

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2679/MUM/2023
(Assessment Year: 2009-10)**

Manish Kumudchandra Mehta,
7, Sudha, 2nd Floor, Patel Compound,
Nepean Sea Road, Mumbai - 400036
[PAN: AADPM9184G]

..... **Appellant**

Income Tax Officer-
19(2)(3), Mumbai,
Matru Mandir, 2nd Floor,
Grant Road, Mumbai - 400007

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Mrugakshi Joshi
For the Respondent/Department : Smt. Mahita Nair

Date

Conclusion of hearing : 10.01.2024
Pronouncement of order : 31.01.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 27/06/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 13/12/2016, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The relevant facts in brief are that the Appellant filed return of

income for the Assessment Year 2009-10 declaring 'Nil' income on 28/09/2009. The aforesaid return was processed under Section 143(1) of the Act. Subsequently, information was received from Director General of Income Tax (Investigation), Mumbai that the Appellant has taken accommodation/hawala entries to the tune of INR 2,25,87,732/- from M/s Sankhala Exports Pvt. Ltd. a company forming part of Bhanwarlal Jain-Rajendra Jain-Gautam Jain Group allegedly engaged in providing accommodation entries for bogus purchases and bogus unsecured loans & advances. Therefore, after recording reasons for reopening assessment under Section 147 of the Act, the Assessing Officer issued notice under Section 148 of the Act. In response, the Appellant requested that the return originally filed by the Appellant be treated as returned filed in response to notice, dated 23/03/2016, issued under Section 148 of the Act. Thereafter, a copy of reasons recorded for reopening of assessment was provided to the Appellant vide letter, dated 21/04/2016. During the reassessment proceedings, the Appellant was asked to furnish details of transactions undertaken by the Appellant with M/s Sankhala Exports Pvt. Ltd. and furnished relevant documents pertaining to the same. Vide letter, dated 06/07/2016, the Appellant submitted that the interest bearing loan taken by the Appellant from M/s Sankhala Exports Pvt. Ltd. was returned in the subsequent year. Subsequently, vide letter, dated 25/10/2016, the Appellant stated that the Appellant has neither taken any loan from nor paid any interest to M/s Sankhala Exports Pvt. Ltd. The Assessing Officer completed the assessment vide order, dated 13/12/2016, passed under Section 147 read with Section 143(3) of the Act after making addition of INR 2,25,87,732/- in the hands of the Appellant. The Assessing Officer concluded that the Appellant had received loan of INR 2,25,87,732/- from Sankhala Exports Pvt. Ltd. during the

relevant previous which constituted unexplained cash credit since the Appellant had failed to discharge the onus cast upon the Appellant under Section 68 of the Act.

3. Being aggrieved, the Appellant preferred appeal before CIT(A) against the Assessment Order, dated 13/12/2016 challenging, both, the validity of the reassessment proceedings as well as the addition of INR 2,25,87,732/- made by the Assessing Officer under Section 68 of the Act on merits. Vide order dated 27/06/2023, the CIT(A) dismissed the aforesaid appeal.
4. Being aggrieved, the Appellant is now in appeal before us.
5. Ground No. 1 raised by the Appellant challenges the reopening of the assessment under Section 147 of the Act, while Ground No. 2 is directed against the addition of INR 2,25,87,732/- made under Section 68 of the Act on merits. Ground No. 3 raised by the Appellant highlights the failure of the authorities below to follow the correct procedure in relation to non-grant of the opportunity of cross examination by the Assessing Officer and/or failure to call for remand report by the CIT(A).
6. We have heard the rival submission and perused the material on record. It is admitted position that the reassessment proceedings were initiated on the basis of the information/report received from Director General of Income Tax (Investigation), Mumbai. In the report, it was clearly stated that Bhanwarlal Jain-Rajendra Jain-Gautam Jain Group allegedly engaged in providing accommodation entries for bogus purchases and bogus unsecured loans & advances, and that the Appellant had taken accommodation entry to the tune of INR 2,25,87,732/-. In our view, the Assessing Officer had sufficient new tangible material in the form of information/report received from

the Director General of Income Tax (Investigation), Mumbai for the purpose of initiating reassessment proceedings under Section 147 of the Act.

7. We note that the Assessing Officer has recorded following reasons for re-opening the assessment:

"A search/survey action was carried out by the DGIT (Investigation) Mumbai, in the case of Bhanwarlal Jain Group, Rajendra Jain group and Gautam Jain group on 03/10/2013. During the course of search/survey action, it was revealed that these group concerns were merely providing accommodation entries through various benami concerns operated and managed by these group concerns. It was also found that these concerns are indulged into fraudulent transactions of issuing accommodation/hawala entries which purportedly shows transaction of purchase and sale of materials and bogus unsecured loans and advances.

On the basis of information received and also on perusal of the records of the assessee, it is noticed that the above mentioned assessee has availed accommodation entries from the Said Group Concerns during the year under consideration.

Details of the hawala entities from whom the assessee has obtained accommodation entries for the year under consideration are given as under:-

Sr. No.	Name of the hawala parties	<u>Bill amount (Rs.)</u>
1.	Shankhala Exports Pvt. Ltd.	2,25,87,732/-
	Total	2,25,87,732/-

On the basis of the aforesaid information available with me, carrying out the Independent field enquiries through Inspector and after duly applying my mind, I have reason to believe that income chargeable to tax, as indicated above, to the tune of Rs. 22587732/-, or any other income chargeable to tax which comes to my notice subsequently in the course of proceedings for re-assessment, has escaped assessment for A.Y. 2009-10 within the meaning of Section 147 of the IT Act 1961." (Emphasis Supplied)

8. On perusal of above, it is not clear whether the accommodation entry alleged to have been taken by the Appellant was in the nature of bogus purchase or bogus unsecured loan transaction. While recording the details of the alleged hawala entries in the reasons recorded, the Assessing Officer has stated in the table reproduced hereinabove "*Bill Amount (Rs.)*". However, on perusal of the first paragraph of the Assessment Order, dated 13/12/2016, we find that the Assessing Officer has proceeded on the premise that the Appellant had taken unsecured loan of INR 2,25,87,732/-. During the course of the appellate hearing before us, the Ld. Departmental Representative had impressed upon the facts that during the assessment proceedings, the Appellant had admitted that unsecured loan was taken by the Appellant from Sankhala Exports Pvt. Ltd. which was returned in subsequent years. The Ld. Departmental Representative had also placed on paragraph 4.3 of the assessment order and submitted that a ledger copy of the loan and confirmation was also filed by the Appellant during the assessment proceedings. Refuting this, the Ld. Authorised Representative for the Appellant had submitted that no such ledger copy/confirmation was filed by the Appellant during the assessment proceedings. Vide letter, dated 25/10/2016, filed during the assessment proceedings, the Appellant had clearly stated that the Appellant had neither taken any loan from nor paid any interest to Sankhala Exports Pvt. Ltd. Even before the CIT(A), the Appellant had pointed out that vide letter dated 06/07/2016, the Appellant had inadvertently stated the incorrect position that loan taken by the Appellant from Sankhala Exports Pvt. Ltd. was returned by way of account payee cheques in the subsequent years. We have perused the computation of taxable income, statement of account and balance sheet of the Appellant [placed at page 1 to 3 of the paper-book]. On perusal of the same,

we find that the Appellant has declared 'Nil' income after claiming exemption under Section 10(2A) of the Act in respect of his share in the profits of the partnership firm M/s K D Mehta. The balance sheet does not reflect any credit in the name of M/s Sankhala Exports Pvt. Ltd. as on 31/03/2009. The Appellant has also placed on record, a copy of bank account maintained with Bank of India to show that the Appellant had not received any loan during the relevant previous year from Sankhala Exports Pvt. Ltd. The aforesaid documents support the stand taken by the Appellant that during the relevant previous year, the Appellant had not taken any unsecured loan from M/s Sankhala Exports Pvt. Ltd. On the other hand, there is nothing on record to support the finding returned by the Assessing Officer in paragraph 4.3 of the Assessment Order that the Appellant had filed copy of ledger account or loan confirmation during the assessment proceeding. In the absence of any material to show that a sum of INR 2,25,87,732/- was credited in the books of the Appellant we hold that, in the facts and circumstances of the present case, the provisions of Section 68 of the Act cannot be invoked to bring to tax alleged unsecured loan amount of INR 2,25,87,732/-. While we reject the contention of the Appellant that the Assessing Officer did not have new tangible material to initiate reassessment proceedings, we hold that the Assessing Officer did not have sufficient material to make the addition of INR 2,25,87,732/- in the hands of the Appellant under Section 68 of the Act. Accordingly, the addition of INR 2,25,87,732/- made under Section 68 of the Act is deleted.

9. In view of the above, Ground No. 1 raised by the Appellant is dismissed, Ground No. 2 raised by the Appellant is allowed, and Ground No. 3 raised by the Appellant is dismissed as being infructuous.

10. In result, present appeal preferred by the Assessee is partly allowed.

Order pronounced on 31.01.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.01.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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