

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.759 & 760/Bang/2023
Assessment Years: 2013-14 & 2017-18

Bajaj Clothings Private Limited 194, 4 <sup>th</sup> Cross, Lalbagh Road KS Garden Karnataka 560 027  <b>PAN NO : AADCB0405E</b>	<b>Vs.</b>	DCIT Circle-1(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri S.N. Agarwal, A.R.
<b>Respondent by</b>	:	Shri Narendra Kumar Naik, D.R.

<b>Date of Hearing</b>	:	01.05.2024
<b>Date of Pronouncement</b>	:	08.05.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These two appeals by assessee are directed against order of NFAC passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment years 2013-14 & 2017-18 dated 21.8.2023 and 26.8.2023 respectively.

**ITA No.259/Bang/2023 (AY 2013-14):**

**2.** The assessee has raised following grounds of appeal:

- 1. That on the facts and in the circumstances of the case and in law, notice under section 143(2) of the Income-Tax Act, 1961 was issued from the office of non-jurisdictional Assessing Officer and consequently, entire assessment proceedings and assessment order passed under section 143(3) of the Act deserve to be quashed on this ground itself being illegal and bad in law*
- 2. That on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in confirming the addition of Rs. 85,00,000/- made by the Assessing Officer to the total income of the appellant on account of unsecured loans received by treating it as unexplained cash credit under section 68 of the Income-Tax Act, 1961 without properly appreciating*

*the facts of the case and submissions made before him/ her more so when the appellant had duly established the identity and creditworthiness of the unsecured loan parties and genuineness of the amount of unsecured loan received from those parties*

3. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 85,00,000/- made by the Assessing Officer to the total income of the appellant on account of unsecured loans received by treating it as unexplained cash credit under section 68 of the Income-Tax Act, 1961 more so when such amount of unsecured loan was repaid in entirety*
4. *The appellant reserves the right to add, alter and modify the grounds of appeal as taken by it*

**3.** Ground No.1 above raised by the assessee is the additional ground filed for the first time before this Tribunal and the assessee has filed a petition dated 21.12.2023 for admission of the same.

**4.** We have heard the both the parties on admission of additional ground. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above ground. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional ground for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bonafide.

**5.** After admitting additional ground, in our opinion, this ground was not filed before first appellate authority and for the first time it was raised before us. To adjudicate this ground, it is necessary to go through the records of the ld.AO, which is not made available. Hence, in the interest of justice, we remit the legal issue with additional ground raised before us to the file of ld. NFAC/CIT(A) to decide the issue after verifying the records in accordance with law. It is needless to say that NFAC/CIT(A) has to give fair opportunity of hearing to the assessee.

**5.1** The other grounds of appeals are kept open at this stage, as the legal issue to be decided first.

**6.** In the result, appeal of the assessee in ITA No.759/Bang/2023 is partly allowed for statistical purposes.

**ITA No.760/Bang/2023 (AY 2017-18):**

**7.** The assessee has raised following grounds of appeal:

1. *“That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 58,00,000/- made by the Assessing Officer to the total income of the appellant on account of unsecured loan received from group concern, was Borneo Vinimay Private Limited by treating it as unexplained cash credit under section 68 of the Income-Tax Act, 1961 without properly appreciating the facts of the case and submissions made before him/ her more so when the appellant had duly established the identity and creditworthiness of the unsecured loan party and genuineness of the amount of unsecured loan received from the said party.*
2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs. 58,00,000/- made by the Assessing Officer to the total income of the appellant on account of unsecured loan received from group concern, M/S Borneo Vinimay Private Limited by treating it as unexplained cash credit under section 68 of the Income-Tax Act, 1961 even when only an amount of Rs. 18,94,765/- was proposed to be added to the total income of the appellant in the show cause notice as issued during the course of assessment proceedings thereby grossly violating the principles of natural justice*
3. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Assessing Officer in computing the amount of tax liability by invoking the amended provisions of section 115BBE of the Income-Tax Act, 1961 even in respect of unsecured loans received prior to 15-12-2016 i.e. prior to the date of obtaining assent from the President of India and hence, in any case, amended provisions of section 115BBE of Income-Tax Act, 1961 shall not be applicable to the facts of the present case*
4. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 4,31,617/- out of addition of Rs. 8,90,282/- made by the Assessing Officer to the total income of the appellant on account of CST paid for earlier year by invoking the provisions of section 37 of the Income-Tax Act, 1961 without properly appreciating the facts of the case and submissions made before him/ her even when CST being in the nature of tax is allowable on actual payment basis under section 43B of the Income-Tax Act, 1961*
5. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 17,71,226/- made by the Assessing Officer to the total income of the appellant on account of interest paid to M/S Jagran Commodeal Pvt. Ltd. by invoking the provisions of*

*section 37 of the Income-Tax Act, 1961 without properly appreciating the facts of the case and submissions made before him/ her*

6. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 17,71,226/- made by the Assessing Officer to the total income of the appellant on account of interest paid to M/S Jagran Commodeal Pvt. Ltd. even when such addition was not proposed in the show cause notice issued during the course of assessment proceedings thereby grossly violating the principles of natural justice*
7. *The appellant reserves the right to add, alter and modify the grounds of appeal as taken by it.”*

**8.** With regard to first ground of appeal, facts of the case are that an addition of Rs.58 lakhs of loan taken from M/s. Borneo Vinimay Pvt. Ltd. u/s 68 of the Act. The ld. AO has observed as follows:

*“Similarly, in the case of M/s. Borneo Vinimay Private Limited, it is noticed that Sri Vijay Bajaj is the director of the said company. It seems that M/s. Borneo Vinimay Private Limited is nothing but a shell company. The Director himself being the director of the shell company should have furnished the annual reports and other details of the company, but only return of income is furnished. The assessee company is able to furnish the existence of the lender company but it is not able to prove the creditworthiness of the lender. As per the ITR of M/s. Borneo Vinimay Private Limited, the company doesn't have any creditworthiness to lend Rs.58,00,000/- and hence the same is disallowed as unsecured loan and added back u/s 68 of the Income Tax Act.”*

**8.1** The NFAC observed that M/s. Borneo Vinimay Private Limited is Kolkata based company where the assessee company holds 19.70% shares. From the audited account/ITR of he observed that the said company has issued 2,46,220 shares out of Rs.3,00,000/- authorized shares capita of Rs.10 each. The balance sheet also shows that it has received security premium of Rs.2,00,37,600/- and has only 'Reserve and Surplus' out of profit of the company of Rs,1,88,116/- only. The company has profit of Rs.10,929/- in the present year and in the immediately preceding year it had profit of Rs.13,480/-. The company does not have any fixed business assets. It does not pay rent either. The share capital so raised in the earlier years does not have any basis of charging premium looking at the activities of the company and its profitability. He observed that the

finding of the AO in this regard who considered the company as shell company, find place in view of the activities of the company. The company does not have creditworthiness to lend loan of Rs.58,00,000/-. As per submission of assessee, NFAC observed that M/s Borneo Vinimay Private Limited received Rs.60,00,000/- from its Director, Shri Vijay Bajaj prior to advancing loan of Rs.58,00,000/- to the assessee. However, NFAC did not understand why the company has not directly taken loan from its director of this Rs. 58,00,000/- like loans taken from him. The money is being rotated among the group and utilizing at its sweet will. M/s. Borneo Vinimay Private Limited, as observed from the findings of the AO and NFAC's observations, does not have any credential of its own. NFAC observed that it seems incorporated to introduce the unaccounted money into it without paying tax on the same and utilize for its business or to buy properties. With these observations, NFAC dismissed the ground of assessee. Against assessee is in appeal before us.

**9.** The ld. A.R. submitted that loan of Rs. 58,00,000/- advanced by the unsecured loan by group concern, M/s. Borneo Vinimay Private Limited during the Financial Year 2016-17 was outstanding as on 31<sup>st</sup> March, 2017. Further, relevant sub-schedule of 'Loans and Advances' forming part of the audited financial statements of the unsecured loan party and group concern, M/s. Borneo Vinimay Private Limited for the year ended 31<sup>st</sup> March, 2017 and he drew our attention to their balance sheet, wherein the amount of loan of Rs. 58,00,000/- advanced to the assessee i.e. M/s. Bajaj Clothings Private Limited is duly reflected.

**9.1** Furthermore, he submitted that closing balance as per sub-schedule of 'Loans and Advances' can be duly reconciled with the Schedule of 'Long-Term Loans and Advances' in the audited financial statements of the unsecured loan party and group concern, M/s. Borneo Vinimay Private Limited. Moreover, relevant sub-schedule

of 'Unsecured Loans' forming part of the audited financial statements of the assessee i.e. M/s. Bajaj Clothings Private Limited for the year ended 31<sup>st</sup> March, 2017 was placed by the Id. A.R. in the written submissions for our ready reference, wherein the amount of unsecured loan of Rs.58,00,000/- received from M/s. Borneo Vinimay Private Limited and outstanding as at year-end was duly reflected. He drew our attention to the closing balance as per sub-schedule of 'Unsecured Loans' can be duly reconciled with the Schedule of 'Long-Term Borrowings' in the audited financial statements of the assessee. In view of the above discussion and in light of the ample corroborative documentary evidence furnished by the assessee with its Paper Book/Synopsis filed earlier, the Id. A.R. for the assessee requested to delete the addition of Rs.58,00,000/- made by the Assessing Officer and confirmed by Ld. CIT(A) on account of unsecured loan received from group concern, M/s. Borneo Vinimay Private Limited by treating it as unexplained cash credit under section 68 of the Act.

**10.** The Id. D.R. relied on the order of lower authorities.

**11.** We have heard the rival submissions and perused the materials available on record. In the present case, the main issue is with regard to addition made u/s 68 of the Act with regard to unsecured loan standing in the name of M/s. Borneo Vinimay Private Limited. The assessee's counsel submitted before us that this amount has been duly accounted in the assessee's books of accounts as well as in the books of accounts of M/s. Borneo Vinimay Private Limited. Accordingly, he drew our attention to the balance sheet of M/s. Borneo Vinimay Private Limited for the year ended on 31.3.2017 and shown entry appearing in the books of accounts of M/s. Borneo Vinimay Private Limited. According to Id. A.R., it has been shown by M/s. Borneo Vinimay Private Limited under the head "Long Term Loans and Advances" (Note 6) total of Rs.1,32,67,585.30ps. consisting of following:-

Bajaj Clothing Pv.t Ltd.	-	Rs. 58,00,000.00
Income Tax under protection	-	Rs. 5,04,585.30
Mr. Vijay Bajaj	-	<u>Rs. 69,63,000.00</u>
<b>Total</b>	-	<b><u>Rs.1,32,67,585.30</u></b>

**11.1** However, the contention of the ld. D.R. is that before advancing Rs.58 lakhs to the present assessee M/s. Borneo Vinimay Private Limited has issued Rs.60 lakhs loan from one of its Director Mr. Vijay Bajaj and that transaction has not been properly explained and also it was not explained as to why the present assessee has not directly taken loan from Shri Vijay Bajaj and what is the reason to root through this amount through M/s. Borneo Vinimay Private Limited by Director Vijay Bajaj. According to the ld. D.R., this is a suspicious transaction, which required to be properly enquired at the end of the ld. AO. In our opinion, u/s 68 of the Act, assessee is required to prove the identity of creditors, genuineness of transaction and capacity of the lender to advance the money to assessee. There is a burden cast upon the assessee which is not discharged.

**11.2** As rightly pointed out by the ld. D.R., there is a huge burden on the assessee to explain the genuineness of the transaction also. Both the lower authorities have doubted the genuineness of the transaction. In our opinion, in the interest of justice, it is appropriate to remit this issue in dispute to the file of ld. AO to carry out necessary enquiry with the transaction to the assessee to prove the genuineness of the transaction and capacity of the parties to the transaction. Ordered accordingly.

**11.3** This ground of appeal of the assessee is partly allowed for statistical purposes.

**12.** Next ground is with regard to sustaining addition of Rs.4,37,617/- out of Rs.8,90,282/- u/s 37 of the Act made towards payment of CST. In this regard the AO has observed as follows: -

*"4.4.2.1 The assessee company is claiming CST of earlier year amounting to Rs.8,90,282/-. The assessee was show caused why the same shall not be disallowed.*

*4.4.2.2 In response to the same, the assessee submitted that the CST is an allowable expenditure and the same cannot be disallowed merely for the reason that it pertained to previous year and not to the current year. The amount of CST earlier year of Rs. 4,31,617/- as debited in the statement of profit and loss during the year under consideration was paid on account of non-submission of "C" Form for the FY 2012-13 and 2013-14 and the said amount was a debited in the statement of profit and loss for the year under consideration since the liability to pay crystallized in the current year.*

*The submission of the assessee is pursued and the same is not acceptable. The assessee is following a mercantile system of accounting. As per the mercantile system, the assessee ought to have created provision for claiming CST deduction in the previous years. The same should have been added in the previous year and hence the assessee could have claimed the same in the current year. As per the notes attached to and forming part of final accounts, the assessee has clearly mentioned an amount of Rs.8,90,282 for the earlier year CST. As it is prior period expenses same is not allowed during the year. Hence, Rs.8,90,282/- is hereby disallowed as the same pertains to earlier years."*

**12.1** The NFAC observed that the assessee submitted inter alia that- "The assessee claimed deduction on account of 'CST Earlier Year' of Rs. 4,31,617/- only in its Statement of Profit & Loss for the year ended 31<sup>st</sup> March, 2017 and not of Rs. 8,90,282/- as was mentioned in the assessment order passed by the Assessing Officer. Hence, the issue in dispute shall be with respect to the amount of Rs. 4,31,617/- only and not with respect to the amount of Rs.8,90,282/-". The assessee further given various reason and relied upon case laws of various courts which the NFAC has considered but declined to accept based upon the finding of the AO which is on a strong footing as the assessee is following mercantile system of accounting and accordingly the assessee would have created provision for claiming CST deduction in the previous years and same should have been added in the previous year and claimed the same in the current year. The assessee's claim that the issue in dispute shall be with respect to the amount of Rs. 4,31 ,617/- only and not with respect to the amount of Rs. 8,90,282/- may be verified by the

AO. Thus, considering the discussion made above, the ld. NFAC sustained the action of the AO. However, to meet the end of justice, the AO was directed to verify the amount in dispute and if found in order shall allow undisputed amount. NFAC directed the assessee to furnish all necessary evidence before the AO at the time of giving effect to this order. With these observations, NFAC partly allowed this ground of appeal of the assessee.

**13.** The ld. D.R. relied on the orders of the lower authorities.

**14.** We have heard the rival submissions and perused the materials available on record. The ld. A.R. submitted that in the assessment year under consideration assessee has made actual payment of Rs.3,66,164/- which is related to earlier assessment year 2012-13 and another amount of Rs.65,453/- is related to CST paid for non-submission of 'C' form in respect of 5 parties as follows:-

S.No.	Name of the parties	Amount (in Rs.)
1	ENC Holding Pvt. Ltd. (Brands Bar)	6,874
2	Malabis Fashions – Nizama	777
3	Mannequin (Cochin)	5,324
4	Suruchi Fashion – Rourkela	30,019
5	Swastik Steel – Mumbai	22,459
	Total	65,453

**14.1** On considering these facts, NFAC already remitted the issue to the file of ld. AO for fresh consideration. Before us, the ld. A.R. further pleaded that addition be deleted instead of remitting back to the file of ld. AO for verification. In our opinion, the finding of the NFAC on this issue by remitting to ld. AO to verify the amount in dispute and if found in order, it was directed to allow the deduction. The ld. CIT(A) cannot exercise the power of remand u/s 251 of the Act. We therefore, direct the ld. AO to verify the amount in dispute with a direction to allow the deduction, if found in order.

**14.2** This ground of appeal of the assessee stands allowed partly for statistical purposes.

**15.** Next ground is with regard to confirming addition of Rs.17,71,226/- towards payment of interest to M/s. Jagran Commodeal Private Limited. In this regard, the Id. AO observed as under:

*“4.4.3 Disallowance of interest on account of bogus loan: It is observed from finance cost note of the assessee that the assessee company has paid interest to others amounting to Rs.33,70,889/-. It is also noticed from the ledger of interest paid on loan account in the books of assessee company that the assessee has paid interest amounting to Rs.17,71,226/- to Jagran Commodeal Pvt. Ltd. No other details have been provided by the assessee with regard to the same. With respect to the loan there was addition on account of unsecured loan during AY 2013-14 and 2014-15. On account of bogus loan interest paid to Jagran Commodeal Pvt. Ltd. is considered as bogus expenses and disallowed u/s 37 of the IT Act. Hence, it can be construed that the assessee has received loan from a shell company and paid off the same to claim expenses. Hence, the amount paid off as interest amounting to Rs.17,71,226/- is hereby disallowed u/s 37”.*

**15.1** Before the NFAC, the assessee submitted inter alia the following:-

*“In this respect, we would like to clarify that the aforesaid finding of the Assessing Officer was factually incorrect and completely devoid of any merits since no addition was made to the total income of the appellant on account of unsecured loan received from M/S Jagran Commodeal Private Limited in any of the preceding years'. It is being further clarified that the appellant received unsecured loan from M/S Jagran Commodeal Private Limited during the previous year 2012-13 relevant to the Assessment Year 2013-14 and that the case of the appellant was also selected for scrutiny for the Assessment Year 2013-14 and assessment order dated 29-03-2016 was passed under section 143(3) of the Act wherein the then Assessing Officer duly accepted the amount of loan received by the appellant from M/S Jagran Commodeal Private Limited as genuine but made addition to the total income of the appellant on account of unsecured loan received from the following three parties by treating it as unexplained cash credit under section 68 of the Act: -*

Sl.No.	Name of the companies in respect of which addition was made to the total income of the appellant on account of receipt of unsecured loans	Amount (Rs.)
1	Idani Trading Private Limited	25,00,000
2	Colour Union Private Limited	15,00,000
3	Dev Share Private Limited	45,00,000
	Total	85,00,000

**15.2** From the above submission of the assessee and the observation of the AO in the assessment order, NFAC observed that it is apparent that the AO fell into an error in mentioning the name of the lenders. However, the assessee has not disputed the interest payments debited for the three lenders in which case principal loans amount in the preceding years were added to the assessee's income. The assessee has also not mentioned about finality of the said addition. Thus, NFAC observed that the expenditure on such loans is liable to be disallowed in the year in which it was added and in subsequent years, if it has debited interest of said loan in its profit and loss account. Thus, the AO correctly disallowed the amount u/s 37 though he has mentioned the name of M/S Jagran Commodeal Private Limited instead of (i) Idani Trading Private Limited, (ii) Colour Union Private Limited and (iii) Dev Share Private Limited. Mentioning a wrong name cannot be considered as illegal action by the AO. Therefore, considering the discussion made above, NFAC upheld the amount of disallowance of Rs.17,71,226/- and dismissed this ground of appeal of the assessee.

**15.3.** The Id. A.R. submitted that he had furnished sub-schedules of 'Unsecured Loans' forming part of the audited financial statements of the assessee for the year ended 31<sup>st</sup> March, 2017 wherein the amount of unsecured loan received from M/s. Jagran Commodeal Pvt. Ltd. and outstanding as at year end i.e. 31<sup>st</sup> March, 2017 was duly reflected for our verification. The closing balance as per sub-schedule of 'Unsecured loans' can be duly reconciled with the schedule of 'Long Term Borrowings' in the audited financial statements of the assessee which has been attached in the paper book at page 119. Further, he drew our attention to ledger account of M/S Jagran Commodeal Pvt. Ltd. in the books of accounts of the assessee for the Financial Year 2016-17, so as to substantiate the fact that

interest of Rs. 17,71,226/- was credited on the amount of unsecured loan received from M/s. Jagran Commodeal Pvt. Ltd. only and that no addition was made to the total income of the assessee on account of unsecured loan received from M/s. Jagran Commodeal Pvt. Ltd. there by leaving no scope whatsoever for making addition on account of interest credited on the amount of unsecured loan received from the said party. In view of the above discussion and in light of the ample corroborative documentary evidences furnished by the assessee with its Paper Book/ Synopsis filed earlier, the ld. A.R. for the assessee humbly requested to delete the addition of Rs. 17,71,226/- made by the Assessing Officer and confirmed by the Ld. CIT(A) on account of interest paid to M/s. Jagran Commodeal Pvt. Ltd. by invoking the provisions of section 37 of the Act.

**16.** The ld. D.R. relied on the order of lower authorities.

**17.** We have heard the rival submissions and perused the materials available on record. The assessee in this assessment year under consideration claimed payment of interest at Rs.17,71,226/- as paid to M/s. Jagran Commodeal Pvt. Ltd. The plea of the ld. D.R. is that this amount is relating to interest paid to unsecured loan which was already made addition in earlier assessment year and there was no outstanding of that loan in the assessment year under consideration. More so, this was a bogus loan shown by the assessee in its books of accounts as it is the loan from shell company.

**17.1** Contrary to this, ld. A.R. submitted that there was no treating of this loan as income of the assessee in any assessment year and no addition has been made on this count and actually assessee paid interest to M/s. Jagran Commodeal Pvt. Ltd. at Rs.17,71,226/- in the assessment year under consideration. In our opinion, this issue requires verification at the end of ld. AO to look whether any loan in the name of M/s. Jagran Commodeal

Pvt. Ltd. has been treated as bogus loan and made addition on this count in any assessment year. If there is no outstanding loan in the name of M/s. Jagran Commodeal Pvt. Ltd. in the assessment year under consideration, there is no question of payment of interest to this party. Accordingly, the issue is remitted to the file of ld. AO for fresh consideration.

**17.2** This ground of appeal of the assessee is partly allowed for statistical purposes.

**18.** In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 8<sup>th</sup> May, 2024

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 8<sup>th</sup> May, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**