

**IN THE INCOME-TAX APPELLATE TRIBUNAL “K(SMC)”
BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA-3864/MUM/2024
(A.Y. 2012-13)**

Rajuram Savaji Purohit, 6 th Floor, 602, Kothari Heights, DR D.B. Marg, Mumbai Central, Mumbai 400 008, Maharashtra	v/s. बनाम	Income Tax Officer, Ward – 20(3)(1), Matrumandir, Mumbai 400008, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAJPP1306M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Ajay R. Singh / Akshay Pawar, ARs
Respondent by :	Shri Asif Karmali (Sr. DR)

Date of Hearing	19.11.2024
Date of Pronouncement	26.11.2024

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 05.08.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 27.01.2021 as passed by the Income Tax Officer, Ward-42(1)(2), Mumbai for the Assessment Year [A.Y.] 2018-19.

2. The grounds of appeal are as under:
 1. *On the facts and circumstances of the case and in law the NATIONAL FACELESS APPEAL CENTRE NEW DELHI, C.I.T. (APPEAL) has erred in upholding the entire reassessment proceedings u/s 147/148 of the Act, as valid, without appreciating facts of the case.*
 2. *On the facts and circumstances of the case and in law the NATIONAL FACELESS APPEAL CENTRE NEW DELHI, C.I.T. (APPEAL) has erred in confirming the addition of Rs. 15,00,000/- made to the returned income of the appellant, under section 68 of the Act, without appreciating the facts of the case and correct nature of transaction.*
 3. *On the facts and circumstances of the case and in law the NATIONAL FACELESS APPEAL CENTRE - NEW DELHI, C.I.T. (APPEAL) has erred in confirming the addition of Rs.27,740/- under section 69C, being an interest paid on the loan borrowed for the purpose of business, without appreciating facts of the case, evidence available on the record.*

Ground no.1-Validity of action u/s 147

3. The assessee has pleaded that the Assessing Officer incorrectly assumed jurisdiction u/s 147 of the Act as it is a not a case of reasons to believe, rather reasons to suspect. He merely received certain information on which no preliminary enquiries were conducted enabling him to form an opinion that income had escaped assessment. Therefore, reopening is bad in law.

4. The Ld.CIT(A) has deliberated on this aspect on page 10/11, paras 5.2 to 5.4 and has concluded that that AO has taken due approval. Reasons were also supplied to the assessee and the objections were duly disposed of by him. In this case, return was merely processed u/s 143(1) of the Act without any scrutiny and verification. The information with



the AO was a new information and not verified. Therefore, reopening was rightly done as per law.

5. The ld.AR has not disputed the observations of the ld.CIT(A) (supra). Considering the above findings and materials on record, we do not find any reason for interference in the matter. The facts that previously no assessment was made in terms of section 143(3) which is undisputed and reopening has been done subsequently based on information received from the Investigation wing of the department are enough reasons for assuming jurisdiction u/s 147 of the Act. The reasons were also confronted and objection made by the assessee have also been replied and disposed of by the AO. In such a situation, there is no merit in the ground in this regard which is therefore, **dismissed**.

Ground no.2-Addition u/s 68 of the Act

6. The assessee has contested the addition of Rs 15 lakh u/s 68 of the Act. According to the assessment order, the assessee had taken Short Term Loan amounting to Rs. 15,00,000/- from one Marine Gems Ltd. during the year. It was alleged that Mr. Gautam Jain & Group has admitted before the Income Tax authorities during a search in that group that he had indulged in the business of providing accommodation entries in the form of capital gain, loans, sale and purchases etc. It was also alleged that various documents were found from premises of Mr. Gautam Jain or his associates and these companies were controlled by the said Mr. Pramod Ranka. Further, notice us 133(6) was issued to M/s Marine Germs Pvt. Ltd. The documents filed by M/S Maine Gems Pvt. Ltd were undated and unstamped. Also the other questions asked by the AO in respect of activities of the company, detailed nature of transactions, explanation etc. were not furnished. Further, to verify



genuineness of the transactions, summon 131 was issued to M/s Marine Gems Pvt. Ltd and the director of the M/s Maine Gems Pvt. Ltd. was asked to attend personally alongwith the details specified therein. However, they have avoided to attend before the undersigned intentionally. The impugned sum of Rs 15 lakh was added to the income. The Ld.CIT(A) has observed that the AO has not relied on the information and sworn statements supplied by the Investigation wing. He made all possible attempts to directly verify the genuineness of the creditor. After making all attempts to directly verify the genuineness of the creditor the AO has passed the ball to the Court of the appellant to enable the appellant to produce the creditor. The AO mentioned in the order that opportunity was given to the appellant to produce the creditor for verification. The evidence filed copy of PAN, ITR, confirmation and bank statements are filed are documents that any person will maintain correctly for any bogus transactions. As held by Courts these evidences are enough to prove the genuineness of a regular ordinary transaction. But when there is some tangible evidence or even reason for suspicion that this is a bogus or sham transaction some fresh evidence or confirmation of the creditor before the AO is required to prove the genuineness of transaction. The AO has given enough opportunities to the appellant to do this but it seems that the appellant is not able to obtain fresh evidence and has relied on the existing evidence and claiming that I have done my part and that now it is the duty of the AO to disprove it. The AO has correctly arrived at the finding that the appellant has not produced or filed any fresh evidence to prove the genuineness of transaction and the creditor is avoiding appearance. Grounds were accordingly dismissed by him.



7. Before us, the Ld. AR has vehemently argued against the orders passed by the above authorities which the Ld. Sr. DR has placed reliance on them.

8. The ld.AR has submitted that following documents were submitted to the Learned Assessing Officer proving the genuineness of the transaction, identity of the lender and creditworthiness of the lender: Copy of PAN card of Lender Companies, Details of Unsecured loan along with all the confirmation of the lender Companies, Copy of Relevant Bank Statement of the lenders, Copy of ITR Acknowledgement of lenders.

However, the AO has ignored following vital facts as under:

- The appellant had received loan from the said lender Companies which are duly registered under the provision of Companies Act and the lender companies are filing return of Income regularly.
- The appellant had received a short term loan from M/s. Marine Gems P. Ltd. (Rs.15 lacs) and had repaid the total dues, further the entire transactions of receipts and payment were made by proper banking channels.
- The appellant had also filed confirmation of the said lenders and submitted the copy of the lenders Acknowledgment of Income Tax return, where the said lender had offered income by way of Interest paid by the appellant to the lender with TDS claim. It is clear that the said lender had shown interest Income received in its entirety and it is not wrong to assume that the department has already accepted such Income in the hand of the said lenders as total Interest received by the lender



and has not assessed Income by way of so called entry commission as has been alleged. Thus, on one hand when it comes to charge of income the amount is assessed as total Income treating the Income as genuine whereas when it comes to allowance of same expenditure the same as been disallowed treating it as non-genuine.

- The assessee had duly disclosed the said loan transaction amounting to Rs. 15,00,000/- and the documents were submitted to prove the genuineness as well as the credit worthiness of the lenders at the time of assessment.
- The Learned Assessing Officer could not controvert the factual material and documentary evidences placed by the appellant during the assessment proceeding and he could not bring anything contrary on record to negate the documentary evidences furnished by the appellant.
- The Appellant requested the Learned Assessing Officer time and again to take necessary action/ Issue summon u/s. 131 to the lenders Company for the attendance and due legal compliances. The request of the Appellant was not considered by the Learned Assessing Officer.

8.1 It is further stated assessee had submitted the confirmation, bank statement, Acknowledgement, ITR and financial statements of the lender and affidavit during the scrutiny proceeding before the A.O. Further, stated that the AO has not brought any material on records to prove the loan taken by the appellant as accommodation entry. On the contrary, the appellant has proved the transaction of loan as genuine loan with evidence on records. The AO has made the disallowance u/s 68 in spite of all the conditions satisfied by the appellant.



8.2 It is further stated that as far as the question of validity of the transaction done through are concerned, even if some of the transactions entered into by Shri Gautam Jain & others are found to be not genuine, it does not lead to the conclusion that all the transactions were non-genuine including the transactions related to the our assessee. There is no evidence brought in the assessment order to prove the above conclusion, by the AO. The outcome of investigation carried out in the case of Shri Gautam Jain and the conclusions drawn therein cannot be applied *ipso facto* to all other cases. Simply relying on the report and statement, the AO cannot conclude that all transactions are accommodation entries.

8.3 During the assessment proceedings, the appellant has submitted Loan Confirmations, Copies of the Bank Statements of the loan creditors, photocopies of bank statement of the assessee wherein loan repayment and Interest payment entries through cheques were reflected. The genuineness of the transaction is established from the fact that both the acceptance and repayment of loan has been through banking channels. The creditworthiness of the lenders can be established from the statements. In the assessment order, the A.O. did not at all discuss the merit of submission made by the appellant and casually brushed aside the details filed by the appellant. The three criteria required for establishing the genuineness of the loans are identity of the creditor, credit worthiness of the creditor and the genuineness of the transaction. The party is existing and has confirmed giving the loan. They are also assessed to income tax regularly and transactions have been made through banking channels. The loan taken from the concern, M/s. Marine Gems P.ltd. has been repaid along with



interest. Tax has been deducted at source and the details have also been filed.

8.4 It is further submitted that since the party was not produced before the AO, cannot be mere reason for considering the loan taken as bogus, the reliance here is placed on **Pr. Commissioner of Income Tax Vs M/s. Chawla Interbild Construction Co. Pvt. Ltd. (Bombay High Court)** wherein court has held that merely nonappearance of party doesn't tantamount that payments made are non- genuine. The Hon'ble Supreme Court, in **Kale Khan Mohd. Hanif vs. CIT**, pointed out that the onus on the assessee has to be understood with reference to the facts of each case and proper inference drawn from the facts. If the prima facie inference on the fact is that the assessee's explanation is probable, the onus will shift to the Revenue.

9. Before us the Ld. AR has further claimed that the AO relied upon the statement of a third party which was adversely used against it. However, no cross-examination of the said persons was allowed to the assessee. Besides, even the statement of Sri Gautam Jain was not provided to it. It is also stated that the AO did not take into account an important aspect of the submission whereby it was pleaded that the assessee had taken loan from the Marine Gems P.Ltd which was received on 17.01.2012 duly repaid to it on 24.9.2012. In this regard, the assessee has placed strong reliance on the case certain decisions of Hon'ble Bombay and Gujarat High Courts discussed in succeeding paras.

10. We have carefully gone through all the relevant facts of the case, rival submission as also the provisions of law and cases relied upon. On going through the detailed submissions, it is found that the main reason for making the addition by the AO was the source of the loan taken by



the assessee from certain company alleged to having links with an accommodation entry provider who admitted such act on his part during search and seizure. The AO based on such admission, treated the impugned loan as bogus and added u/s 68 of the Act to the income of the assessee. However, we find that all the ingredients of a genuine loan transaction are quite evident here. Identity of the lender, genuineness of the transaction as also credit worthiness of the lender have not been disproved in any manner by the AO. Transaction involving loan taken and even its repayment are thought banking channels. The lender company is carrying on fully disclosed income is also active on ROC site. There is nothing brought on record to suggest that the impugned loan is assessee's unaccounted money channelized through the alleged lender.

10.1 It is worthwhile to examine following case laws which appear to be directly applicable to the facts of the case. In the case of **H.R.Mehta vs. ACIT(2016) 72 Taxmann.com 110(Bom)** where also the loan added u/s 68 of the Act by the AO was advanced and repaid vide account payee cheques. The Hon'ble Jurisdictional High Court while allowing appeal of the assessee observed that the AO should have provided assessee material used against him apart from providing opportunity to cross examine deponents whose stamen were relied upon.

Para 16 *In the instant case although the appellant assessee has called upon us to draw an inference that the burden shifted to the revenue in the present case once it was established that the payments were made and repaid by cheque we need not hasten and adopt that view after having given our thought to various issues raised and the decisions cited by Mr. Tralshawalla and finding that on a very fundamental aspect, the revenue was not justified in making addition at the time of reassessment without having first given the assessee an opportunity to cross examine the deponent on the statements relied upon by the ACIT. Quite apart from denial of an opportunity of cross examination, the revenue did not even*



provide the material on the basis of which the department sought to conclude that the loan was a bogus transaction.

Para 17 In our view in the light of the fact that the monies were advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the revenue should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against assessee in arriving before passing the order of reassessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the CIT (A) and the Tribunal vulnerable. In our view the assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents. Despite the request dated 15th February, 1996 seeking an opportunity to cross examine the deponent and furnish the assessee with copies of statement and disclose material, these were denied to him. In this view of the matter we are inclined to allow the appeal.

10.2 In the case of **PCIT vs Ambe Tradecorp P.Ltd (2022) 145 Taxmann.com 27(Gujarat)** -It is also pertinent to note that there was a response from the loan parties in response to the notice issued under [Section 133\(6\)](#) of the Act wherein it was confirmed that these companies have advanced loan to the assessee. This reply of the loan parties cannot be brushed aside merely on the ground that the directors were not produced by the assessee during the assessment proceedings. It was the revenue which wanted to verify the directors of the loan companies. For this purpose, lot of powers were available with the revenue such as issuing notice under [Section 131](#) of the Act for inviting the personal attendance of the directors. But the AO has not exercised such power in the given facts and circumstances. We also feel pertinent to refer the judgment of the Hon'ble Gujarat high court in case **CIT vs. Ayachi Chandrashekhar Narsangji reported in 42 taxmann.com 251** where it was held as under:

‘It is required to note that as such an amount of Rs. 1,00,00,000 vide cheque No. 102110 and an amount of Rs. 60 lakhs vide cheque No. 102111 was given to the assessee and out of the total loan of Rs. 1.60 crores, Rs. 15 lakhs vide cheque no. 196107 was repaid and therefore, an amount of Rs. 1,45,00,000 remained outstanding to be paid to IA. It has also come on record that the said loan amount has been repaid by the assessee to 'IA' in the immediately next year and the



Department had accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible, there was no reason to interfere with the impugned order passed by the Tribunal. [Para 6]

We are conscious of the fact that the provisions of Section 68 of the Act are deeming provisions which implies that there are certain transactions which are not the income of the assessee but these are deemed as income under the relevant provisions of the Act. Thus, we have to see the deeming provisions beyond the facts available on record. However, the question arises for the adjudication whether only the credit entries should only be considered for the purpose of cash credit entries as provided under section 68 of the Act after ignoring the debit entries. To our mind the debit entries cannot be set aside for determining the income of the assessee & C.O. No. 199/Ahd/2016 A.Y. 2012-13.

*In view of the above discussion, 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 isolation after ignoring the debit entries despite the debit entries were carried out in the later years.** Thus, in the given facts and circumstances, we hold that there is no infirmity in the order of the Ld. CIT-A. Hence, the ground of appeal of the revenue is hereby dismissed.*

In the result, the appeal filed by the Revenue is hereby **dismissed.**”

10.3 The co-ordinate bench of ITAT, Ahmedabad **DCIT Vs Asit Surendrabhai Shah (ITAT Ahmedabad) Appeal Number : ITA No. 945/Ahd/2018 Date of Judgement/Order : 02/08/2023** held that provisions of section 68 of the Income Tax Act don't attract as unsecured loan availed was repaid in the next financial year through cheque payments to the creditor and bank statement thereof was filed.



10.4 In this case, even the lender companies in their reply to notice u/s. 133(6) of the Act has submitted the requisite information and have admitted of giving the loans to the assessee company. There is nothing on record from the lender company admitting the loans given in the nature of accommodation entries to the company or the same have been channelized out of the undisclosed income of the appellant company. Nowhere it has been proved that the lender company was in chain in the accommodation entry cycle and the final beneficiary was the assessee company. As per the allegation of the AO, had the assessee been the final beneficiary of the accommodation entries, then no repayment of the said loans would have been made by it to the lender. On the contrary, their accounts have been settled and squared up in the subsequent year as discussed in the preceding paras of this order, which itself disproved the allegation of the Assessing Officer. So far as identity of the lender is concerned, the complete address and their PAN No. besides Income Tax Return etc. have been submitted, therefore, the same does not remain in doubt. With regard to the genuineness of the unsecured loans, the lender companies have provided their bank account statements highlighting the withdrawals towards the account payee cheque given as a loan to the company. Therefore, the same cannot be doubted. Further, with regard to the creditworthiness, the lender company have submitted the details with regard to sources of the lending which have been credited in their bank accounts. Thus, the immediate sources of the lending to the assessee company have been duly explained by the lender companies. Therefore, in view of the aforesaid discussion, the identity, creditworthiness and genuineness of the borrowings have been proved from the details and evidences



submitted in the assessment proceedings and does not call for any adverse inference.

10.5 It is also an admitted fact that no cross-examination was granted to the assessee though materials were considered adversely in its case. The Hon'ble Supreme Court in the case Recently, Hon'ble Supreme Court in the matter of **Andaman Timber Industries vs, Commissioner of Central Excise, Kolkata-II (2015, 62 taxmann.com 3 SC)**, held that *when statements of witnesses are made basis of demand, not allowing assessee to cross-examine witnesses, is a serious flaw which makes order nullity, as it amounts to violation of principles of natural justice. Moreover, if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show-Cause Notice.*

10.6 In the case of **CIT vs Ashwani Gupta(2010) 322 ITR 396(Del)**, Hon'ble Delhi High Court *inter alia* held that

7.The Tribunal has correctly understood the law and applied it to the facts of the case. Once there is a violation of the principles of natural justice inasmuch as seized material is not provided to an assessee nor is cross-examination of the person on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the proceedings. Following the approach adopted by us in *SMC Share Brokers* (supra), we see no reason to interfere with the impugned order. No substantial question of law arises for our consideration

10.7 Considering the discussion made above and respectfully relying on cited decisions(supra),we hold that the AO was not justified in treating the impugned sum as unexplained credit u/s 68 of the Act and



adding to the income of the assessee. The addition made is, therefore, **deleted.**

Ground no.3 –Interest paid on alleged cash credit added u/s 69C

11. The ground is consequential as the impugned loan has been treated as genuine by us in the preceding paras above. The addition made is, **deleted.**

12. **In the result, the appeal is partly allowed.**

Order pronounced in the open court on 26/11/2024.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai
दिनांक /Date 26.11.2024
Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
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सत्यापित प्रति //True Copy//



आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

