

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 1020, 2337/MUM/2024
Assessment Year: 2013-14**

Jet Infracore Ltd.
Office No. 1, 1st floor, E Wing
Nandanvan Apartment, Kandivali
Link Road, Kandivali (W),
Mumbai-400067.
PAN NO. AAACJ 9982 B
Appellant

Addl./Joint/Dy./Asst. CIT
MUM-W-(443)(91),
Vs. ITO Ward 12(3)(1),
Aayakar Bhavan,
Mumbai.
Respondent

Assessee by : Mr. Gunjan H Kakkad
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 10/07/2024
Date of pronouncement : 27/08/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against order dated 09.01.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2013-14, raising following grounds:



1) On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals), NFAC has erred in confirming the action of assessing officer in the addition of ₹ 80,00,000/- to the income of the appellant u/s 68 of the act, 1961 as Unexplained Cash Credits in the Books of the appellant, on the basis of beneficiary of accommodation entry from Samyak Exim Private Limited as per the Dissemination Report received from Investigation Wing in the case of Dishita Gems Private Limited which was already return back.

2) On the facts and circumstances of the case as well as law on the subject, the learned officer Commissioner of Income-Tax (Appeals), NFAC has erred in confirming the action of assessing in passing an order under section 147 r.w. 144B of the IT Act, 1961 without considering the fact that assessing officer has not issued valid notice under section 148 of the I.T. Act, 1961 as well as not properly considering the reply submitted by Samyak Exim Private Limited in response to Notice u/s 133(6) was sent to them.

3) On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of income-Tax (Appeals), NFAC has erred in confirming the action of assessing officer in violating the principle of natural justice by passing an order based on the Dissemination Report received from Investigation Wing, without appreciating the fact that the appellant has submitted all such details and documents which prove the genuineness of the transaction and creditworthiness of the M/s. Samyak Exim Private Limited such as confirmations, bank statements, reply also filed by them in response to notice u/s 133(6) of the act etc, not allowed Cross Examination, an Appellant has discharge their onus of proof by proving Identity of the creditor, capacity of the creditor and the genuineness of the transaction in question with explained the need for the loan etc.

4)) On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals), NFAC has erred in confirming the action of assessing officer for reopening as well as addition as Assessing Officer has not mentioned as to how such loan amount of Rs. 80 lakhs as Unexplained Cash Credits as accommodation entry in the Books of the appellant and how it will constitute income in the hands of the appellant, which are essential requirement for forming belief about escapement of income when interest paid on such credit is not in disputed and also the repaid loan during the year under consideration is also not under dispute.

5) On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of income-Tax (Appeals), NFAC has erred in making wrong presumptions assumption and allegations, without any tangible documents but only on the basis of search/survey report of third party, which is against the natural justice.

6) On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals), NFAC has erred in over looked the various documentary evidences filed by the



appellant in support of loan including the confirmation letter, PAN number, bank statement reflecting the transactions, also is not considering the case law on which appellant relied.

2. At the outset , we found that both the captioned appeals are arising from the same impugned order of the Ld. CIT(A). One has been filed in physical form, whereas other has been filed electronically. Therefore, one of them is to be treated as duplicate. We find that the Form No. 36 in ITA No. 1020 has not been signed by the person authorized to sign the appeal, therefore, the appeal having ITA No. 1020/Mum/2024 is dismissed as infructuous, both on the ground of duplicate as well as being not signed by the authorized person.

3. Now, we take up the appeal having ITA No. 2337/Mum/2024 for adjudication. Briefly stated facts of the case are that the assessee filed return of income for the year under consideration on 28.07.2016 declaring total income at Rs.9,63,340/-. Subsequently, the case of the assessee was reopened by way of issue of notice u/s 148 of the Income-tax Act, 1961 (in short 'the Act'). The Assessing Officer in the reasons recorded mentioned that investigation wing of Mumbai Income-tax Department carried out searches and surveys along with various inquiries and made analysis of the bank accounts of 'M/s Dishita Gems Pvt. Ltd'. and after discrete enquiries, it was gathered that said company was only a paper company and was used for providing accommodation entries in the form of purchase and unsecured loans etc. The company transacted



with various entities for providing accommodation entries relevant to year under consideration. From the information the AO noted that Investigation Wing of Income-tax Department identified one of the companies namely 'M/s Samyak Exim Pvt. Ltd.', who transacted with 'M/s Dishita Gems P Ltd' during the year under consideration and the assessee company had shown unsecured loan of Rs.80,00,000/- from M/s Samyak Exim Pvt. Ltd. during the year under consideration. Therefore, the Assessing Officer recorded reason to believe that said unsecured loan being accommodation entry and hence income escaped assessment.

3.1 During the course of reassessment proceedings, the Assessing Officer asked the assessee to justify the genuineness of the loan of Rs.80,00,000/- shown in the bank accounts of the assessee, which was received from M/s Samyak Exim Pvt. Ltd. The assessee submitted that it had no knowledge of M/s Dishita Gems Pvt. Ltd. being a paper company. The assessee further submitted that the loan received from M/s Samyak Exim Pvt. Ltd. in the financial year 2012-13 was obtained under normal course of business and was repaid in the year under consideration itself. The assessee expressed its innocence and submitted that no wrong doing was done on behalf of the assessee. However, the Ld. Assessing Officer rejected the contention of the assessee mainly for the reason that, firstly, the notice u/s 133(6) of the Act sent to M/s Samyak Exim Pvt. Ltd. was not complied completely and the said company did not



provide copy of 'profit and loss account' and 'balance sheet'. *Secondly*, the said company had shown taxable income of Rs.70,380/- only and bank statement revealed credit and debit entries of same amount within a span of 2-3 days. *Thirdly*, no genuine business activity was being carried out by the said company M/s Samyak Exim Pvt. Ltd. and *finally*, the said company had obtained accommodation entry from M/d Dishita Gems Pvt. Ltd. which was a paper company. Accordingly, the Ld. Assessing Officer concluded that creditworthiness and genuineness of loan transaction was not proved and made addition for the loan amount as unexplained cash credit invoking section 68 of the Act

3.2 . On further appeal, the Ld. CIT(A) upheld the addition made by the Assessing Officer observing as under:

"7. Ground no.1 to 4 are relating to the addition of Rs.80,00,000/- as unexplained cash credit u/s.68 of the Act. All these grounds are relating to the same issue and hence are being adjudicated together. The information in the possession of the AO was that the said company M/s. Samyak Exim Pvt. was an entry provider and hence, the AO issued notice u/s.148 of the Act to the appellant after taking necessary approval from the competent authority. The appellant filed the same return in response to the notice u/s. 148 of the Act. Before making the said assessment, the AO sent notice u/s. 133(6) of the Act to M/s. Samyak Exim Pvt., and the said notice was received back unserved. Subsequently, the AO has made verification of the bank statements of M/s. Samyak Exim Pvt. Ltd. and M/s. Dishita Gems Pvt. Ltd from whom M/s. Samyak Exim Pvt. had received the funds. It was found that the M/s. Dishita Gems Pvt. Ltd had deposited cash and credited huge receipts amounting to Rs.261 crores in a period of 05 years with a Kotak Mahindra Bank account no. 550011039002 and the funds given by the said entity to M/s. Samyak Exim Pvt. were given as accommodation entries to various concerns including the appellant. All these details show that the AO had made proper and an independent enquiry about the transactions between the appellant and M/s. Samyak Exim Pvt Ltd. and M/s. Dishita Gems Pvt. Ltd. On the basis of the said enquiry, the AO came to the conclusion



that there were huge credits and cash deposits in the bank accounts of M/s. Dishita Gems Pvt. Ltd, which was the source of giving loans to various entities including the appellant. The Modus Operandi in accommodation entry cases is that the person wanting the loan gives cash to the entry provider and gets the entry in cheque. That is the reason as to why M/s. Dishita Gems Pvt. Ltd has huge credits and debils without there being any actual purchase or sales. M/s. Dishita Gems Pvt. Lid has given loans to M/s. Samyak Exim Pvt. Ltd. and who in turn given loans to the appellant. These loans are only on paper and hence, rightly treated as unexplained cash credit by the 40. The AO has given proper finding alongwith the Balance Sheet and computation of income of l/s. Dishita Gems Pvt. Ltd and and M/s. Samyak Exim Pvt Ltd. with bank statements which prove beyond doubt that the entry of loan was an accommodation entry. Further, the appellant has given required time and opportunity to the appellant and hence, there is no violation of principle of natural justice. Further, the AO has given a proper finding with the help of bank statements and Balance Sheets of the entities involved which prove beyond doubt that the entity which has claimed to have given loan to the appellant is an accommodation entry provider and not a genuine entity having creditworthiness to lend money to the appellant. Therefore, it cannot be said that the AO has made wrong presumptions while completing the assessments. In view of all these facts, the addition of Rs. 80,00.000/- made /s,68 of the Act is hereby sustained. Ground no.1 to 4 are dismissed.”

4. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has wrongly recorded that notice issued to M/s Samyak Exim Pvt. Ltd. was received back un-served. The Ld. counsel however before us submitted that M/s Samyak Exim Pvt. Ltd. could not file copy of the profit and loss account and balance sheet in response to notice u/s 133(6) of the Act issued by the Assessing Officer. The Ld. counsel filed a copy of the financial statement of M/s Samyak Exim Pvt. for admitting the same as additional evidence and decide the issue after examination/verification of the financial statement of M/s Samyak Exim Pvt. The Ld. counsel further submitted that loan in question has already been repaid by the assessee in the same financial year. The Ld. Counsel relied on



the following decisions to support that repayment by cheque establish genuineness of the loan transaction.

(i) Pr. CIT v. Ambe Tradecorp (P.) Ltd. [2022] 145 taxmann.com 27 (Gujarat)

(ii) M/s Jet Speed Realtors v. ACIT in ITA Nos. 77, 108, 109/Mum/2022

(iii) CCIT (OSD)/Pr. CIT v. Bhupendra Champaklal Dala [2024] 160 taxmann.com 645 (Bombay)

(iv) Shri Bhupendra C. Dalal v. DCIT OSD in ITA No. 1350, 1351, 1352/Mum/2011.

4.1 The Ld. counsel also relied on the decision of the Hon'ble Bombay High Court in the case of Mr. Gaurav Triyugi Singh v. ITO Income Tax Appeal No. 1750 of 2017.

5. The Ld. Departmental Representative (DR) on the other hand submitted that creditworthiness of the lender was not established by the assessee before the lower authorities and therefore, the Ld. CIT(A) is justified in upholding the addition made by the Assessing Officer.

6. We have heard rival submission of the parties and perused the relevant material on record including the Paper Book filed by the assessee which is running from pages 1 to 106. Before us, the Ld. counsel for the assessee did not press the grounds challenging the validity of the reassessment proceedings and therefore, the ground Nos. 2 and 8 and other grounds wherever validity has been challenged, are dismissed as infructuous.



6.1 As far as grounds challenging merit of the addition is concerned before us, the Ld. counsel for the assessee has filed addition evidences containing 'audited financial statement' of lender company namely M/s Samyak Exim Pvt., which the assessee could not file before the lower authorities for the reason that same were not provided to the assessee by said party and now the assessee has obtained a copy of relevant financial statement. We note that the Assessing Officer has held that creditworthiness and genuineness of the transaction was not established mainly in view of absence of profit and loss account and the audited balance sheet of the lender, therefore, it is vital to examine the said documents for establishing the creditworthiness and genuineness of the transaction. In view of the facts and circumstances and in the interest of substantial justice, we feel it appropriate to restore the matter back to the file of the Ld. Assessing Officer for examining the creditworthiness and genuineness of the transaction in the light of the audited financial statement of M/s Samyak Exim Pvt. and if required may ask the assessee to produce the said party for verification of the business activity and relationship with M/s Dishita Gems Pvt. Ltd. The AO is at liberty to carry out further enquires as deemed fit for adjudication of the issue in dispute. The assessee shall be afforded adequate opportunity of being heard. The grounds of the appeal of the assessee challenging merit of the additions are accordingly allowed for statistical purposes.



7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 27/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 27/08/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai