

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1586/Ahd/2024
Assessment Year 2017-18**

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| DCIT Central Circle-1(1), Ahmedabad (Appellant) | Vs | Gopi Synthetics Private Limited Survey No. 302, Isanpur, Gopi Compound, Narol Vatva Road, Ahmedabad-382405 Gujarat PAN: AAACG7683G (Respondent) |
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**Revenue Represented: Shri Rignesh Das, Sr.D.R.
Assessee Represented: Shri Gaurav Nahta, A.R.**

Date of hearing : 12-12-2024
Date of pronouncement : 19-12-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the appellate order dated 15.07.2024 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. Brief facts are that for the Asst. Year 2017-18 the assessee filed its Return of Income on 26-10-2027 declaring total income of Rs. 3,13,63,890/- which was processed u/s.143(1) of the Act. The assessment was reopened based on the information from DDIT (Inv.), Kolkata, that the assessee received accommodation entry of Rs.1,25,00,145/; Rs.23,00,000/= and Rs.95,00,000/= from M/s. Gurumukh Mercantile Pvt. Ltd; M/s.Aastha Commotrade Pvt. Ltd. and M/s Gainwell Mercantile Pvt. Ltd. which are all Paper/Shell companies controlled by Shri Mukesh Banka, Entry Operator.

2.1. Whereas the assessee claimed that it had received unsecured loan of Rs. 1,25,00,000/- M/s. Gurumukh Mercantile Pvt. Ltd. and also repaid the said unsecured loan along with interest after deducting TDS on it and all the transaction were done through banking channel. Similar is case for the other two unsecured loans which were repaid with interest along with TDS u/s.194A of the Act.

3. The AO has not accepted the above explanation of the assessee and added the unsecured loans as unexplained income of the assessee and demanded tax thereon.

4. Aggrieved against the reassessment order, assessee filed an appeal before CIT[A] who deleted the additions made by the AO after considering the evidences of repayment of loans with interest by observing as follows:

"... 5.5 Further, on perusal of ledger account, it is clearly seen that the appellatant had repaid the entire outstanding unsecured loan of Rs 1,34,39,513/- along with interest during F.Y 2017-18 to the lender

party. It is also important to mention here that the appellant has also deducted TDS on interest paid to the lender party. Thus, it is observed that the appellant has taken the unsecured loan and repaid the said amount with Interest after deducting TDS on it. It is relevant to reproduce the copy of ledger account and copy of relevant page of bank statement.

5.6 It is also worthwhile to mention here that a search/survey action in the case of Banka Group was conducted on 21.05.2018. However, the appellant had already made repayment of unsecured loan along with interest by deducting TDS before the date of search. Therefore, it cannot be said that the appellant is one of the beneficiaries who had taken accommodation entries in the form of unsecured loan from M/s Gurumukh Mercantile Pvt. Ltd. during the year under consideration,

5.9 In view of the above factual discussions and legal matrix of the case, the AO is directed to delete the addition made of Rs. 1,25,00,000/-. Thus, the ground of appeal no. 3 is allowed.

6.1 I have carefully perused the assessment order and submission filed by the appellant. It is observed from assessment order that interest paid by the appellant of Rs.2,60,199/- on loan amount of Rs.1,25,00,000/- taken from M/s Gurumukh Mercantile Pvt. Ltd was disallowed. The appellant submitted that it had repaid the loan along with interest.

6.2 Since the addition in respect of unsecured loan of Rs. 1,25,00,000/- has been deleted in view of detailed findings given in para 7 of this order, the addition made in respect of corresponding interest of Rs.2,60,199/- on unsecured loan of Rs.1,25,00,000/- also stands deleted. Thus, the ground of appeal no. 4 is allowed.

7.2 During the course of appellate proceedings, the appellant has filed written submission (reproduced supra) The appellant had submitted that it can be seen from the ledger account of M/s Aastha Commotrade Pvt. Ltd. that it had an opening balance of Rs. 17,00,000/- and during the year, the appellant had received Rs.23,00,000/- and paid Rs.40,00,000/- squaring up the account at last. Further, the appellant-had-also-submitted-that-it-can-be-seen-from-the-ledger- account of M/s Gainwell Mercantile Pvt. Ltd. that it had an opening balance of Rs.47,00,000/- and during the year, the appellant had received Rs.95,00,000/- and paid Rs. 1,42,00,000/- squaring up the account at last. The appellant submitted the requisite documents to prove identity, capacity of creditors to advance money and genuineness of the transaction The appellant has also relied on similar case law which was relied upon in ground of appeal no. 3 (supra).

The appellant has stated that it had received unsecured loan of Rs. 95,00,000/- during the year under consideration i.e. A.Y.2017-18 and also made repayment of the said unsecured loan along with interest after deducting TDS in the same assessment year. On perusal of bank statement, it is seen that the said unsecured loan was received through banking channel.

In this regard, on perusal of ledger account, it is clearly seen that the appellant had repaid the entire outstanding unsecured loan of Rs.1,46,38,205/- along with interest during F.Y.2016-17 to the lender party. It is also important to mention here that the appellant has also deducted TDS on interest paid to the lender party. Thus, it is observed that the appellant has taken the unsecured loan and repaid the said amount with Interest after deducting relevant page of bank statement as under:

7.4 In this regard, It is also worthwhile to mention here that a search/survey action in the case of Banka Group was conducted on 21.05.2018. However, the appellant had already made repayment of entire unsecured loan along with interest by deducting TDS before 31.03.2017 i.e. much before the date of search.

7.5 Further, it is relevant to mention here that similar issue has been dealt in ground no. 3 and by giving detailed finding including relying on the various decision of Hon'ble Court including the jurisdictional High Court of Gujarat, in para no. 5 of this order, the undersigned has deleted the addition made on account of unsecured loan received by the appellant and made repayment along with interest and also after deducting TDS on it.

7.6 In view of the above, the AO is directed to delete the addition made of Rs. 1,18,00,000/-. Thus, the ground of appeal no. 5 is allowed.

8.1 I have carefully perused the assessment order and submission filed by the appellant. It is observed from assessment order that interest paid by the appellant of Rs.5,46,275/- on loan amount of Rs. 1,18,00,000/- taken from M/s Aastha Commotrade Pvt. Ltd. and M/s Gainwell Mercantile Pvt Ltd was disallowed. The appellant submitted that it had repaid the loan along with interest.

8.2 Since the addition in respect of unsecured loan of Rs.1,18,00,000/-deleted. in view of findings mentioned in para no 7 of this order, the addition made in respect of corresponding interest of Rs.5,46,275/- on unsecured loan of Rs.1,18,00,000/- also stands deleted. Thus, the ground of appeal no. 6 is allowed."

5. Aggrieved against the appellate order, Revenue is in appeal before us raising the following Grounds of Appeal:

1) *In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs 1,25,00,000/- on account of unexplained cash credit u/s.68 of the home Tax Act towards unsecured loan from paper company M/ s. Gurumukh Mercantile Pvt. Ltd.*

2) *" the facts and on the circumstances of the case and in law, the ld. CIT(A) has ignored the facts of the case that Gurumukh Mercantile Pvt. Ltd. was not engaged in the real business and do not have creditworthiness to lend such huge amount in Assessee Company'.*

3) *"In the facts and on the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate the fact us mentioned in assessment order that the assessee failed to disclose the unsecured loan of Rs. 1,25,00,000/-taken from M/s Gurumukh Mercantile Put. Ltd. in clause 31a of its Tax Audit Report despite must be disclosed"*

4) *In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.2,60,199/ u/s 37 of the Income Tax Act being interest credited to paper company M/s. Gurumukh Mercantile Pvt. Ltd for unsecured loan of Rs. 1,25,00,000/*

5) *In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs. 1,18,00,000/-on account of unexplained cash credit u/s 68 of the Income Tax Act towards unsecured loan from paper company Aashta Commtrade Pvt. Ltd amounting to Rs 23,00,000/-and Gainwell Mercantiles Put Ltd amounting to Rs 95,00,000/*

6) *In the facts and on the circumstances of the case and in law, the ld. CIT(A) has ignored the facts of the case that Aashta Commtrade Pvt Ltd. & Gainwell Mercantiles Put Ltd was not enquired in the real business and do not have creditworthiness to lend such huge amount in Assessee Company"*

7) *"In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.5,46,275/- u/s 37 of the Income Tax Act being interest credited to paper company for unsecured loan of Rs.1,18,00,000/ taken from Aashta Commtrade Pvt. Ltd amounting to Rs.23,00,000/- and Gainwell Mercantiles Put Ltd amounting to Rs. 95,00,000/-."*

8) *"The Revenue craves leave to add/alter/armed and/or substitute any or all of the grounds of appeal"*

6. Heard rival submissions at length and perused the materials available on record including the Paper Books filed by the assessee. As far as unsecured creditors of M/s. Gurumukh Mercantile Pvt. Ltd. the assessee paid interest of Rs.6,79,314/- as on 31-03-2018 with appropriate TDS of Rs. 67,931/-. Website copy of the Ministry of Corporate Affairs in the name of M/s. Gurumukh Mercantile Pvt. clearly shows it's an active company and the last AGM held on 16-08-2023 and the company status is shown as "active" by Registrar of Companies, Kolkata.

6.1. The Ld. Sr. D.R. appearing for the Revenue could not dispute the above facts and the findings arrived by Ld. CIT(A). Similar is the case for M/s. Aashta Commtrade Pvt. Ltd. and M/s. Gainwell Mercantiles Pvt. Ltd. wherein the loans have been repaid with interest and appropriate TDS.

7. In similar circumstances, the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Ojas Tarmake (P.) Ltd. reported in [2023] 156 taxmann.com 75 held as follows:

"Where assessee showed unsecured loans received during relevant assessment year and AO made addition on ground that assessee failed to discharge onus of liability as laid down under section 68, **since amount of loan received by assessee was returned to loan party during year itself and all transactions were carried out through banking channels, impugned addition was to be deleted.**"

8. Similarly Jurisdictional High Court in the case of PCIT Vs. Ganesh Plantation Ltd. [2022] 134 taxmann.com 149 held as follows:

"Where **Assessing Officer initiated reassessment on basis of Information that search in case of Venus Group showed that**

amount of Rs. 4 crores had been received by assessee from Builders of Venus Group through banking channel against corresponding payment of unaccounted cash by assessee to Builders, and considered this as accommodation entry and made addition under section 68, since no live link/proximate nexus of alleged dubious transactions between searched person and assessee had been brought on record, said addition was to be deleted.”

9. Respectfully following the above judicial precedents, we have no hesitation in confirming the order passed by Ld. CIT(A). Thus the Grounds raised by the Revenue are devoid of merits the same are liable to be dismissed.

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

Order pronounced in the open court on 19 -12-2024

Sd/-
(DR BRR KUMAR)
VICE PRESIDENT
Ahmedabad : Dated 19/12/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद