

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 7074/Mum/2019
(Assessment Year: 2011-12)**

Spiritual Impressions Pvt. Ltd., 703, Sharda Chambers, Near SNTD College, Churchgate, Mumbai- 400020 PAN : AAMCS0223L	Vs.	DCIT-15(3)(2), Room No. 473, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri V.G. Ginde a/w Shri Kumar
Kale, Advocate

Revenue/Respondent by : Shri P.D. Chougule, Sr. DR

Date of Hearing : 11.01.2024

Date of Pronouncement : 24.01.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of the Commissioner of Income Tax (Appeals)-24, Mumbai [in short 'the CIT(A)'] dated 23.03.2019 for the AY 2011-12. The assessee has raised the following grounds:

"Being aggrieved by the order dated 23.08.2019 passed by the learned Commissioner of Income Tax (Appeals)-24, Mumbai. ("Ld. CIT(A)") u/s 250 of the Income-tax Act, 1961 ("Act"), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:

1. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in upholding legal validity of the reassessment proceedings. Your appellant submits that the proceedings initiated u/s 147 of the Act were bad in law and ab initio void since the mandate of section 147 was not satisfied. Your appellant, therefore, prays that the assessment order dated 29.12.2018 passed u/s. 143(3) r. w. s. 147 of the Act be quashed.

2.1 On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the addition made by the Ld. AO of Rs.66,00,000/-u/s.68 of the Act, treating the loans taken by the appellant from M/s. Ansh Merchandise P. Ltd. and M/s. Atharva Business P. Ltd., as alleged unexplained cash credit.

2.2 Without prejudice to the above, the Ld. CIT(A) erred in not appreciating that the loans taken from the aforesaid two parties were of Rs.55,00,000/- only whereas the Ld. AO made an addition of Rs.66,00,000/-

Your appellant, therefore, prays that the addition of Rs.66,00,000/- be deleted.

3. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the addition made by the Ld. AO of Rs. 1,58,400/- u/s.69C, being alleged commission paid by the appellant. Your appellant, therefore, prays that the addition of Rs. 1,58,400/- be deleted.”

2. The assessee is a private limited company engaged in the business of trading in CDs, DVDs and books. For the AY 2011-12 the assessee filed the return of income on 28.09.2011 declaring total loss of Rs.7,12,528/-. The return was processed under section 143(1) of the Act. Subsequently, the AO based on information received from competent authority formed the reason believe that the income of the assessee has escaped assessment within the meaning of section 147 of the Income Tax Act (the Act). As per the information received, the assessee has taken bogus accommodation entries from two companies i.e. M/s Ansh Merchandise Pvt. Ltd. and Atharv Business Pvt. Ltd. which are controlled and managed by one Mr. Shri Pawan Pravin Jain who is alleged to be engaged in the activity of providing accommodation entries of bogus purchase, unsecured loans,

bogus share application money without any genuine business activity. Accordingly, the AO initiated the reassessment proceeding against the assessee by issue of notice under section 148 of the Act. The assessee in response to notice under section 148 filed the return of income declaring income of Nil and claimed current year loss of Rs. 7,12,528/-. The assessee requested for the reason for re-opening and the assessee raised its objections vide letter dated 23.08.2018 and 24.10.2018. The AO disposed of the objections vide order dated 24.08.2018 and order dated 15.11.2018.

3. The AO during the course of reassessment proceedings noticed that as per the information received from DGIT (Inv.) the assessee has taken loan from Ansh Mercantile Pvt. Ltd. for an amount of Rs. 35,00,000/- and Rs. 10,00,000/- from Atharv Business Pvt. Ltd. As per the findings of the AO the assessee has shown unsecured loans taken from these parties as Rs. 55,00,000/- and Rs. 11,00,000/- in the financial statements respectively. The AO also received the information that Shri Pravin Jain who is arranging the accommodation entries in lieu of commission of Rs. 0.15% to 0.20% per month which he has confirmed in the statement recorded under section 132(4) of the Act and accordingly in assessee's case, the AO arrived at a commission of Rs. 1,58,400/-. The AO issued a show-cause notice calling on the assessee to provide further details with respect to the impugned loan transactions. The AO also issued summons under section 131 of the Act to the parties with whom the alleged transaction has taken place.

4. The assessee submitted before the AO that a loan of Rs. 35,00,000/- from Ansh Merchandise Pvt. Ltd.(Ansh) and the loan of Rs. 20,00,000/- form Atharv Business Pvt. Ltd.(Atharv) during the financial year 20.10.2011 through banking channel and the same is accounted in the books of accounts. The assessee

submitted the ledger copy, bank statements, confirmation and tax returns of Ansh and Atharv. The assessee also submitted that the amount of loan as claimed by the assessee is not the correct figure. The AO did not accept the submissions of the assessee and proceeded to make an addition of Rs. 66,00,000/- under section 68 of the Act for the reason that financial statements of the impugned parties does not look genuine and that both the parties neither furnished any response to the summons nor appeared in person before the AO. The AO also treated the commission computed at Rs. 1,58,400/- as an addition under section 69C of the Act.

5. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee challenged the re-opening of assessment under section 147 stating that the AO initially provided one reason for re-opening to which the objections were provided by the assessee and that while disposing of the objections, the AO considered different reasons. The assessee also submitted before the CIT(A) that the AO has relied on the report of the DDIT (Inv.) without making any independent enquiries and accordingly the assessee submitted that the re-opening is bad-in-law. On merits the assessee submitted that the relevant details in order to evidence that the loan transaction is genuine are already submitted before the AO which have not be considered by the AO. Therefore the assessee submitted that the addition of Rs. 66,00,000/- under section 68 is not tenable on merits.

6. The CIT(A) on the legal contentions of the assessee held that the AO has re-opened the assessment based on information contained the report of DDIT (Inv.) and has a reasonable believe that there is escapement of income. Accordingly, the

CIT(A) dismissed the contentions of the assessee. On merits, the CIT(A) upheld the addition made by the AO by stating that

"5.3.4 I have perused the facts of the case, the submissions made by the appellant and the assessment order in detail. The Ld. AO had received the information from DGIT(Inv) that the appellant had received loans of Rs. 66,00,000 from M/s. Ansh and M/s. Atharv, which were companies company operated by hawala operator, Mr. Pravin Jain, basis which the appellant reopened the assessment after completing the necessary formalities. The Ld. AO has stated in his assessment order at para 6 that during the course of the assessment proceedings, summons u/s. 131 of the Act were issued to both the parties from whom the appellant had taken loan but the said notices remained unanswered and nobody attended the office on the given date. Thus, the AO issued a show cause notice to the appellant pursuant to which the appellant filed the relevant details and documents, however, the summons were left unanswered.

5.3.5 Section 68 of the Act, which is reproduced hereunder for ready reference and analysis states as under : -

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:"

As per section 68 of the Act, onus is upon the appellant to discharge the burden so cast upon. First burden is upon the appellant to satisfactorily explain the credit

entry contained in his books of accounts. The burden has to be discharged with positive material. This has been observed in Oceanic Products Exporting Company v. CIT 241 ITR 497 (Kerala.). The legislature had laid down that in the absence of satisfactory explanation, the unexplained cash credit may be charged u/s. 68 of the Act. This view is fortified by the ratio laid down in Hon'ble Apex Court in P. Mohankala (2007) (291 ITR 278)(SC). The law is well settled, the onus of proving the source of a sum. found to be received/transacted by the appellant, is on him and where it is not satisfactorily explained, it is open to the Revenue to hold that it is income of the appellant and no further burden lies on the Revenue to show that income is from any other particular source. It is necessary for the appellant to prove not only the identity of the creditor but also the capacity of the creditor and genuineness of the transactions. The onus lies on the appellant, under the facts available on record. A harmonious construction of section 106 of the Evidence Act and section 68 of the Income Tax Act will be that apart from establishing the identity of the creditor, the appellant must establish the genuineness of the transaction as well as the creditworthiness of the creditors.

5.3.6 In this case the appellant was required to explain the loans received and prove the genuineness and creditworthiness of the lender party. To do so, the appellant furnished the details at the time of assessment proceedings. The Ld. AO perused the details filed by the appellant and more specifically perused the financial statements of both the lender companies to examine and determine their business genuinity. The Ld. AO has examined in detail and has recorded his observations and findings at para 9.5 to 9.9 and para 10.4 to 10.7 of the impugned assessment order and the same are not being repeated here for the sake of brevity. I have perused the same and agree with the observations and findings of the Ld. AO.

Further, it is also interesting to note here that the loan confirmations of both the parties are signed by Mr. Manish Jain, who has agreed that both these lender companies, M/s. Ansh and Atharv are not engaged in the genuine business activities, during his statement recorded u/s. 131. Mr. Manish Jian has also confirmed that whilst he is the director of these companies, he has no idea of the business activities being carried out in these companies

This clearly boils down to the Ld AO's observation and conclusion that both these lender, companies are shell or paper companies and carrying on dubious business activities

5.3.7 The Delhi High Court in the case of Principal CIT v. Bikram Singh ITA. No. 55/2017 has held that where the transactions herein do not inspire confidence as being genuine and are shrouded in mystery, as to why the so called creditors would lend such huge unsecured, interest free loans that too without any agreement in the

absence of the same, the creditors fail the test of creditworthiness and the transactions fail the test of genuineness.

In this case, the assessee has been able to submit only its own documents Tike bank account, ledger, etc and has not preliminarily discharged the obligation of establishing the genuineness of the transaction.

The Hon. Calcutta High Court in CIT vs. Precision Finance Pvt. Ltd. (1994) 208 ITR 465 (Cal) laid down that the assessee is expected to establish:-

- 1. Identity of his creditors;*
- 2. Capacity of creditors to advance money, and*
- 3. Genuineness of transaction.*

As to the issue of genuineness of transaction, it was further held in the above decision that the transaction is not genuine, simply because some, out of many, of the transactions are by cheque. Where certain sum of money claimed by the assessee to have been borrowed from certain persons, it is for the assessee to prove, by cogent and proper evidence, that they are the genuine borrowings for the reason that the facts are exclusively within the assessee's knowledge.

In CIT vs. Oasis Hospitalities Pvt. Ltd., 333 ITR 119 (Delhi), it was held by the Hon. Court that "The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors, (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise."

The appellant has not been able to prove the genuineness and creditworthiness of the transaction. Moreover, it could not produce the party for verification. In the case of CIT vs. Jansampark Advertising & Marketing Pvt. Ltd. (ITA 525/2014) (Del), the additions have been made u/s. 68 in respect of the share capital received by the assessee from various companies and during the course of investigation, it was found that the share capital has been received from three entry operators, who are allegedly in the business of providing accommodation entries. Notices issued u/s. 131 to these parties were returned undelivered by the postal authorities with the remark "left"/ "no such person". Under these circumstances, the Hon'ble High Court took a view that the assessee failed to discharge the burden to prove the credit worthiness as well as the genuineness of the transactions.

Having regard to the facts of the case and judicial precedents, I am of the view that the AO has rightly added the loan borrowed of Rs.66,00,000 as unexplained cash credit u/s. 68 of the Act. This ground of appeal is dismissed."

7. Aggrieved the assessee is in appeal before the Tribunal.
8. Before us also the ld. AR presented arguments contending the validity of the re-opening under section 147 of the Act on legal grounds. The ld. AR also presented a written submission containing the arguments with regard to the legal grounds which have been taken on record.
9. The ld. AR on merits submitted that the total loans taken from the impugned parties is Rs.55,00,000/- i.e. from Ansh Merchandise Pvt. Ld. Rs. 35,00,000/- and from Atharv Business Pvt. Ltd. Rs.20,00,000/-. However the addition is made at Rs. 66,00,000/- based on some mistaken figures from the balance-sheet of the assessee. The ld. AR further submitted that the assessee has submitted all the documentary evidences to prove the genuineness of the transactions before the AO in the form of ledger accounts, bank statements, confirmations from parties, etc. (page 44 to 50 of PB-1). The ld. AR further submitted that the AO placed heavy reliance on statements recorded from various parties related to Mr. Pravin Kumar Jain and the findings given with regard to financial statements and the bank accounts etc, are based on conjecture and surmise. The ld AR also submitted that the assessee was not provided with the extract of the statement recorded from these parties though the assessee has requested for the same and that the assessee was not provided opportunity to cross-examine the deponents.
10. The ld. DR on the other hand relied on the orders of the lower authorities.
11. We have heard the parties and perused the material on record. We will first consider the contentions raised based on merits. To recapitulate the facts, the assessment of the assessee is re-opened for the reason that the AO has received

information from DGIT (Inv.) that the assessee has taken loan from certain companies which are managed and controlled by Shri Pravin Kumar Jain who is an accommodation entry provider. The assessee during the course of assessment proceedings has submitted various documents such as the ledger accounts, financial statements, tax returns, confirmation from parties etc. in order to support the claim that loan transactions are genuine, however, we noticed that the AO has held that the parties are not engaged in genuine business based on the analysis of the statement of accounts and also that the summons issued to these parties are not responded. Accordingly, the AO made an addition of Rs. 66,00,000/- under section 68 of the Act. In this regard, it is relevant to note that as per the financial statements of the assessee (page 5 of the PB) the outstanding loan from Ansh Merchandise Pvt. Ltd. stands at Rs. 35,00,000/- and from Atharv Business Pvt. Ltd. stands at Rs. 20,00,000/-. Therefore, there is merit in the contention of the assessee that the AO has misread the financial statements and has made an addition of Rs. 66,00,000/- instead of Rs. 55,00,000/-. During the course of hearing, the ld. AR drew our attention to the fact that the loan from Atharv Business Pvt. Ltd. is repaid during the financial year 2012-13 and during the financial year 2014-15 (page 93 to 97 of PB). The ld. AR further drew our attention to the fact that out of the loan of Rs. 35,00,000/- taken from Ansh Merchandise Pvt. Ltd. a sum of Rs. 14,00,000/- has already been repaid during the financial year 2014-15 and 2015-16 (page no. 57 to 62 of PB). The ld AR during the course of hearing made a without prejudice submission that the loan transactions which are subsequently repaid should be treated as. Considering the facts of the assessee's case and the documentary evidences submitted by the assessee we direct the AO to restrict the addition under section 68 to the unpaid balance of Rs. 21,00,000/- in the name of

Ansh Merchandise Pvt. Ltd. This ground is partly allowed in favour of the assessee.

12. With regard to the commission estimated at 0.25% added under section 69C, we direct the AO to apply the commission % on the amount to be treated as addition under section 68 as per the directions given in this order. It is ordered accordingly.

13. During the course of hearing the ld AR fairly conceded that if the appeal is considered on merits and relief given to the assessee, then the legal grounds need not be adjudicated. We have decided the issue based on merits and have given partial relief to the assessee. Therefore the legal grounds do not warrant a separate adjudication.

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

Order pronounced in the open court on 24-01-2024.

Sd/-

(NARENDER KUMAR CHOUDHRY)

Judicial Member

**SK, Sr. PS*

Sd/-

(MS. PADMAVATHY S)

Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai