

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)**  
**AND**  
**MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**ITA No. 3212/MUM/2023**  
**Assessment Year: 2013-14**

Anshul Gems Pvt. Ltd.,  
C/o CA Himanshu Gandhi  
Chartered Accountants, 16<sup>th</sup> floor,  
D Wing, Trade World Tower,  
Kamala Mills Compound, Lower  
Parel,  
Mumbai-400013.

**PAN NO. AAHCA 6495 P**

**Appellant**

**Vs.**

ITO, Ward-5(1)(1),  
5<sup>th</sup> floor, Aayakar Bhavan,  
MK Road,  
Mumbai-400020.

**Respondent**

**Assessee by** : Mr. Himanshu Gandhi  
**Revenue by** : Mr. A.S. Sant, Sr. DR

Date of Hearing : 27/12/2023  
Date of pronouncement : 29/12/2023

**ORDER**

**PER PADMAVATHY S., AM**

This appeal is against the order of the Ld. Commissioner of Income-tax (Appeals)-51, Mumbai [in short 'the Ld. CIT(A)'] dated 10.08.2023 for assessment year 2013-14.

2. The assessee raised various grounds with regard to the following issues under that:

(i) DIN number on the order – Ground No.1



- (ii) Exparte order – Ground No.2
- (iii) Reopening under section 147 not valid – Ground No.3
- Protective addition on account of unsecured loans of Rs.50,00,000/- u/s 69A – Ground No.4,5, & 6
- (iv) Disallowance of interest of Rs.1,03,562/- – Ground No.7 & 8
- (v) Addition towards unexplained expenditure u/s 69C of Rs.1,20,000/- – Ground No.9 & 10
- (vi) Interest u/s.234B & 234C – Ground No.11
- (vii) Penalty u/s.271(1)(c) – Ground No.12
- (viii) General – Ground No.13

3. The assessee is a company and filed the return of income for assessment year 2013-14 on 26.09.2013 declaring total income of Rs.3,40,730/-. The case was selected for scrutiny and the order u/s 143(3) dated 04.03.2016 was passed accepting the return of income filed by the assessee. Subsequently, an information was received from the office of DCIT Central Circle-6(4), Mumbai stating that a search and seizure action u/s 132 of the Act was carried out on 10.03.2016 in the case of Rajesh Lifespaces Group and that the group was involved in taking on-money from sale of flats and that the cash so generated was brought back into the books of the assessee by way of loans and advances from various concerns. In the statement recorded from Mr. Rajesh Patel it was admitted that interest @ 12% to 21% was paid on the unsecured loans. The Assessing Officer also noted that in its application filed before the settlement commission M/s Rajesh Lifespaces Group admitted that the loans received from assessee in FY 2012-13 amounting to



Rs.50,00,000/- where accommodation entries in lieu of cash. In the light of above information the Assessing Officer issued a notice u/s 148 of the Act reopening the assessment of the assessee. The assessee in response to filed a return of income on 30.05.2019 declaring total income of Rs.3,04,730/-. Though the assessee had not responded to various notices issued by the assessee. The assessee filed certain details vide letter dated 17.12.2019. On perusal of the details furnished the Assessing Officer notices that in the statement of loans and advances as on 31.03.2013 the assessee has shown an amount of Rs.50,93,206/- as a loan amount outstanding from M/s Rajesh Estate & Nirman P. Ltd. The Assessing Officer issued show cause notice to the assessee to substantiate with proper evidence the loan amount. After perusing the details furnished by the assessee and considering the fact that Shri Rajesh Patel could not offer proper explanation to prove the genuineness of the loans, the Assessing Officer had add the sum of Rs.50,00,000/- on protective basis in the hands of the assessee. The Assessing Officer also noticed that the assessee has received a sum of Rs.1,03,562/- as interest on the unsecured loans taken by M/s Rajesh Estate & Nirman P. Ltd. and added the same to the income of the assessee. Further Shri Rajesh Patel in the statement had stated that brokerage @ 1.2% to 2.4% on the loans where charged by the brokers and based on the said information the Assessing Officer added a sum of Rs.1,20,000/- as commission @ 2.4% on the impugned loan amount.



4. Aggrieved assessee preferred an appeal before the Ld. CIT(A).

5. Since, the assessee did not appear before the Ld. CIT(A) in spite of various notices issued on 28.06.2023, 10.07.2023, 24.07.2023 and 02.08.2023. Accordingly, the Ld. CIT(A) dismissed the appeal in limine.

6. Before us, the Ld. AR submitted that the addition towards unsecured loans which is protectively added in the arms of the assessee is already settled by M/s Rajesh Lifespaces Group before settlement commission which has been accepted by the settlement commission. Therefore, the Ld. AR submitted that the protective assessment could not survive. With regard to the addition made towards interest received and the commission. The Ld. AR submitted that the interest on unsecured loans is already part of the income of the assessee and is offered to tax and therefore, the same could not be added as unexplained cannot be added again in the hands of the assessee. The Ld. AR further submitted that the commission added in the hands of the assessee is a notional charge without any basis and that the brokerage is charged in the hands of the person is taking the loan and therefore, the AO is not correct in making addition in the hands of the assessee.

7. The Ld. DR on the other hand relied on the order of the lower authorities.



8. We have heard the parties and perused the materials on record. The assessee's case is reopened based on information received from DCIT, Central Circle wherein in the statement recorded u/s 132(4) one Mr. Rajesh Patel has admitted that the loan received from the assessee amounting to Rs.50,00,000/- where the accommodation entries in lieu of cash. The AO added the said amount in the hands of the assessee u/s 69A of the Act on protective basis. In this regard we noticed that the unsecured loan taken from the assessee is part of the income offered by M/s Rajesh Lifespaces Group before the settlement commission and settlement commission vide order dated 30.04.2019 had accepted the income offered declared by the group (refer page 26, 47, 116, 124, 132 and 135 of the order). Therefore in our considered view once the substantive assessment in the case of M/s Rajesh Estate & Nirman P. Ltd. is settled and subjected to tax, the protective assessment has no independent standing. Accordingly the protective addition made by the AO in the hands of the assessee does not survive.

9. With regard to the interest of addition we notice that the assessee has already declared the interest income and as duly paid taxes on the same given this the Assessing Officer once again making an addition towards interest could amount to double taxation. Therefore, we direct the AO to delete the addition made towards interest income.



10. The AO also made an addition towards commission @ 2.4% of the impugned loan amount. In this regard, we noticed that the assessee has not claimed any expenses towards brokerage and that the AO has not brought anything on record to substantiate that such payment is made by the assessee. Given that the assessee has not claimed any expenditure towards payment of commission the addition made by the Assessing Officer on notional basis stating that the assessee would have paid such commission is not tenable. Accordingly, we delete the addition made by the Assessing Officer in this regard.

11. Ground No. 1 & 2 not pressed during the course of hearing by Ld. AR. Hence, the same are dismissed as not pressed. Ground No. 11 & 12 are consequential and ground No. 13 is general. These grounds do not warrant separate adjudication.

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

**Order pronounced in the open Court on 29/12/2023.**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PADMAVATHY S.)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 29/12/2023

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**