

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.674/Mum/2024
(Assessment Year :2012-13)**

ACIT 321, 202, 2 nd Floor Kautilya Bhavan BKC, Bandra (E) Mumbai-400 051	Vs.	M/s. Amal Corporation A-501, Gladdiola Old Hanuman Road Vile Parle East Mumbai -400057
PAN/GIR No.AAAFA0297R		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhupendra Shah
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	02/09/2024
Date of Pronouncement	14/10/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 21/12/2023, passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2012-13.

2. In the grounds of appeal, the Revenue has challenged the deletion of addition of Rs.1,50,00,000/- made in respect of unsecured loans which were alleged to be taken from the concerns of M/s. Bhanwarlal Jain Group who were found to be

providing accommodation entries and secondly, deletion of addition of Rs.28,90,574/- which was made on account of interest payment in respect of these loans.

3. The brief facts are that assessee firm is engaged in the business of investment in shares/securities/properties etc., and also carrying on business in the firm as contractors, designers, developers of immovable properties and providing consultancy. The return of income was filed declaring income of Rs.3,36,09,110/- on 26/09/2012. During the course of assessment proceedings, ld. AO on perusal of the balance sheet noted that assessee has taken unsecured loan which has been shown on the liability side received from M/s. Mehul Gems Pvt. Ltd. and M/s. White Stone aggregating to Rs.1,50,00,000/-. In response to the notice, assessee submitted the details of loans wherein assessee had shown Rs.50,00,000/- of loan from M/s. Mehul Gems Pvt. Ltd and Rs.1,00,00,000/- from M/s. White Stone. Further, assessee has also paid interest to M/s. Nice Diamonds of unsecured loan which was availed prior to A.Y.2012-13. Ld. AO noted that these parties were listed by the Investigation Wing who were found to be providing accommodation entries of unsecured loans and bogus purchases to various beneficiaries. He also referred to search conducted by Investigation Wing on Bhanwarlal Jain group of cases on 03/10/2014, wherein it was found that Mr. Bhanwarlal Jain alongwith his families were managing 70 Benami concerns and various entities through which they provide accommodation entry of unsecured loans and bogus purchases. Thereafter, he

has referred to the *modus operandi* adopted for providing accommodation entries for loans and advances and on sample basis, he has taken note of one Amba Corporation who has found to be beneficiary and has taken loan entry from various benami concerns of Bhanwarlal Jain in A.Y.2011-12 and quoted the example given by the Investigation Wing.

4. Ld. AO then asked for the details like copy of acknowledgement of income tax returns, copy of balance sheet and profit and loss account for the year, copy of ledger account, copy of bank statement in case of the creditors to prove the transaction made during the year by these parties with the assessee. He had asked all these information directly from the creditors' u/s. 133(6). In response to notice u/s. 133(6), both the parties who had given the loan to the assessee in this year and also one party to which assessee had paid interest on the loan taken earlier duly responded and filed all the details as required by the ld. AO. From the details filed and replies in response to notice u/s. 133(6), AO noted following facts:-

- i) All the three entities had carried out business of trading & Polishing of diamonds.
- ii) They have filed belated returns le beyond due date of filling of return.
- iii) On verification of record submitted in response to notice U/s 133(6) of I.T. Act, certain characteristic features were observed in their businesses which are not possible in normal business. The same are as below:
 - a) High Turn Over.

b) Major Portion of assets in the balance sheet comprise of Loan & advances, debtors and investments. These assets almost match the figures of their business creditors.

c) The advance tax payment is very nominal despite their turn over running in to several crores.

d) The entire TDS deducted (by the assessee) on the interest payable against their Loans & advances is claimed as Refund.

e) There is hardly any capital in the balance sheet.

f) A perusal of balance sheet shows that the source of loans and advances is from the funds due to sundry creditors. Advancing loans worth crores of Rupees for years together and that too, without any security, from the source of funds payable to creditors is very unlikely in normal course of business. The balance sheet of M/s Nice Diamonds as on 31/03/2012 shows that the capital is only 3,18,292 and loans & advances of Rs 8,28,30,136/- were given. The source was Rs. 55.39 crores payable to sundry creditors. Similarly, the balance sheet of M/s Mehul Gems Pvt. Ltd as on 31/03/2012 shows that the capital is only 1,00,000/- and reserve of Rs 1,06,073/- only. However, loans & advances of Rs 15.21 crores were given. The source was Rs. 17.68 corers payable to sundry creditors. In case of White Stone, the balance sheet as on 31/03/2012 shows that the capital is only 1,22,814/- and loans & advances of Rs 8,42,94,193/- were given. The source was Rs. 26.18 crores payable to sundry creditors.

5. Thus, AO held that the creditworthiness of the parties has not been proved. Thereafter, ld. AO asked to produce the said parties. In response, partner of M/s. White Stone Mr. Ashish Chordiya and Mr. Bhupendra Singh, Proprietor of Nice Diamonds appeared before the AO and their statement on oath was recorded u/s.131. AO has also reproduced relevant statement of these parties in the assessment order. In response to the various

questions, these persons have duly confirmed the loan and also given the details of their business turnover and in the case of M/s. White Stone, Mr. Ashish Chordiya stated that the turnover was more than Rs.15 Crores and also explained the source of the loan given to the assessee on interest @9%. Further, when the party was confronted with the search of Bhanwarlal Jain, the person categorically submitted that he was not aware of any search action nor can offer any comments. Further, he also stated that he has not borrowed any loan from any other party. Similarly, with regard to Bhupendra Singh, proprietor Nice Diamonds, stated that he was engaged in the business of trading of rough diamonds and polished diamonds and admitted that he has given unsecured loan to the assessee in earlier year at Rs.2,50,00,000/-. Again when confronted with regard to Bhanwarlal Jain in search action, he stated that he is not aware of any search action. He has also provided the details of his business.

6. The assessee also in response to show-cause notice has given all the relevant documents and explanation before the AO proving the genuineness and creditworthiness with all the details as required by the AO. However, the same has been rejected by the AO including the statements and the documents submitted by these parties in response to u/s. 133(6) solely based on the outcome of certain findings of Investigation Wing in the Bhanwarlal Jain group. Accordingly, he has treated the unsecured loan aggregating to Rs.1,50,00,000/- u/s.68. He also disallowed the interest paid to Nice Diamonds and to M/s. Mehul

Gems Pvt. Ltd. and and M/s. White Stone paid on unsecured loan of Rs. 28,90,574/-.

7. Before the Id. CIT (A) assessee filed all the documents like copy of ledger account, ITR, audited financial statements of M/s. Mehul Gems and M/s. White Stone and M/s. Nice Diamonds. Further, affidavit of these parties were also filed alongwith confirmations filed and all the documents required by the AO in response to notice u/s.1 33(6). The Id. CIT (A) has deleted the addition after observing as under:-

“3(b). I have gone through the above submissions made by the appellant. I have also verified the material as presented during the course of appellate proceedings. I have also considered assessment order and various facts and circumstances of the case. From the verification of the material, it is understood that the appellant made various submissions to prove the genuineness of the transactions. In the case of firm M/s. White Stone, the appellant filed following details

- 1. Copy of Return of Income and schedules reflecting transaction with the Amal Corporation*
- 2. Details of ledger account and ledger account of subsequent payment details*
- 3. Copies of bank statements evidencing the loan payments through banking channels.*
- 4. Copy of affidavit dated 31.03.2015 authenticating the payments made by the firm*

Apart from the above, one of the partner Mr. Ashish Chordia from M/s. White Stone has also attended before the AO during the

course of assessment proceedings and confirmed about the payment of loan. Thus, the assessee discharged its obligations as per 68 of the IT Act. From the material and facts of the case, it is understood that the assessee filed all relevant details which are needed to explain genuineness, creditworthiness and identification of lender EPAR

In the case of M/s. Mehul Gems Pvt. Ltd., nobody attended from the company in response to summons during the course of assessment proceedings, but the assessee furnished all relevant details during the course of assessment proceedings.

1 Copy of Return of Income and schedules reflecting transaction with the Amal Corporation.

2. Details of ledger account and ledger account of subsequent payment details.

3. Copies of bank statements evidencing the loan payments through banking channels.

4. Copy of affidavit dated 31.03.2015 authenticating the payments made by the firm.

Thus, from the verification of the material filed by the assessee clearly reveals that the appellant discharged his obligations as required u/s. 68 of the IT Act.”

8. Thereafter, Ld. CIT (A) quoted various judgments and held that AO did not point out any specific instances or any infirmity in the statement recorded by the Investigation Wing in the case of Bhanwarlal Jain group which reveals alleged involvement of the assessee in taking accommodation entries. Once the assessee has filed all the documents and he himself carried out enquiry then, he could not have made the addition simply based on his

own presumption. Accordingly, the addition made by the AO was deleted.

9. Similarly, with regard to interest payment also he held that since the loan has been found to be genuine and therefore, interest has to be allowed and in the case of Nice Diamond, the loan was taken in the earlier year and the partner of the firm admitted during the course of assessment proceedings, he has given loan to the assessment.

10. Before us ld. DR submitted that in view of the investigation and search carried out in the case of Bhanwarlal Jain, it was categorically found that he was providing accommodation entries of bogus purchases and loans to various Benami concerns and Mehul Gems Pvt. Ltd. was one of the concerns of Bhanwarlal Jain. In the case of Bhanwarlal Jain, the Tribunal has upheld commission income on account of providing accommodation entry which goes to show that these are all bogus companies who were providing accommodation entry and therefore, loan from such company cannot be held to be genuine. He, thus, relied upon the order of the ld. AO.

11. Before us, ld. Counsel submitted that the assessee before the AO has given detailed submissions before the AO and various documents were furnished to discharge the onus. The copy of all such documents has been placed in the paper book. The index of the papers submitted before the authorities below are reproduced hereunder:-

Sr. No.		
1	Copy of a. Income Tax Return Acknowledgement & Form b. Tax Audit Report c. Audited Balance Sheet and Income and Expenditure Account d. Computation of Income	1-23 24-45 46-52 53-71
2	Copy of Show Cause Notice dt. 14.12.2018	72-73
3	Copy of reply to Show Cause Notice before Ld. Assessing Officer (AO) along with annexures a. Submission letter b. Details of Mehul Gems Pvt Ltd i. Ledger ii. Bank statement reflecting loan transaction iii. ITR Acknowledgement iv. Audited Financials c. Details of White Stone i. Ledger ii. Bank statement reflecting loan transaction iii. ITR Acknowledgement along with computation of Income iv. Audited Financials d. Details of Nice Diamonds i. Ledger ii. Bank statement reflecting loan transaction iii. ITR Acknowledgement iv. Audited Financials with Tax Audit Report e. Affidavit from White Stone f. Affidavit from Mehul Gems Pvt Ltd g. Affidavit from Nice Diamonds	74-86 87 88 89 90-96 97 98-100 101-103 104-109 110-111 112-113 114 115-126 127-128

		129-130 131-133
3	<i>Copy of Ld. CIT(A) Order for AY 12-13 dt. 21.12.2023</i>	134-146
4	<i>Submissions done during Ld. CIT(A) proceedings</i>	147-202
5	<i>Copy of CIT(A) Order for AY 13-14 dt. 21.12.2023</i>	203-220
6	<i>Copy of CIT(A) Order for AY 14-15 dt. 21.12.2023</i>	221-226
7	<i>Copy of Retraction Statement of Shri Bhawarlal Jain</i>	227-234

12. Once these documents have been furnished and also these parties have responded in response to notice u/s. 133(6) and filed all the requisite details asked by the AO then no adverse inference can be drawn. Not only that, two of the parties have also appeared before the ld. AO and have given their statements and in their statement they have clearly stated that they have given loan to the assessee and also given the source of income and the details of the business carried out. Thus, in view of these facts ld. CIT (A) has deleted the said addition.

13. We have heard the rival submissions and perused the relevant material placed on record and the findings given in the assessment order as well as ld. CIT (A). Here in this case in so far as the loans aggregating to Rs.1,50,00,000/- taken from the aforementioned two parties, the assessee had furnished copy of

ledger account, bank statement of the creditors reflecting the loan transaction, income tax returns and their audited financial statements wherein they have shown the source of giving the loans and were regularly assessed the tax. Not only that, ld.AO himself carried out his own enquiry and issued notice u/s. 133(6) and in response these parties had given the entire details as required by the ld.AO. Once these parties have confirmed the source of their loan, which is out of their own funds from the balance sheet, then the creditworthiness stands proved and ld. AO has not further brought anything on record that such source of funds are fictitious. Then again, when ld. AO summoned all the three parties, two of them personally appeared before him and have given their statement on oath and they have categorically admitted of giving of loan; have explained their operation of the business and the extent of their turnover and the funds in the balance sheet. Thus, the onus which lied upon the assessee was duly discharged at the assessment stage. The entire premise of the ld. AO is based on Investigation report in the case of Bhanwarlal Jain and nothing has been brought on record by him that any particular information or material was found relating to the assessee that assessee was beneficiary of accommodation entry of loan or advance from any of the group concerns of Bhanwarlal Jain. Once AO himself has carried out his enquiry and nothing adverse has been found, then simply relying upon the investigation report cannot justify the addition. In view of the facts and material placed on record, the aforesaid

finding of the ld. CIT(A) cannot be tinkered with and accordingly, the deletion of Rs.1,50,00,000/- by the ld. CIT(A) is upheld.

14. Even the disallowance of interest especially on the loan taken in the earlier year by the assessee and the said party has duly confirmed that it has given loan and has given all the details then, there is no question of disallowing any interest. Once, the loans have been accepted to be genuine, then disallowance and interest made by the ld.AO is deleted. In the result, order of the CIT(A) is confirmed and the grounds raised by the Revenue are dismissed.

15. In the result, appeal of the Revenue is dismissed.

Order pronounced on 14th October, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai; Dated 14/10/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai