

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2504/Mum/2023
(Assessment Year :2008-09)**

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| Shri Rajesh Manohar Patil B-603, Milap Society Juhu Versova Road 4, Banglow, Andheri-East Mumbai-400 053 | Vs. | CIT-Appeal, National Faceless Appeal Centre Delhi -110 001 |
| PAN/GIR No.AFRPP6123R | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|-------------------|
| Assessee by | Shri K.K. Lalka |
| Revenue by | Smt. Mahita Nair |
| Date of Hearing | 31/10/2023 |
| Date of Pronouncement | 31/10/2023 |

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 26/05/2023 passed by NFAC Delhi for the quantum of assessment passed u/s. 143(3) r.w.s.147 for the A.Y.2008-09.

2. In various grounds of appeal assessee has challenged the validity of reopening and re-assessment proceedings as bad in law and without jurisdiction and secondly, addition of

Rs.50,00,000/- on account of unsecured loans added u/s. 68 of the Act.

3. The brief facts are that return of income was filed on 05/04/2010 declaring total income of Rs.3,47,740/-. The said return was duly processed u/s. 143(1). Thereafter, the assessee's case was reopened u/s.147 and notice u/s.148 was issued on the following reasons:-

The assessee has not filed its return of income for A.Y.2008-09.

Information was received (Gautam Jain & Ors.) from the DOIT(Inv), Mumbai. vide letter No.DGIT(Inv)/Information/GJ & Ors./2014-15 dated 2.03.2015 to Pr.CIT-14, Mumbai and the same endorsed to this charge mentioned sat this assessee has taken accommodation entries from Mihir Diamond and shown unsecured Loan The details of such party from whom the assessee had taken accommodation entries in F. Y. 2007-08 relevant to A. Y. 2008-09 are as under:-

| <i>Name of the Hawala Party</i> | <i>AY</i> | <i>Amount</i> |
|---------------------------------|----------------|------------------------|
| <i>Mihir Diamond</i> | <i>2008-09</i> | <i>Rs. 50,00,000/-</i> |
| | Total | Rs. 50,00,000/- |

The above chart shows that the assessee has taken accommodation entries to tune of Rs. 50,00,000/- from the above mentioned party in F. Y 2007-08 relevant to A. Y. 2008-09. It has thus understated its income by Ra. 50,00,000/- introducing cash through bogus Unsecured Loan in its books of accounts.

Thus I have reason to believe that an amount of Rs. 50,00,000/- has escaped assessment in the hands of the assessee for A. Y 2008-09,

The income has escaped assessment on account of failure on the assessee's to disclose its income. So the case of the assessee for A. Y. 2008-09 is being opened u/s. 147 of the IT Act, to bring to tax the income escaping assessment and also other income chargeable to tax which has escaped assessment, which comes to subsequently in the course of proceedings for assessment for A.Y.2008-09.

4. The ld. AO issued show-cause notice based on the reasons recorded that information was received from DGIT (Investigation) Mumbai informing that a search and seizure action u/s.132 was undertaken in the case of Shri Gautam Jain & Others, wherein it was found that they were operating and managing various benami concerns for providing accommodation entries for bogus purchase, bogus loans, bogus share capital with premium and bogus share application money to various beneficiaries. Assessee too had received unsecured loans of Rs.50,00,000/- from M/s. Mihir Diamond, a proprietary concern of Shri Gautam Jain.

5. In response to the show-cause notice, assessee submitted that the loan taken by the assessee was genuine and in support, he has furnished confirmation letter from M/s. Mihir Diamond alongwith copy of ledger account of the assessee appearing in the books of M/s. Mihir Diamonds for the A.Y.2007-08 to 2010-11, wherein all entries relating to availing of the loan, payment of interest by the assessee as well as the entire repayment of loan in A.Y.2010-11 has been mentioned. Assessee has also furnished copy of income tax return of Shri Gautam Jain alongwith computation of income, copies of balance sheet, profit and loss account right from A.Y.2008-09 to 2011-12. Apart from that,

assessee has also furnished copies of bank statement of M/s. Mihir Diamonds wherein the entries with relation to the said loan as well as payment of interest thereon are appearing alongwith copy of bank statement of the assessee.

6. However, the ld. AO without examining or rebutting these documents observed that the assessee was asked to produce the said party for verification which assessee could not do. For this reason alone he has drawn adverse inference that non-producing of the party cast apprehension on the claim of the assessee. Thereafter, he has reproduced relevant statement of Shri Gautam Jain recorded on oath u/s.132 (4) on 06/10/2013, wherein he has admitted that various brokers of the diamond market approached him regularly to import diamonds in books of accounts and once the diamonds are received they are taken away by these brokers at whose direction these imports were made and for doing such activities he was getting commission. Further, the stock of diamonds shown in the books of accounts is without any physical stock and he used to issue bogus sale bills. He also stated that incase of some persons he was providing entry for unsecured loans also. He used to give in check in return and receive in cash. Thus, based on this statement of Shri Gautam jain, AO held that the unsecured loan of Rs.50 lakhs received from M/s. Mihir Diamond is nothing but a bogus transaction. After detailed discussion and relying on various judgments, he has added the amount of unsecured loans of Rs.50,00,000/- u/s.68.

7. The Id. CIT (A) too confirmed the said action of the Id. AO after observing as under:-

6.2 The addition made by the Assessing Officer and the submissions of the appellant have been perused. It is seen from the assessment order that the appellant obtained unsecured loan of Rs 50 lakhs from M/s. Mihir Diamond during the year under consideration. During the course of search and seizure proceedings u/s. 132 of the Act, in the case of Shri Gautam Jain and Others, Mr. Gautam Jain in his statement recorded on catch u/s 132(4) on 06.10.2013 admitting that he has indulged in providing accommodation entries and also explained the complete modus operandi of the transactions. It is seen from the assessment order that the AO has reproduced relevant portion of the statement recorded u/s 132(4) of the Act of Mr. Gautam Jain. Q. No.52 of statement is reproduced below for brevity-

"Q 52 You have mentioned in answer to Q.No.33 that your business is carried out solely at 58/1108 A 1167/688 Santok Diamond Office No 204, 2nd Floor, Somnath Mahadev Ni Sheri, Gajar Falia, hari Pura, Surat. Please explain the correctness of this statement in light of the finding during course of serach conducted in case of your concerns w/s. 132 of the Act on 03.10.2013 that the premise mentioned by you is not being used at all for any business activity?"

Ans. Sir, I would like to state that factually there is no actual business of trading in diamond that is being carried out by me in the above stated three concerns namely M/s. Krishna Diamond Pvt. Ltd, M/s. Krishna Diam, M/s. Mihir Diamond and that is why during the course of search and seizure action us. 132 of the I.T.Act on 03.10.2013, the business premises were found vacant and not being in use. Those addresses have been kept only for the purpose of registration of company address, receiving any mails including Income Tax notices if any, bank verification etc. Sir, I would also like to add that not only the above 3 concerns, but I also control the concerns in the name of Ms. Parshwanath Gems Pvt Ltd, and M/s. Shree Ganesh Gems which also claim to be trading in diamonds but in which no actual business takes place.

Sir, I hereby on my own declare that I am running these paper based companies with no real business activities at all

6.3 It is understood from the above statement that Mr Gautam Jain was managing and controlling multiple companies and concerns, which were not carrying out any genuine business activities, but was engaged in providing accommodation entries like unsecured loan, share premium, bogus LTCG/STCG, contrived losses etc. through various concerns, and that such concerns were in fact non-existent at their addresses. It was also found that the director of the said companies in whose name the concerns were registered, had submitted in oath that he was not carrying on any genuine business activities and was engaged into providing accommodation entries through multiple entries and Mihir Diamond is also one of the entity providing accommodation entries by way of unsecured loan. From the above, it can be understood that the unsecured loan given by M/s. Mihir Diamond to the appellant amounting to Rs.50 lakhs is a bogus and not genuine. The transactions done by the appellant was clearly sham and make believe and the excellent paper work to camouflage the bogus nature. Considering the facts and circumstances of the case, the action of the AO in treating the unsecured loan as cash credit in the hands of the appellant is upheld and Ground Nos.2, 3 and 4 are dismissed.

8. Before us ld. Counsel for the assessee, Mr. Lal Kaka submitted that the entire basis of addition by the ld. AO is the statement of Shri Gautam Jain which was received by him from the Investigation Wing. Once, the assessee has filed all the evidences as mentioned in the assessment order as well as the ld. CIT(A) order, then without rebutting the same he could not have made the addition; or at least he should have made independent enquiry by sending notice to Shri Gautam Jain. In so far as allegation that assessee has not produced Shri Gautam Jain, he submitted that loan was taken in the year 2007 and after expiry of almost 9 years, assessee could not have produced

the said person, once the assessee has refunded the loan way back in the year 2010. If the ld. AO had any doubt about the documents submitted, then he should have confronted Shri Gautam Jain. Apart from that, despite several requests, no material or information or documents were confronted to the assessee, except the statement of Shri Gautam Jain and that to some portion of statement of Shri Gautam Jain incorporated in the assessment order, which was not given to the assessee. Even in the assessment order there is no discussion whether there is any material or any document or evidence which was found from the search of Gautam Jain that assessee has received any kind of accommodation entry from Shri Gautam Jain, in lieu of cash or there is any specific averment by Mr. Jain about assessee. The assessee has taken a loan from M/s. Mihir Diamonds, who has not only filed the confirmation but also provided the copy of ledger account alongwith balance sheet and profit and loss account of various years wherein the loan given to the assessee is also appearing and not only that, bank statement of M/s. Mihir Diamonds were also submitted wherein these entries are appearing. Nowhere there is any adverse finding or inference from the bank statement of Mihir Diamonds. The assessee has also repaid the entire loan in F.Y.2010-11 the entry of which has also been provided to the ld. AO. Thus, onus which was cast upon the assessee has been duly discharged and there was no adverse material or any enquiry to rebut the explanation as well as the documents furnished by the assessee.

9. On the other hand, ld. DR submitted that once it has been found that Shri Gautam Jain was not doing any genuine business and were involved in providing accommodation entries including that of loan, then it cannot be said that the loan taken by the assessee was genuine. All the evidences which have been filed are merely paper work which does not lead to any inference that it is a genuine loan. Thus, she strongly relied upon the order of the ld. AO and the ld. CIT (A) and also drew attention to the relevant observations and the finding of the ld. AO as well as the excerpts of the statement of Shri Gautam Jain.

10. We have heard rival submissions and perused the relevant finding given in the impugned orders as well as material referred to before us. The entire addition made by the ld. AO hinges upon the fact that a search and seizure action was taken in the case of Shri Gautam Jain wherein he has given a statement that he was providing accommodation entries on sale bills of diamonds and in case of some persons he was also providing bogus / unsecured loans and share capital. Secondly, assessee was required to produce Shri Gautam Jain during the course of assessment proceedings which assessee has failed to do so and therefore, in light of these facts, the unsecured loans taken by the assessee is not genuine. From the perusal of the documents submitted as well as explanation of the assessee as incorporated in the assessment order, that assessee has taken unsecured loans of Rs. 50,00,000/- from M/s. Mihir Diamond which was a concern owned by Shri Gautam Jain. He has also given confirmation letter in the form of confirmation of the account

alongwith copy of ledger account of the assessee appearing in the books of M/s. Mihir Diamonds for various years wherein the amount of loan is reflected alongwith interest paid by the assessee from time to time and also the factum of repayment of entire loan by the assessee in the F.Y. 2010-11. From the perusal of the balance sheets of M/s. Mihir Diamonds it is seen that it had sufficient funds and the loan given to the assessee has also been reflected therein. Nowhere it has been brought on record as to whether providing of loan to the assessee has been treated as non-genuine in the case of M/s. Mihir Diamonds for the A.Y. 2008-09. Apart from that, the bank statement of M/s. Mihir Diamonds does show sufficient cash balance before issuing the loan and there is no cash deposits made therein before issuance of loan amount. Once these bank statements of M/s. Mihir Diamond have been produced wherein all the entries in relation to the loan given, payment of interest and repayment of loan are appearing and which has not even been examined by the ld. AO. If the assessee has produced all these documents to prove the nature and source of loan and discharged the onus of identity and creditworthiness and prima facie genuineness, then it cannot be held that assessee has not discharged onus, without any inquiry or material post submission of these documents. The loan transaction took place in the F.Y. 2007-08 and ld. AO had asked the assessee to produce the said person in the year 2015-16 i.e. almost after expiry of 8-9 years, especially when assessee has already repaid the loan in the year 2010. It is not the case wherein during the course of search in the case of Shri Gautam

Jain any specific document was found or was handed over to the ld. AO wherein it has been found that assessee might have given cash in lieu of the loan taken in cheque from Gautam Jain; or whether assessee's name specifically has been found as beneficiary wherein he has stated that he has received cash from the assessee in lieu of the cheque amount and not only that, once the loan was repaid back, he has returned back the cash amount to the assessee. If such information was not there, then Assessing Officer should have confronted it to Shri Gautam Jain or sought information and enquire from him. More so, when it has been brought on record by ld. Counsel by placing many Tribunal judgments wherein it has been found that Shri Gautam Jain had retracted from his statement stating that he has not provided any accommodation entry for loans. Thus, merely on the general statement of Shri Gautam Jain at the time of search which has been retracted later on cannot be the sole ground for rejecting the assessee's explanation and also all the documentary evidences filed by the assessee to prove the genuineness of the loan. Here all the three ingredients have been discharged by the assessee viz., identity, creditworthiness in the form of balance sheet, profit and loss account, copy of return of income and bank statement of the creditor and genuineness of the transaction which is evident from the ledger account of the party' and his bank statement and the repayment of loan by the assessee and no adverse material has been found to prove that the transaction is not genuine. Accordingly, in the absence of any such material specific to the assessee have been found, the explanation and

evidence filed by the assessee cannot be rejected. Accordingly, the addition made u/s.68 of Rs.50,00,000 is upheld.

11. Since we have allowed the appeal on merits, we are adjudicating the validity of reopening u/s.148 as it has become purely academic.

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

Order pronounced on 31st October, 2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai; Dated 31/10/2023
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mumbai