

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

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM**

आयकर अपील सं/ I.T.A. No.3099/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2016-17)

Apple Lifecare India Pvt. Ltd. 39, Nanoghanshyam, Iondl Estate, Mahakali, Caves Road, Andheri East, Mumbai-400093.	<b>बनाम/</b> Vs.	ITO-9(1)(3) Aaykar Bhavan, Maharishi Karve Road, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCD9736A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Mona Makwana
Revenue by:	Shri Manoj Kumar Sinha (Sr. DR)

सुनवाई की तारीख / Date of Hearing: 11/01/2024

घोषणा की तारीख /Date of Pronouncement: 29/01/2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee company against the order of the Ld. CIT(A)/NFAC, Delhi dated 08.06.2023 for AY 2016-17.

**2. The grounds of appeal of the assessee are as under: -**

- a) "On the facts and in the circumstances of the case and in law, CIT(A), hereinafter referred to as the CIT(A) has erred in law in assessing the total income at Rs.65,16,227/-.
- b) On the facts and in the circumstances of the case and in law, the CIT(A) has erred in making addition of in disallowing interest of Rs.24,850/- out of total interest of Rs.59,500/- paid by the appellant to Shri Tilak Samant. Your honour is requested to delete such disallowance. Your honour is requested to delete the said addition.
- c) On the facts and in the circumstances of the case and in law, the CIT(A) has erred in making addition of Rs.1,00,000/- on the basis of



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unexplained Cash Credit u/s 68 of Unsecured loan of H B Enterprises.  
Your honour is requested to delete the said addition.

- d) On the facts and in the circumstances of the case and in law, the CIT(A) has erred in making addition of Rs.59,83,034/- on the basis of unexplained Cash Credit u/s 68 of Unsecured loan of Mr. Hitesh Asarani. Your honour is requested to delete the said addition.”

**3.** Brief facts as noted by the Ld. CIT(A) are that the assessee company had filed its return of income for the relevant AY. 2016-17 declaring total income of Rs.4,08,340/-. Later the case was selected for limited scrutiny under CASS and accordingly, the AO issued notices. And in response to the notices, the Ld. AR of the assessee appeared and filed the information called for by AO. During the course of assessment proceedings, the AO observed that the assessee company is a commission agent of pharmaceutical products and that the assessee company is primarily handling the sales and services of leading bulk drug manufacturers of Chinese market. The AO noticed that there were long term borrowings of Rs.1,29,44,652/- and short term borrowing. The AO after discussion in the assessment order, concluded that in the case of M/s. H. B. Enterprises, the assessee has taken loan of Rs. 1 lakh during the year consideration and in this regard, the assessee has filed the loan confirmation and acknowledgement of ITR only, and no other details such as copy of profit & loss account and balance sheet to verify the creditworthiness of the lender, and bank statement of the lender as well as of the assessee to verify the genuineness of the transaction were furnished. Hence, the AO treated the amount of Rs.1,00,000/- as unexplained cash credit u/s 68 of the Income Tax Act



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1961 (herein after the Act), and added it to the total income of the assessee. Further, the AO observed that the assessee had taken unsecured loan of Rs.59,83,034/- from Director of assessee company i.e., Shri Hitesh Asrani. And since, Sri Hitesh Asrani has not proved his creditworthiness, the AO treated the unsecured loan of Rs.59,83,034/- as unexplained cash credit u/s 68 of the Act and added it also to the total income. Further, the AO observed that the assessee has claimed interest expenses on account of loan borrowed from Shri Tilak Samant of Rs.59,500/-, but Shri Tilak Samant has confirmed the interest of Rs.34,650/- only. Therefore, the difference amount of interest of Rs.24,850/- was treated as unexplained by the AO and added to the total income. Thus, the AO completed the assessment by assessing the total income at Rs.65,16,227/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the appeal of the assessee by holding as under: -

“7. Decision:

7.1 The assessee company has filed return of income declaring total income at Rs.4,08,340/-. The case was selected for scrutiny. The AO during the course of assessment proceedings observed that the assessee company has taken loans from M/s. H.B. Enterprises of Rs.1,00,000/- as unsecured loans and from Sri Hitesh Asrani, Director of assessee company of Rs.59,83,034/- as unsecured loans. With regard to above loans, the assessee company has failed to prove the genuineness and creditworthiness of the lender, the Assessing Officer disallowed the same as unexplained cash credits and added to the total income of the assessee. Further, there is also interest amount which was paid for the loan taken, the difference amount of



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Rs.24,850/- was also disallowed and added to the total income.  
Hence, the assessee in appeal.

7.2 I have carefully considered the assessment order, statement of facts, documentary evidences produced and grounds of appeal filed.

7.3 During the course of appellate proceedings, on perusal of the assessment order, it is observed that the appellant company is commission agent of pharmaceutical products and is primarily handling the sales and services of leading bulk drug manufacturers of Chinese market. It is observed that, the appellant company has taken loans of Rs. 1,00,000/- from M/s H.B. Enterprises and also from one person Sri Hitesh Asrani of Rs.59,83,034/-. From assessment order it is noticed that Sri Hitesh Asrani, is the Director of the appellant company and very closed person holding 12.5% share in the company.

7.4 During the course of appellate proceedings, with regard to above loans, the appellant company has not filed any written submissions. The appellant company has filed only the documentary evidences such as confirmation letter, acknowledgement of TR of both the parties i.e., M/s H.B. Enterprises and Sri Hitesh Asrani. However, these documents are not sufficient to establish the creditworthiness and genuineness of the above parties. Even after detailed enquiry by the Assessing Officer during the course of assessment proceedings, the documentary evidences provided by the appellant company were not sufficient to prove the creditworthiness and genuineness of the said parties. During the appellate proceedings also, since the appellant company failed to prove the creditworthiness and genuineness of the above parties



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with documentary evidences, the additions made by the AO of Rs.1,00,000/- on account of unexplained cash credit as loan taken from M/s H.B. Enterprises and Rs. 59,83,034/- on account of unexplained cash credit as loan taken from Sri Hitesh Asrani, are upheld and confirmed. Hence, the grounds of appeal raised by the appellant company are dismissed.

7.5 It is observed from the assessment order that the appellant company has claimed the interest expenses on account of loan borrowed from Sri Tilak Samant of Rs. 59,500/- but as per confirmation received from Sri Tilak Samant, the interest amount is of Rs.34,650/- only. However, there is difference in interest amount of Rs. 24,850/- and the AO added the same to the total income assessee. During the course of appellate proceedings, with regard to addition of Rs. 24,850/-, the appellant company failed to explain the same with documentary evidences. Hence, the addition made by the AO towards difference in interest of Rs.24,850/- hereby upheld and confirmed. The grounds of appeal raised by the appellant company on this issue is dismissed.”

4. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee has preferred the aforesaid three (3) grounds of appeal (supra).
5. Ground no. 1 is general in nature so does not require any adjudication.
6. Ground no. 2 is against the action of the Ld. CIT(A) confirming the addition of Rs.24,850/- on account of Interest on Borrowed Loan from Shri Tilak Samant. It is noted from perusal of the assessment



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order that the assessee company claimed interest expenses on account of loan borrowed from Shri Tilak Samant to the tune of Rs. 59,500/-. According to the AO, Shri Tilak Samant only confirmed about receipt of interest of Rs.34,650/-. Therefore, the difference of Rs.24,850/- (Rs.59,500 – Rs.34,650/-) was added in the hands of the assessee. The Ld. CIT(A) confirmed the action of the AO on the ground that the assessee failed to explain the addition of Rs.24,850/- with documentary evidence. Before us, the Ld. AR drew our attention to the confirmation of the account of Shri Tilak Samant placed at page no. 95 of PB wherein it is noted that the assessee had made the following payments to Shri Tilak Samant as interest i.e.(i) on 17<sup>th</sup> April, 2015 an amount of Rs.18,900/- as well as TDS deducted on it of Rs.2100/-, (ii) on 19<sup>th</sup> Dec, 2015, an amount of Rs.15,750/- as well as TDS deducted on it of Rs.1,750/- and (iii) on 23<sup>rd</sup> Mar, 2016 interest amount of Rs.18,900/- as well as TDS deducted on the same day of Rs.2,100/-. Thus, assessee had made total remittance of interest along with TDS deducted of total amount of Rs.59,500/- before 23<sup>rd</sup> Mar, 2016. However, confusion arose due to the fact that Shri Tilak Samant has deposited the cheque of last amount (*dated 23 March 2016*) in his bank account on 16.06.2016 due to which he accounted the said interest in AY 2017-18 (Subsequent AY). From the confirmation of account signed by Shri Tilak Samant which is available on record (refer page 95 PB), we note that the interest amount along with TDS of Rs.59,500/- was credited/paid by the assessee to Shri Tilak Samant before 23<sup>rd</sup> Mar, 2016. Therefore, on the facts and circumstances discussed (supra), disallowance of interest of Rs.24,850/- made by the



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assessee was not warranted. And therefore, the addition of Rs 24,850/- is directed to be deleted.

7. Ground no. 3 is against the action of the Ld. CIT(A) confirming the addition of Rs.1 Lakh on account of unsecured loan from M/s. HB Enterprises. The AO taking note that assessee has received an amount of Rs.1,00,000/- from M/s. HB Enterprises asked for the *nature and source* of the credit entry. The assessee in order to prove the identity of the M/s. HB Enterprises filed the acknowledgement of return of income which is found placed at page no. 98 of PB wherein the PAN detail, address and the Income Tax ward under which M/s. HB Enterprises is assessed is available. The assessee has also filed the confirmation of account which is found placed at page no. 99 of PB. The payment of Rs. 1,00,000/- from M/s HB Enterprises has been received on 18.03.2016 by assessee company through NEFT/RTGS which fact is reflected from perusal of the bank statement of the assessee company found placed at page no. 91 of PB. The assessee also has filed Form 3CD which reflects the *ibid* transaction. Thus, we note that the assessee has discharged the burden to prove the *nature and source* of amount as loan from M/s. HB Enterprises which as noted (*supra*) is an income tax assessee and the loan has been given through banking channel and lender has confirmed lending the amount of Rs. 1 lakh. And the AO/Ld. CIT(A) has not found any infirmity in the documents filed by assessee, therefore, the addition of Rs.1,00,000/- was not warranted. And therefore, directed to be deleted.



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8. Ground no. 4 is against the action of the Ld. CIT(A) confirming the addition of Rs.59,83,034/- on account of unsecured loan from Shri Hitesh Asrani who is the director of the assessee company and holds 12.5% share in the assessee company. In order to prove the *nature and source* of the amount credited in his name to the tune of Rs.59,83,034/- which was given by Shri Hitesh Asrani to the assessee company, the assessee had filed copy of the ITR Acknowledgement of Shri Hitesh Asrani and confirmation from Shri Hitesh Asrani. However, the AO doubted the transaction since there was contradiction in Shri Hitesh Asrani's reply to notice u/s 133(6) of the Act wherein one reply he has shown outstanding balance of loan as Rs.1,29,49,618/- whereas in the other reply the outstanding loan amount was shown at Rs.1,04,49,617/- Taking note of the contradiction in the outstanding balance of loan, according to the AO, Shri Hitesh Asrani has not complied properly to the notice issued u/s 133(6) of the Act. And therefore, he did not accept the confirmation filed by Shri Hitesh Asrani; and taking note that in the year under consideration the fact that assessee has taken unsecured loan to the tune of Rs.59,83,034/- from Shri Hitesh Asrani and has not proved the *source of source*, the same was added in the hands of the assessee u/s 68 of the Act. On appeal, the Ld. CIT(A) confirmed the same. Aggrieved the assessee is before us.

9. Assailing the action of Ld CIT(A), the Ld. AR submitted that Shri Hitesh Asrani is the Director of assessee company and holds 12.5% shares and has given loan to assessee company. In order to prove the *nature and source* of loan, Ld AR drew our attention to the paper book filed wherein the assessee has filed the following



documents to prove the loan of Rs.59,83,034/-from Shri Hitesh Asrani (i) Acknowledgment of return of income of Shri Hitesh Asrani (ii) Computation of income of Shri Hitesh Asrani (iii) Confirmation of loan (iv) Bank statement of Shri Hitesh Asrani and (v) replies filed by Shri Hitesh Asrani to the AO. On the strength of the aforesaid documents, the Ld. AR contended that the assessee has discharged its burden to prove the nature and source of Rs. 59,83,034/- which was borrowed from Shri Hitesh Asrani. In this regard, we note the crucial fact that Shri Hitesh Asrani is the director of the assessee company and he hold 12.5% of share of the assessee company. Shri Hitesh Asrani's return of income along with computation of income are found placed at page no. 100 to 104 of PB and from perusal of the same it is noted that the gross total income of Shri Hitesh Asrani is to the tune of Rs. 20,12,074/- (Para 102 PB). Shri Hitesh Asrani has filed the confirmation of loan which is found placed at page no. 105 & 106 of PB. The Bank statement of Shri Hitesh Asrani is found placed at page no. 107 to 125 of PB and from perusal of the same (highlighted portion) that assessee received the loan through bank transaction. Thus, the assessee has discharged the burden of proving the nature and source of the amount credited in its account by Shri Hitesh Asrani. It is true that there was contradiction in the reply filed by Shri Hitesh regarding outstanding balance of loan. In his first reply he stated that the outstanding loan was Rs.1,29,49,618/- and in second reply he corrected the figure as Rs.1,04,49,617/-. In this regard, the Ld. AR, submitted that it was a bonafide mistake and that Shri Hitesh Asrani has reconciled the mistake and affirmed in a sworn affidavit that the



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outstanding loan amount was to the tune of Rs.1,04,44,651/- and drew our attention to the affidavit of Shri Hitesh Asrani found placed on record which contents reveal that it was a bonafide mistake and the outstanding loan amount was to the tune of Rs. 1, 04,44,651/- and not Rs.1,29,49,618/-. In this regard, it is noted from the balance-sheet placed at page no. 30 onwards and from perusal of page no. 35 (Schedule-5), Long Term Borrowing as on 31.03.2016 is noted to be Rs.1,29,44,652/-; and as on 31.03.2015, loan term borrowing was Rs.25 Lakhs (*Inter corporate/NBFC loan*). In the year under consideration the Long Term Borrowing of Rs.1,29,44,652/- as on 31.03.2016 which consists of Rs.25,00,000/- [*Inter-corporate/NBFC loan from Cdymax (India) Pharma P. Ltd*] and from Shri Hitesh Asrani to the tune of Rs.1,04,44,652/- which is clear from chart given below: -

	31.03.2016	31.03.2015
Long Term Borrowings		
Schedule-5 Page No. 35 Unsecured		
Loan from Inter Corporated/NBFC		25,00,000
Directors	1,29,44,652/-	

**The break-up of loans is as under;-**

Name	31.03.2016	31.03.2015
Cdymax (India) Pharma P Ltd.	25,00,000	0
Hitesh Asrani	1,04,44,652/-	0
Total	1,29,44,652/-	0

Thus, we find that the assessee has re-conciled the contradiction in the replies filed to the AO u/s 133(6) of the Act and note that the outstanding loan form Shri Hitesh Ansari was Rs. 1,04,44,652/-, and



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therefore, the AO erred in rejecting the confirmation of loan filed by the assessee without verifying the clarification/reconciliation given by the assessee as noted (supra); and the AO erred in law by observing that post amendment brought in from 1<sup>st</sup> Apr, 2013, the lenders *source of source* need to be proved is erroneous. It is true that amendment was brought in section 68 of the Act from 1<sup>st</sup> Apr, 2013, but the burden of proving *source of source* was not in respect of loans taken but for sums credited as share application money, share capital, share premium or any such amount. Therefore, in the facts and circumstances discussed (supra), the AO erred in insisting assessee to prove *source of source* of loan of Rs. 59,83,034/- which was not the requirement of law. Having held so, and taking note that the assessee has discharged the burden to prove the nature & source of Rs. 59,83,034/- as loan taken from Shri Hitesh Asrani/director, the action of both AO & Ld. CIT(A) cannot be countenanced. Therefore, we are of the view that the addition of Rs. 59,83,034/- was not warranted in the facts and circumstances of the case. So, directed to be deleted.

**10.** In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 29/01/2024.

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/01/2024.  
Vijay Pal Singh, (Sr. PS)



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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
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