

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.1064/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2013-14)

Sankpal Developers 101-104, Haripriya Apartment, Sundervan Complex, Lokhandwala Cross Road, Andheri (West), Mumbai-400053.	बनाम/ Vs.	ITO, Ward-25(1)(1) 203, Kautilya Bhavan, Bandra Kurla Complex, Bandra, Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABWFS4025Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dharmesh Shah/Ms. Mitali Gopani
Revenue by:	Shri Dharmvir D Yadav (Sr. DR)

सुनवाई की तारीख / Date of Hearing: 26/06/2023
घोषणा की तारीख /Date of Pronouncement: 14/07/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 24.03.2023 for AY. 2013-14.

2. The only grievance of the assessee against the action of the Ld. CIT(A) confirming the addition of Rs.50 Lakhs on account of alleged bogus loan received by the assessee.

3. Brief facts, as noted by the AO is that the assessee had filed return of income declaring total income at Rs. nil. Later, the return was selected for scrutiny under CASS. The AO noted that he received information from the DGIT(Inv.), Mumbai that Shri Rajendra Jain, Shri Sanjay Choudhary, Shri Dharmichand Jain [*alleged entry operators*] and their group entities are providing accommodation entries *inter-alia* in the nature of unsecured loans and that assessee is also a beneficiary of such activity. According to the AO, the assessee



ITA No.1064/Mum/2023
A.Y. 2013-14
Sankpal Developers

had shown to have received unsecured loans to the tune of Rs.50 Lakhs from M/s. Nazar Impex Pvt. Ltd. (hereinafter “M/s. Nazar”) which according to AO was operated by these entry operators (supra). So, the AO confronted, the assessee to prove the un-secured loan from M/s. Nazar. Pursuant thereto, assessee filed (i) copy of ITR of M/s. Nazar (ii) confirmation account (iii) bank statement of the loan transaction to prove the *nature and source* of loan i.e. identity, creditworthiness of genuineness of the transaction. According to the AO, despite the following documents filed, the assessee failed to produce the loan party and based on the information available with him, he was of the opinion that unsecured loan of Rs.50 Lakhs is nothing but accommodation entry from M/s. Nazar Impex Pvt Ltd. And therefore, he treated the transaction of as un-explained credit and added it u/s 68 of the Income Tax Act, 1961 (hereinafter “the Act”). On appeal, the Ld. CIT(A) confirmed the action of the AO by observing that M/s. Nazar Impex Pvt Ltd has meagre profit of Rs.2,68,202/- and net worth of Rs.14,30,222/- which do not correspond to huge sum of money to lend to the assessee. Aggrieved, the assessee is before this Tribunal.

4. I have heard both the parties and perused the records. It is noted that the assessee has taken loan from M/s. Nazar Impex Pvt Ltd on 28.03.2013 which facts is discernible from the bank statement of the M/s. Nazar Impex Pvt Ltd found placed at page no. 27 of PB which shows that on 28.03.2013 through bank transaction an amount of Rs.50 Lakhs has been transferred to the assessee (M/s. Sankpal Developers). The assessee in order to prove the identity of the lender has filed the



ITA No.1064/Mum/2023
A.Y. 2013-14
Sankpal Developers

company master data of M/s. Nazar Impex Pvt Ltd downloaded from Registrar of Company website (refer page 32 PB) which shows that M/s. Nazar Impex Pvt Ltd had Registration No. 164655 which was shown to be functioning from the address given therein; and that two director of this entity are Shri Sanjay Choudhary and Shri Hiralal Parasmal Nahar who are directors from inception of incorporation of M/s. Nazar from 16.09.2006 onwards; and that last AGM was held 30.09.2022; and had filed balance-sheet as on 31.03.2022 before the Registrar of companies. The assessee had filed also the ITR acknowledgment (*return filed by the lender company M/s. Nazar refer page no. 10 of PB and copy of the PAN Card of the lender is also found at page no. 11*). In the light of the aforesaid documents, the identity of the lender company M/s. Nazar Impex Pvt Ltd cannot be doubted. Further it is noted that the assessee had filed the relevant bank statement of the lender evidencing loan given to the assessee (*refer page no. 27 of PB*) and relevant bank statement of assessee evidencing receipt of the loan (*refer page no. 28 of PB*); and the confirmation from the lender is found placed at page no. 29 to 30 of PB. And the assessee has also brought to my notice that it has repaid loan which fact is noted from perusal of the relevant bank statement of the assessee found placed at page no. 31 of PB. Thus, the genuineness of the transaction also cannot be doubted as such. The only burden of proof remaining on assessee is to show is that the lender company had creditworthiness/capacity to lend the loan of Rs 50Lakhs to assessee in the relevant assessment year ie. AY. 2013-14. And the Ld. CIT(A) has doubted the creditworthiness of the lender by noting that the lender has



ITA No.1064/Mum/2023
A.Y. 2013-14
Sankpal Developers

meagre profit and less net worth. Countering the adverse observation of Ld. CIT(A), the Ld. AR of assessee asserted that lender company has capacity/creditworthiness to lend Rs.50 Lakhs to assessee and to support his contention drew our attention to the profit and loss statement of the lender [M/s. Nazar] which shows turn over to the tune of Rs.125,14,54,103/- (Rs.125 crores). And according to him, due to foreign exchange fluctuation, there was loss to the tune of Rs.1,60,91,548/- (refer page no. 13 PB) because of which lenders profit got reduced. He also drew our attention to the page no. 21 of PB wherein the cash and bank balances of M/s. Nazar Impex Pvt Ltd is reflected which shows that it had cash and bank balance of Rs.2,05,66,388/- [more than Rs two crores] and the fact that it has given loan and advances to the tune of Rs.11,53,44,123/- as on 31.03.2013. And it was pointed out that loans & advances given by the lender company as on 31.03.2012 was to the tune of Rs.13,73,03,854/- which got reduced to Rs.11,53,42,123/- as on 31.03.2013 which means lender had Rs.2,19,61,731/- in its hand to give Rs.50 Lakhs to assessee. Therefore, according to Ld. AR, the lender M/s. Nazar had enough money to advance Rs.50 Lakhs to the assessee. On the facts discussed (supra), it is noted that the assessee has discharged the initial burden to prove the *nature and source* of credit/loan/lender, ie. identity, creditworthiness and genuineness of the loan transaction/lender from whom Rs.50 Lakhs was given to assessee and subsequently repaid in the following assessment year as evidenced from the repayment dated 19.12.2013 i.e. AY. 2014-15. (refer page no. 31 of PB).



ITA No.1064/Mum/2023
A.Y. 2013-14
Sankpal Developers

5. It is noted that even though, the assessee had filed the aforesaid relevant documents to discharge the burden casted upon it, the AO has brushed aside all the relevant materials filed before him and relied merely on the statement recorded during survey u/s 133A of the Act as well as for non-production of lender party in order to fasten the addition u/s 68 of the Act. It is noted that statement given by Shri Sanjay Choudhary has been retracted on 07.12.2013 which facts is discernible from affidavit found placed at page no. 33 of PB wherein he asserted that he was retracting the statement given to survey team on 03.10.2013 u/s 133A of the Act [*i.e. within four (4) day*]. From a perusal of the contents of the affidavit reveals that he (Shri Sanjay Choudhary) has alleged coercion on the part of the survey team to give statement as dictated by them, and that he was forced to sign on pages wherein statements were recorded without reading out the contents of writing (statement). It is noted that the basis for adverse inference against the assessee (*statement recorded by survey team*) has been retracted. It is trite law that survey statement cannot be the sole basis for drawing adverse inference against the assessee as held in the case of Khader Khan Vs. CIT (352 ITR 480) (SC) wherein it was held by the Hon'ble Apex Court that section 133A of the Act does not empower any income-tax authorities to examine any person on oath, hence any such statement does not have any evidentiary value and any admission made during survey cannot by itself be made the basis for addition. Therefore, the reliance placed by AO on retracted survey statement cannot be accepted to draw adverse inference against the assessee. As noted (*supra*) since the assessee had discharged the



ITA No.1064/Mum/2023
A.Y. 2013-14
Sankpal Developers

burden of proof to prove the nature & source of the credit (loan from M/s. Nazar) by adducing relevant documents to prove the identity capacity and genuineness of the loan of Rs.50 Lakhs to the assessee and the AO could not find any infirmity in the documents, the action of the Ld. CIT(A) to confirm addition u/s 68 of the Act cannot be accepted and moreover, it is noted that the assessee has repaid loan amount of Rs.50 Lakhs in next assessment year i.e. AY. 2014-15. (Refer Hon'ble Bombay High Court decision in the case of Gaurav Triyugi Sing Vs. ITO (423 ITR 531)] wherein it was held as under: -

Section 68 of the Act has received considerable attention of the courts. It has been held that it is necessary for an assessee to prove *prima facie* the transaction which results in a cash credit in his books of account. Such proof would include proof of identity of the creditor, capacity of such creditor to advance the money and lastly, genuineness of the transaction. Thus, in order to establish receipt of credit in cash, as per requirement of section 68, the assessee has to explain or satisfy three conditions, namely : (i) identity of the creditor; (ii) genuineness of the transaction; and (iii) credit-worthiness of the creditor.

16.In *Pr. CIT v. Veedhata Towers (P.) Ltd.* [2018] 403 ITR 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were



ITA No.1064/Mum/2023
A.Y. 2013-14
Sankpal Developers

suspect *i.e.*, he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.

17. In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur *i.e.* Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.

18. Considering the above, we are of the view that the Tribunal was not justified in sustaining the addition of Rs. 14 lakhs to the total income of the assessee as undisclosed cash credit under section 68 of the Act.

6. In the light of the facts and circumstances discussed (*supra*), the appeal of the assessee is allowed.

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

Order pronounced in the open court on this 14/07/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 14/07/2023.
Vijay Pal Singh, (Sr. PS)



ITA No.1064/Mum/2023
A.Y. 2013-14
Sankpal Developers

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, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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