

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

I.T.A No.2536/Mum/2023 - 2014-15
I.T.A No.2537/Mum/2023 - 2013-14
I.T.A No.2538/Mum/2023 - 2010-11
I.T.A No.2542/Mum/2023 - 2014-15

M/s ASG Capital Service Pvt.Ltd (Now known as M/s ASG Capital Service LLP), 1601, Rasik Villa, 54, Vinay Oza Marg, Matunga Central Matunga S.O., Mumbai-400 019 PAN : AAFCA0896E	vs	ITO, Circle-6(1)(3), Mumbai
APPELLANT		RESPONDENT

Assessee by : Shri Nishit Gandhi, Advocate
Respondent by : Shri Manoj Kumar Sinha (SR. DR)
Date of hearing : 13/08/2024
Date of pronouncement : 28/08/2024

ORDER

PERBENCH:

These bunch of appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for

Assessment Years 2014-15,2013-14, 2010-11 & 2014-15, order passed for AY 2010-11 & 2014-15 on dated 23.05.2023 and for AY 2013-14 on dated 24/05/2023. The impugned orders emanated from the orders of the Id. Income-tax Officer, Ward-6(1)(3), Mumbai 03/11/2016, 04/03/2016 14/03/2016 & 03/11/2016, respectively, for AY 2010-11 order passed U/s 143(3)/147 and for AY 2013-14 & 2014-15 order passed U/s 143(3) of the Act.

2. All the appeals have the same nature of facts and have a common issue; so, ITA No.2538/Mum/2023 for A.Y. 2010-11 is taken as the lead case. ITA No.2536/Mum/2023 is related to the disallowance of interest payment to the loan creditors.

3. The brief facts of the case are that the assessee has filed the appeal before the ITAT in the name of ASG Capital Services Pvt Ltd; but the company has changed its status and is now known as ASG Capital Services LLP. The assessee has received loans total amount to Rs.1 crore from M/s Olive Overseas Ltd (known as M/s Realgold Trading P. Ltd.) and Triangular Infocom Ltd (Lexus Infotech Ltd). during the impugned assessment year. After receiving information from the investigation department, the Id. AO reopened the impugned year U/s 148 of the Act. During assessment the Id. AO treated the loan as accommodation entry. The Id. AO relied on the statement recorded of Shri Pravin Kumar Jain during search. The said person was allegedly involved in providing the accommodation entry to the assessee. Considering this, the amount of Rs.1 crore was added back under section 68 of the Act and also the interest payment on the loan amount to Rs. 11,45,063/-. Being aggrieved on the appeal order, the assessee filed an appeal

before the Id. CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR argued and filed a written submission which is kept in the record. The Ld.AR in argument placed that the assessee has not at all connected with Shri Pravin Kumar Jain and the statement recorded under section 133(6) from Shri Pravin Kumar Jain was later on retracted. So the addition on the basis of the statement recorded has no evidentiary value. In assessment and also in appeal stage, the assessee filed all the relevant documents which are required to comply the section 68 of the Act related to the identity, transaction and creditworthiness of loan creditors. The Ld.AR invited our attention to assessment order para 8.4 related to the submission of the documents of the loan creditors. The relevant paragraph is reproduced as below: -

“8.4 In response to the same, assessee vide letter dated 14.03.2016 stated that it had already discharged the onus under section 68 of the act to prove the identity, genuineness and creditworthiness of the lender companies. Assessee further submitted that it had complied with all the requirement u/s 68 and have submitted all the relevant documents to satisfy identity, genuineness and the creditworthiness of the investor as required a/s 68. Assessee further submitted that in the return of income filed on 26.09.2010 it had disclosed all the material facts. Assessee stated that it had paid interest on loan borrowed from the above alleged companies at the rate of 9% p.a. and has also deducted tax at source on said interest paid to the lender companies. Assessee stated that it had repaid the entire loan taken from alleged bogus parties Le. Olive Overseas (Real Gold) and Triangular Infocom (Lexus Infotech) on 17.02.2014 and 15.03.2013 respectively. Assessee further submitted that Mr. Pravin Kumar Jian has already retracted his statement given during the search proceedings alleging that the same was made

by him under pressure. Assessee filed copy of retraction statement. Assessee further submitted that unsecured loans borrowed from the alleged parties are genuine and it had discharged the onus of proving the genuineness of the transactions by submitting all the related details and documents. Assessee also relied upon judicial pronouncements and requested not to made any addition on this ground.”

5. The Ld.AR invited our attention in the paper book about the detail submission of documents for compliance of Section 68 of the Act, which are as follows: -

*“Re.: Loan from Olive Overseas Ltd
(Earlier Realgold Trading P. Ltd)
PAN AACCR4512K
Amount of LoanRs.50,00,000/-
Interest Paid Rs.11,45,063/-
Taken on 12.12.2009 in FY 2009-10 (AY 2010-11)*

<i>Sl no</i>	<i>Documents</i>	<i>APB, Pages</i>
<i>1.1</i>	<i>Ledger account of Assessee</i>	<i>28-29</i>
<i>1.2</i>	<i>Bank statement of Assessee</i>	<i>30-34</i>
<i>1.3</i>	<i>Ledger account of M/s Olive Overseas Ltd (M/s Real gold Trading Company)</i>	<i>35</i>
<i>1.4</i>	<i>Bank statement of M/s Olive Overseas Ltd (M/s Real gold Trading Company)</i>	<i>37-38</i>
<i>1.5</i>	<i>Copy of IT Return filed with Computation of Income alongwith Audited Balance Sheet & Profit and Loss Account for y 2010-11 of M/s Olive Overseas Ltd (M/s Real gold Trading Company)</i>	<i>41-61</i>
<i>1.6</i>	<i>PAN card copy of M/s Olive Overseas Ltd (M/s Real gold Trading Company)</i>	<i>62</i>
<i>1.7</i>	<i>Confirmation letter of M/s Olive Overseas Ltd M/s Olive Overseas Ltd (M/s Real gold Trading Company)</i>	<i>98</i>
<i>1.8</i>	<i>Affidavit-cum-declaration of M/s Olive Overseas Ltd M/s Olive Overseas Ltd (M/s Real gold Trading Company)</i>	<i>1876-188</i>

	<i>[stating details of repayment Filed as additional evidence before the CIT(A) in support of evidence before the CIT(A) in support of evidence already furnished]</i>	
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Re.: Loan from Triangular Infocom Ltd

(Earlier Lexus Infotech Ltd)

PAN AAACL4646G

Amount of LoanRs.50,00,000/-

Taken on 12.12.2009 in FY 2009-10 (AY 2010-11)

2.1	<i>Ledger Account of Assessee</i>	<i>28-29</i>
2.2	<i>Bank Statement of Assessee</i>	<i>30-34</i>
2.3	<i>Ledger account of M/s Triangular Infocom Ltd (M/s Lexus Infotech Ltd</i>	<i>36</i>
2.4	<i>Bank statement of M/s Triangular Infocom Ltd (M/s Lexus Infotech Ltd</i>	<i>39-40</i>
2.5	<i>Copy of IT Return filed with Computation of Income alongwith Audited Balance Sheet & Profit and Loss Account for AY 2010-11 of M/s Triangular Infocom Ltd (M/s Lexus Infotech Ltd</i>	<i>63-68</i>
2.6	<i>PAN card copy of M/s Triangular Infocom Ltd (M/s Lexus Infotech Ltd</i>	<i>83A</i>
2.7	<i>TDS certificate (Form 16A)</i>	<i>84-85</i>
2.8	<i>Confirmation letter of M/s Triangular Infocom Ltd (M/s Lexus Infotech Ltd</i>	<i>99</i>
2.9	<i>Affidavit-cum-declaration of M/s Triangular Infocom Ltd (M/s Lexus Infotech Ltd [Stating details of repayment Filed as additional evidence before the CIT(A) in support of evidence already furnished]</i>	<i>183-184</i>

6. The Ld.AR in argument further placed that the assessee raised ground pertaining to jurisdiction of the Id. AO to frame a reassessment U/s 148 of the Act. The grievance of the assessee is that the Id. CIT(A) has not been adjudicated the legal ground. The Id. AR argued that the reassessment in the present case is bad in law and void since the same is based on borrowed satisfaction and simply on

the basis of some information from the investigation wing, which has not been provided to the assessee till date and the existence of which is in serious doubt. Further, there is not any material linked to the assessee so as to enable the assessing officer to form a reasonable belief as regards income escaping assessment. In fact, in the entire order there is not a whisper about the name of the assessee in any of the information / statement / material, if any, relied on by Ld. AO. Such a reassessment deserves to be quashed and it is prayed accordingly. The Id. AR respectfully relied on the order **PCIT v/s Shodiman Investments – (2020) 422 ITR 337 (Bombay), Reynolds Shirting Ltd. v/s ACIT – (2022) 285 Taxman 554 (Bombay)**, et. al. holding that re-assessment simply based on borrowed satisfaction of another officer / Investigation Wing and without any independent enquiry deserves to be quashed.

6.1. The Id. AR argued on the merits of addition u/s 68 are concerned and submits that it had furnished voluminous documents, evidence and detailed submissions as to why the addition in respect of inter-corporate deposits could not have been made. This fact is noted both by the Ld. AO as well as the Ld. CIT(A). Despite having furnished all these voluminous details and evidences, the addition was sustained simply on the basis of assumptions and presumptions and without disputing any of the documents / evidences furnished by the assessee. The assessee, therefore, submits that on this very ground the addition is unsustainable since no dispute or doubt has been raised in respect of the evidences furnished by the assessee.

6.2. Ld. AR argued that the assessee further submits that the addition made by the Ld. AO and as affirmed by the Ld. CIT Appeals is bad in law also because the

only basis of making a said addition is certain statements of one Mr. Pravin Kumar Jain and some others. It is not stated as to whether the assessee was in fact named in any of them and the relevance of these in the case of the assessee. However, keeping this apart for a moment, admittedly, the said statements stood retracted and which fact has been categorically noted by both the Id. AO as well as the Id. CIT(A) in their respective orders. The said statements are therefore not reliable and could not be used in evidence. The Id. AR respectfully relied on the order of **CIT v/s Sanjeev Kumar Jain (2009) 310 ITR 178 (P&H)**.

6.3. The Id. AR argued that statements / material were never confronted to the assessee nor any cross examination of the said parties was granted to the assessee, though the same were specifically asked for multiple times before the Id. AO as well as the Id. CIT(A). The assessment order is passed without confronting with the material relied on by the Id. AO including the statement of Shri Pravin Kumar Jain and Others. The Id. AR respectfully relied on **KishinchandChellaram v/s CIT – (1980) 125 ITR 713 (SC)& CIT v/s Ashish International – ITXA 4299 of 2009 (Bombay High Court)**.

6.4. The Id. AR further submits that in the present case the Id. AO as well as the Id. CIT(A) erred in not appreciating the fact that u/s 68 of the Act an assessee is required to prove the nature and source of credit, which was duly proved, and which has in fact been accepted by the Id. AO himself. Not only that, but the Id. AO also has not brought any material on record to show that the documents furnished by the assessee were in any way non-admissible as evidence. The assessee humbly submits that such an approach is grossly unjust and cannot be sustained.

6.5. The Id. AR further argued that the assessee also furnished an Affidavit from each of the loan-creditors confirming the said transactions it has made with the assessee. Now it is a settled law that evidence tendered in the form of an affidavit cannot be lightly rejected and must be admitted unless the Id. AO being dissatisfied with the contents thereof proves to the contrary by examining the deponent. The Id. AR respectfully relied on the ***Mehta Parikh & Co. v. CIT 30 ITR 181 (SC)***.

6.6. The Id. AR argued related the disallowance of the interest payments pertaining to the relevant assessment year 2014-15 have been disallowed by the Id. AO. In this impugned assessment year only the interest payment was rejected. The interest payments to Atharva Business Pvt. Ltd., Ansh Merchant Dyes Pvt. Ltd and May Fair Management Services is concerned, it needs to be mentioned that the said interest pertains to loan taken in earlier years and which have not been doubted by the department. Therefore, it is prayed that no disallowance as regards the said interest payment can be made.

7. The Ld.DR vehemently argued and relied on the orders of revenue authorities. The Id. DR respectfully relied on the order of ITAT, Mumbai Benches in the case of ***M/s Atharva Business Pvt. vs. DCIT*** date of pronouncement **25/08/2022**. Further, he relied on the order of ITAT, Mumbai Bench in the case of ***Olive Overseas Pvt. Ltd vs DCIT, CC-1(1) in ITA No.1402/Mum/2023***, date of order **27/07/2023** and finally, the order of co-ordinate bench of Mumbai Bench "C" in the case of ***Shri PravinKumar Jain vs DCIT in ITAT 7191/Mum/2018***, date of pronouncement **19/01/2023**. In this order, the Ld.DR pointed out that during the search under section 132(4), the statement of Shri Pravin Kumar Jain was

recorded and mentioned the names of the companies where the assessee has taken loan. Further, the Ld.DR relied on the order of the co-ordinate bench of ITAT, **Ahmedabad Bench 'SMC'** in the case of **Premkumar M Sanghvi vs ITO (2017) 81 taxmann.com 308 (Ahd-Trib)**, but the Ld.DR had not argued against the veracity of the documents duly filed by the assessee before the revenue authorities.

8. We heard the rival submissions, considered the documents available in the record. The loans and in loan interest, the assessee has submitted the entire evidence before the revenue authorities. However, on a perusal of the impugned appeal order it would be evident that not a single document or evidence has been brought on record to even remotely show that the documents as furnished by the assessee are inadmissible nor any comment is made on the affidavits furnished by the assessee.

Further, the loans were repaid and the affidavits were filed which are not contradicted by the Ld.CIT(A). The assessee has complied with the evidence as required under section 68 of the Act. We respectfully relied on the order of **CIT vs Ayachi Chandrashekhar Narsangji (2014) 42 taxmann.com 251 (Guj)**. The relevant paragraph 6 is reproduced as below:-

"6. Having heard Shri Pranav Desai, learned Counsel appearing on behalf of the order passed by the CIT(A) confirmed by the ITAT, it appears that CIT(A) was satisfied with respect to the revenue and on perusal of the genuineness of the transaction and creditworthiness of Shri Ishwar Adwani and, therefore, deleted the addition of Rs. 1,45,00,000/- coded credit worthiness of Shri Ishwar Ada to need that as such an amount of Rs. 1,00,00,000-vide cheque no. 102110

and an amount of Rs.60 lakh vide cheque no. 102111 was given to the assessee and out of the total loan of Rs.1.60 crore, Rs 15 lakh vide cheque no. 196107 was repaid and, therefore, an amount of Rs. 1,45,00,000- remained outstanding to be paid to Shri Ishwar Adwani. It has also come on record that the said loan amount s been repaid by the assessee to Shri Ishwar Adwani in the immediate next financial year and the Department has accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the ITAT has held that the matter is not required to be remanded as no other view would be possible, we see no reason to interfere with the impugned order passed by the ITAT. No question of law, much less substantial question of law arises in the present Tax Appeal. Hence, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.”

8.1. Considering the legal grounds as argued by both the parties, we respectfully considered that the Judgementsrelied on by the Id. DR are factually distinguishable due to the following primary reasons.

8.1.1. The order in the case of Praveen Kumar Jain v/s DCIT – ITA Nos 7191 to 7197 / M / 18is not applicable to the case of the assessee because the orders in thiscase are passed ex-parte and therefore the assessee was not defended;Even in the case of Pravin Kumar Jain, the estimate is made after rejecting the books of accounts of the assessee hence genuinity or otherwise of the transactions was not adjudicated by the Tribunal. The ruling is based on the self-incriminating statements of the assessee therein which as mentioned earlier have been retracted by him which has not been considered by the Hon’ble Tribunal in the case of Pravin Kumar Jain.

8.1.2. The order relied on by the Id. DR in the case of M/s Olive Overseas P. Ltd. v/s DCIT – ITA Nos 1402 to 1407 / M / 23 is factually different due to the order is not applicable to the present assessee's case because, the same deals with protective additions which also ultimately stood deleted relying on the case of Praveen Kumar Jain (supra) which itself is not applicable in the present case as stated above. There is no adverse ruling or finding as regards the nature and genuineness of transactions entered into by Olive Overseas P. Ltd. The Id. DR has argued that section 153C proceedings were undertaken based on search and therefore the transactions by this entity are questionable. However, it is admitted that the original assessments, if any, in the above entity's case stood confirmed and there are aspersions about the nature of transactions. Further, even the additions made in Section 153C proceedings were deleted by the Tribunal which in fact supports the case of the assessee. Further, if there is no material to incriminate the alleged party and no additions are made in its hands in respect of the loan transactions, it therefore cannot be made in the hands of the assessee.

8.1.3. We respectfully considered the order of **PCIT v/s NRA Iron and Steel P. Ltd.[2019] 103 taxmann.com 48 (SC)** is factually distinguishable. The order in this case is passed ex-parte. The Id. DR pointed out that the lender parties are mentioned even in the said order. However, on a bare perusal of the same it is evident that in those cases the enquiries were left incomplete.

8.1.4. The order in the case of Pavankumar Sanghvi v/s ITO – (2018) 404 ITR 601 (Gujarat) is factually distinguishable due to this order turns on its own facts and merely affirms the findings of the Tribunal.

9. In our considered view, the orders relied on by the Id. DR are factually distinguishable. The assessee repaid the loan & interest to the loan-creditor. The transactions with assessee and loan creditors are duly recorded and reflected in the audited books of accounts of both the depositor as well as the recipient. The entire impugned assessment order as well as the impugned appeal order never rejected the documentary evidence filed by the assessee. The assessee was denied the opportunity to rely upon documents of the Id. AO. We respectfully relied on **Kishinchand Chellaram**(supra) and **Ayachi Chandrashekhar Narsangji** (supra). We set aside the impugned appeal order and the impugned assessment order is dismissed. The additions are quashed.

10. Therefore, ITA No.2538/Mum/2023 is *mutatis mutandis* applicable for the ITA Nos 2536 & 2537 /Mum/2023. ITA No.2542/Mum2023 is the repetition of the appeal, so it is dismissed as infructuous.

11. In the result, the appeals of the assessee in **ITA Nos 2536, 2537 & 253/Mum/2023** are allowed and **ITA No.2542/Mum/2023** is dismissed as infructuous.

Order pronounced in the open court on 28th day of August, 2024.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 28/08/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai