the assessee has

discharged the burden of proof in filling the documents. Whereas the A.O and the CIT(A) has taken a different view and over looked the explanations of the assessee. The judicial decisions relied by the Ld.AR are as under:

i. Kishinchand Chellaram vs. CIT (1980) (125 ITR 713)(SC)

ii. Andaman Timber Industries vs. CIT 2015-TIOL-255(SC)

iii. Mehta Parikh & Co. V. CIT [1956] 30 ITR 181(SC)

iv. Dy. CIT CC 7(2) v. M/s. Manba Finance Ltd(ITA.No1448&1467/Mum/2017)

v. Dy. CIT CC 6(3) v. M/s. Marathon Fiscal Pvt Ltd(ITA 5783&5784/Mum/2017)

vi. ITO 15(1)(3) v. M/s. Celebrity Lifespace Pvt Ltd(ITA.No 6301/Mum/2017)

vii. Pr CIT, Central -2 Vs. Skylark Build in ITA No. 616 of 2016(2018-TIOL-2323)(Mum)

7. Further the assessee has cooperated in submitting the information in the assessment proceedings, whereas the A.O has ignored the information, evidences and audited financial statements and unilaterally made addition u/sec68 of the Act. The Ld. AR emphasized that the assessee has discharged its burden by submitting the financial statements of the lender where the payment is made through banking channel and identity, creditworthiness and genuineness of the lender company was proved in the assessment proceedings. The A.O. has not conducted independent inquiry and relied on the statement of third party and no opportunity of cross examination was provided to the assessee though the assessee has requested by letter dated 19-03-2015 placed at page 50&51 of the paper book. The Ld.AR highlighted the retraction statement of the third party placed at page 72 to 82 of the paper book. Further the assessee has submitted the audited financial statements, confirmation, Bank statements, copy of the income tax return, Form no 16A, and the repayment details to substantiate the genuineness and credit worthiness of loan creditor,

which are placed at page 52 to 72 of paper book. The Ld.AR demonstrated the confirmation, the copy of bank statements reflecting the repayment of unsecured loan in the paper book placed at Page. no 102 to 109 of paper book which is not disputed by the revenue. Further, the A.O has failed to make further enquiries and relied on the statement recorded overlooking the factual aspects that the assessee has discharged the initial burden placed by furnishing the details. The information submitted by the assessee satisfied the three ingredients of provisions of Sec. 68 of the Act. Further the A.O. has not allowed the interest claim. The unsecured loan is repaid through account payee / banking channels in the subsequent years which is not disputed. The Ld.AR submitted that the assessee has substantiated the stand by submitting the details before the A.O. and CIT(A) and discharged the burden and the third party statement relied by the revenue authorities was retracted. We considering the facts, circumstances submissions and judicial decisions set-aside the order of the CIT(A) and direct the Assessing officer to

delete the addition of unsecured loan and allow the grounds of appeal in favour of the assessee.

8. On the second disputed issue, the A.O has disallowed the interest on unsecured loan. Since we have directed the A.O to delete the addition of unsecured loans in the abovePara-7 therefore the interest on the unsecured loan has to be allowed. Accordingly, we direct the A.O to delete the addition and allow the interest claim of the assessee on the unsecured loan.

ITA No. 2057/Mum/2020(A.Y.2013-14)

9. As the facts and circumstances in this appeal is identical to ITA No 2056/Mum/2020 on the disputed issue of interest on unsecured loan (except variance in figures) and the decision rendered in above paragraph-8 will apply *mutatis mutandis* to this appeal also and accordingly direct the A.O to delete the disallowance of interest on unsecured loan. And the second issue is with respect to claim of disallowance of fine of Rs.40,000/-.The assessee has paid the amount due to delay in obtaining the permission from the BMC pollution control board and

later the registration certificate was granted. Since the payment is compensatory in nature and was incurred exclusively for the business and exist commercial expediency. We direct the A.O. to delete the disallowance. Accordingly, the grounds of appeal are allowed in favour of the assessee.

ITA No. 2055/Mum/2020(A.Y.2014-15)

10. As the facts and circumstances in this appeal is identical to ITA No 2056/Mum/2020 on the disputed issue of interest on unsecured loan (except variance in figures) and the decision rendered in the above paragraph-8 will apply *mutatis mutandis* to this appeal also. Accordingly, we direct the A.O to delete the disallowance of interest on unsecured loan and the grounds of appeal are allowed in favour of the assessee

11. In the result, the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 24.04.2023.

Sd/-

Sd/-

(BR BASKARAN)

(PAVAN KUMAR GADALE)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Mumbai, Dated 24.04.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//()

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai