

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 303/JPR/2022
निर्धारण वर्ष / Assessment Years : 2012-13

Rising Stock Trade Private Limited Ashapura, Narayan Vihar, Government School Ke Samne Pancholiyo Ki Dhani, Jaipur.	बनाम Vs.	The ITO, Ward-1(1), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAFCR 3344 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Rajeev Sogani (C.A.)
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 04/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 01/10/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 10.06.2022, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2012-13.

2.1 The assessee has raised the following grounds of appeal:-

"1. In the facts and circumstances of the case and in law, the Id. AO has erred in making the assessment under Section 147 of Income Tax Act, 1961. The action of the Id. AO is

illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the assessment proceedings being illegal and without jurisdiction.

2. in the facts and circumstances of the case and in law, the Id. AO has erred in issuing notice under Section 148 of Income Tax Act, 1961 without obtaining proper sanction under Section 151 of the Income Tax Act, 1961. The action of the Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the assessment proceedings being illegal and without jurisdiction

3. In the facts and circumstances of the case and in law, the Id. AO has erred in invoking the provisions of section 147 instead of section 153C. The action of the Id AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed under section 147 being without jurisdiction.

4. In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming addition of Rs. 10,00,000/- made by Id. AO on account of alleged bogus unsecured loan. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the addition of Rs.10,00,000/-.

5. In the facts and circumstances of the case and in law, the Id. CIT (A) has erred in confirming addition of Rs. 27,500/- being 2.75% of the alleged bogus entry of Rs. 10,00,000/- as commission expended by the assessee towards the accommodation entry of alleged unsecured loan. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and in violation of principal of natural justice. Relief may please be granted by deleting the addition of Rs. 27,500/-.

6. The assessee craves its rights to add, amend or alter any of the grounds on or before the hearing.”

2.2 It is noticed that the assessee vide letter dated 08-08-2022 has raised following additional grounds:-

“1. In the facts and circumstances of the case and in law, the Id. AO has erred in making the assessment under Section 147 of Income Tax Act, 1961. The action of the id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the assessment proceedings being illegal and without jurisdiction.

2. In the facts and circumstances of the case and in law, the Id. AO has erred in issuing notice under Section 148 of Income Tax Act, 1961 without obtaining proper sanction under Section 151 of the Income Tax Act, 1961. The action of

the Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the assessment proceedings being illegal and without jurisdiction.

3. In the facts and circumstances of the case and in law, the Id. AO has erred in Invoking the provisions of section 147 instead of section 153C. The action of the id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the order passed under section 147 being without jurisdiction.

The above grounds are legal grounds. All relevant facts are available on record No new facts are required to be evaluated, nor is any further enquiry needed. The provisions of law are to be applied on the facts already available on record. The assessee while filing original Form 36 included the above grounds as Ground 1.2 and 3, however, as a matter of precaution the prayer for admission of same is being moved.

Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. [1998] 229 ITR 383 (SC) held that Under section 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the department have a right to file an appeal/cross objections before the Tribunal. There is no reason why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier..." (Emphasis Supplied)

We hereby make a prayer for admission of the above addition ground.''

2.3 The Bench has taken into consideration the submission of the assessee as to admission of additional grounds of appeal and further noted that the similar grounds are raised in Form No. 36 mentioning therein

similar grounds at Serial No. 1 to 3 which indicates that it is the repetition of grounds. However, the Bench has no objection to consider it while adjudicating the grounds of appeal of the assessee as legal grounds.

3.1 Apropos Ground No. 4 & 5 of the assessee, the Bench noted that the Id.CIT(A) has dismissed the appeal of the assessee by observing as under:-

‘‘05. Ground No. 1 relates to addition made of Rs.10,00,000/- on bogus unsecured loans and Rs.27,500/- expended for bogus entry. The brief facts of the case are that the appellant company derives income from share business. It is noticed that a survey operation u/s 133A was later on converted into search operation u/s 132 in the case of Shri Sripal Vora on 14-12-2016 and it was found that the company was in control of affairs of 44 concerns which are in the business of providing accommodation entries. As per assessment order appellant arranged accommodation entry from Aditi Gems Pvt. Ltd. which was bogus concern of Shri Sripal Vora. Hence, Id. AO made addition on account of unsecured loan amounting to Rs.10,00,000/- and commission paid for obtaining accommodation entries @ 2.75% of total bogus entries i.e. $10,00,000 \times 2.75\% = 27,500/-$

5.2 Findings and Decision:-

I have carefully considered the facts of the case as well as submissions filed by the appellant. The only issue here is the addition made by the AO u/s 68 of the Act in respect of an unsecured loan of Rs. 10,00,000/- taken by the Assessee from M/s Aditi Gems Pvt. Ltd. (PAN: AAICA6634K). It was found during the Survey operation operations conducted u/s 133A of the Act on the business premises of Sripal Vora group, that the above company was a mere paper company and was involved in providing accommodation entries to various persons. The appellant has taken a plea that this 'unsecured loan' was a genuine transaction, obtained by cheque through normal banking channels, and the same was duly returned in the next financial year. I find no force in the arguments taken by the appellant. The primary factors in the application of section 68 of the Act are the identity and credit-worthiness of the creditor. The appellant has not submitted even one sentence on these issues That the 'unsecured loan' has been returned, is a subsequent happening, and has no bearing on these primary factors. Further, it was clearly established by the detailed investigations during

the survey operations u/s 133A, that M/s Aditi Gems Pvt. Ltd. was a paper company which had no capacity to provide any unsecured loans to anybody, and was in the business of providing accommodation entries to various entities. The same was also admitted by the operators of the group. The appellant has furnished no evidence or even any argument to controvert this finding. Hon'ble SUPREME COURT OF INDIA in the case of NDR Promoters (P.) Ltd.v. Principal Commissioner of Income-tax, [2019] 109 taxmann.com 53 (SC), held as under :-

"Section 68 of the Income-tax Act, 1961 Cash credit (Share application money) Assessment year 2008-09 During year, assessee-company received money in form of share capital from five companies Assessing Officer received an information that share capital money received by assessee was bogus as aforesaid five companies from whom it received premium were operated by one, 'TG', Chartered Accountant who had set up about 90 companies for providing accommodation entries - Accordingly, he made an additions under section 68 in respect of impugned share application money received by assessee It was noted that assessee had failed to produce directors of shareholder companies, though directors had filed confirmations and, therefore, were in touch with assessee Further, it was found that directors of all these five companies were either employees of 'TG' or close relatives - All five shareholder companies were located at a common address - During search on premises of 'TG', it was found that all passbooks, cheque books, PAN cards etc. belonging to said companies were in possession of 'TG' - High Court by impugned order held that, on facts, impugned additions made under section 68 in respect of share application money was justified - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [Paras 12 and 13] [In favour of revenue]"

In this case before me, the appellant has essentially submitted the same paper evidence, like the confirmations, bank statements etc. which were submitted in the above case. Similar evidence submitted, as detailed by the Hon'ble Delhi High Court in the same case cited supra [2019] 102 taxmann.com 182 (Delhi) was as under-

"7. The respondents-assessee did not produce the Directors for examination. Other details and particulars were also not filed as required by the Assessing Officer. However, the respondent-assessee had filed:-

- (i) Copy of the ledger account of share application.
- (ii) Copy of the bank statement of the account in which money was received

- (iii) Copy of the ledger account of share capital
- (iv) Copy of balance sheet and profit & loss account reflecting receipt of share application money.
- (v) Share application form with complete list of shareholders, old and new
- (vi) Annual return filed before the Registrar of Companies
- (vii) Copy of Form No.2 i.e., return of allotment filed before the Registrar of Companies.
- (viii) Affidavits of Directors of the shareholder companies along with PAN details, copy of PAN cards, Board Resolutions, confirmations from the parties, share application forms, bank account statements of the shareholder companies. Memorandum and Articles of Association, confirmation of receipt of shares from M/s Bhawani Portfolio and CIN details of M/s Bhavani Portfolio

However, mere paper evidence was not considered enough, and it was held that

"13. In view of the aforesaid factual position, we have no hesitation in holding that the transactions in question were clearly sham and make-believe with excellent paper work to camouflage their bogus nature. Accordingly, the order passed by the Tribunal is clearly superficial and adopts a perfunctory approach and ignores evidence and material referred to in the assessment order. The reasoning given is contrary to human probabilities, for in the normal course of conduct, no one will make investment of such huge amounts without being concerned about the return and safety of such investment."

In light of the above decision of the Hon'ble Supreme Court, and the facts of the instant case, the addition of Rs. 10,00,000/- made by the AO u/s 68 of the Act, is hereby confirmed. Following the same reasoning, the addition of Rs. 27,500/- as expenses to obtain this entry is also confirmed.

06. In the result, the appeal is dismissed."

3.2 Feeling dissatisfied from the order of the ld. CIT(A), the ld. AR for the assessee has filed a gist of submissions which is reproduced herein below:-

“ The Appellant Company was incorporated on 20.06.2011 under the provisions of Companies Act, 1956/ 2013. The Appellant Company is engaged in the business of dealing in shares in securities and also carries on investment business. Assessment Year 2012-13 was the first year of the existence of the Company. The Appellant Company filed its original Return of Income on 30.03.2013 declaring business loss of Rs. 22,25,060 but due to Return of Income being filed late no carry forward of loss was claimed thus NIL return was filed.

The assessment was reopened *vide* notice under section 148 dated 28.03.2019. The Appellant company in response to the said notice reiterated its original Return of Income.

The assessment was completed *vide* order under section 147/ 143(3) dated 14.12.2019 wherein addition of Rs. 10,00,000/- was made under section 68 in respect of loan from M/s Aditi Gems Pvt Ltd but after set off of loss of Rs. 22,25,060 the income was assessed at Rs. NIL.

ADDITIONAL GROUND NO. 1: Invoking the provisions of section 147

1. During the course of assessment proceedings, along with notice under section 142(1) dated 13.11.2019, reasons recorded for reopening the case were made available to the Appellant Company **[PB 2-4]**.
2. Reasons have been recorded without application of mind and accordingly case has been reopened without establishing any link between the information received and the escapement of income least any live link. The information has not at all be analyzed nor the same has been evaluated with the details of the Appellant Company available in the form of Return of Income filed under section 139 by the Appellant Company. At para 3 of the reasons recorded **[PB-3]** it is mentioned that the Assessee Company made bogus purchases from Aditi Gems Pvt Ltd. The fact remains that the Assessee Company has received a loan from M/s Aditi Gems Pvt Ltd which was duly reflected as liability in the Balance Sheet of the Company filed along with the Return of Income. By the time reasons were recorded the loan, in the subsequent financial year, stood repaid. This fact must have been available with the Id. AO by way of seized record. Thus, reasons recorded were without verification of facts on record. The reasons recorded are contrary to the facts on record. A slight review of the details on record would have easily revealed that there were no purchases from Aditi Gems Pvt Ltd and, therefore, in that case the case would not have been reopened. Similarly, a cursory look or an application of common sense would have revealed that a share trading company would not have purchased anything from a gems company. The entire reasons recorded at every para i.e. para 3, para 4, para 5, para 6 mention about bogus purchases. Reopening of a case on such reasons recorded is patently illegal and, therefore, the very assumption of jurisdiction for reassessment is bad in law and deserves to be quashed. Reliance is placed on the following judicial pronouncements:

Sagar Enterprises v. ACIT (2002) 257 ITR 335 (Guj.)(HC):

Notice under section 148 issued on the ground of incorrect fact that the assessee had not filed its return could not be sustained even on the basis of alternative reason since it could not be said with certainty as to which factor weighed with the concerned officer when he issued the impugned notice and when the respondent authority was himself unsure as to the year of taxability of the income which is stated to be undisclosed income.

PCIT v. Shodiman Investments Pvt. Ltd. [2020] 422 ITR 337 (Bom.) (HC):

The reopening of an Assessment is an exercise of extra ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of section 148 of the Act, before reopening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of reopening Assessment and its reasons which would evidence the linkage/ nexus to the conclusion that income chargeable to tax has escaped Assessment. In this case, the reasons as made available to the Assesseeas produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

3. A careful analysis of the search material would have revealed that there cannot be any sale transaction from Aditi Gems Pvt Ltd to the Assessee Company because the amount was paid by Aditi Gems to the Assessee Company. In case of sale the consideration would be received by the seller. Such patent errors in appreciating the facts clearly indicate no application of mind in reopening the case.
4. It is also submitted that even the query letter dated 13.11.2019 [PB-2] sought the details of purchases from Aditi Gems Pvt Ltd. It is only during assessment proceedings that the ld. AO came to know of this fact that there were no purchases from M/s Aditi gems Pvt Ltd rather loan was received and that too was repaid in the subsequent year.

In view of the above the very action of reopening the assessment is illegal and, therefore, the entire assessment order deserves to be quashed by allowing this ground of appeal.

ADDITIONAL GROUND NO. 2: sanction under section 151

Assessee Company was never provided with copy of approval under section 151 of the IT Act, 1961. In such a situation a normal presumption is that no such approval/ proper approval exists on record.

The reasons recorded are full of factual errors. Granting approval to such reasons recorded apparently shows that approval was granted mechanically and without application of mind.

In view of the above the action of reopening deserves to be quashed.

ADDITIONAL GROUND NO. 3: reopening under section 147 instead of invoking the provisions of section 153 C

1. It is submitted that the sole basis, emerging out of the reasons recorded, of reopening the case of the assessee was the statements recorded of Shri Sripal Vora during the course of search on him. Further, information in this regard, was provided to the ld. AO, by DCIT-CENTRAL CIRCLE -1(2), Ahmedabad.
2. Reassessment pursuant to material found in search can be done through recourse to section 153C only and not by invoking the provisions of section 147/148.
3. The provisions of section 153C are over-riding in nature and contain non-obstante clause for sections 139,147,148,149,151 and 153.
4. Section 147 and 153C are not interchangeable but are mutually exclusive sections. It is not the choice of the revenue to invoke either of the two sections at its whims. The scope of the two sections has been legislated differently with a definitive purpose.
5. For the above ratio, reliance is placed on the following judicial pronouncements: -
 - i. **Arun Kumar Kapoor [2011] 140 TTJ 249 (Amritsar)**
 - ii. **G. Koteswara Rao [2015] 64 taxmann.com 159 (Visakhapatnam - Trib.)**
 - iii. **Rajat Shubra Chatterji, ITA No. 2430/Del/2015, ITAT Delhi Bench**
6. The aforementioned judgments have been followed by the Hon'ble ITAT, Jaipur Bench, in the case of **Shri Navrattan Kothariin ITA No. 425/JP/2017**, wherein under identical set of facts the entire re-assessment proceedings were quashed.

In view of the above the reassessment proceedings may please be quashed.

GROUND NO. 4: Addition of RS. 10,00,000/- under section 68

FACTS

The Appellant Company received a loan of Rs. 10,00,000/- from M/s Aditi Gems Pvt Ltd as per following details:

Amount of Loan	Rs. 10,00,000/-
Cheque No.	RTGS
Date of Credit	08.08.2011
Bank Statement	[PB- 7]

The above loan was repaid *vide* following details:

Amount of Repayment	Rs. 10,00,000/-
Cheque No.	500045 for Rs. 6,60,000/- 500046 for Rs. 3,40,000/-
Date of Repayment	22.03.2013
Bank Statement	[PB- 8]

SUBMISSIONS

1. The loan was taken and also repaid through banking channel. The lender is a Private Limited Company whose credentials are available in public domain on the site of Ministry of Corporate Affairs. Before the lower authorities, confirmation of the Lender along with PAN number was filed. Bank statement of the Appellant Company was also furnished to substantiate the receipt and repayment of loan through banking channel. Ld. lower authorities have not found any defect in the evidences submitted by the Appellant Company towards discharge of its obligation under section 68.
2. Ld. AO added the sum and ld. CIT (A) confirmed the same for the sole reason that during the course of search on Shri Sripal Vora he had allegedly admitted controlling certain companies which were only paper companies and allegedly involved in providing accommodation entries.

3. Nowhere in the assessment order nor in the reasons for reopening there is any specific mention of the name of Aditi Gems Pvt Ltd having been found in the seized material. No reference of seized material in this regard is found in the assessment order nor there is any reference of any specific evidence substantiating providing accommodation entry to the Appellant Company.
4. It is submitted that Id. AO has not conducted any independent enquiry and brought any material on record to controvert the evidences filed by the Appellant Company.
5. The assessment is completed on the basis of alleged statements of a third party Shri Sripal Vora. Appellant Company was never confronted with any material/ statements in which name of Aditi Gems Pvt Ltd and the Appellant Company was mentioned.
6. Thus, the addition is made without any specific evidence against the Appellant Company and also without any specific and independent enquiry by the Id. lower authorities in this regard. It is submitted that Id. AO was duty bound, in terms of section 142, to carry out independent enquiry before making any assessment.
7. It is submitted that sole evidence with the Department is the oral testimony of Shri Sripal Vora. No other corroborative evidence is brought on record. In such a situation, before relying on the statements of Shri Sripal Vora opportunity of cross examination must have been provided to the Assessee Company. Reliance is placed on the following judicial pronouncements:

Hon'ble Supreme Court in the case of **Andaman Timber Industries (CIVIL APPEAL NO. 4228 OF 2006)**:

"...not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected"

8. No part of seized material was confronted to the Assessee Company before making the addition. No opportunity of rebuttal was ever provided. Thus, the assessment order is passed in gross violation of principles of natural justice and, therefore, deserves to be quashed. In **Maneka Gandhi vs Union of India, 1978 AIR 597** dated 25 January, 1978 the passport of the petitioner was impounded by the Government of India in public interest. No opportunity was afforded to the petitioner before taking the impugned action. The Supreme Court held that the order was violative of principles of Natural justice.

9. It is submitted that before making any addition under section 68 the ld. AO is expected to bring on record that it was assessee's unaccounted money which was routed back in assessee's books of accounts through accommodation entry. Following issues need consideration:
- i. Name of the trusted confidante of the broker to whom cash was handed over by the assessee.
 - ii. How did assessee earn/generate so called unaccounted money?
 - iii. How the cash was received back when loan was repaid?
 - iv. How the Assessee Company located at Jaipur managed the cash handling with Shri Sripal Vora at Ahmednagar.
10. Reliance is placed on the judgment of **Jurisdictional High Court** in the case of **Shubh Mines Private Limited (Income Tax Appeal No. 96/15)**, wherein the Hon'ble High Court has held as under:
- "...In the considered opinion of this court, in absence of any cogent evidence on record establishing that the money shown to have received as share application money, was as a matter of fact, unaccounted money belonging to the assessee company, the finding arrived at by the AO, which is based on suspicion, has rightly been held not sustainable in the eyes of law..."*
11. It is submitted that this was the first year of operations of the Appellant Company. It incurred a loss of Rs. 22,25,060. It was involved in the business of dealing in securities which market is highly regulated by SEBI and also the stock exchanges. There is absolutely no possibility of Appellant Company earning any undisclosed income and, therefore, routing the same through accommodation entry, under the circumstances, is impossible.
12. Attention is also drawn towards the fact that loan stood repaid well before the date of search on 16.12.2016 (AO page 1). The loan was repaid on 22.03.2013 **[PB- 8]**.
13. Without agreeing and without prejudice to above it is submitted that post 2013 the Company might have indulged in providing accommodation entries. Any statement of Shri Sripal Vora given in 2016 cannot be related to transaction of 2012-13.
14. It is further submitted that when loan stood repaid no addition under section 68 is justified. Reliance is placed on the following judicial Pronouncements:

Hon'ble Gujarat High Court in case of **DCIT vs. Rohini Builders 256 ITR 360, 2002:**

"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."

The above judgment has been followed in a recent judgment of **Hon'ble ITAT Ahmedabad** in the case of **RAS Concepts Pvt. Ltd. vs. Income Tax Officer 95 ITR 46, 2022:**

"9.4 In view of the above, we are of the opinion that, though the transactions of the loan received by the assessee are not free from any doubt but in either of the case, once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into in isolation after ignoring the debit entries. Thus in view of the above and after considering the facts in totality, we are not inclined to uphold the finding of the learned Commissioner of Income-tax (Appeals). Accordingly we set aside the finding of the learned Commissioner of Income-tax (Appeals) and direct the Assessing Officer to delete the addition made by him. Hence the ground of appeal of the assessee is allowed. In the result, the appeal of the assessee is allowed. Order pronounced in the court on February 7, 2022 at Ahmedabad."

In. view of the above addition under section 68 amounting to RS. 10,00,000/- may please be deleted.

GROUND NO. 5: Addition of Rs. 27,500/- being alleged commission for arranging accommodation entry

Since the loan is established to be genuine and addition is requested to be deleted consequently prayer is made for deletion of the addition towards alleged commission payment for arranging accommodation entry."

3.3 On the other hand, the ld. DR supported the order of the ld.CIT(A) and submitted that the lower authority is justified in confirming the addition as made by the AO. The narration as made by the AO in his assessment order at page 5 of his order is reproduced as under:-

“Since the assessee has obtained the accommodation entry through obtaining unsecured loan amounting to Rs.10,00,000/-, this amount represents assessee’s income from undisclosed sources for A.Y. 2012-13. Further, the assessee has expended a sum of Rs.27,500/- being 2.75% of the total bogus entry of Rs.10,00,000/-, therefore a sum of Rs.27,500/- is added to the total income to assessee’s declared income. Since the assessee has concealed the particulars of income, penalty proceedings under section 271(1)© of the Income Tax Act, 1961 is hereby initiated.”

Further during the course of hearing, the ld. DR relied upon the following case laws countering the submissions of the ld. AR of the assessee.

1. Pr. CIT vs Bikram Singh, [2017] 85 taxmann.com 104 (Delhi.)
2. CIT vs Uttam Chand Nagar, 204 CTR 498 (Raj)

3.4 We have heard the rival contentions and perused the material available on record, along with the evidence submitted before us during the course of the appellate proceedings by the ld. AR. In this case, the assessee company was incorporated in the year 2011; accordingly, the year under consideration is the first year of existence of the assessee company. The assessee company took loan amount from M/s Aditi Gems Pvt. Ltd. of Rs. 10,00,000/-. Before us, the ld. AR submitted that the loan amount had been taken by the assessee company through the banking channel on 8th August 2011. Subsequently, the loan amount has also been repaid through the banking channel. Accordingly, the ld. AR of the assessee

company submitted that the loan amount had been taken and thereafter had also been repaid through the banking channel. During the course of proceedings before the AO, which was reopened under Section 147, the AO made an addition of Rs. 10,00,000/- to the income of the assessee company under Section 68, alleging that the loan received by the assessee company was from a paper company and it was nothing but a bogus transaction entered into by the assessee company. The assessee company, thereafter, preferred appeal before the Id. CIT(A), who dismissed the appeal of the assessee company and upheld the findings of the AO. Before us, the Id. AR submitted all the documentary evidence, consisting of the ledger confirmation received from M/s Aditi Gems Pvt. Ltd., and the bank statement of the assessee company highlighting the loan undertaken and the subsequent repayment made. It is noted that the Id. AR of the assessee has not submitted the details of creditworthiness of the party except the confirmation of credit amount of Rs.10.00 lacs made by the M/s. Aditi Gems (P) Ltd of the year of repayment. Since, the assessee has not placed on record the details for the year wherein the loan was accepted and therefore, the Bench feels to restore the matter to the file of the AO look into it at his angle and if found it adequate then the same may be considered in accordance with the law. Thus this ground of appeal of the assessee is allowed for statistical purposes.

4.1 During the course of proceedings before us, the ld. AR has also raised Additional Grounds challenging the reopening of the case made by the AO under Section 147. Since we have disposed off the case of the assessee by restoring the matter to the file of the AO then we are not inclined to adjudicate on the additional ground raised by the ld. AR, as the same are now only academic in nature.

5.0 In the result, the appeal of the assessee is allowed statistical purposes as indicated hereinabove

Order pronounced in the open court on 01/10/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 01/10/2024

*Santosh

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

1. The Appellant- Rising Stock Trade Private Limited, Jaipur.
2. प्रत्यर्था / The Respondent- ITO, Ward-1(1), Jaipur.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 303/JPR/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar

