

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2634/MUM/2024  
(Assessment Year: 2008-2009)**

**Chirag Construction Co.**

105, Gopalpuri, S. V. Road, Borivali West,  
Mumbai – 400068, Maharashtra.

[PAN:AACFC7646N]

..... **Appellant**

**Assistant Commissioner of Income Tax  
32(1), Mumbai**

7<sup>th</sup> Floor, Kautilya Bhavan,  
Bandra Kurla Complex, Bandra  
Mumbai – 400068, Maharashtra

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Hitesh Shah  
For the Respondent/Department : Shri H. M. Bhatt

**Date**

Conclusion of hearing : 05.09.2024  
Pronouncement of order : 28.11.2024

---

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal preferred by the Assessee is directed against the order, dated 04/04/2024, passed by the National Faceless Appeal Centre (NFAC), New Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 29/02/2016, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2008-2009.
2. The Assessee has raised following grounds of appeal :
  - "1. *The National Faceless Appeal Centre erred in not accepting the submission of the appellant and maintaining the addition made*

*by Ld. A.O. in his order dt. 29.02.2016 for Loan of Rs. 25,00,000/- in spite of the judgement of ITAT and High Court allowing the loan given by the said lender.*

- 2. The National Faceless Appeal Centre erred in enhancing the assessed income by Rs. 2,28,333/- being interest paid to Navkar Diamonds through the appellant has deducted TDS on the same and the Lender has offered the said income in its Income Tax Return.*
  - 3. The National Faceless Appeal Centre erred in enhancing the assessed income by Rs. 18,750/- arbitrary being commission paid by the appellant to Mr. Bhanwarlal Jain without establishing any nexus, and referring to an appeal.*
  - 4. The National Faceless Appeal Centre erred in initiating penalty u/s 271(1) (C) of the Income Tax Act on the enhancement made in appeal proceedings..”*
3. The relevant facts in brief are that the Appellant, a partnership firm engaged in the business of civil contractor, filed return of income for the Assessment Year 2008-09 on 30/09/2008 declaring total income at INR.5,47,69,340/-. The proceedings were initiated in the case of the Appellant under Section 147 of the Act on the basis of information received from the office of Directorate General Income Tax (Inv), Mumbai to the effect that the Appellant was beneficiary of bogus accommodation entries of unsecured loan of INR.25,00,000/- taken in the financial year 2007-2008 from M/s. Navkar Diamond, a group concerned of Shri Bhawarlal Jain who was managing and controlling entities engaged in providing bogus loans/advances entries. In response to the notice issued under Section 148 of the Act, the Appellant filed letter, dated 18/04/2015, adopting the original return of income as return filed under Section 148 of the Act. During the reassessment proceedings, vide letter dated 18/01/2016, the Appellant filed (a) copy of confirmation from Navkar Diamonds (b) copy of the bank statement showing loan received and (c) copy of income tax return. It was submitted on behalf of the Appellant that the loan was taken from M/s Navkar

Diamonds by way of account payee cheque and interest on same was paid after complying with the tax withholding requirements. It was also submitted that the said loan was repaid in full in the subsequent years. In order to verify the genuineness of the transaction, the Assessing Officer issued notice under Section 133(6) of the Act to M/s Navkar Diamonds which was complied with and vide Letter dated 30/12/2015, M/s Navkar Diamonds filed loan Ledger Confirmation, Bank Statement, and Balance Sheet. Thereafter, the Appellant filed letter dated 18/01/2016, providing following details/documents:

- (a) Copy of PAN of M/s. Navkar Diamond Proprietor Shreyansh L. Jain
- (b) Copy of ITR Acknowledgment along with balance sheet.
- (c) Copy of the bank statement of Navkar Diamond reflecting the amount paid to the Appellant.
- (d) Copy of the Confirmation of accounts reflecting all the transactions

4. However, the Assessing Officer was not satisfied with the documents/details furnished by the Appellant. According to the Assessing Officer the details/documents furnished by the Appellant did not constitute strong clinching evidence and mere filing of the aforesaid documents did not prove the genuineness of the transaction in view of the enquiries conducted by the investigation wing which showed that M/s Navkar Diamonds was engaged in providing accommodation entries. The Assessing Officer concluded that the Appellant had failed to discharge onus cast under Section 68 of the Act to prove genuineness of the transactions and the creditworthiness of the lenders. Thus, the Assessing Officer made addition of Rs.25,00,000/- in the hands of the Appellant under Section 68 of the Act vide Assessment Order, dated 29/02/2016, passed under Section 143(3) read with Section 147 of the Act.

5. Being aggrieved, the Appellant preferred appeal before the CIT(A) against the above addition of INR.25,00,000/- which was dismissed by the CIT(A) vide order dated 04/04/2024.
6. Now Appellant has preferred the present appeal before the Tribunal on the grounds reproduced at paragraph 2 above.
7. We have heard both the sides and perused the material on record. The Learned Authorised Representative for the Appellant reiterated the submissions made before the authorities below while the Learned Departmental Representative relied upon the orders passed by the Assessing Officer and the CIT(A).
8. Having given thoughtful consideration to the rival submission we find merit in the contentions advanced on behalf of the Appellant. We note that before the Assessing Officer, in order to discharge the primary onus cast upon the Appellant under Section 68 of the Act to prove identity & creditworthiness of the lender and the genuineness of the loan transaction, the Appellant had placed before the Assessing Officer the following documents/details – (a) Copy of PAN of M/s. Navkar Diamond Proprietor Shreyansh L. Jain, (b) Copy of ITR Acknowledgment along with balance sheet, (c) Copy of the bank statement of Navkar Diamond reflecting the amount paid to the Appellant and (d) Copy of the Confirmation of accounts reflecting all the transactions. Further, the notice issued by the Assessing Officer under Section 133(6) of the Act was also complied with by M/s Navkar Diamonds by confirming the loan transaction and furnishing aforesaid documents to support the same. It has also not been disputed by the Revenue that interest was charged on the loan and tax was deducted at source in respect of such interest as per law. The Appellant had also filed bank statement to shown receipts of loan through banking channel. In our view, the Appellant had successfully discharged the initial onus cast upon the Appellant to

establish genuineness of the transaction and creditworthiness of the parties. However, the Assessing Officer rejected the documents/details furnished by the Appellant without carrying out any independent inquiry and bringing on record any material to controvert the same merely by placing reliance on the inquiry conducted by the investigation wing in relation to M/s Navkar Diamonds. Taking into consideration the facts and circumstances of the present case and on weighing the varied probabilities, we find that the preponderance is in favour of the Appellant. While the Appellant had discharged the primary onus, the Assessing Officer had failed to bring on record any material to justify invocation of provision contained in Section 68 of the Act. Accordingly, we delete the addition of INR 25,00,000/- made by the Assessing Officer. Thus, Ground No. 1 raised by the Appellant is allowed.

9. On perusal of memorandum of appeal filed before the CIT(A) in Form 35 and the order passed by the CIT(A) we find that Ground No. 2 & 3 raised by the Appellant do not arise from the order impugned and therefore, the same are dismissed.
10. Penalty proceedings are separate and distinct from the assessment proceedings. Ground No. 4 relating to levy of penalty under Section 271(1)(c) of the Act is dismissed as being premature.
11. In result, the appeal preferred by the Assessee is partly allowed..

Order pronounced on 28.11.2024.

**Sd/-**  
**(Amarjit Singh)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated :28.11.2024  
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai