

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 1188/MUM/2024  
Assessment Year: 2012-13**

Ebrahim Essa Developers Pvt. Ltd.,  
115 Dathawala Wstate, SV Road,  
Jogeshwari West, 400 102.

ITO-9(2)(4),  
Aayakar Bhavan,  
Mumbai-400020.  
**Vs.**

**PAN NO. AACCE 4720 E  
Appellant**

**Respondent**

Assessee by : Mr. Prateek Jain  
Revenue by : Mr. Hemanshu Joshi, DR

Date of Hearing : 05/12/2024  
Date of pronouncement : 11/12/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 22.01.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13, raising following grounds:

*1. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of the Id. A.O. in reopening*



*the assessment u/s 147 by issue of notice u/s 148 of the Act which is merely due to change of opinion and therefore the re-opening is bad in law.*

*2. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of the Id. A.O. in reopening the assessment u/s 147 by issue of notice u/s 148 of the Act dated 19.03.2019 which is barred by limitation in view of the first proviso to section 147 of Income Tax Act, 1961.*

*3. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of the Id. A.O. in holding that the appellant had obtained accommodation entry in the form of unsecured loan from M/s Santoshima Tradelinks Ltd., as per the reasons stated in the impugned order or otherwise.*

*4. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in confirming the action of the Id. A.O. in making an addition of Rs. 1,00,00,000/- on account of alleged unexplained unsecured loans u/s 68 of the IT Act, 1961 as per the reasons stated in the impugned order or otherwise.*

*5. On the facts and circumstances of the Appellant's case and in law the Id. A.O. erred in not providing an opportunity of cross examination of the various parties whose statements have been relied upon, as per the reasons stated in the impugned order or otherwise.*

2. Briefly stated facts of the case are that the assessee filed its original return of income on 30.09.2012 declaring total income at Rs. Nil. The return of income filed by the assessee was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') on 30.12.2013. Subsequently, the return of income filed by the assessee was selected for scrutiny assessment for verification of the entries of the unsecured loans. The assessment u/s 143(3) of the Act was completed on 28.03.2015 wherein the total income was assessed at Rs. Nil after making disallowance of Rs.5,67,900/- and Rs.3,07,500/- on account of donation and depreciation respectively totaling to Rs.8,75,400/-.



2.1 Subsequently, in view of receipt of information from the Investigation Wing that assessee obtained bogus accommodation entries of loans from M/s Santoshima Tradelink Ltd. which was a company controlled and managed by Mr. Vipul Vidur Bhatt, he himself admitted during the course of the search action at his premises that he was engaged in issuing bogus accommodation bills through 347 companies including M/.s Santoshima Tradelink Ltd. Accordingly, the Assessing Officer recorded reasons to believe that income escaped assessment and issued notice u/s 148 of the Act on 19.03.2019. The assessee vide letter dated 26.03.2019 requested to treat the return of income which was filed on 30.09.2012 as return filed in response to notice u/s 148 of the Act. A copy of the reasons recorded was provided to the assessee. Subsequently, the notice u/s 142(1) of the Act was issued to the assessee requiring the information as per annexure to the notice. The assessee filed confirmation of accounts on M/s Santoshima Tradelink Ltd. along with copy of acknowledgement of its return of income showing the total income, copy of ledger account statement of the total income, details of unsecured loans along with copy of the bank statement. For verification of the genuineness of the transaction, the Assessing Officer issued notice u/s 133(6) of the Act to M/s Santoshima Tradelink Ltd. at the address having office No. 19, Building No. 3 Navjeevan Commercial Society, Lamington Road, Mumbai-400 008, but said notice returned un-served with the remarks 'not known'. Again, the Assessing Officer issued notice



u/s 142(1) of the Act at the another address i.e. MCA Portal at 205-A, 599, J SS Road, Kapadia Chambers Kalbadevi, Mumbai. The said notice also returned un-served with the remarks 'not known'. Thereafter the Assessing Officer deputed Ward Inspector for verification of the address but the said party was not found at both those addresses and the Ward Inspector reported that the said party never existed at those addresses. The Assessing Officer again issued notice u/s 133(6) of the Act to the Chairman/Secretary of Navjeevan Commercial Society but it was responded that said company was never a member of the Navjeevan Society. The Assessing Officer thereafter analyzed the bank statement and financial statement of M/s Santoshima Tradelink Ltd. and opined that M/s Santoshima Tradeling Ltd. was not having much business activity. In view of notice u/s 133(6) remain un-served, the Assessing Officer was of the view that genuineness of the transaction was not proved. In view of above observation, the Assessing Officer concluded the transaction with M/s Santoshima Tradelink Ltd. as unexplained cash credit observing as under:

*"13. Information was received from DDIT(Inv.), Unit 7(4) that during the search and seizure action in the case of Shri Vipul Vidur Bhatt and his other related entities, statement was recorded on oath wherein Shri Vipul Vidur Bhatt managed and controlled web of 347 front companies through dummy directors and is providing accommodation entries of share capital and premium, unsecured loans, entry of bogus long term capital gain and short term capital gain, bogus sales entries, expenditure, etc. to a large number of beneficiaries one of such company is the assessee company M/s Ebrahim Essa Developers Pvt. Ltd. Shri Vipul Vidur Bhatt has categorically said in his statement that he is providing only accommodation entries and no genuine business was carried on*



and as per the information M/s Santoshima Trade Link is a bogus entity.

13.2. The assessee M/s Ebrahim Essa Developers Pvt. Ltd. is one of the beneficiary to such transactions.

13.3. The assessee has not offered any explanation for the purpose of loans taken from M/s Santoshima Trade Links Ltd.

14.4. All the transactions entered into between the above companies are accommodation entries to evade the tax. During the A.Y. 2012-13, the assessee company is showing unsecured loans received of Rs.1,00,00,000/- from M/s Santoshima Trade Links Ltd.

13.5. The creditworthiness of the M/s Santoshima Trade Links Ltd. is not proved.

13.6. Assessee has not proved genuineness of the transactions.

13.7. There is no explanation whatsoever with regard to the genuineness of source of these loans/funds.

13.8. All the correspondences made with M/s Santoshima Trade Links Ltd. returned back unserved.

14. In view of the above facts and circumstances of the case, the amounts totaling to Rs. 1,00,00,000/- credited in assessee's bank account are treated as Unexplained Unsecured Loans and are accordingly added to the total income of the assessee.

Subject to the above discussion, the total income of the assessee is computed as under:

Total Returned income	Rs.	Nil
Add: Unsecured loans u/s 68 as discussed above	1,00,00,000/-	
<b><u>Assessed total income</u></b>		<b><u>Rs.1,00,00,000/-</u></b>

3. Before the Ld. CIT(A), the assessee challenged the validity of the reassessment proceedings as well as addition on merit. The validity of the reassessment was challenged on two grounds. Firstly, the unsecured loan received from M/s Santosh Tradelink Ltd. was



already examined during the course of the scrutiny proceedings u/s 143(3) of the Act and no addition was made which means the Assessing Officer was satisfied with the identity, creditworthiness and genuineness of the transaction in respect of M/s Santosh Tradelink Pvt. Ltd. and thereafter reopening of the assessment for examining the same transaction of the loan amounted to change of opinion, which is not permitted in law. Secondly, the reassessment was initiated beyond the period of four years and therefore, in view of first proviso to section 147 of the Act reassessment in the case where assessment was already completed u/s 143(3) of the Act, reassessment can only be permitted beyond four years if there is failure on the part of the assessee in disclosing the material facts fully and truly. However, in the reasons recorded, the Assessing Officer has nowhere recorded that reassessment was initiated on the ground of the failure on the part of the assessee in disclosing the material facts fully and truly.

4. After taking into consideration submission of the assessee the Ld. CIT(A) rejected the contention of the assessee with reference to change of opinion. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“5.0 Grounds no 1 and 2 relate to reopening of the assessment u/s 147 of the Act. The appellant argues that the reopening of the assessment u/s. 147 by issue of notice u/s. 148 dated 01.02.2018 which is barred by limitation in view of the first proviso to section 147 of Income Tax Act, 1961. It is further argued that the reopening the assessment u/s 147 by issue of notice dated 01.02.2018 u/s 148 is merely due to change of opinion and therefore the reopening is bad in law.*”



5.1 I have perused the submission of the appellant, copy of the assessment order and the reason recorded for reopening the assessment. I find that the Ld AO had received information from the DDIT(Inw), Unit-7(4), Mumbai that the appellant had taken bogus accommodation entry in respect of unsecured loan amounting to Rs 1 crore from M/s Santoshima Tradelinks Ltd during the A Y 2011-12. There was a specific finding of the DDIT (Inw) that Sri Vipul Vidur Bhatt under oath had admitted that he is managing and controlling a web of 347 front companies through dunny directors and providing accommodation entries of share capital and premium, unsecured loans, entry of bogus LTCG and STCG, bogus sales entries, bogus expenditure entries, etc to large number of beneficiaries. From the information received, it became evident that the companies controlled and operated by Sri Vipul Vidur Bhatt had provided bogus accommodation entries in respect of unsecured loan to the appellant through one M/s Santoshima Tradelinks Ltd during the A Y 2011-12. The investigation report received shows that the appellant is part of an organized racket of generating bogus entries to evade taxes. After examining the evidence provided by the investigation wing and return of income filed by the appellant, the Ld AO had come to the prima facie belief that this is a fit case for reopening of the assessment. Though the appellant during the assessment proceedings u/s 143(3) of the Act for the AY 2012-13 had provided the name and address of M/s Santoshima Tradelinks Ltd, however, the same can not be taken as true and full disclosure of the transaction in view of the finding of the DDIT(Inw). Thus, I find that there is a clear application of mind by the Ld AO. There is a live link or close nexus between the material obtained and formation of belief. It is not a case where the reasons recorded by the Ld. A.O. are not germane and the Ld. A.O. wanted to simply verify and make fishing enquiries with respect to bogus unsecured loan entries. The Ld. A.O. has applied his own mind. After the receipt of the information, AO verified the record Subsequently, reasons were recorded for reopening the assessment u/s 147 Of the Act and approval was sought from the Pr CIT-9, Mumbai. Thereafter, the notice U/s 148 was issued. In response to this notice, the appellant filed return of income declaring income. The appellant also asked for a copy of the reason recorded for reopening of the assessment. The same was duly provided to the appellant. Thereafter notices u/e 143(2) and 142(1) were issued on various dates. In response to these notices, the A/R of the appellant filed submission.

5.2 Thus, I find that all the statutory requirements have been fulfilled by Ld AO before reopening the assessment. The AO has examined the information received along with the information available with him in the form of return of income, past assessment records available. I find that Ld AO after examining the details had formed his independent opinion that the case of the appellant is a fit case for reopening. Necessary approval for reopening was also obtained by the Ld AO. The appellant has also cooperated in the assessment proceedings by filing various submissions from time to time. The reopening cannot be said to be a mere change of opinion. Similar



*view has been held in the case of Yogendrakumar Gupta, (2014) 46 taxmann.com 56 (Gujarat), in which the Hon'ble court has decided that the AO acquires jurisdiction u/s 147 r.w.s. 148 of the Act when specific and reliable information is received from investigating agencies. It was held in this case that where after the completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee. Reopening on the basis of the report of the Investigation Wing about receipt of loans / LTCG / bogus bills from Entry Providers held to be justified by the hon'ble courts in the cases of Bright Star Syntex (P.) Ltd, 71 taxmann.com 64 (Bombay) [2016], Peass Industrial Engineers Pvt.Ltd. 2016 (72 Taxman.com 302 (Guj), Rajat Export Import India (P.) Ltd. 18 taxmann.com 311 (Delhi) [2012], Money Growth Investment & Consultants (P.) Ltd [2012] 21 taxmann.com 438 (Delhi), Jayant Security & Finance Ltd. Vs. ACIT 91 taxmann.com 181 (Guj.), Ankit Agrochem Pvt. Ltd. Vs. JCIT 89 taxmann.com 45 (Raj.), Pushpak Bullion Pvt. Ltd. Vs. DCIT 85 taxmann.com 84 (Guj.), Aradhana Estates Pvt. Ltd. Vs. DCIT 91 taxmann.com 119 (Guj). In this case also, the AO has received specific information from the investigation wing and the AO has applied his mind on such information and formed a reason to believe that income has escaped assessment, thus reopening of the assessment is a valid reopening. Accordingly, I find no merit in the argument of the appellant that the reopening is based on a change of opinion and this ground of the appellant is dismissed.”*

4.1 In respect of second objection for reopening of assessment beyond four years, the Ld. CIT(A) held that reassessment was validly reopened beyond four years after obtaining prior approval from the competent authorities. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“5.4 From the plain reading of section 149 of the Act, it is seen that a notice under section 148 can be issued for the relevant Assessment year after four years, but before six years from the end of the relevant assessment if the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year. In the instant case notice under section 148 was issued within six years from the end of the AY 2010-11 it is also clear from the reason recorded that the income chargeable to tax which has escaped assessment amounts is more than one lakh rupees. Thus, the conditions enumerated in section 149 are clearly satisfied in the instant*



*case. Accordingly, the second ground of the appellant is dismissed.”*

4.2 As far as addition on merit is concerned, the Ld. CIT(A) upheld the addition mainly for the reason that the party M/s Santoshima Tradelink Ltd. did not comply to the notice u/s 133(6) of the Act. The Ld. CIT(A) further observed that the assessee should have taken step to explain the source of deposit made in the bank account of M/s Santosh Tradelink Ltd. and therefore, creditworthiness of the lender was not well founded. The Ld. CIT(A) relied on the decision of the Hon'ble Supreme Court in the case of CIT v. Durga Prasad More [1971] 82 ITR 540 and Sumati Dayal v. CIT 214 ITR 801 (SC). On the issue of no opportunity of cross-examination of Shri Vipul Vidur Bhatt, the Ld. CIT(A) relied on the decision of Hon'ble Supreme Court in the case of State of J & K Bakshi Gulam Mohd. (supra), decision of Hon'ble Chairman, Board of Mining Examination v. Ratijee (supra) and decision Mumbai Bench of the Tribunal in the case of GTC Industries Ltd. v. ACIT (supra), wherein it is held that if witness has given directly incriminating statement and the addition in the assessment is based solely or mainly on the basis of such statement, in that eventually it is incumbent on the Assessing Officer to allow cross-examination. The Ld. CIT(A) accordingly rejected the contention of the assessee on the merit of the addition.

5. Aggrieved the assessee is in appeal before the Tribunal by way of two grounds reproduced above.



6. Before us, the Ld. counsel for the assessee submitted that M/s Santosh Tradelink Ltd. had responded to notice u/s 133(6) of the Act but there was a delay on the part of the said party in responding. He submitted that response to notice u/s 133(6) of the Act notice was sent after completion of the assessment to the AO. The Ld. counsel for the assessee submitted that delay might be on the part of the courier agency. He submitted that neither the Assessing Officer nor the Ld. CIT(A) has taken into consideration this factual observation and decided the issue against the assessee mainly for the reason that no compliance of notice u/s 133(6) of the Act was made. He further submitted that assessee was not obliged to explain source of the source i.e. source of money in the hands of M/s Santosh Tradelink Ltd. He submitted that assessee has duly explained the creditworthiness of the said party by way of the copy of the return of income and financial statement of said party along with copy of the bank statement. He further submitted that there was no material against the assessee except the statement of Shri Vipul Vidur Bhatt. He submitted that neither copy of the said statement was provided nor cross-examination of Shri Vipul Vidur Bhatt was provided during the assessment proceedings. Accordingly, he submitted that addition in dispute should be deleted.

7. On the contrary, the Ld. Departmental Representative (DR) relied on the order of the lower authorities.



8. We have heard rival submission of the parties and perused the relevant material on record. The Ld. counsel before us only emphasized for deciding the issue on the merit of the addition. Therefore, the grounds challenging the validity of the reassessment are accordingly dismissed as infructuous. As far as addition on merit is concerned, the lower authorities have made the addition mainly for the reasons that notice u/s 133(6) of the Act issued by the AO was not complied by M/s Santosh Tradelink Ltd. The Assessing Officer has made attempt by way of sending notice u/s 133(6) at the two addresses of assessee and letter to the Chairman/Secretary of the Society, where office of said party was located and also by way of deputing Ward Inspector for verification of the address. But the said party was not found to be in existence at that address provided. Now before us, the Ld. counsel for the assessee submitted that said party had complied to the notice u/s 133(6) of the Act but said reply was received in the office of the Assessing Officer after completion of the assessment. Since the identity of the party could not be established in assessment and appellate proceedings, the assessee is seeking one more opportunity. In view of facts and circumstances and in the interest of substantial justice , we feel it appropriate to restore this issue back to the Assessing Officer with the direction for issuing fresh notice u/s 133(6) of the Act to M/s Santosh Tradelink Ltd at the address which will be provided by the assessee to the Assessing Officer. Thereafter, the Assessing Officer may examine the issue of



addition u/s 68 of the Act in accordance with law. The ground Nos. 3 to 5 of the appeal of the assessee are accordingly allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 11/12/2024.**

**Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 11/12/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**