

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

&

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

**ITA No. 4856/Mum/2023
(A.Y. 2013-14)**

Sandipkumar Sachidanand Jhunjhunwala B/706, Dharti Residency, 150 Feet Road, next to Reena Mehta College, Bhayander (W), Dist. Thane-401101	v/s. बनाम	ITO, Ward 2(2), Thane 6 th Floor, Ashar IT Park, Road No. 16Z, Wagle Estate, Thane-40604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABPJ7394P		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Subodh Ratnaparkhi
Respondent by :	Shri Himanshu Kumar

Date of Hearing	16.05.2024
Date of Pronouncement	13.08.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Pune-11/ [hereinafter referred to as “CIT(A)”] dated 30.10.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2013-14.

2. The assessee has raised following grounds of appeal:



“1. The Hon. CIT (A) erred in upholding addition of Rs.3,00,000/- made u/s 68 of the I.T. Act, 1961 as unexplained cash credit, on account of unsecured loan borrowed from M/s. Falak Trading Co. Pvt. Ltd., on the basis of information received from DGIT (Inv) Mumbai, not appreciating that the said unsecured loan was a genuine loan and the appellant had fully discharged the onus placed by section 68 of the I. T. Act, 1961 and further as the information received by the Id AO was untested by cross examination, the same had little evidential value. The addition of Rs.3,00,000/- made by the Id AO was not justified and is required to be deleted.

2. The Hon. CIT (A) erred in upholding addition of Rs.16,00,000/- made u/s 68 of the I.T. Act, 1961, on account of unsecured loan borrowed from M/s. Kashish Diamonds Pvt. Ltd., not appreciating that the appellant had fully discharged the onus placed by section 68 of the I. T. Act, 1961 and therefore the addition on the basis of surmises and presumptions was not justified. The addition of Rs. 16,00,000/- made by the Id AO was not justified and is required to be deleted.

3. The Hon. CIT (A) erred in upholding addition of Rs.3,45,000/- on account of disallowance of interest paid to 3 unsecured loan parties by holding the unsecured loans from these parties to be not genuine, on the basis of information received from DGIT (Inv) Mumbai, not appreciating that the appellant had discharged the onus u/s 68 and the said information received was untested by cross examination and therefore had little evidential value and the interest was allowable as revenue expenditure. The addition of Rs. 3,45,000/- was incorrect by facts and in law required to be deleted.

4. The Hon. CIT (A) erred in not appreciating that the Id AO was relying upon information not tested by cross examination and therefore having no evidential value and that denial of cross examination resulted in breaching of the salient principles of equity, fair play and natural justice and for this reason the order under appeal was bad in law and void ab initio.”

3. Brief facts of the case are that the assessee is engaged in the business of commission agent and trading in cement in his proprietary concern M/s. Harshita Enterprises. Return declaring income of Rs. 3,10,910/- for AY 2013-



14 was filed on 31.07.2013. The assessment u/s 143(3) was completed after making the following additions:

- i. Addition of Rs. 3,00,000/- u/s 68 on account of loan from M/s. Falak Trading Co. Pvt. Ltd.
- ii. Addition of Rs. 16,00,000/- u/s 68 on account of interest on loans from M/s. Kashish Diamonds Pvt. Ltd. u/s 68 –
- iii. Disallowance of interest on loans borrowed in earlier assessment years : 3,45,000/-

Ground No. 1 & 2 :-

4. It was the case of the AO that the loans taken by the assessee were in fact accommodation entries, information regarding which was obtained during the search action u/s 132 carried out on Shri Bhanwarlal Jain. It was held by the AO that M/s. Falak Trading Co. Pvt. Ltd. is under the control of Shri Bhanwarlal Jain and the loan of Rs. 3,00,000/- taken by the assessee is an accommodation entry. However, the assessee furnished the loan confirmation from the aforesaid party and also filed details of repayment of the said loan in subsequent years. Similarly, in respect of Rs. 16,00,000/- taken from M/s. Kashish Diamond Pvt. Ltd., the Ld. AO doubted the genuineness of the transaction even though the confirmation and copy of the return of the creditor was filed by the assessee. Notices were issued u/s 133(6) of the Act by the AO to both the entities, however, no compliance was made by either of the creditors. Accordingly, both the loans of Rs. 3,00,000/- and 16,00,000/- were treated as



accommodation entries and added to the income of the assessee u/s 68 of the Act.

Ld. CIT(A) upheld the addition made by the AO vide order dated 30.10.2023.

5. Before us, the Ld. AR has submitted as under:

3.1 It is the case of the Id AO that a search action u/s 132 was carried out on Shri Bhanwarlal Jain, which pointed out to the said person being engaged in providing bogus accommodation entries. It is the case of the Id AO that M/s Falak Trading Co. Pvt. Ltd. from whom the appellant has borrowed unsecured loan of Rs. 3,00,000/- was under the control of the said Shri Bhanwarlal Jain. Accordingly, the Id AO has made addition of Rs. 3,00,000/- u/s 68 of the I.T Act, 1961. However, no evidence to support such allegation about accommodation entries provided by Shri Bhanwarlal Jain is shared with the appellant till date.

3.2 The appellant in the year under appeal, had borrowed unsecured loan of Rs.3,00,000/- from M/s Falak Trading Co. Pvt. Ltd on 21.03.2013. Subsequently, the loan was repaid with interest on 19.12.2013. The appellant has paid interest of Rs. 32,425/- (for approx 8.6 months @15%) on the said loan amount in AY 2014-15 after deducting TDS. All the transactions of borrowing as well as repayment are through banking channels. The appellant in support of the loan, has placed on record of the lower authorities the following documents.

Sr No.	Nature of Documents
1.	Ledger account of M/s Falak Trading Co. Pvt. Ltd. in the books of the appellant
2.	Loan confirmation from M/s Falak Trading Co. Pvt. Ltd
3.	Bank statement of M/s Falak Trading Co. Pvt. Ltd. with Axis Bank reflecting the loan transaction.
4.	Bank statement of the appellant reflecting loan from M/s Falak Trading Co. Pvt. Ltd. – Dena Bank
5.	ITR ack. of M/s Falak Trading Co. Pvt. Ltd. for AY 2013-14
6.	TDS certificate for deduction of TDS on interest paid
7.	Partywise breakup of unsecured loan and interest for AY 2013-14 and 2014-15, reflecting repayment of loan and interest thereon to all parties



It is the case of the appellant that he has fully discharged the onus placed by sec. 68 by placing on record the above evidences.

3.3 The Id AO has made the addition/upheld by Hon. CIT(A) for the reasons that the loan party is managed and controlled by Shri Bhanwarlal Jain.

That no response was received to notice issued u/s. 133(6) from M/s Falak Trading Co. Pvt. Ltd.

3.4 The appellant submits that he has fully discharged the onus placed by section 68 of the I. T. Act, 1961 by placing on record all evidences in support of the loan borrowing. It is also the case, that the Id AO has not shared any statement/evidence implicating the appellant of any wrong doing nor granted cross examination of Shri Bhanwarlal Jain. The entire addition is on the basis of unsubstantiated claims and presumptions without any iota of evidence supporting such claims.

3.5 The appellant submits that in the under mentioned cases, (all belonging to Shri Bhanwarlal Jain loan transactions) similar additions made were deleted by the Hon. Tribunal.

(1) Shri Sumit J. Jain vs ACIT in ITA No. 145/Mum/2017, order dt. 12.03.2018, Hon. Members, "SMC" Bench, Mumbai

(ii) M/s Pabal Housing Pvt. Ltd. & others vs DCIT, ITA No. 2687, 2688 & 2689/Mum/2018/ ITA Nos. 2692, 2693 and 2694/M/2018, ITA No. 3226 to 3229/M/2018, ITA No. 2690/M/2018, ITA No. 2691/M/2018 03.05.2019 Hon. Members "C" Bench, Mumbai. order dt.

(iii) ACIT-vs- M/s Rukhana Enterprises, ITA Nos. 6505 & 6508/Mum/2019, Hon. Members, "D" Bench, ITAT MUMBAI order dt. 31.03.2023

(iv) DCIT-vs- M/s. Rupa Properties and Securities Pvt. Ltd, ITA NO. 3596 & 3597 /MUM/2019, Hon. Members, "D" Bench, ITAT MUMBAI order dt. 27.04.2022

6. Similarly, in respect of the loan Rs. 16,00,000/- taken from M/s. Kashish Diamond Pvt. Ltd. following facts have been submitted by the Ld. AR.

4.1 The appellant has also borrowed Rs. 16,00,000/- from one, M/s. Kashish Diamonds Pvt. Ltd. on 26.03.2013. The said amount has been repaid in July 2013. During assessment proceedings, the appellant has placed on record the following documents in support of the loan transaction.



Sr. No.	Particulars.
1	Loan confirmation from M/s Kashish Diamonds Pvt. Ltd
2	Ledger A/c of M/s Kashish Diamonds Pvt. Ltd in the books of appellant
3	Ack. for filing ITR by M/s Kashish Diamonds Pvt. Ltd

4.2 As no response was received from the loan party to notice issued u/s. 133(6), the ld AO has made addition of Rs. 16,00,000/- as unexplained cash credit u/s 68 is made in the hands of the appellant.”

7. Ld. AR has vehemently argued that in view of the above, the onus placed on the assessee u/s 68 of the Act has been duly discharged. The loan has also been repaid in subsequent assessment years, therefore, the addition made by the AO and upheld by the CIT(A) is not justified. On the other hand, Ld. DR heavily relied upon the orders of the lower authorities.

8. We have heard the rival submissions. It is seen that requisite confirmations, copies of ledger accounts and bank statements, reflecting transactions have been submitted by the assessee in respect of the above loans. Moreover, these loans have also been repaid in subsequent assessment years. Interest has also been paid on these loans after deducting TDS. The AO has majorly relied on the report received from the Investigation Wing which in turn is based on the confession made in the statement of Shri Bhanwarlal Jain, recorded during the search which has subsequently been retracted. No reply to the notice u/s 133(6) issued by the AO was received. However, the assessee has submitted requisite confirmation letters as well as other documents as discussed hereinbefore. In view of these facts, we hold that the assessee had



discharged the onus placed on him u/s 68 of the Act. We are, therefore, of the view that the addition made on account of unsecured loans of Rs. 19,00,000/- [16,00,000/- + 3,00,000/-] is not justified and the same is accordingly deleted.

Ground No. 3 :-

9. Disallowance of interest of Rs. 3,45,000/- on loan borrowed in early assessment was also made by the AO after holding that interest paid to M/s. Duke Business Pvt. Ltd., M/s. Olive Overseas Pvt. Ltd. & M/s. Alka Diamond Industries Ltd. is not allowable as these loans are not genuine. It was noted by the AO that during the search conducted in the case of Mr. Praveen Jain it was found that the above 3 parties are controlled and managed by him and as was admitted by him during the course of investigation, these are only paper entities. The AO, therefore, held that even though confirmations, bank statements and balance sheet have been filed in respect of above parties, the investigation carried out by the Investigation Wing had shown that these parties were engaged in providing accommodation entries. On this account, the AO disallowed the interest of Rs. 3,45,000/- paid to the above entities during the year. Ld. AR has made the following written submissions:

5.1 During the year under appeal, the appellant has paid interest of Rs. 3,45,000/- to three unsecured loan parties. These loans were borrowed not in the year under appeal but in the earlier asst. years. The ld AO on the basis of statement of Shri Pravin Jain, (partly reproduced in the asst. order) held that the unsecured loan parties were not genuine



and accordingly disallowed the interest of Rs. 3,45,000/- paid to them for the year under appeal as per details as under

5.2 The appellant submits that all the above listed loans are genuine loans, accepted by the appellant in earlier assessment years. The appellant has paid interest @15% on the said loans after deducting applicable TDS. The entire transaction of Borrowing and repayment is carried out through banking channel. To establish the genuineness of the above loans, the appellant submitted the following evidences during asst. proceedings.

Name party of the loan	Loan confirmation enclosed at page no. of the paperbook	Ledger account enclosed at page no. of the paperbook	Bank statement of the appellant highlighting receipt of loan enclosed at page no. of the paperbook	TDS certificate for deduction of TDS on interest paid enclosed at page no. of the paperbook
M/s Alka Diamond Industries Ltd	23	24	25&26	27
M/s Duke Business Pvt. Ltd.	28&29	30	31	32 to 34
M/s Olive Overseas Pvt. Ltd.	35&36	37	38&39	40

The Id AO however, by solely relying upon view that the loan transactions were accommodation entries disallowed interest of Rs. 3,45,000/-. However, the Id AO has not made any addition in respect of these loans in the relevant asst. years. It is thus the case that existence of these loans in the year of borrowing is not treated adversely. In such circumstances, when the loan transactions are not subjected to any



addition, interest on such loans cannot be disputed on stand alone basis.”

10. We have heard the rival submissions. It is clear that the interest of Rs. 3,45,000/- has been disallowed on old loans. These loans were taken in the earlier assessment years and the department had accepted these as genuine in the respective years. Subsequently also, no action for treating these loans as non-genuine in relevant years has been initiated by the department. Accordingly, there is no justification for disallowance of interest paid on these loans for the year under consideration. The addition made on the account is also hereby deleted.

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

Order pronounced in the open court on 13.08.2024.

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 13.08.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.



ITA No. 4856/Mum/2023
A.Y.2013-14
Sandeepkumar Sachidanand Jhunjhunwala

3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.