

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.911/Ahd/2017
Assessment Year: 2013-14**

Deputy Commissioner of Income Tax, Central Circle – 2(2), Ahmedabad.	Vs.	M/s. John Energy Limited, Plot No.220, GIDC Estate, Nagalpur, Mehsana 384 002. [PAN – AAACJ 5184 F]
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**ITA No.711/Ahd/2017
Assessment Year: 2013-14**

M/s. John Energy Limited, Plot No.220, GIDC Estate, Nagalpur, Mehsana 384 002. [PAN – AAACJ 5184 F] (Appellants)	Vs.	Asstt. Commissioner of Income Tax, Mehsana Central, Mehsana. (Respondents)
Assessee by	Shri S.N. Divatia, AR	
Revenue by	Shri Kamlesh Makwana, CIT (DR)	
Date of Hearing	15.03.2024	
Date of Pronouncement	11.06.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

These are cross appeals filed by the Revenue & Assessee against order dated 31.01.2017 passed by the CIT(A), Gandhinagar, Ahmedabad for the Assessment Year 2013-14.

2. The Revenue in its ITA No.911/Ahd/2017 has raised the following grounds of appeal :-

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and/or on facts in deleting the disallowance of professional & consultancy fees paid outside India of Rs.3,32,31,388/-.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.*
3. *It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent”.*

The Assessee in its ITA No.711/Ahd/2017 has raised the following grounds of appeal :-

- 1.1 *The order passed u/s.250 on 31-1-2017 for A.Y. 2013-14 by CIT(A)-GNR, Abad upholding the addition of Rs.2,00,00,000/- on account of unsecured loan as unexplained cash credit and disallowance of employees contribution to PF of Rs.45,05,019/- is wholly illegal, unlawful and against the principles of natural justice.*
- 2.1 *The Ld. CIT(A) has grievously erred in law and or on facts in upholding that the unsecured loan of Rs.1,00,00,000 each taken from Josh Trading Pvt. Ltd. and Viraj Mercantile Pvt. Ltd. were bogus accommodation entries provided by one, Shri Praveen Kumar Jain as per Investigation report, his statement etc.*
- 2.4 *The observations made and evidence relied upon by AO as well as CIT(A) for holding the same as accommodation entry from Shri Jain are not admitted by the appellant in so far as the same were unproved and used against the appellant without giving copy of the said material and providing opportunity of cross examination of the said party. Therefore, the impugned addition was wholly illegal and unlawful.*
- 2.2 *That in the facts and circumstances of case as well as in law, the Ld. CIT(A) ought not to have upheld the addition of Rs.2,00,00,000/- in respect of the unsecured loan of Rs.1,00,00,000/- each taken from Josh Trading Pvt. Ltd. and Viraj Mercantile Pvt. Ltd. as unexplained credits and bogus accommodation entry from Shri Praveen Kumar Jain.*
- 3.1 *The Ld. CIT(A) has erred in law and on facts in upholding the disallowance of employee's contribution to PF totalling to Rs.45,05,019/- u/s. 36(1)(va).*
- 3.2 *The Ld. CIT(A) has erred in law in holding that the impugned payments were not made within the prescribed time limits.*

It is, therefore, prayed that the addition of Rs.2,00,00,000/- on account unsecured loan as unexplained cash credit and

disallowance of employees contribution to PF of Rs,45,05,019/- may please be allowed on the work-over rigs.”

3. Firstly, we are taking up Revenue's appeal. The return of income was filed by the assessee on 29.09.2013 declaring total income of Rs.18,55,10,540/-. The return was assessed under Section 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny and notice under Section 143(2) was issued on 03.09.2014 which was duly served on the assessee on 07.09.2014. Another notice under Section 142(1) of the Act calling for various details issued on 07.05.2015 which was served upon the assessee on 11.05.2015. In response to the notices, the Chartered Accountant of the assessee attended the proceedings and furnished various details. The assessee company during the year under consideration engaged in the business of Oil Field Services i.e. work over and drilling services. The Assessing Officer observed that during the year under consideration, the assessee has shown turnover of Rs.428,99,42,244/- declaring net profit of Rs.72,97,29,420/- at 17.01% against which in immediately preceding year, it has shown turnover of Rs.388,30,63,453/- declaring net profit of Rs.48,89,91,186/- at 12.59%. The Assessing Officer observed that with respect to the unsecured loan taken by the assessee, the assessee was called for the details and further mentions that the letter of Principal Director of Income Tax (Investigation) Ahmedabad, contained investigation report with respect to sharing of information of the beneficiaries who have obtained accommodation entries from Shri Praveen Kumar Jain in the nature of unsecured loan which was received. On going through such report, the Assessing Officer observed that the assessee company has taken such entry in the form of unsecured loan from a Company managed by Praveen Kumar Jain especially from Josh Trading Private Limited amounting to Rs.1,00,00,000/- and Viraj Mercantile Private Limited amounting to Rs.1,00,00,000/-. The assessee was called for establishing the genuineness of the transactions and identify as well as credit worthiness of the depositors vide notice under Section 142(1) of the Act dated 07.05.2015. The reply of the assessee was considered and the Assessing Officer observed that the whole report is the crucial evidence in assessee's case. On cross-verification of the said information, the Assessing Officer observed that the details provided by the assessee reveals that the same was entered into such transaction with the

alleged Company of the entry provider of Rs.2,00,00,000/- during the year in the form of unsecured loan. The Assessing Officer made addition of Rs.2,00,00,000/- as cash credits under Section 68 of the Act. The Assessing officer also made disallowance out of late deposit of employees' P.F. and ESIC contribution amounting to Rs.1,75,98,275/-. The Assessing Officer further made disallowance of professional and consultancy fee paid outside India amounting to Rs.3,32,31,388/- thereby observing that the assessee debited huge sum in its Profit & Loss account under the head "Professional and Consultancy Fee".

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR, while contesting the appeal which was filed in consonance with the assessee's appeal, submitted that the search was conducted in case of Praveen Kumar Jain under Section 153 and the order under Section 153D of the Act was passed. Therefore, in assessee's case, no incriminating material was found and whether the appeal in respect of the order under Section 153D of the Act has been filed or not becomes immaterial.

6. The Ld. DR submitted that the order under challenge before the CIT(A) as well as before the ITAT is emerging from Assessment Order passed under Section 143(3) of the Act and the question of no incriminating material found will not be the criteria for quashing the Assessment Order under Section 143(3) of the Act.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessment Order under question before us is emerging from Section 143(3) of the Act and though the Assessing Officer has taken cognisance of the investigation report dated 16.06.2015, the assessment is not solely upon the same search itself. On the contrary, the Assessing Officer has categorically given the genuineness of the transactions and the creditworthiness of the depositors which the assessee could not establish hence the contentions of the Ld. AR does not survive.

8. As regards ground no.1 of the Revenue's appeal relating to deletion of disallowance of professional and consultancy fee paid outside India of Rs 3,32,31,388/-, the Ld. DR submitted that the payment is that of the nature of professional and consultancy fees paid outside India but the assessee has not deducted taxes at source on certain payments. The provisions of Section 5 and 9(1)(vii) of the Act clearly mentions that taxability of payment of consideration by a resident assessee to non-resident assessee where the purpose of earning and the profit derived in India has to be taxed at source.

9. The Ld. AR relied upon the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has categorically given finding that in the absence of clause pertaining to fees paid for technical services under the India UAE DTA as well as there being no evidence brought on record by the assessee to prove that there is business connection or permanent establishment of Gulf Engineering Consultancy FZC, UAE, in India, the consideration paid by the assessee to the UAE based party is not taxable in India and, therefore, there is no requirement under the provisions of the Act to withhold the taxes. Therefore, there is no requirement under the provisions of the Act to withheld the taxes. Therefore, the CIT(A) has rightly deleted the disallowance of the said payment under Section 40(a)(ia) of the Act. There is no need to interfere with the said finding of the CIT(A). Hence, ground no.1 of Revenue's appeal is dismissed.

11. As regards ground nos.2 & 3 of the Revenue's appeal, the same are general in nature and hence not adjudicated.

12. Now, coming to the assessee's appeal, in respect of ground no.1, the same is general in nature and hence not adjudicated.

13. As regards ground nos.2.1, 2.4 & 2.2, the Ld. AR submitted that the assessee has discharged the initial burden cast upon it under Section 68 before the Assessing Officer thereby filing confirmation copy of bank statement, audit

report and ITR. In fact, the Ld. AR submitted that impugned loans were repaid in subsequent year by cheques. The assessee paid interest and even TDS which was made from interest paid, thus initial burden was fully discharged. The Ld. AR relied upon the decision of ITO vs. M/s. Minimed Laboratories Pvt. Ltd. (ITA No 3585/Mum/2019, order dated 22.02.2023). The Ld. AR submitted that perusal of the ledger account of Josh Trading Pvt. Ltd. from the books of assessee for the A.Y. 2013-14 indicate that Rs.50,00,000/- each were transferred by a journal entry dated 29.08.2012 and 31.08.2012 respectively to the account of Viraj Mercantile Private Limited, so that, the said addition in respect of Viraj Mercantile Private Limited of Rs.1,00,00,000/- is unjustifiable in law and on facts. The Ld. AR submitted that both the Authorities failed to appreciate that the said addition of Rs.1,00,00,000/- in respect of Viraj Mercantile Private Limited was a journal entry which is not covered under Section 68 of the Act. The Ld. AR further submitted that in subsequent Financial Year Rs.2,00,00,000/- has been repaid by cheque and, therefore, no dues were remained from December 2013 onwards. The Ld. AR further submitted that the statement of Praveen Kumar Jain was subsequently retracted though the same was rejected by the CIT(A), still the retracted statement cannot be sole basis for making the addition which is in fact repaid by the assessee in subsequent Assessment Years.

14. The Ld. DR submitted that the Investigation Wing has clearly set out that Praveen Kumar Jain was found to be an entry provider and the Companies i.e. Josh Trading Pvt. Ltd. and Viraj Mercantile Private Limited and, therefore, merely repaying on paper the loan which was not actually a loan will not make the assessee to escape from his liabilities for the alleged accommodation entry transaction. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

15. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer though has mentioned that the investigation report in case of Praveen Kumar Jain clearly set out that the transactions with alleged Companies is that of entry provider which was admitted by the said Praveen Kumar Jain for accommodation entries to

various natures like bogus unsecured loans, bogus share application/capital and bogus sales and purchases to various beneficiaries including the entities of Josh Trading Pvt. Ltd. and Viraj Mercantile Private Limited, the fact remains that the assessee has duly entered these transactions in his accounts and in fact has repaid the said amount to these entities in subsequent year with interest. Therefore, the assessee's role in accommodation entries has not been set out by the Assessing Officer directly and, hence, the addition made in the hands of the assessee on the basis of statement of Praveen Kumar Jain which was later on retracted cannot be criteria for making the addition. Hence, ground nos.2.1, 2.4 and 2.2 of the assessee's appeal is allowed.

16. As regards ground no.3.1 related to disallowance of employees' contribution to PF under Section 36(1)(va) of the Act, the same is decided by the Hon'ble Supreme Court in case of Checkmate Services (P.) Limited vs. CIT-1 (2022) 143 taxmann.com 178 (SC) against the assessee, hence, ground no.3.1 of the assessee's appeal is dismissed.

17. In the result, appeal of the Revenue is dismissed and appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 11th June, 2024

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 11th day of June, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*