

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

BEFORE SHRI.NARENDER KUMAR CHOUDHRY
(JUDICIAL MEMBER)

I.T.A. No.2245/Mum/2023
(Assessment year : 2009-10)

Sulochana Godhwani
165, Sanjay Building No.5
Mital Industrial Estate
Sakinaka, Andheri (E)-400 059

PAN : AABPG8131B
APPLICANT

vs Income Tax Officer-10(3)(3)
Aayakar Bhavan, 2nd Floor, M.K.
Road, Mumbai-400 020

RESPONDENT

Present for the Assessee Shri Vimal Punmiya
Present for the Department Ms. Smitha V Nair

Date of hearing 05/10/2023
Date of pronouncement 24/11/2023

ORDER

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee against the order dated 25/04/2023 impugned herein passed by the National Faceless Appeal Centre (NFAC) Delhi / Ld. Commissioner of Income Tax (Appeal) [in short, Ld. Commissioner] under section 250 of the Income-tax Act, 1961 (in short, the Act) for the A.Y.2009-10.

2. The brief facts are that the Assessee being an individual, has declared its total income at Rs.5,67,183/- by filling its return of income on dated 31/12/2009, which was processed under section 143(1) of the Act . Subsequently, on the basis of information received from Investigation Wing to the effect *"that the search and survey action carried out in the premises of Shri Pravin Kumar Jain and his group wherein it was revealed that Shri Pravin Kumar Jain, through a web of concerns run and operated by him was engaged in providing accommodation entries of various nature like bogus unsecured loans, bogus share application and bogus sales (purchase for the beneficiaries) etc. It was also transpired that the Assessee was also one of the beneficiaries, having taken accommodation entries in the nature of unsecured loan"* the case of the Assessee was reopened under section 147 of the Act and accordingly, a notice under section 148 was issued.

2.1 In the re-assessment proceedings, it was observed by the AO that the Assessee has obtained following accommodation entries in respect of unsecured loan:-

PAN	Concern of Pravin Jain group	AY	PAN of beneficiary	Name of beneficiary	Amount (Rs.)	Address of the beneficiary
AANP V6131	Jasoda Exports	2009-10	AABPG 8131B	Sulochana Godhwani	8,00,000	16, Kakkad Market, 306, Kalbadevi Road, Kalbadevi, Mumbai
AIPPP6 372H	Natasha Enterprise	2009-10	AABPG 8131B	Sulochana Godhwani	8,00,000	16, Kakkad Market, 306, Kalbadevi Road, Kalbadevi, Mumbai

2.2. The Assessing Officer while relying upon the statement recorded from Shri Pravin Kumar Jain, made additions of the above unsecured loan credits, under section 68 of the I.T. Act, 1961.

3. The Assessee being aggrieved carried the matter before the Ld. Commissioner, who dismissed the appeal by relying on the judgment of the Hon'ble Supreme Court in the case of CIT vs P Mohana Kala (167 taxmann 169) 2007(AC) and by holding that the relevant parties did not respond to the notices issued u/s 133(6) by the AO and the Assessee has also not produced the same parties before the AO and the return of the said loan through banking channels also, by the same modus operandi cannot be a basis to accept the original transactions as genuine.

4. Further aggrieved, the Assessee is in appeal before the Tribunal and raised the following main ground of appeal:-

"The learned CIT(Appeal) has erred in making additions of Rs.16,00,000 as the unexplained cash credit under section 68 from the following parties Jasoda Exports (Prop. Shri Sushil Kumar Ratanlal Varma) Rs.8,00,000 Natasha Enterprise (Ms.Rose Padbidri) Rs.8,00,000 Total rs.16,00,000. The same has been wrongly accounted as unexplained cash credit under section 68 by the assessing officer in spite of submission of all the evidence of the loan confirmation, ITR Acknowledgement and Copy of bank statement of the year in which loan was taken. The Assessee has also submitted the evidence towards repayment of loan in next year along with Loan confirmation, bank Statement, ITR acknowledgement M/s Jasoda Exports (Prop. Shri Sushil Kumar Ratanlal Verma) and Natasha Enterprises (Prop. Ms.Rose Padbidri) reflecting repayment of loan taken)."

5. Heard the parties and perused the material available on record. In the instant case, the addition has been made u/s 68 of the Act, wherein loan amount of Rs. 16,00,000/- received by the Assessee, has been added. The Co-ordinate Bench of the Tribunal in the case of ITO Ward 4(2)(4) Vs M/s Lucky Star {ITA No 5691/Mum / 2017 decided on 19-07-2023 dealt with identical issue and held as under

Sec. 68 enables assessment of such types of cash credits, if the Assessee fails to prove the nature and source of cash credits. "Nature of cash credit" would mean that the Assessee is required to show that it is not of revenue nature. In order to prove the sources, the Assessee should discharge initial burden to prove the cash credits placed upon his shoulders of the Assessee u/s 68 of the Act, the Assessee is required to prove three main ingredients, viz., the identity of the creditor, the genuineness of the transactions and the credit worthiness of the creditor. If the assessee discharges the initial burden, then the burden would shift to the shoulders of the assessing officer, i.e., it is the responsibility of the AO to disprove the claim of the assessee by bringing evidences on record.

5.1 We observe It is not in controversy that in this case the Assessee in order to discharge the burden cast upon it under section 68 of the Act, filed certain documents viz-a- viz evidence of the loan confirmations, copy of bank statement of the year in which loan was taken, ITR Acknowledgements and the evidence towards repayment of loan with interest in next year along with Loan

confirmations, bank Statements, ITR acknowledgements of M/s Jasoda Exports (Prop. Shri Sushil Kumar Ratanlal Verma) and Natasha Enterprises (Prop. Ms. Rose Padbidri) and therefore by furnishing above said documents, in our view, the Assessee prima facie discharged its onus cast upon it under section 68 of the Act.

5.2 It is also a fact that Shri Pravin kumar Jain on whose statement, the Assessing Officer has mainly relied upon for making the addition has in fact, retracted his statement. Therefore, the statement made by Shri. Pravin kumar Jain lacks authenticity. The question as to whether the Assessing Officer could have made addition under section 68 of the Act by relying upon the statement given by an accommodation entry provider was examined by the Coordinate Bench in the case of M/s. Moraj Realty Pvt. Ltd. (ITA No.708 & 709/Mum/2019 dated 08-12-2020 by holding as under :-

“17. Moreover, except for relying on the statement of VVB the Assessing Officer has not done any inquiry himself except for referring to a notice issued under section 133(6) in A.Y. 2009-10 only. The learned counsel of the assessee has challenged the very veracity of this observation. He has submitted that assessee has asked for the copy of the said notice issued under RTI Act. In response it was replied that copies thereof are not available. Hence, this shows that even the so called inquiry by the Assessing Officer was done in case of only one party for A.Y. 2009-10 and the veracity of which is itself in doubt.

18. We find ourselves in agreement with the submissions of the assessee’s counsel. We note that

except for the statement of the entry operator which was also retracted the addition made by the authorities below is devoid of cogent material. In this regard we note that in similar circumstances honourable Bombay High Court in the case of CIT Vs. Orchid Industries Pvt. Ltd. (ITA No. 1433 of 2014 dated 5.7.2017) held as under :-

“The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case.”

5.3 No doubt, the creditors failed to appear before the Assessing Officer, however, as Shri Pravin kumar Jain on whose statement, the Assessing Officer has mainly relied for making the addition has in fact, retracted his statement and therefore such statement made by Shri. Pravin kumar Jain lacks authenticity, further as the Assessee by providing all the necessary details/documents such as bank statement, loan confirmations and ITR acknowledgements of creditors reflecting repayment of loan with interest in next year, prima facie discharged its onus as cast upon it, under the provisions of section 68 of the IT Act and therefore the addition under consideration made under section 68 of the Act, is unsustainable. Consequently, the same is deleted.

6. In the result, appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 24/11/2023.

**Sd/-
(NARENDRA KUMAR CHOUDHRY)
JUDICIAL MEMBER**

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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Asstt. Registrar / Senior Private
Secretary , **ITAT, Mumbai**