

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
SHRI RAHUL CHADHARY, JUDICIAL MEMBER**

**ITA No.3308/Mum/2023  
(A.Y. 2012-13)**

Hiral Exports DW 6160 Block D Tower, Bandra Kurla Complex, Bandra (E), S.O. 400051	Vs.	ITO Ward 23(1)(1) [Earlier known as ITO 19(1)(5)] Matru Mandir Building, 1 <sup>st</sup> , 2 <sup>nd</sup> Floor, Nana Chowk, Bhatia Hospital Lane, Javji Dadaji Marg, Grant Road West, Mumbai – 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AACFH3237N		
Appellant	..	Respondent

Appellant by :	Bharat Kumar
Respondent by :	Lieder Panicker

Date of Hearing	28.12.2023
Date of Pronouncement	15.01.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the ld. CIT(A) NFAC, Delhi, dated 02.08.2023 for A.Y. 2012-13. The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case in law, the ld. CIT(A) has erred invoking section 68 of the Act which is not applicable in assessee case.
2. On the facts and circumstances of the case in law, the ld. CIT(A) has erred in making addition of Rs.40,82,500/- u/s 68 of the Act.
3. The assessee craves leave to add, alter or amend the existing grounds of appeal on or before the date of hearing.”

2. Fact in brief is that return of income declaring total income of Rs.1,87,010/- was filed on 15.09.2012. Assessment u/s 143(3) of the Act was made on 12.02.2015 assessing the total income same as per the return of income filed by the assessee. Subsequently, assessing officer in consequence to order u/s 263 passed by the Pr.CIT-19, Mumbai assessed the total income at Rs.42,69,510/- u/s 143(3) r.w.s 263 of the Act by making addition of Rs.40,82,500/- due to payment made by M/s Vishal Gems under section 68 of the Act as unexplained. The AO stated that Vishal Gems was shown as unsecured loan instead of trade creditors in the A.Y. 2011-12. The assessee stated that because of wrong grouping made by the accountant it was shown as unsecured loan instead of trade creditors because of technical error. However, the AO has not agreed with the submission of the assessee. The assessing officer stated that assessee has not provided any evidence of sale made to Vishal Gems and further stated that his name was not mentioned under trade activities in the relevant assessment year. It was also stated that assessee has failed to provide sales ledger in support of its assertion, therefore, the explanation of the assessee was rejected and the amount of Rs.40,82,500/- was added to the total income of the assessee u/s 68 of the Act.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee stating that the assessee has merely claimed the amount credited as sales but has not demonstrated the same.

4. During the course of assessment proceeding before us the ld. Counsel has filed paper book comprising copies of document and details filed before the lower authorities. The ld. Counsel referred page no. 55 of the paper book pertaining to letter of confirmation of accounts relating to Vishal Gems & Jewels. The letter shows that assessee has

made sales to the said party and after receiving the payment the closing balance was Rs.43,60,500/- as on 31.03.2022. The ld. Counsel also referred other pages of the paper book showing that sale was made to the said party against amount received in advance from the said party. The ld. Counsel also referred VAT audit report that total sale turnover of the assessee was of Rs.99,97,808/-.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. The assessing officer has made addition of Rs.40,82,500/- on account of unexplained cash credit pertaining to M/s Vishal Gems. The assessee has submitted that it has not availed any unsecured loan from M/s Vishal Gems. It was explained that assessee has made sale to M/s Vishal Gems against the amount received in advance. In support of his contention the assessee has also submitted copies of ledger confirmation of Vishal Gems & Jewels before the lower authorities showing that there was total sale to the amount of Rs.38,37,697/- which was made during the financial year relevant to the assessment year under consideration and the assessee has received payment of Rs.43,60,500/- including the opening balance shown as advance of Rs.7,78,000/- as on 01.04.2011. The assessee has also filed copies of sale register along with copies of sale invoices issued during the F.Y. relevant to the assessment year under consideration. The assessee has also filed copies of sale register and copies of bank statement showing payment received from Vishal Gems. The assessee has also filed audit report along with audited accounts of Vishal Gems comprising profit and loss account balance sheet and other schedule of account in support of their contention that assessee has made sale to the said concern against the advance amount received and there was no

unsecured loan transaction taken place with the said entity. We have also perused the schedule of sundry debtor filed in the audit report of Vishal Gems & Jewels wherein under the head advance to supplier it was shown that as on 31.12.2012 there was outstanding advance of Rs.10,22,803/- shown as paid to the assessee. After considering the above facts and material on record we find that lower authorities have failed to controvert the relevant supporting evidences furnished by the assessee that they have made sales to the Vishal Gems & Jewel against the advance amount received by them from that concern and there was no unsecured loan obtained by the assessee from that concern. Looking to the above facts and circumstances we consider that decision of Id. CIT(A) in sustaining the addition of Rs.40,82,500/- u/s 68 of the Act is not justified, therefore, both the ground of appeal of the assessee are allowed.

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

Order pronounced in the open court on 15.01.2024

Sd/-  
(Rahul Chuadhary)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 15.01.2024

Rohit: PS

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

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.