

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.3323/Mum/2023
Assessment Year: 2010-11**

Shri Rajesh Kumar C Jain, Flat No.09, Surendra Apartment, DM Road, Dahisar West, Maharashtra – 400 097 PAN: ADFPJ0970N (Appellant)	Vs.	Income Tax Officer, Ward 42(1)(4), Kautilya Bhavan, C-41 to C-43, G Block, BKC (East), Maharashtra- 400 051 (Respondent)
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Present for:

Assessee by : Shri Suchek Anchaliya, A.R.

Revenue by : Shri Nagnath Pasale, D.R.

Date of Hearing : 29 . 05 . 2024

Date of Pronouncement : 25 . 06 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 20.07.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2010-12.

2. In the instant case, on the basis of information from the office of DGIT(Inv.), Mumbai, qua search and seizure action under section 132 of the Act conducted on 03.10.2013 in the case of Rajendra Jain Group, Sanjay Choudhari Group and

Dharmichand Group, wherein statements of various persons were recorded in which they admitted and revealed the modus operandi of accommodation entries. As per information received the assessee has also received the accommodation entries to the tune of Rs.18 lakhs from M/s. Kangan Jewels Pvt. Ltd. as loan and therefore the case of the assessee was reopened under section 147 of the Act and consequently notice dated 30.03.2016 under section 148 of the Act was issued to the assessee in response to which the assessee vide letter dated 10.05.2016 stated that the return filed on 29.07.2010 may be treated as return filed in response to the notice under section 148 of the Act. Thereafter other statutory notices were issued from time to time in response to which the assessee filed the relevant details.

2.1 The Assessee during the assessment proceedings claimed that he has received the amount of Rs.3 lakhs as a loan from M/s. Kangan Gems Pvt. Ltd. and in support of his claim also filed copy of loan confirmation as well as bank statement.

2.2 Therefore, in order to verify the contention/claim of the assessee the Assessing Officer (AO) issued notice under section 133(6) of the Act dated 12.09.2016 to M/s. Kangan Jewels Pvt. Ltd., however, the said notice was returned unserved by the postal authority on 22.09.2016 with the remarks "non known". Thereafter, information was gathered from the office of the Dy. Commissioner of Income Tax, Central Circle-4, Surat who submitted the audited balance sheet of M/s. Kangan Jewels Pvt. Ltd. wherein the advance of Rs.18 lakhs in the name of assessee has been reflected. Therefore, the AO presumed that it is clear that the assessee took accommodation entry of Rs.18 lakhs from

M/s. Kangan Jewels Pvt. Ltd. and ultimately made the additions of Rs.18 lakhs on account of alleged loan taken and Rs.2,34,942/- on account of alleged interest as worked out and consequently added the same in the income of the assessee.

3. The Assessee, being aggrieved, challenged the said additions before the Ld. Commissioner, who vide impugned order affirmed the additions to the extent of Rs.3 lakhs + interest amount of Rs.39,157/- mainly on the ground that during the assessment year under consideration, the loan taken being only Rs.3 lakhs and the interest paid being Rs.39,157/- only and therefore only these amounts are to be considered in this aspect.

4. The Assessee, being aggrieved, is in appeal before us.

5. Heard both the parties and perused the material available on record. It is not in controversy that the assessee has duly shown the loan in his financials and in order to establish borrowing of loan, not only submitted the bank statement but in fact also submitted the confirmation from the concerned party which goes to show that the Assessee prima-facie discharged his onus. But the Revenue Authorities simply on the basis of assumption and presumption and on the basis of statements of third parties without giving any opportunity of cross examination to the assessee and without establishing any incriminating material, made the addition which, in our considered view, is at all un-sustainable. As before us as well, the Assessee demonstrated the relevant facts and documents to establish the genuineness of the transaction of Rs.3 lakhs and therefore the addition under consideration is liable to be deleted.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 25.06.2024.

**Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.