

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “ B ” BENCH**

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No.1772/Ahd/2019
Assessment Year: 2013-14**

The I.T.O, Ward-1(2)(1), Vadodara. (Appellant)	Vs	M/s.Meet Enterprises Plot No.355-356 Por Ramangamdi, GIDC Estate, Vadodara-391243. PAN: AAKFM0212C (Respondent)
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**Revenue Represented: Ms Neeju Gupta, Sr-DR
Assessee Represented: Shri Sanjay R Shah, AR**

Date of hearing : 10-04-2024
Date of pronouncement : 05-07-2024

आदेश/ORDER

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the Revenue as against the appellate order dated 03.09.2019 passed by the Commissioner of Income Tax (Appeals-4) Vadodara, arising out of the assessment order passed under section 143(3) of the Income-tax Act, 1961 [hereinafter referred to as ‘the Act’] relating to the Asst. Year 2013-14.

2. The brief facts of the case are that the assessee is a firm engaged in the business of trading of Metal scrap. The assessee filed its Return of Income for the Asstt. Year 2013-14 on 21.09.2013, declaring total income of Rs.6,65,020/-. During the course of assessment proceeding the Assessing officer (AO) found that the unsecured loan amounting to Rs.2,40,00,000/-received by the assessee from M/s.Prabhav Industries Ltd. was not genuine, thereby

disallowed the same u/s.68 of the Act and also disallowed the interest payment of Rs.10,48,009/- on the above unsecured loan as well as TDS on the above loan amount of Rs.4,257/-. Thus, the AO made the addition of Rs.2,15,52,266/- as against the returned income and demanded tax thereon.

3. Aggrieved against the assessment order, the assessee filed an appeal before the Ld CIT(A), who followed his predecessor order in the case of Jayesh R Thakkar, Director of M/s.Prabhav Industries which has given the above unsecured loan, thereby deleted the addition made u/s.68 of the Act by observing as follows:

"...I have considered the facts of the case and gone through the assessment order and submission of the appellant. Sole dispute is related to genuineness and creditworthiness of the unsecured loan amounting to Rs 2,40,00,000. Appellant has submitted copy of ledger for AY 2010-11 & AY 2011-12 showing business transaction with M/s Prabhav Industries Ltd. AR stated that appellant has not only availed loan from M/s Prabhav Industries but also paid interest thereon. Even in fact interest income was declared by M/s Prabhav Industries in their return of income. However, AO proceeded to add entire amount of loan u/s 68 of the Act. Remand report was sought vide letter dated 27.09.2018. Appellant submitted all the required details before the AO. However, the said remand Report reiterates addition u/s 68 based on the statement recorded during survey held at the business premise of Shri Shirish Chandra Shah, Mumbai. He has named some of the companies through which he used to pass accommodation entry after charging commission from 0.1% to 1%. However, as per AR, appellant's name does not appear in the statement recorded neither in the list of shell companies appellant's name exists. As per AO, appellant received bogus unsecured loan from M/s Prabhav Industries Ltd of Rs. 2,40,00,000/- Basis of terming the un-served loan as bogus transaction is the statement of Shri Shishir Chandra Shah.

6.1 AR vehemently argued that it has taken unsecured loan of Rs.2,40,00,000/- from M/s Prabhav Industries Ltd in F.Y.2010-11. Undisputedly, P/L A/c and bank statement confirms payment of interest on such unsecured loan. AO has also accepted that loan was repaid to M/s. Prabhav Industries Ltd during F.Y.2013-14. Appellant's books is audited and as such, no defect has been

identified by AO. Bank statement of the appellant also supports corresponding debit entry showing loan was returned along with interest.

6.2 Once loan is taken by banking channel, returned by banking channel along-with interest and also the fact that appellant had business connection in previous year then to my understanding, it is hard to believe that unsecured loan was bogus. If it had availed bogus loan then chances of its repayment back to the lender would have been a remote possibility. Bank statement does not show cash deposit/withdrawal either prior or after the loan amount was transacted.

6.3 Modus operandi as discussed by the AO might be hundred percent true but again it remains to be proved on paper. Transaction in bank statement can be a starting point for an AO to launch inquiry and proceed step by step for further inquiry so as to prove trail. Appellant has proved identity and credit worthiness of the lender. Genuineness is proved on record from the facts that loan alongwith interest was fully repaid. Most importantly, name of appellant does not find entry in the statement of Shri Shirish C Shah relied upon by AO. Even AO is believed then also entire cash deposit cannot be teemed unexplained until and unless there is unearthing cash trail. In this case, neither in the statement recorded on oath nor through bank statement it is considering worth that loan was bogus.

6.4 I find that entire case revolves around M/s Prabhav Industries and statement of Shri Shirish C Shah. On similar facts of case, vide appellate order No. CAB-5/-144/14-15 dated 03.09.2015, my predecessor has allowed appeal in case of Jayesh R Thakkar director of M/s Prabhaav Industries. It is held that all the three ingredients viz. creditworthiness, genuineness and identity are proved..."

4. Aggrieved against the appellate order, the Revenue is in appeal before us raising the solitary ground of appeal as follows:

"On the facts and in the circumstances of the case and in law, the Ld.CIT(Appeals) erred in deleting the addition of Rs.2,40,00,000/-u/s. 68 of the Income tax Act, 1961 being unsecured loan, without appreciating the fact that the unsecured loan is nothing but merely an accommodation entry."

5. The Ld.Sr-DR appearing for the Revenue supported the order passed by the AO and requested to uphold the same.

6. Per Contra, the Ld.Counsel Shri Sanjay R Shah appearing for the assessee submitted that the order passed in the case of Jayesh R Thakkar, director of M/s. Prabhav Industries is being upheld by the Co-ordinate Bench of this Tribunal in ITA No.3407/Ahd/2015 vide order dated 16.10.2023 wherein the Co-ordinate Bench has deleted the addition made u/s.68 of the Act by observing as follows:

9. We have heard the rival contentions of both the parties and perused the materials available on record. Undisputedly, the assessee during the year under consideration has shown receipts of unsecured loan of Rs. 7,80,19,000/- from the 15 different companies/concern based in Kolkata and Mumbai and other places. The dispute before us is with respect to sum credited from 13 parties for an amount aggregating to Rs. 6,73,19,000/- only. The issue on hand has bearing on the provisions of section 68 of the Act. The provision of section 68 of the Act suggests that if there is any sum credited in books of account maintained for the any previous year then the assessee is required to offer proper and reasonable explanation regarding nature and sources of such credit to the satisfaction of the AO. Thus, the primary onus lies with the assessee to explain the source of credit in the books. Over the period, the courts have laid down that the assessee to discharge its onus is required to furnish evidence with respect to identity of the creditor, genuineness of transaction and credit worthiness of the creditor. If the assessee failed to discharge the primary onus cast or the explanation and evidence submitted by the assessee, are not found satisfactory by the AO then the sum credited in the books shall be deemed as income of the assessee. The Hon'ble Supreme Court in case of CIT vs. P. Mohanakala reported in 291 ITR 278 while dealing with scope of provision of section 68 of the Act held that "the opinion of the AO that the explanation furnished by the assessee as not satisfactory is required to be based on proper appreciation of materials and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion." In other words, once the assessee submits the primary evidence with regard to identity and credit worthiness of creditor and the genuineness of the transaction, the onus shifts on the AO to consider the materials provided and make independent inquiry in order to find out genuineness of the evidence or bring material contrary to facts explained by the assessee. The AO

cannot reject the primary evidence furnished by the assessee without appreciating the facts available on record or without bringing contrary material to form the belief that primary document or explanation furnished by the assessee is not satisfactory.

9.1 Undeniably, the assessee at the time of assessment proceedings in support of genuineness of credit of interest free unsecured loan has furnished certain documentary evidence which at cost of repetition are illustrated as under:

- a. PAN of all the companies.*
- b. Acknowledgements of returns filed for assessment year 2011-12.*
- c. Computation of income for assessment year 2011-12 and Audited Annual Accounts for the year under consideration.*
- d. Copy of Bank Statement of all the parties evidencing to have advanced loan to the assessee.*
- e. Confirmations stating that monies have been advanced to the assessee.*
- f. Copy of Ledger Accounts of all the above parties.*
- G. Copy of various ROC Documents showing the existence and identity of the parties and*
- h. Affidavits of Directors of all the parties to prove Identity and genuineness of the loan.*

9.2 From the above-mentioned list of documentary evidence, it is discernable that the assessee has provided sufficient documents such as PAN, copies of ITR-V and various ROC forms to establish the identity of the creditor. Similarly, the assessee also provided sufficient documents in the form of confirmation letter from creditor, affidavit from their director, bank statement showing amount debited in the creditor's bank account and credited in assessee's bank through RTGS to establish genuineness of transaction. Likewise, the creditworthiness of the creditor is also discernable from their balance sheet and bank statements though they were declaring lower income in the IT return but have fund in the form of share capital reserve and loans liability.

9.5 Based on the above, we hold that the report of the commission cannot be taken as sacrosanct/gospel truth for taking any adverse

*view against the assessee without pointing out any specific defect in the documentary evidence furnished by the assessee during the assessment proceedings which have been elaborately discussed in the preceding paragraph. **In our considered view the identity, creditworthiness of the parties and genuineness of the transaction were established by the assessee based on the documentary evidence but the revenue without pointing out any defect in such documents has decided the issue against the assessee based on the commission report. As such it is the onus upon the revenue to disprove the materials/documents submitted by the assessee in support of the transactions in dispute based on cogent reasons.** But the same has not been done by the revenue in the objective manner. Likewise, it is also a fact on records that the revenue has taken some statements from the 3rd party which were not provided to the assessee for the rebuttal. It is the settled law that the third-party statement cannot be used against the assessee until and unless the opportunity of cross-examination is afforded to the assessee. In view of the above facts and after considering the necessary details discussed above, we do not find any reason to interfere in the finding of the learned CIT-A. Hence the ground of appeal of the revenue is hereby dismissed.*

7. The Ld.Counsel further relied upon the various case laws including the Jurisdictional High Court in the case of CIT vs Ayachi Chandrashekhar Narsangji [2014] 42 taxmann.com 251 wherein “the repayment of loan was made by the assessee in the next Financial Year then addition made u/s.68 of the Act by the AO is liable to be deleted” and also relied on Jurisdictional High Court in the case of CIT vs. Rachod Jivabhai Nakhava [2012] 21 taxmann.com 159 wherein it was held that “ lenders who are all income tax assessee whose PAN has been disclosed, the AO cannot ask assessee to further prove the genuine of transaction without first verifying such fact from the Income Tax Return of the lenders”. Thus, the Ld.AR prayed to sustain the order passed by Ld.CIT(A).

8. We have given our thoughtful consideration and perused the materials available on record. Under section 68 of the Act, primary onus is on the assessee to provide all necessary details and

evidences. In this case, the assessee has provided copy of ledger account of M/s.Prabhav Industries Limited, bank statement of the assessee for June and July 2012, confirmation of account from Prabhav Industries, copy of Form No. 201 and 201A of the Act. However, the AO has strongly relied on the statement recorded during the survey/search in the business premises of Shri Shirish Chandra Shah, Mumbai and treated this loan transaction as bogus and taxed u/s.68 of the Act. Thus, in our considered opinion the AO has not considered primary evidences furnished by the assessee. Further the Ld.AO failed to appreciate the material evidences available on record and also not recorded his dis-satisfaction of the above loan transaction, which were done through banking channel and loans were repaid with interest and with applicable TDS. Whereas the Co-ordinate Bench of this Tribunal in the case of Jayesh R Thakkar, Director of the Prabhav Industries Limited (cited Supra) have considered in detail the loan transactions as genuine and deleted the addition made u/s.68 of the Act. Respectfully, following the same ratio, the deletion made by the Ld.CIT(A), does not require any interference. Thus, the ground raised by the Revenue is devoid of merits and liable to be dismissed.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 05/07/2024

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

(True Copy)

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad : Dated 05/07/2024