

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

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No. 3856/Mum/2024  
(Assessment Year: 2015-16)**

ITO, Ward 20(2)(1) Room No. 314, 3 <sup>rd</sup> Floor, Piramal Chambers, Dr. SS Rao Marg, Lalbaug, Mumbai - 400012.	Vs.	Om Shanti Residency Flat No. 3, Ground Floor, B Wing, Maner Kunj, Meghwadi, Dr. SS Rao Marg, Lalbaug, Mumbai - 400012.
PAN/GIR No. AABFO2195D		
(Applicant)		(Respondent)

Assessee by	Shri Anish Shah
Revenue by	Shri Krishna Kumar, CIT(DR)

सुनवाई की तारीख/Date of Hearing	06.11.2024
घोषणा की तारीख/Date of Pronouncement	13.11.2024

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

The present appeal has been filed by the revenue challenging the impugned order 20.05.2024, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the assessment year 2015-16. The revenue has raised the following grounds of appeal:

1. *Ground* On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in allowing interest expenses of Rs 52,92,988/- without appreciating the fact that the assessee failed to prove the genuineness of interest expenditure related to interest paid on unsecured loans.

2. *On the facts and circumstances of the case the Ld.CIT(A) has erred in deleting addition of unsecured loan of Rs 1,92,00,000/- without appreciating the fact that the assessee failed to prove the genuineness of the transaction and creditworthiness of the unsecured loan providing party.*

3. *On the facts and circumstances of the case the Ld.CIT(A) has erred in not taking into account the fact that the AO has conducted independent enquiry to ascertain identity, genuineness of the transaction and creditworthiness of the unsecured loan providing party.*

4. *The appellant prays that the order of the National Faceless Appeal Centre (NFAC), Delhi on the above grounds be reversed and that of the AO be restored.*

5. *The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary.*

2. The revenue has taken five grounds which are inter related and inter connected and relates to challenging the deletion of addition of unsecured loan taken by the assessee by Ld. CIT(A). Therefore, we have been decided to dispose off these grounds by the present consolidated order.

3. We have heard the counsels for both the parties and we have also perused the material placed on record, judgments cited by the respective parties and the orders passed by the authorities.

4. From the records, we noticed that the assessee is a partnership firm, engaged in the business of property developer and the return of income for the A.Y 2015-16 was filed declaring total income of Rs. Nil. Subsequently, the case was selected for scrutiny and after issuing the requisite notices the order of assessment was passed u/s 143(3) of the Act on 27.12.2017, thereby making an addition of Rs. 1,92,00,000/- on account of unexplained borrowing and also reduced interest thereon amounting to Rs. 52,92,988/- from the closing work-in-progress. The details of party wise borrowings and interest thereon is mentioning below:

Sr. No	Name of the parties	Loan Amount (in Rs.)	Interest paid (in Rs.)
1	M/s Kanika Gems Pvt Ltd		7,76,338/-
2	Mangalmurti Impex Pvt Ltd		10,58,312/-
3.	M/s Siddham Gems Pvt Ltd	1,92,00,000/-	23,45,284/-
4	M/s Radhey Krishna Gems Pvt Ltd		6,26,026/-
5	M/s Shri Jagdamba Shakti Gems Pvt Ltd		4,87,028/-
	<b>Total</b>	<b>1,92,00,000/-</b>	<b>52,92,988/-</b>

5. The AO proceeded to make the addition / disallowance even though the revenue appeal was pending before the Coordinate Bench of ITAT for the A.Y 2013-14 in respect of same parties at the time of finalization of the order of the assessment for year under consideration.

6. Therefore, aggrieved by the additions made by the AO, assessee preferred an appeal before the Ld. CIT(A) and the Ld. CIT(A) allowed the appeal of the assessee by following the decision of Coordinate Bench of ITAT in assessee's own case for the A.Y 2013-14 passed vide order dated 10.01.2020, relevant portion of the order of the Coordinate Bench of ITAT as reproduced below:

*Thus, if these loans were not genuine then in that eventuality the same would not have been repaid. Therefore, considering the entirety of the facts, the Ld. CIT (A) had rightly held that the assessee had satisfied all the ingredients of cash credit ie. identity, creditworthiness and genuineness of transactions and accordingly deleted the additions. 15. Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these ground raised by the revenue stands dismissed. 16. In the net result, the appeal filed by the revenue stands dismissed with no order as to cost." 9. We further noted that the Ld. CIT(A) after considering relevant details filed by the assessee, in respect of all five loan creditors has come to the conclusion that the assessee has discharged the onus cast upon it u/s 68 of the I.T.Act, 1961, by filing various details, including confirmation letters from the parties. We, further noted that the Ld. CIT (A) had also recorded categorical findings that the ld. AO has disregarded all evidences filed by the assessee only on the ground that notice issued u/s 133(6) were return unserved, in respect of some parties, without appreciating the fact that on subsequent event all the lender companies had replied to the notices of the Ld. AO issued u/s 133(6) by furnishing documentary evidences, in respect of each of the issues raised therein. Further, the assessee had also furnished bank statement to prove transfer of loans through proper banking channel. The assessee firm had paid 354 ITA*

Nos.5613 &5614/Mum/2017 Om Shanti Residency 20 interest on said loans after deducting TDS applicable as per law. The assessee firm had also repaid said loans by crossed account pay cheques in the subsequent assessment years and the details thereof have been filed in form of a chart, which is at pages No. 59 to 63 of the paper book Therefore, we are of the considered view that when, the assessee has discharged its onus by filing necessary evidences to prove identity, genuineness of transactions and creditworthiness of the parties, the Ld. AO cannot make additions towards unsecured loans only on the basis of non-service of 133(6) notices or non-cooperation of lenders to said notices issued by the Ld. AO, because, the appearance of parties to notices issued by the Ld. AO is not within the control of the assessee. The assessee at best could file necessary evidences to prove transactions between the parties as genuine, but at the same time non-appearance of parties cannot be attributed to the failure of the assessee to hold that transactions between the parties are non-genuine. Therefore, we are of the considered view that the Ld. AO was erred in making additions towards unsecured loans taken from five parties u/s 68 of the I.T. Act, 1961. The Ld. CIT(A) after considering relevant facts has rightly deleted additions along with interest paid thereon. 10. Coming back to various case laws relied upon by the assessee. The assessee has relied upon the decision of Hon'ble Bombay High Court, in the case of PCIT vs Paradise Inland Shipping Pvt.Ltd. (2018) 400 ITR 439. We find that the Hon'ble Jurisdictional High Court has examined a similar issue in light of provision of section 68 and held that once, assessee has discharge its onus by filing necessary evidences, including name and address of alleged shareholders, then the revenue is free to proceed on loan creditors in accordance with law, but sum so received from loan creditors 355 ITA Nos.5613 &5614/Mum/2017 Om Shanti Residency 21 cannot be regarded as SHANTI RESID undisclosed income of the assessee. The above decision of Hon'ble Bombay High Court has been affirmed by the Hon'ble Supreme Court, thereby concurred with the findings of the Hon'ble High court. Further, the Hon'ble Bombay High Court, in the case of CIT vs Green Infra Ltd. (2017) 392 ITR 7 and CIT vs. Gagandeep Infrastructure Ltd. (2017) 394 ITR 680 had taken similar view and held that once, the assessee discharges its onus by filing necessary evidences, including name

*and address of creditors, then the department can reopen the assessment of creditors and proceed in accordance with law, but sum so received from the creditors cannot be regarded as undisclosed income of the assessee. A similar view has been upheld by the Hon'ble Allahabad High court, in the case of CIT vs Rahul Vineeth Traders 2014 41 taxmann.com 86. The Hon'ble Punjab & Haryana Court, in the case of CIT vs Varinder Rawalley 2014 366 ITR 233 had taken similar view. 11. In this view of the matter and respectfully following the case laws discussed hereinabove, including the coordinate bench of ITAT, Mumbai bench decision in assessee's sister concerns case namely M/s. Om shanti realtors in ITA No.5615/Mum/2017, we are of the considered view that the Ld. AO was erred in making additions towards unsecured loan and consequent interest paid thereon u/s 68 of the I.T.Act, 1961. The Ld. CIT(A) after considering relevant facts and also by relied upon various judicial precedents has rightly deleted additions made by the Ld. AO. Hence, we are inclined to uphold the findings of the Ld. CIT(A) and dismissed appeal filed by the revenue."*

*"As a result, both appeals filed by the revenue are dismissed. In the instant case under appeal, the appellant has established the genuineness of the transactions as appellant has received the loans vide crossed account-payee cheques, paid interest on these loans by crossed account-payee cheques, deducted TDS from the interest payments and repaid the loan by crossed account-payee cheques. The appellant has furnished bank statements of all the lenders to prove that the funds have been received from these lenders. Thus, the appellant has discharged the burden of proof that lies on it to establish the genuineness of the transactions. Moreover, the,appellant has also proved the creditworthiness of all the five lender companies who lent loan amounts to it by furnishing the audited accounts of the said lender companies. The identity of these five lenders giving loans has been established by furnishing loan confirmation having complete address and PAN, acknowledgement of filing IT, Company Master Data from the website of the Registrar of Companies, etc. Thus all the three criteria are met to prove the genuineness of the loans .In view of the factual matrix of the case, the discussion above and the judicial decisions cited above, these grounds of appeal are,*

*accordingly, allowed and the addition made by the AO is, hereby, deleted"*

*In the result, appeal filed by the revenue is dismissed.*

*"356 ITA Nos.5613 &5614/Mum/2017 Om Shanti Residency 22 ITA No.5614/Mum/2017 13. The facts and issues involved in the present appeal are identical to the facts and issues, which we had considered in ITA No.5613/Mum/2017. The reasons given by us in preceding paragraph shall mutatis-mutandis apply to this appeal as well. Therefore, for similar reasons*

*Recorded in ITA No. 5613/Mum/2017, we are of the considered view that the Ld CIT(A) was right in deleting additions made by the Ld. AO towards unsecured loans and consequent interest paid thereon u/s 68 of the I.T.Act, 1961. Hence, we are inclined to uphold the findings of the Ld. CIT(A) and dismissed appeal filed by the revenue,"*

*As a result, both appeals filed by the revenue are dismissed "In the instant case under appeal, the appellant has established the genuineness of the transactions as appellant has received the loans vide crossed account-payee cheques, paid interest on these loans by crossed account-payee cheques, deducted*

*TDS from the interest payments and repaid the loan by crossed account-payee cheques. The appellant has furnished bank statements of all the lenders to prove that the funds have been received from these lenders. Thus, the appellant has discharged the burden of proof that lies on it to establish the genuineness of the transactions. Moreover, the appellant has also proved the creditworthiness of all the five lender companies who lent loan amounts to it by furnishing the audited accounts of the said lender companies. The identity of these five lenders giving loans has been established by furnishing loan confirmation having complete address and PAN, acknowledgement of filing IT, Company Master Data from the website of the Registrar of Companies, etc. Thus all the three criteria are met to prove the genuineness of the loans."*

*In view of the factual matrix of the case, the discussion above and the judicial decisions cited above, these grounds of appeal are, accordingly, allowed and the addition made by the AO is, hereby, deleted.*

*6. In the result, the appeal is allowed. In the result, the appeal is decided as above.*

7. Although, the revenue has filed the present appeal, but it is undisputed fact that the parties from whom unsecured loan was taken by the assessee in the year under consideration are exactly the same which were there in A.Y 2013-14 and assessee in order to prove the genuineness of the transactions and creditworthiness of the unsecured loans providing parties had submitted the relevant documents, the detail of which are mentioned below:

***Details submitted during the course of Assessment & Appeal Proceedings M/s Kanika Gems Pvt Ltd***

- a) MCA Record ie Company Master data*
- b) Financials*
- c) Ledger Copy along with Confirmation*
- d) Income tax Acknowledgement*
- e) Bank statement*

***M/s Mangalmurti Impex Pvt Ltd***

- a) MCA Record ie Company Master data*
- b) Financials*
- c) Ledger Copy along with Confirmation*
- d) Bank statement*

***M/s Siddham Gems Pvt.Ltd***

- a) MCA Record ie Company Master data*
- b) Financials*
- c) Ledger Copy along with Confirmation*
- d) Income tax Acknowledgement*
- e) Bank statement*

***M/s Radhey Krishna Gems Pvt Ltd***

- a) MCA Record ie Company Master data*
- b) Financials*
- c) Ledger Copy along with Confirmation*
- d) Bank statement*

***M/s Shri Jagdamba Shakti Gems Pvt Ltd***

- a) MCA Record ie Company Master data*
- b) Financials*
- c) Ledger Copy along with Confirmation*
- d) Income tax Acknowledgement*
- e) Bank statement*

8. Since, the Coordinate Bench of ITAT has already evaluated the facts of the case and has passed the order regarding the genuineness of the transaction and creditworthiness of the unsecured loan providing parties which are exactly same in the year under consideration. Therefore, we feel that the present controversy in question is fully covered by the decision of the Coordinate Bench of the ITAT in assessee's own case for the A.Y 2013-14.

9. Nothing has been placed on record by Ld. DR to controvert or rebut the findings so recorded by the Coordinate Bench of the ITAT for the A.Y 2013-14 in assessee's own case and even in the present appeal. Therefore, we feel no reasons to interfere into or devert from the lawful findings so recorded by the Ld. CIT(A). Therefore, the grounds raised by the revenue stands dismissed. Consequently, the appeal filed by the revenue also stands dismissed.

10. In the result the appeal filed by the revenue is dismissed with no orders as to cost.

Order pronounced in the open court on 13.11.2024.

Sd/-

**(PADMAVATHY S)  
ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)  
JUDICIAL MEMBER**

Mumbai, Dated 13/11/2024

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai