

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

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

I.T.A No.3297/Mum/2024 - A.Y. 2010-11  
I.T.A No.3298/Mum/2024 - A.Y. 2018-19

<b>Dy.CIT, Central Circle-8(1), Mumbai</b> Room No.656, 6 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai-400 020	vs	<b>JSK Industries Private Limited</b> 9, Near New Expire Cinema A.K. Naik Marg, CST (V.T.), Mumbai- 400 001 <b>PAN: AABCJ5937F</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Neelkanth Khandelwal  
Respondent by : Shri Vivek Perampurna,CIT-DR  
  
Date of hearing : 11/09/2024  
Date of pronouncement : 20/ 09/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Both the appeals of the revenue are filed against the order of the Learned Commissioner of Income-tax (Appeals)-50, Mumbai [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Years 2010-11& 2018-19,date of order 30.05.2024. The impugned orders are emanated from the orders of the Learned Assistant Commissioner of Income-tax, Central Circle 8(2), Mumbai, order passed under section 143(3) of the Act, date of order 30/09/2021 for A.Y. 2018-19 and the order passed by the Id.

Deputy Commissioner of Income-tax-2(2)(1), Mumbai order passed under section 143(3) read with section 147 of the Act, dt of order 31/12/2016 for A.Y. 2010-11.

2. The revenue has taken the following grounds: -

**A.Y. 2018-19**

**PROPOSED GROUNDS OF APPEAL**

*"1. Whether on the facts and circumstances of the case and in laws the L4 CMA) has erred in deleting the additions made by the AO in respect of interest paid on unsecured loan u/s 69C of the Income Tax Act, 1961 during the action of search and seizure u/s 132 of the Act.*

*2. Whether on the facts and circumstances of the case and in law, the Ld CIT has erred in not appreciating the enquiries made by the AO during the assessment proceedings and the non genuineness and non creditworthiness of the alleged loan providers related to the assessee indulged in providing bogus accommodation entries established by the search and survey action conducted by the department?"*

**A.Y. 2010-11**

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was Justified in holding that the statements has no evidentiary value?"*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was Justified in deleting the addition made by Assessing Officer on account of unaccounted income when the same was based on the statements recorded in question to discrepancies found and admitted by the assessee company?"*

*3. "Whether on the facts and in the circumstances of the case and in law the Ld CIT(A) was justified in ignoring the findings given by the Survey Report which was on the basis of an intensive investigation which revealed the modus operandi of the transaction of allotment of shares of the assessee company to the Kolkata based three companies on premium and thereafter acquiring the three*

*companies which was actually a scheme to infuse unaccounted income of the assessee company into its regular books of accounts?*

*4. "Whether on the facts and in the rates of the case and in law the LA CITA justified in deleting the addition made by the Assessing Officer by relying on the evidence submitted by the assessee in support of the unsecured loans without appreciating the fact that the creditworthiness of lender could not be said to be proved?"*

*5. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in deleting the addition by relying on the decision of the Hon'ble ITAT without appreciating the merits of the case?"*

3. The brief facts of the case are that during both the years, the assessments were completed and for A.Y. 2018-19, the interest on loan amount to Rs.62,58,289/- was added back under section 69C of the Act. The said interest was generated from the loan which was taken in earlier years and added back by the Ld.AO with the total income of the assessee. For A.Y. 2010-11, the Ld.AO added back the loan amount to Rs.20,39,75,800/- related to the loan taken from 3 entities which are as follows:-

i.	Prayagchand Ashok Kumar Pvt Ltd	6,63,10,000/-
ii.	Purak Trading Pvt Ltd	9,80,47,800/-
iii.	M/s Eklavya Management Services Pvt Ltd	3,96,00,000/-
	<b>Total</b>	<b>20,39,57,800/-</b>

The entire amount was added back with the total income of the assessee. In impugned assessment order the Ld. AO mentioned the said total amount Rs. 20,39,75,800/- which was followed toto by the Ld. CIT(A). But summation of three loan amount comes to Rs. 20,39,57,800/-. Aggrieved, the assessee filed an appeal before the Ld. CIT(A). For A.Y. 2010-11 to 2016-17, the assessee's case was before

the ITAT, Mumbai Benches and issues are covered by the order of the coordinate bench for the earlier years. Respectfully considering the orders of ITAT, Mumbai Bench, the Id.CIT(A) allowed the appeal of the assessee. Being aggrieved, the revenue filed appeals before us.

4. We heard the rival submission and considered the documents available in the record. For A.Y. 2018-19, the addition of interest amount to Rs.62,58,289/- was generated from the loan creditors M/s TTI Enterprises Pvt Ltd and M/s Waltz Tracom Pvt Ltd. The relevant paragraph 3 of the order of the coordinate bench of ITAT in assessee's own case bearing **ITA Nos 5891 to 5897/Mum/2019** date of order **28/10/2021** is reproduced as below: -

*"3. The Ld. CIT(A) has erred in law and in facts in confirming the receipts by the appellant from the following companies as unexplained cash credits u/s. 68 of the Act:*

<i>Sr.No.</i>	<i>Name of the entity</i>	<i>Loan Amount (Rs.)</i>	<i>Share Capital (Rs.)</i>
1	<i>Prayagchand Ashok Kumar Pvt Ltd</i>	<i>4,67,30,000</i>	<i>2,60,70,000</i>
2	<i>Purak Trading Pvt Ltd</i>	<i>2,88,69,600</i>	<i>2,60,80,400</i>
3	<i>Eklavya Management Services Pvt Ltd</i>	<i>7,92,30,000</i>	<i>2,60,79,000</i>
4	<i>Mridul Exports Pvt Ltd</i>	<i>2,52,000</i>	-
5	<i>Tycoon Traders &amp; Investments Ltd</i>	<i>81,049</i>	-
6	<i>Waltz Tracom Pvt Ltd</i>	<i>5,54,104</i>	-
	<b>TOTAL</b>	<b>15,57,16,753</b>	<b>7,82,20,000</b>

*4. The Ld. CIT(A) has erred in law and in facts in not appreciating the fact that the transactions with Prayagchand Ashok Kumar Pvt. Ltd, Purak Trading Pvt. Ltd and Eklavya Management Services Pvt. Ltd., were also examined and added by the Assessing Officer in his earlier assessment order dated 31.12.2016 passed u/s. 143(3) r.w.s. 147 of the Act and hence assessments of these amounts in the impugned assessment order amounts to double addition in the hands of the appellant.*

5. *The Ld. CIT(A) has erred in law and in facts in determining the peak credit in respect of transactions with various companies as listed above at Rs. 21,27,43,384/- with respect to transactions on account of alleged unsecured loans, interest paid on unsecured loans and alleged share capital.”*

Considering this order, the addition was deleted. Paragraphs 10 to 12 on page 32 to 36 of **ITA Nos 5891 to 5897/Mum/2019** (supra) is further reproduced below:-

*“10. The facts in brief are that the A.O. has made the addition of Rs.17,13,48,674/- on account of unsecured loans taken and interest thereon u/s. 68 of the Act the details whereof is already given para 6.1. above. According to the A.O., the registered addresses of the companies belonged to one of the employees of the group and no business activities were carried on from the said premises. The Ld. A.O. has relied upon the statement of the director Mr. Anish Shah recorded at the time of survey on 18.09.2014 wherein he accepted that he had no documentary evidences to prove the identity, creditworthiness and the genuineness of the investments made by the 3 group concerns namely Eklavva Management Services Pvt. Ltd., Prayagchand Ashokkumar Pvt. Ltd, and Purak Trading Pvt. Ltd. Accordingly, he had made a disclosure for an aggregate amount of Rs, 20.39.75.800/- in the instant year in respect of the funds received from the aforesaid 3 group companies. The appellant assessee had also filed various documents comprising details of lenders like names, addresses and PAN of the parties, Ledger Account of the parties in the books of the assessee appellant, confirmations, ITRs. Financial statements, bank statements, ROC data of lenders besides Bank statement of the appellant and also source of funds given by the parties to the assessee. The AO however rejected the pleas and contentions of the assessee and added a sum of Rs.17,13,48,674/- to the income of the assessee under section 68 of the Act.*

11. *In the appellate proceedings, the Ld. CIT(A) upheld the order of A.O. on the issue of loans received by the appellant being non genuine. Besides Ld. CIT(A)*

*by referring to his order for A.Y. 2011-12 in appellant own case applied peak theory on the ground that the appellant has rotated its own funds through various non-genuine entities by taking into account share capital received from these entities over and above the unsecured loans added by the Ld. A.O, and enhanced the amount of addition to Rs.21,27.43.384/- from Rs.17,13,48,680/-.*

*12. We have heard the rival contentions and perused the records including the various citations by the Id AR. We note that assessee has filed various evidences before the authorities below as discussed above in order to prove the genuineness of the transactions with 3 group companies. We note that the both the authorities below have not pointed any defect in the evidences filed by the assessee. We note that assessee has even filed evidences proving the source of source in respect of the transactions with the group concerns. We also note that letters issued by A.O. u/s. 133(6) of the Act, in order to verify these transactions, to the lenders/investors were duly replied along with the evidences. We note that the AO relied on the statement of Mr. Anish Shah recorded during survey which has been retracted vide letter dated 21.12.2015. In the said statement Mr. Anish Shah stated that he is unable to substantiate the investments made by these 3 companies into the appellant company and thus accepted the investment made by the 3 companies as unexplained. In our opinion the statement recorded during survey has no evidentiary value unless corroborated by other evidences. The case of the assessee finds support from the decisions namely CIT v. S. Khader Khan Sons [254 CTR 2289(SC)] confirming the decision in the case of CIT v. S. Khader Khan Son [300 ITR 157] and Paul Mathews and Sons v. CIT [263 ITR 101 (Ker)]. We also take note of the fact that these companies are part of the group companies of the appellant and therefore the creditworthiness as well as capacity of these companies cannot be examined independently and the capacity of the entire group as a whole has to be considered and not individually. We note that the appellant has filed the evidences in the form of bank statements, financial*

*statements and the ITR acknowledgement of these companies to justify that the transactions by the appellant company with them were genuine. Moreover, the perusal of the evidences filed by the appellant assessee justifies the capacity of these companies. We find that these companies have offered substantial interest income on the advances given to various parties and the income is regularly offered by them to tax beside the profit arising from the financing activity. In fact, one of the company has also shown share trading as its business activity and has earned a sizeable profits during the year. Moreover, the companies had sufficient reserves and the capital balances since past several years to make investments or advance funds as loans. Considering these facts and circumstances, the order of the CIT(A) appears to be incorrect in rejecting the evidences filed by the appellant and the explanation offered by them. In respect of the other loans taken from Mridul Exports Pvt. Ltd., Tycoon Traders & Investments Ltd. and Waltz Tracom Pvt. Ltd., even the said companies have shown substantial business activities during the year. These companies have shown income from interest, dividend from investments as well as substantial amount of capital gains from sale of investments. Some of these companies have also been found trading in shares. Further, we have also perused the statement of Mr. Paraj Mehta recorded at the time of survey u/s. 133A of the Act at his premises conducted on 25.10.2016. The various question and answers recorded in the statement clearly showed that he has confirmed the genuineness of the transactions undertaken by his companies with the appellant. Thus, even the independent investigation in case of these companies have proved that the transactions undertaken by them with the appellant were genuine. In spite of search and seizure action carried out by the Department as well as reassessments undertaken by the Department in case of the appellant assessee, no documentary evidences could be found to support the case of the AO. Further, we also find that the addition has been made by the Ld. A.O. in the year under consideration without appreciating that no loans were taken from these companies during the year. The appellant has filed the*

*confirmations as well as the Ledger accounts of Mridul Exports Pvt. Ltd., Tycoon Traders & Investments Ltd, and Waltz Tracom Pvt. Ltd., which showed that the addition made by the Ld. A.O. on account of the loans taken during the year are nothing but the amount of interest that has accrued on the opening balances. This is over and above the disallowance on account of the interest paid on these loans during the year. As a result of the above, there has been double addition of the interest amount, once by treating the same as loans and secondly by disallowing the interest claimed as expenditure. There is nothing on record which proved that these loans taken by the appellant in the past years have been treated as unexplained by the Department. In view of these facts, we are of the opinion that no addition could be made in the hands of the appellant assessee in respect of the interest payments without disputing the loans from these companies in the past. In light of the above, we are of the view that the loans and the share capital raised by the appellant are genuine and that the addition made by the Ld. A.O. and enhanced by the Id CITIA) can not be sustained.”*

5. Respectfully following the order of the ITAT, Mumbai Bench, the said addition of the loans related to Waltz Tracom Pvt Ltd, Purak Trading Pvt Ltd and TTI Enterprises Ltd, duly taken as non accommodation entry and the loans are genuine in nature. So accordingly, the interest generated amount to Rs.62,58,289/- from these loans is beyond doubt. Accordingly, we are not interfering in the impugned appeal order. The Ld.DR has accepted the fact and not able to submit any contrary judgment against the submission of the Id.AR. Accordingly, the grounds of the revenue are dismissed.

#### **Related to A.Y. 2010-11**

6. The Id.AR further relied on paragraphs 10 to 12 on pages 32-36 of the order of the ITAT, which has already been reproduced above and the loan was taken

from 3 entities, i.e. Prayagchand Ashok Kumar Pvt Ltd, Purak Trading Pvt Ltd and M/s Eklavya Management Services Pvt Ltd. The issue was already covered, and the same loan was taken as genuine transaction in the assessee's own case passed by the ITAT, Mumbai Bench. We respectfully follow the order of the ITAT, Mumbai Bench "F" bearing **ITA Nos 5891 to 5897/Mum/2019** (supra).

7. The Ld.DR informed us that the revenue has challenged the order of the ITAT before the Hon'ble Jurisdictional High Court, but the Ld.DR was unable to produce any order of the Hon'ble High Court in its favour. Accordingly, the appeals of the revenue are dismissed.

8. With regard to the next issue pertaining to addition under section 69C, since the addition of the loan amounts pertaining to the above 3 parties are deleted; interest expenditure disallowed thereon, also cannot stand even as it is genuine business expenditure; therefore, this ground of the revenue is dismissed.

8. In the result, **ITA Nos 3297 & 3298/Mum/2024** are dismissed.

Order pronounced in the open court on 20<sup>th</sup> day of September, 2024.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated:  
Pavanan

20/09/2024

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