

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.4650/Mum/2023
(Assessment Year :2014-15)**

M/s. Trio Mercantile & Trading Limited 613/B, Mangal Aarambh, Kora Kendra Borivali West Mumbai-400 092	Vs.	ITO-13(3)(2), Mumbai Aaykar Bhavan Maharshi Karve Road Mumbai-400 020
PAN/GIR No.AABCT7201N		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhupendra Shah
Revenue by	Shri P.D. Chougule
Date of Hearing	13/05/2024
Date of Pronouncement	30/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 04/11/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 147 for the A.Y.2014-15.

2. In various grounds of appeal assessee has challenged the reopening of assessment u/s.148 on various grounds and addition of Rs.3,08,47,239/-.

3. The brief facts are that the assessee company had filed its return of income on 28/11/2014 declaring total income of Rs.32,50,232/-. The said return was processed u/s.143(1). Later on assessee's case was reopened u/s. 147 and notice u/s. 148 was issued on 18/07/2017 on the following reasons recorded.

"1. Information was received from DCIT Central Circle-4(2), Mumbai in this office vide letter dated 07.06.2017 received in this office on 04.07.2017 According to the letter, a search seizure action u/s. 132 was conducted in the group cases of M/s Esn Dee Aluminium Ltd. By DDIT (Inv.) Unit-II(2), Mumbai on 28.03.2014 During this search and seizure action, a survey action u/s. 133A was also conducted in case of Shri. Hasmukh Mehta During the survey action, an admission was made by Shri Hasmukh Mehta before the investigation wing that he arranges accommodation entries of unsecured loans, share application money, capital gains, purchase bills etc for various entities. A diary was also impounded by the investigation wing which contained certain transactions done by the assessee. M/s Trio Mercantile & Trading Pvt. Ltd which are accommodation entries arranged by Shri Hasmukh Mehta in which the assessee is also a beneficiary of amount Rs. 3,08,47.239/

2 After going through the information received and statements recorded it is seen that the assessee was one of the beneficiaries of accommodation entries furnished by Shri Hasmukh Mehta. The statements recorder by the investigation wing of Shri Hasmukh Mehta and his accomplices confirms to this extent The entries in diaries also confirm that the assessee has received an amount of Rs 3,08,47,239/- from different entities from accommodation entries provided by Shri Hasmukh Mehta.

3. In light of verifying the material facts available on record, I have reason to believe that the income of 3,08,47,239/- changeable to tax has escaped assessment by reason of the failure on part of the assessee to disclose fully and truly ail material facts necessary for AY 2014 15 within the meaning of section 147 of the IT Act, 1961.

4. Thus, the case has been reopened on the ground that assessee has taken certain accommodation entries arranged by Shri Hasmukh Mehta of Rs.3,08,47,239/-. Before the AO assessee in its objection for reopening before the AO stated that none of the transactions was in the nature of cash credit or any kind of entry. The details of transactions from various entities were explained before the ld. AO in the following manner:-

Sr No.	Name of the Party	Amount	Nature of Transaction
1.	Pioneer Insurance Pvt Ltd	Rs.550564/-	Income/ Brokerage Received Part of sale of services Rs.556500/- in P&L A/c Debit note and bank statement was attached
2.	H.J.Thakkar Properties Pvt Ltd	Rs.500000/- Rs.900000/-	This is part payment received back (given an advance] from the party
3.	Infrasoft Technologies Pvt Ltd	Rs.1213488/- Rs.2025311/- Rs.2014896/-	Income/ Brokerage Received Included in sale of services in P&L A/c Debit note and bank statement was attached
4.	Anirudha Enterprises	Rs.5000000/-	This is advance received from the party Confirmation & Bank statement was attached
5.	Pioneer Investment Ltd	Rs.580980/-	Income/ Brokerage Received Part of sale of services in P&L A/c Debit note and bank statement was attached
6.	ADF Foods Pvt Ltd	Rs.900000/-	Finance Expenses Part of financial cost Rs.1131507/- in the P&L A/c Ledger copy & Bank statement was attached

7.	Stac International	Rs.1200000/-	Short term advances given Ledger copy & Bank statement was attached
8.	K.Sevnatilal & Co.	Rs.5236000/-	Paid for purchase of Goods Included in the purchase of P&L A/c Purchase bill & Bank statement attached
9.	Sevantilal & Sons	Rs.6326000/-	Received for sale of Goods Included in the revenue from operations of P&L A/c Sale bill & Bank statement was attached
10.	K.Sevantilal & Co.	Rs.4400000/-	Paid for purchase of Goods Included in the purchase of P&L A/c Purchase bill & Bank statement was attached
	Total	Rs.3,08,47,239/-	

5. These details have also been incorporated at page 3 & 4 of the assessment order. Thus, it was stated that none of these entries were in the nature of loan or credit which can remotely suggest that there was some any kind of accommodation entries. However, the Id. AO not rejected the objections by the assessee but also rejected assessee's explanation in the following manner:-

S.No.	Name of the Party	Amount (Rs.)	Findings from the assessee's submission
1	Pioneer Insurance Pvt. Ltd.	550564	The assessee offering income against the fee received on account of risk inspection and bank statement reflecting the

			<p>payment submitted. However, the nature of transaction is not proved vis-a-vis the business of assessee, creditworthiness of the payer, purpose of the risk inspection carried out by the payer vis-a-vis it's business, capacity of the assessee to conduct such inspect is not proved, in view of the fact that this party is an upfront company used by Shri Hasmukh Mehta for providing accommodation entries. Hence, the transaction cannot be treated as genuine.</p>
2	HJ Thakkar Properties Pvt. Ltd	500000 900000	<p>Only confirmation of the party to whom loans advanced by assessee and bank statement reflecting the receipts against the same produced by assessee. However, the purpose of loan taken by the party from the assessee, on what basis the assessee had advance such huge loans vis-a-vis it's capacity, creditworthiness and genuineness of the transaction is not proved by the above details in view of the fact that this party is an upfront company used by Shri Hasmukh Mehta for providing accommodation entries.</p>
3	Infrasoft Technologies Pvt.	1213488 2025311	<p>The assessee claiming income for providing software</p>

	<i>Ltd</i>	2014896	<i>development, design and testing service to this party and only bank statement reflecting the payments furnished. However, the capacity of the assessee to provide such services as well as the genuiness of the business transaction with the party casts a doubt and not a prudent transaction in view of the fact that this party is an upfront company used by Shri Hasmukh Mehta for providing accommodation entries.</i>
4	<i>Anirudha Enterprises</i>	5000000	<i>Only copy of confirmation letter and bank receipt statement furnished by assessee. Hence, the assessee has not proved that it is a genuine transaction, what is the creditworthiness and purpose of the party such loan was advanced in light of the fact it is one of the entity involved for accommodation entry by Shri Hasmukh Mehta.</i>
5	<i>Pioneer Investment Ltd</i>	580980	<i>The assessee is showing the same as income and furnished a copy of debit note towards brokerage for arranging various transactions Le. purchase of coupon bonds and bank statement was provided. However huge transactions with top financial institutions appear as per debit note on which brokerage was</i>

			<i>charged by assessee, however the same are without any proper evidences. Hence, the same is not entertained and allowable.</i>
6	<i>ADF Foods Pvt. Ltd</i>	900000	<i>Only debiting charges of Rs.9,00,000/- and bank statement produced by assessee and no further details produced that the transaction was genuine. Hence, it can be understood that assessee had nothing to say in the matter.</i>
7	<i>Stac International</i>	1200000	<i>Only debit charged of Rs. 12,00,000/- and bank statement produced by assessee and no further details produced that the transaction was genuine. Hence, it can be understood that assessee had nothing to say in the matter.</i>
8	<i>Sevantilal & Co.</i>	5236000	<i>Only copy of confirmation letter in respect of purchase and bank statement of this party produced that payment were made for the purchase of animal feed by assessee. However, the details of the delivery, stock register vis- a vis assessee's business and books of accounts were not produced. Hence, the transaction is not genuine.</i>
9	<i>K. Sevantilal & Sons</i>	6326000	<i>Only copy of confirmation letter in respect of sales and bank statement of this party</i>

			<i>produced that payment were made for the supply of animal feed. However, the details of the delivery, stock register vis-avis assessee's business and books of accounts were not produced as well as the purchase against this sale was not produced by assessee. Hence, the transaction is not genuine.</i>
10	<i>K. Sevantilal</i>	4400000	<i>Only copy of confirmation letter in respect of purchase and bank statement of this party and assessee produced that payment were made for the purchase of animal feed by assessee. However, the details of the delivery, stock register vis-a vis assessee's business and books of accounts were not produced. Hence, the transaction is not genuine.</i>

6.3 Despite the above discrepancies found, owing to the principles of natural justice final opportunity was afforded to the assessee for proving the transactions entered into by it with the above 10 parties are justified and genuine. In response the assessee has submitted only ledger a/cs of the parties and nothing new was brought on record to prove such transactions with the aforesaid 10 parties are regular and genuine business transactions. Accordingly the following conclusions is drawn in respect of the transactions of assessee:-

i) That the above 10 parties with whom assessee carried out transactions to the tune of Rs.3,08,47,239/- are into the business

of providing accommodation entries being operated by Shri Hasmukh Mehta.

ii) The expenditure by way of purchases and the revenue by way of sales should be considered as bogus.

iii) Payments received against loans advanced and payments made against loans received are unexplained.

iv) Mere submission of debit note, bank statement and the reply that the same have been offered as income/sales is not tenable since in the transactions carried out the assessee did not demonstrated nor evidences filed as to how the said sales and purchases are forming part of totals sales / purchases.

6.4 Accordingly, in view of the detailed discussion above, I conclude that the transactions amounting to Rs.3,08,47,239/- is treated as unexplained and the same is added to the assessee's income for the year under consideration.

6. The ld. CIT(A) first of all, rejected assessee's objection regarding validity of reopening u/s.148; and on merits he has confirmed the order of the ld. AO in the following manner:-

5.3.0. I have gone through the assessment order as well as the statement of facts. During the course of appellant proceedings, the appellant has submitted that the appellant itself acknowledge Rs. 63,85,239/- is its income. In view of the above, the addition of Rs. 63,85,239/- made by the AO in respect of M/s. Pioneer Insurance, M/s Pioneer Investment; M/s. Infrasoftware Technology is upheld.

5.3.1 With regard to M/s. HJ Thakkar properties and Stac International were on account of loan given by the appellant. It was argued by the appellant that the loans were received through proper banking channel and TDS was deducted and paid. Deduction of TDS is not an ingredient to decide the transaction is a genuine one or not. Even during the course of appellant proceedings also, the appellant had failed to provide the documentary evidence to show the nature of transactions and the creditworthiness of the persons to give loan of Rs. 14,00,000/-

and Rs. 12,00,000/- respectively. The onus always lies on the appellant to prove that the identity, genuineness and creditworthiness of the persons who have given loan. In the instant case, the assessee has not proved the creditworthiness of the persons. In view of the above, I have not reason to interfere the decision of the Id.AO and accordingly, the addition of Rs 26,00,000/- in the case of M/s. H J Thakkar and M/s. Stac International are upheld.

5.3.2 The transactions with Anirudha Enterprises of Rs. 50,00,000/- was on account of loan received. As rightly pointed out by the AO, the appellant had not filed any details to prove the genuineness and creditworthiness of the lender to give a loan of Rs. 50,00,000/- Further, the appellant had not provided any information in so far as the concerns M/s. ADF Foods P. Ltd., M/s. Sevantilal & Co., M/s K Sevantilal & Sons and M/s K Sevantilal in the appellate proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are incorrect. As per section 68, any sum found credited in the books of an assessee, for which he 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, may be charged to income tax as the income of the assessee of that year. If the assessee fails to prove or rebut with cogent evidence against such facts and findings, no interference is required with assessment order. In the absence of the detailed submissions, the additions made by the AO are confirmed under sec. 68 of the IT Act as the source of which remain unexplained and unsubstantiated. Ground No. 3 is dismissed.”

7. Before us, ld. Counsel for the assessee submitted that, first of all, from the bare perusal of the nature of transaction which was given before the ld. AO, it can be seen that either it is part of the income which assessee has already disclosed or assessee has given certain advance and loans or paid for purchase of goods or received for sale of goods which cannot be treated as unexplained credit appearing in the books of accounts. With

regard to every entry of transaction with various parties as noted above, he drew our attention to the copy of ledger account alongwith bank statements filed in the paper book and in some cases confirmation of ledger account as well as purchase and sale invoices. For the sake of ready reference he has referred to various documents filed in the paper book with regard to transaction carried out by the aforesaid 10 parties is reproduced hereunder:-

Sr No.	Name of the Party	Amount	Nature of Transaction	Reason	Transaction appearing in the Bank Statement (Reference to Pages in the Paper Book)
1.	Pioneer Insurance Pvt Ltd	Rs.650564/-	Income/ Brokerage Received	Part of Sale of services Rs.556500/- in P & L A/c	27 & 28
2.	H.J.Thakkar Properties PvtLtd	Rs.500000/- Rs.900000/-	Loan given	This is part payment received back from the party	30&31
3.	Infrasoft Technologies PvtLtd	Rs.1213488/- Rs.2025311/- Rs.2014896/-	Income/ Brokerage Received	Included in Sale of services in P& L A/c	21,22 & 23
4.	Anirudha Enterprises	Rs.5000000/-	Advance Received	This is advance received from the party	36

5.	Pioneer Investment Ltd	Rs.580980/-	Income/ Brokerage Received	Part of Sale of services in P& LA/c	25
6.	ADF Foods Pvt Ltd	Rs.900000/-	Finance Expenses	Part of financial cost Rs.1131507/- in the P& L A/c	53
7.	Stac International	Rs.1200000/-	Advance given	Short term Advances given	33
8.	K.Sevntilal &Co.	Rs.5236000/-	Paid for purchase of Goods	Included in the purchase of P& LA/c	41
9.	Sevntilal & Sons	Rs.6326000/-	Received for sale of Goods	Included in the Revenue from operations of P & LA/c	47
10.	K.Sevntilal &Co.	Rs.4400000/-	Pa id for purchase of Goods	Included in the purchase of P& LA/c	42

8. Thus, he submitted that the reasons recorded itself was based on wrong premise that assessee has taken any kind of accommodation entry and also on merits such an addition cannot be sustained.

9. On the other hand, ld. DR relied upon the order of the ld. AO and ld. CIT(A) and submitted that onus to discharge the nature

of every transaction alongwith proper evidences and details was upon the assessee which ld. AO and ld. CIT(A) had pointed out have not been satisfactorily explained.

10. We have heard rival submissions and also perused the relevant finding given in the impugned order as well as material referred to before us. The entire premise for reopening assessment u/s. 147 was that assessee has taken accommodation entries arranged by one Shri Hasmukh Mehta and assessee was one of the beneficiaries of accommodation entry. The allegation in the reasons recorded were that assessee had received amount of Rs.3,08,47,239/- from different entities which are credit in the nature of accomodation entry and hence it is unexpained. The basic tenor of ld. AO and ld. CIT(A) that these are unexplained credits appearing in the books of the assessee, though they have not cited under which deeming provision or section. In brief we will take one by one the nature of transaction by each parties.

(i) Pioneer Insurance Pvt. Ltd: - Rs.650564/-

From the perusal of the material placed on record, it is seen that it is in the nature of income / brokerage received by the assessee and is part of sale of services credited to the profit and loss account. In support of its transaction assessee has filed debit note and bank statement as referred in the foregoing table. Once the transaction is in the nature of income already declared and offered as part of sales credited to the profit and loss account, then we are unable to understand as to how this

transaction is treated as unexplained or deemed income. Once assessee has declared the amount received as taxable income, then, where is the question of testing the ingredient of unexplained cash credit. How such a nature of sales can be considered be bogus when ld. AO has not rejected the books of accounts and sales / income declared by the assessee.

ii. H.J.Thakkar Properties Pvt. Ltd - Rs.500000/- & Rs.900000/-

- From the perusal of the ledger account it is seen that assessee had given certain advances prior to 01/04/2013 and there was opening debit balance of Rs.1,40,00,000/-. During the year assessee has received part of the amount of Rs.29,00,000/- from the said party out of which two amounts of Rs.5,00,000/- and Rs.9,00,000/- have been picked up by the ld. AO to hold it to be unexplained credit. If assessee has given advance in the earlier year and part of the payment has been received back in this year then we fail to understand how it is an unexplained credit, because what assessee has received is its own advance given to the said party in the earlier years. Ld. AO has not even enquired from the said party whether any such advance was given in the earlier years. If the amount of loan given in the earlier has not been inquired or doubted in the earlier years, then return of loan in this year by the said party to the assessee cannot be doubted. Accordingly, this amount of Rs.14,00,000/- cannot be added. There is no question of examining of any creditworthiness of the person returning loan when this party owed money to the

assessee to the tune of Rs.1,40,00,000/- as on 01/04/2013. Hence, this cannot be treated as unexplained cash credit.

iii. Infrasoftware Technologies Pvt. Ltd., (Rs.12,13,488/-, Rs.20,25,311/- & Rs.20,14,896/-)

The said nature of transaction has been on account of income / brokerage received which has been included in the sale of services in the profit and loss account and in support of which debit note and bank statement has been attached. Again if assessee has shown this as part of its income / brokerage received, then where is the question of testing the ingredient of unexplained cash credit or the parameters of Section 68 is to be satisfied. It is not the case of unexplained loan, albeit, assessee has rendered these services for which it has received payment and duly declared in the profit and loss account. Accordingly, this addition cannot be treated as unexplained cash credit.

iv. Anirudha Enterprises – Rs.50,00,000/-

This is again advance received from the party, which has filed its confirmed ledger account and its entries are duly reflected in the bank statement of the assessee. If assessee received advance during the course of its business and the party has given confirmation and the bank statement then, ld. AO should have at least *prima facie* inquired from the said party rather than holding it to be unexplained cash credit. AO should have verified and if assessee has explained to be it in the nature of business advance and party is confirming in its ledger account then, onus

shifts on the AO to rebut or carry inquiry. Hence this amount is also deleted.

v. Pioneer Investment Ltd- Rs.5,80,980/-

This is again in the nature of income / brokerage received shown as part of sale of services in the profit and loss account and in support of which debit note and bank statement has been attached. Thus, as held above, once this income already stands declared in the profit and loss account then it cannot be treated as unexplained.

vi. ADF Foods Pvt. Ltd – Rs. 9,00,000/-

This is the finance expenses incurred by the assessee an part of the total financial cost of Rs.11,31,507/- in the profit and loss account. Thus, it is in the nature of financial expenses which we fail to understand how it is to be treated as unexplained credit or unexplained transaction. The financial expenses incurred in the books cannot be recokened as credit.

vii. Stac International – Rs.12,00,000/-

This is a short term advance given by the assessee to the said party and in support of which copy of ledger account and bank statement has been given where assessee has given advance on 04/03/2014 to the said parties from its own bank account. How advance given is unexpalined credit. Thus, it is not in any kind of unexplained credit received by the assessee, so as to bring in the ambit of deemed income or bogus credit entry.

viii & ix. K. Sevnatilal & Co., - Rs.52,36,000/- & Rs.63,26,000/-

These transactions are in the nature of purchase of goods by the assessee which assessee has paid for making the purchases. In support of which, assessee had produced purchase bills and the bank statement showing payment made through cheque for purchase of these goods to the said party. Nothing has been brought on record that ld. AO has carried out any inquiry or there is specific information to prove that this is some kind of bogus purchases made by the assessee, albeit it is case of unexplained credit by the AO. The ledger account clearly shows that its purchase of feed grade which is also reflected in the purchase bills and these purchases had already been debited to the profit and loss account. Then how it can be recokned as unexplained credit.

x. K. Sevantilal & Co. – Rs.44,00,000/-

This transaction is on account of sale of goods which has been included in the Revenue from operations in the profit and loss account. In support of this, assessee had filed copy of sale bills and ledger account alongwith bank statements. Thus, if amount is on account of sales already included in the income, then it cannot be held to be unexplained credit.

11. The ld. AO while treating the entire transaction as unexplained has gone by the premise that since these are all accommodation entries and therefore, the entire purchases are

by way of sales or by way of income, payment received against loans / advances and payment made against loan received are unexplained. Such premise, first of all, has no basis and he has not even examined or there is any categorical information or enquiry by the ld. AO that either the purchases are bogus or sales are bogus or assessee has not given any loan in the earlier years or advances. If all these entries are declared in the books of accounts and nature of transactions are nowhere in the nature of unexplained loan or credit, we fail to understand how the addition can be made. Accordingly, on merits we do not find any reason to confirm the order of the ld. AO and ld. CIT(A). Accordingly, the addition aggregating to Rs.3,08,47,239/- is deleted. Since we have already deleted the addition on merits, the issue of validity of reopening is treated as academic.

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

Order pronounced on 30th May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 30/05/2024

KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai