

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

ITA Nos. 994 & 995/MUM/2023
Assessment Years: 2016-17 & 2017-18

DCIT Central Circle-2(3),
Room No. 803, 8th floor,
Pratishtha Bhavan (Annexe),
M.K. Road, Churchgate,
Mumbai-400020.

Appellant

M/s Trident Marbles Pvt. Ltd.,
Near Laxmi Narayan Temple,
Airport Side Service Road, Vile
Parle (E), Mumbai-400099.

Vs.

PAN No. AAAC 4634 J
Respondent

Assessee by : Sh. Vimal Punmiya a/w Shri Prakash
Bohra

Revenue by : Mr. Alok Kumar, CIT-DR

Date of Hearing : 03/08/2023
Date of pronouncement : 24/08/2023

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the Revenue are directed against a common order dated 06/01/2023 passed by the learned commissioner of Income-tax (Appeals)-48, Mumbai [in short the Ld. CIT(A)] for assessment year 2016-17 and 2017-18 respectively. As grounds raised in both the appeals being similar, these two appeals have been heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.



2. Firstly, we take up the appeal for assessment year 2016-17. The grounds raised are reproduced as under:

1. Whether, on the facts and in the circumstances of the case and in law, The Id. CIT (A) has erred in deleting the addition on account of bogus unsecured loan of Rs. 2,55,00,000/ treated as unexplained cash credit u/s 68 of the Act.

2. Whether, on the facts and in the circumstances of the case and in law, The Id. CIT (A) has erred in deleting the addition on account of interest paid thereon of Rs. 23,83,247/ treating the same as an expense not allowable u/s 37(1) of the Act.

3. The appellant craves leave to add, delete, alter, modify, rectify, substitute or otherwise any or all of the grounds of appeal at or before the time of hearing of the appeal.

3. The briefly stated facts of the case are that during the year under consideration the assessee was engaged in business of trading and import of marble blocks and granites. In the case of the assessee a search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out by the investigation wing of the Income-tax department on 14/02/2019. For the year under consideration, the assessee filed return of income electronically on 16/10/2016 declaring total income at ₹93,11,330/-. Consequent to the search action at the premises of the assessee, a notice under section 153A of the Act was issued on 06/11/2019. In response, the assessee filed return of income declaring same amount of total income i.e. ₹93,11,330/-, which was declared in the regular return of income filed. Subsequently, statutory notices were issued and complied with and assessment was completed on 13/04/2021 u/s 153A of the Act, wherein addition for bogus unsecured loans amounting to Rs.2,70,00,000/-



was made under section 68 of the Act along with disallowance of interest paid amounting to ₹3,29,480/- under section 37(1) of the act in respect of those bogus unsecured loans. On further appeal, the Ld. CIT(A) deleted the addition of the unsecured loan as well as interest disallowed thereon. Aggrieved, the Revenue is in appeal before the ITAT (in short the 'Tribunal') by way of raising grounds as reproduced above.

4. Before the assessee has filed a paper book containing pages 1 to 172 which includes, audited financial statements of the assessee and confirmation, ledger account and bank statement etc in respect of unsecured loan parties

5. The ground No. 1 of the appeal relates to addition on account of bogus unsecured loan of ₹2,70,00,000/-, which has been deleted by the Ld. CIT(A).

5.1 The brief facts qua the issue in dispute are that the Assessing Officer asked the assessee to justify the genuineness of unsecured loans received and interest paid thereon in respect of following parties:

Sr. No.	Name of the Lender	Amount of Loan	Interest thereon
1.	Bluejay Airlines Pvt Ltd.	1,25,00,000	1,56,164
2.	Saharsh Yarn Private limited	75,00,000	93,699
3.	Mansoul Commercial Pvt Ltd.	30,00,000	37,973
4.	Bikhan Construction Pvt Ltd	40,00,000	41,644
	Total	2,70,00,000	3,29,480



5.2 The Assessing Officer on page 3 of the assessment order has noted that assessee did not file any documentary evidence to prove the identity and creditworthiness of the creditors and genuineness of such transactions.

5.2.1 The Assessing Officer has further noted that during the course of pre-and post search inquiries by the investigation wing of the income tax department, those unsecured loan parties were not found in the place of their addresses given in their documents i.e PAN, return of income etc.

5.2.2 The Assessing Officer further, referred to statement of shri Rajesh Agrawal, director of the assessee company, recorded on 14/02/2019 during the course of search proceedings and statement recorded on oath on 11/04/2019 in the course of survey carried out post search action, wherein facts of non existence of those parties and paper companies were brought to his knowledge by the Investigation wing and he was asked to justify genuineness of the above referred loans, however he could not file any satisfactory reply along with supporting documents, except the contention that assessee company had taken the loan legitimately and repaid the same through banking channel and also deducted TDS on the interest paid.

5.2.3 During the course of assessment proceeding, the Assessing Officer issued notice under section 133(6) of the Act to



unsecured loan parties calling for information relating to unsecured loans, note on their business activity, copies of Income-tax return, financial capacity to raise loan funds etc. The Assessing Officer has noted that those notices were delivered to those parties by postal department. The Assessing Officer has further noted that those parties has duly responded to him.

5.2.4 However the learned Assessing Officer rejected the documents filed by those parties and observed that those parties are paper/dummy companies not having any financial creditworthiness and were engaged in providing accommodation entries in the form of loans, share application money, purchases, as observed by the investigation wing of Income-tax department, Kolkata.

5.3 The Ld. CIT(A) however rejected the finding of the Assessing Officer observing as under:

“7.3 From the above observation of the A.O., it appears that his inference of these four companies being paper/shell companies primarily lie on two aspects, i.e., these are Kolkata based companies and found non-existent at the time of visit of the Inspector. In my considered view, these aspects only raise doubts about the conduct of these leader companies but to establish the loan transactions as bogus (the transactions were done through banking channel, repaid later on, paid interest and TDS being deducted on it - as confirmed by Shri Rajesh Kumar Agarwal, Director of the appellant company in the statement recorded on 11.04.2019), the onus is on the Assessing Officer to establish it with evidences or find lacuna or discrepancies in the evidences submitted before him, by the appellant. Nothing to that effect has been brought on record by the A.O. in this regard.

7.4 It is further observed from para 5.10 of the assessment order that the A.O. had issued notices us 133(6) to the loan lenders calling for information viz., details of loans given to the assessee, notes on



business activity, copies of ITs, financial capacity to raise the loan, source of funds, rate of interest, etc. It is clearly mentioned in the order that the notices have been delivered to the addresses (loan creditors). It is further mentioned in para 5.11 that: -

"7.12 In response to the said notices, replies have been received from the parties. After verification of credentials of these replies, it is noticed that these companies are shell companies."

7.5 From the above comment of the A., it is observed that the A.O. has concluded upon verification of the replies of the loan creditors that these companies are shell companies. However, the A.O. has not elaborated the reasons for arriving at this conclusion. It is not explained as to how he has reached to this conclusion. What details in the financials of the loan creditors prompted him to arrive at this conclusion, is not elaborated in the order.

7.6 It is also observed from the submission of the appellant that in order to prove identity of the lenders copy of PAN cards, IT acknowledgement, ROC master data, etc. were submitted before the A.O. In order to prove genuineness of loan transactions, confirmation of loan account with address, PAN, cheque numbers, bank details and appellant's bank details are submitted. In order to prove creditworthiness of the lenders, bank statement of the lenders disclosing source of the fund and balance sheet of the lenders are filed. No adverse comment has been given by the A.O. with respect to these documentary evidences submitted during the assessment proceedings.

7.7 In the written submission, the appellant has also highlighted the following facts: -

7.7.1 that the A.O. has ignored that the loan received from one of the lender M/s. Mansoul Commercial Private Limited amounting to Rs. 30,00,000/- was received and repaid during A.Y. 2015-16 and that for the alleged A.Y 2016-17, no transactions had taken place. The said documents were submitted on assessment record. This proves the degree and level on blind reliance that was made on the investigation report, that even transactions which were not done in A.Y. 2016-17, were added as undisclosed income us 68 of the Act.

7.7.2 that all documentary evidences to establish the identity and creditworthiness and genuineness of such transactions in respect of all parties have been duly submitted vide letter dated 18th Dec 2020, 23rd December 2020 and 04th March 2021

7.7.3 that the AO has not taken cognizance of such documents in its assessment order which shows that no examination of such documents were made and purely considering it a Kolkata nexus and wild assumptions, Acluded that such loan transactions are ingenuine and bogus;



7.7.4 that the lenders M/S. Blue jay Airlines and M/S. Saharash Yarn have also submitted the source of the amounts through which such amounts were given to the appellant. All of this was ignored while framing the assessment order;

7.7.5 that the bank statements of the lenders disclose the source of their funds made through banking channel. The appellant had furnished the relevant bank statements of the lenders corresponding to the disputed loans and is not required to prove the source of the lenders funds. In any case, as verifiable from the bank statement the loans are not sourced out of cash deposits. The A.O. had not brought any contrary material on record even to doubt the intermingling of funds.

7.8 In my considered view, looking to the overall facts and circumstances of the issue involved and evidences brought on record by the A.O./appellant, the addition of Rs. 2,70,00,000/- as unexplained cash credit u/s 68 of the IT. Act and Rs. 3,29,480/- as interest paid thereon are unjustified and unsustainable. There are ample judicial authorities supporting the above conclusion, some of which are highlighted by the appellant in his written submission. Hence the impugned additions are directed to be deleted. Thus, grounds of appeal no. 1, 2, 3, 4 and 5 are allowed.”

5.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Assessing Officer has treated the unsecured loan received from the four parties listed above as unexplained cash credit under section 68 of the Act mainly on the ground that those four companies are paper/shell companies and same were found nonexistent at their addresses during the visit by the Inspector of the Income-tax department. On the contrary, the assessee claimed to have filed details containing, PAN, address, confirmation by those parties, Income-tax return acknowledgement, bank statement of the assessee and lenders disclosing the source of their funds. A copy of a letter addressed to the Assessing Officer enclosing those details has also been filed before us, which is available on PB-57. The



Assessing Officer in his order has nowhere pointed out lack of creditworthiness of the unsecured loan parties. Regarding the identity, the notices issued under section 133(6) of the Act by the Assessing Officer were duly served on the addresses provided. Those parties also responded and filed the documents called for by the Assessing Officer. Before us the learned counsel of the assessee has referred to paperbook page 48 and submitted that source of loan in the hands of party namely **Bluejay Airlines P Ltd** was out of sale of LIC mutual fund amounting to ₹1,27,14,924/-. In the case of **Saharsh Yarn P Ltd** also the learned counsel of the assessee referred to paperbook page No. 72, which is a copy of the bank statement of said party and submitted that source of the loan was sale of LIC mutual fund amounting to ₹50 lakh and 30 lakh respectively, immediately received prior to the issue of the loan to the assessee. The learned counsel of the assessee also referred to page No. 56 of the paperbook, which is a acknowledgement of the information filed by the assessee before the Assessing in respect of unsecured loan parties. Regarding the party namely **Mansoul Commercial private limited**, the Ld. CIT(A) has noted that loan of ₹ 30 lakh was received by the assessee in immediately preceding assessment year and same was returned also in that year and in the year under consideration no loan has been received from the that party. The learned counsel referred to the confirmation of account of the said party available on paperbook page 119 for assessment year 2015-16 and confirmation for AY 2016-17



available on paperbook page 120-122. According to the said confirmation for AY 2016-17, there is no loan transaction from the said party in the year under consideration.

5.4.1 From the above it is evident that assessee has discharged onus of providing primary documents in relation to parties, justifying identity, creditworthiness and genuineness of the transaction, however the Assessing Officer relied only on the finding of the investigation wing of Kolkata and did not carry out any analysis of financial statement of unsecured loan parties for alleging lack of creditworthiness and genuineness of the transaction. It is a strange that on the one hand the Assessing Officer is recording that notices issued under section 133(6) of the Act were duly served on the unsecured loan parties, but still he had relied on the report of the investigation wing that those parties were not found by the inspector of the investigation wing during the course of posts search proceedings. If Assessing Officer was having further doubt regarding the identity of those parties, he could have deputed inspector from his office or could have issued commission to other officers for visiting the places of address of those parties, but he did not do so. The learned Assessing Officer even did not verify the facta that party namely Mansoul commercial private Ltd had not given any loan during the year under consideration. The addition in respect of that party has been made even without verifying the financial statements of the assessee.



5.4.2 In facts and circumstances discussed above, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. 1 of the appeal of the Revenue is accordingly dismissed. The ground No. 2 of disallowance of interest in respect of those unsecured loan, being connected to the ground No.1 , same also stands dismissed.

6. The grounds raised by the Revenue in assessment year 2017-18 are reproduced as under:

1. *Whether, on the facts and in the circumstances of the case and in law, The Id. CIT (A) has erred in deleting the addition on account of bogus unsecured loan of Rs. 2,55,00,000/ treated as unexplained cash credit u/s 68 of the Act.*
2. *2. Whether, on the facts and in the circumstances of the case and in law, The Ld. CIT (A) has erred in deleting the addition on account of interest paid thereon of Rs. 23,83,247/. treating the same as an expense not allowable u/s 37(1) of the Act.*
3. *3. The appellant craves leave to add, delete, alter, modify, rectify, substitute or otherwise any or all of the grounds of appeal at or before the time of hearing of the appeal.*
4. *4. The appellant, therefore, prays that on the grounds stated above, the order of the Ld. CIT (A), Mumbai, may be set aside and that of the Assessing Officer restored.*

6.1 During the year, the Assessing Officer has made addition for the unsecured loan received from six party during the year under consideration and the interest in respect of parties from whom loans were received in preceding year as well in the year under consideration. The detail of loans received and interest payment disallowed in the year under consideration is reproduced as under:

Sr. No.	Name of Parties	Address Verification	for	Spot verification report	Observati on during verificatio n
1.	M/s Saharsh Yarn Pvt. Ltd.	2A, 9 th floor, Room No.	143,	I visited the premise and found that the premise was locked and not operational. A	ANX-1



		Commercial House, Ganesh Chandra Avenue, Kolkata, West Bengal-700013.	local enquiry reveals that the premise has been locked for about one year. No such name board and business activity of the company was found at the given address. Hence, the summons couldn't be served at the given address	
2.	M/s Monsoul Commercial Pvt. Ltd.	2 nd floor, Room No. 212, 7 Mangrol Lane, Kolkata, West Bengal-700 001.	I visited the premise and found that no such company exists at the given address. Local enquiry reveals no such name board and business activities of the company at the given address. Hence, the summons couldn't be served at the given address.	ANX-2
3.	M/s Bikhani Construction Pvt. Ltd.	27, Room No. 510 Narayani Building, Brobourn Road, Kolkata, West Bengal-700001	I visited the premise and found that the premise was locked and not operational. Local enquiry reveals that there is no such company exists at the given address. Hence, the summons couldn't be served at the given address.	ANX-3
4.	M/s AVR Tradecon Pvt. Ltd.	45H, Plot 11A, Ashutosh Mukherjee Road, Kolkata, West Bengal-700020.	I visited the premises and found that this is a residential premise. Local enquiry revealed that there is no such company exists at the given address. Hence, the summons couldn't be served at the given address	ANX-4
5.	M/s.Blackcherry Commosale Pvt. Ltd.	A 3 rd floor, Unit-200, Kolkata, West Bengal-700 001	I visited the premise and found that there was no such name board and business activity of the company at the given address. Hence, the summons couldn't be served at the given address.	ANX-5
6.	M/s.Moonlight Suppliers Pvt. Ltd.	3 rd floor, Room No.30, 63, Madhu Street, Dalhousie, Kolkata, West Bengal-700 001	I visited the premise. No business activity was found at the address. Local enquiry reveals that there is no such company exists at the given address. Hence, the summons couldn't be served at the given address.	ANX-6
7.	M/s.Ramanuj Dealers Pvt. Ltd.	1 st floor, 207, 21A(1), Karnani Estate, ABC Bose Road, Kolkata, West Bengal-700 017	I visited the premises and found that there was no such name board and business activity of the company at the given address. Hence, the summons couldn't be served at the given address.	ANX-7
8.	M/s.Rozelie Sales & Services Pvt. Ltd.	Room No.47, 1 ^o floor, Rabindra Suruni, Burra (Buru) Kolkata, West Bengal-700 007	I visited the premise and found that there was no such name board and business activity of the company at the given address. The premise is 10 x 10 open room where 2 beds were lying at the floor. None was inside this room. Hence, the summons couldn't be served at the given address.	ANX-8
9.	M/s.Splendor Realcon Pvt. Ltd.	302/303, Sunny Corner, Saint Road, Bhawanipura, Kolkata, West Bengal-700 020	I visited the premise and found that there was no such name board and business activity of the company being run at the given address. Hence, the summons couldn't be served at the given address	ANX-9
10.	M/s.Bluejay Pvt. Ltd.	91, 3 ^r floor, Flat No. 303, Lalla Pora, 1 ^a Bye lane, Shihpur, Kolkata, West Bengal-711 101	I visited the premise and found that there was no such name board and business activity of the company at the given address. Hence, the summons could not be served at the given address	ANX-10



6.2 In the year under consideration, the Ld. CIT(A) has followed his finding in assessment year 2016-17. The relevant funding of the Ld. CIT(A) reproduced as under:

“11. The appellant has made identical submissions as that made in the preceding year AY 2016-17 as reproduced above. Other facts and backgrounds of the case regarding nine loan creditors remain the same. Identical findings have been given by the A.O. with respect to nine loan creditors. Since the issues involved in Appeal No. CIT(A)-48, Mumbai/10519/2016-17 for AY. 2017-18 are identical to the one that are stated above in CIT(A)-48, Mumbai/11229/2015-16 for A.Y. 2016-17, the undersigned findings in CIT(A)-48, Mumbai/11229/2015-16 for A.Y. 2016-17 would mutatis mutandis, apply to this appeal for A.Y. 2017-18 as well. Hence, the impugned additions of Rs. 2,55,00,000/- and Rs. 23,83,247/- are directed to be deleted.

11.1 Accordingly, this appeal of the appellant for AY 2017-18 is Partly Allowed too.”

6.3 Before us the learned counsel of the assessee submitted that Assessing Officer had grossly erred in its application of the mind by ignoring that loans stated to be have been received in the year under consideration amounting to Rs. 55,00,000/-, had been actually received by the assessee in the previous year corresponding to assessment year 2018-19 and in the assessment year under consideration no transaction had taken place from those parties except interest payment to few parties.

6.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In view of the submission of the learned counsel of the assessee that no loans were received from those six parties during the year under consideration, it needs verification at the end of the Assessing Officer, as the ld CIT(A) decided the issue without any opportunity



to the Assessing officer. Therefore in the facts and circumstances of the case, we feel it appropriate to restore the issue in dispute to the file of the Assessing Officer for examination of the facts and decide in accordance with law. If no loans are received from those six parties in the year under consideration, then no addition invoking section 68 could be made in respect of those parties. The grounds of the appeal of Revenue are accordingly allowed for statistical purposes.

7. In the result, the appeal of the Revenue for assessment year 2016-17 is dismissed whereas appeal for assessment year 2017-18 is allowed for statistical purposes.

Order pronounced in the open Court on 24/08/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 24/08/2023

Dragon Legal/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