

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.4554/M/2024  
Assessment Year: 2010-11**

<b>DCIT 42 1 1, Mumbai</b> Room No.732, BKC, Mumbai Maharashtra – 400 051	Vs.	<b>Mr. Satyendra Kumar Triloknath Goyal,</b> I-702, Pranay Nagar Society, Ram Mandir Extn Road, Vazira Naka, Borivali, Maharashtra-400 091 <b>PAN: AAEPG3578R</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Ajay Singh, Ld. A.R. a/w  
Shri Akshya Pawar, Ld. A.R.

Revenue by : Shri V.K. Chaturvedi, Ld. Sr. D.R.

Date of Hearing : 10.12.2024  
Date of Pronouncement : 10.12.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Revenue against the order dated 08.07.2024, impugned herein, passed by the National Faceless Appeal Centre/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2010-11.

**2.** In the instant case, the case of the Assessee was reopened on the information received from the Director General of Income Tax

(Investigation), Mumbai that a search & seizure action u/s. 132 of the I.T. Act 1961 was carried out by the Investigation Wing, Mumbai on one Shri Bhanwarlal Jain on 03.10.2013. During the course of search, statements were recorded u/s 132(4) of the Act who admitted the fact that Shri Bhanwarlal Jain & family controls and manages the affairs of approximately 70 benami concerns in the names of dummy directors, partners and proprietors, through which, he provides accommodation entries of bogus unsecured loans, wherein cheque is issued and received against the payment of cash by various beneficiaries. During the course of search, an 'estimate sheets' and pen drive were also found and seized, and it was admitted by Shri Bhanwarlal Jain group in their statement before the Income Tax Authorities that the estimate sheets are angaria's accounts containing cash transaction which are not recorded in the regular books of accounts of any of the benami concerned managed and controlled by the group. Further, parallel accounts maintained in pen drive consists of the details of movement of cash against issue of cheque and vice-versa, wherein the cheque entries get reflected in the regular books of accounts of such benami concerns, the details of the corresponding cash component were maintained on the pen drive and the same cash transactions were shown in the estimate sheets. From the above documents found during the search and the admission of Bhanwarlal Jain, it was proved beyond doubt that Bhanwarlal Jain and Family through 70 Benami concerns have provided accommodation entry of bogus unsecured loans and advances to various beneficiaries, wherein cheques are issued in the name of 70 bogus/benami concerns against the cash received in their Angadia account from the respective beneficiaries. As per the information received, the Assessee is one of the beneficiaries of obtaining accommodation entries by way of obtaining bogus unsecured loans

from Bhanwarlal Jain and group concerns having obtained following accommodation entries in the form of unsecured loans:

<b>Sr.No.</b>	<b>Name of the Hawala Party</b>	<b>Amount</b>
1.	Rajan Diamonds	22,16,000
2.	Daksh Diamonds	29,89,584
3.	Jewel Diam	11,08,000
4.	Kothari & Co.	11,08,000
5.	Little Diam	19,39,000
6.	Minal Gems	33,24,000
7.	Rose Impex	27,70,000
	<b>TOTAL</b>	<b>Rs.1,54,54,584/-</b>

**3.** The Assessing Officer (AO) doubted the aforesaid transactions and came to conclusion that the income to the tune of Rs.154,54,584/- has been escaped assessment within the meaning of section 147 of the Act which resulted into invoking the provisions of section 147 of the Act followed by issuing notice u/s 148 of the Act on 26.02.2015, after recording the reasons for such reopening of the assessment in accordance with the provisions of section 147 of the Act. The Assessee in response to the notice u/s 148 of the Act, vide letter dated 24.03.2015 requested the Assessing Officer (AO) to treat the return filed u/s 139(1) of the Act as return filed in response to such notice u/s 147 of the Act. Thereafter, various statutory notices were issued to the Assessee to which the Assessee filed the relevant documents, however, has not made any objection against the reopening of the assessment and therefore the reassessment proceedings were completed.

**4.** The AO in the assessment order has observed that the Assessee is a proprietor of M/s. Peerless Constructions, which is engaged in the business of building construction and has earned its income comprises of salary and from other sources. From the records available, it was noticed by the AO that the Assessee has obtained loans from the aforesaid parties, as per list provided by the Investigation Wing, Mumbai. Therefore, in order to ascertain

genuineness of the claim of the Assessee, notices u/s 133(6) of the Act were issued to the aforesaid parties, in response to which confirmations and copies of bank statements were received through courier/post which were found insufficient by the AO for establishing the creditworthiness and genuineness of the transactions and therefore a show cause was issued to the Assessee for furnishing various details or documents as mentioned in para No.4.4 of the assessment order. The Assessee in response to the show cause notice filed his reply along with relevant documents in order to substantiate his claim as mentioned in para no. 4.5 by the AO.

**4.1** The AO though considered the reply/documents filed by the Assessee, however, not being satisfied with the same, observed that many evidences were found during the course of search which proved that these concerns were not into any genuine business and some of the events are enumerated below:

*“1. No stock of diamonds was found at any of the premises from where these concerns purportedly carry on their business. Any genuine concern would have at least some stocks of diamonds available.*

*2. Books of accounts are not maintained at respective registered offices but at secret undisclosed premises unearthed during the course of search.*

*3. It was established by examining various dummy directors/partners etc and Bhanwarlal Jain and family under oath that these concerns are used for giving accommodation entries.*

*4. Estimate sheet and PAN drive were found which reflect the bogus entries and cash transaction.”*

**4.2** The AO thereafter analyzed the modus operandi of the adopted by the accommodation entries providers and also recorded the statement of the Assessee and the fact that the Assessee has failed to produce Mr. Rajesh Jain and it is established that the

Assessee does not know anybody from whom he has secured loan and has not been able to establish creditworthiness of the parties. The AO ultimately, by holding that from the aforesaid discussion it is proved that all the loans taken by the Assessee amounting to Rs.154,54,584/- from the aforesaid mentioned parties, are accommodation entries in the form of unsecured loans taken in the previous years, however, since the Assessee has taken loan of Rs.2,00,000/- in the AY under consideration, therefore the same is held to be un-explained cash credit within the meaning of provisions of section 68 of the Act and accordingly added in the income of the Assessee as un-explained credit.

**6.** The AO as per observation and discussion made above, also came to conclusion that the Assessee has introduced his unaccounted money by way of loan from the above parties and claimed interest expenses on the above unexplained loan amounting to Rs.16,71,764/- which is found to be bogus. Therefore, the claim of the interest on the bogus cash credit is not the actual expenditure but an accommodation entry and consequently the same is disallowed and added to the total income of the Assessee.

**7.** The Assessee, being aggrieved, challenged the said additions before the Ld. Commissioner and reiterated his claim as raised before the AO and filed his reply along with relevant documents and also relied on various judgments, which were considered by the Ld. Commissioner, who specifically recorded in the order (para 7) that the Assessee before the AO had filed the following documents:

- (1) *loan confirmations from the lenders*
- (2) *PANs of the lenders*
- (3) *copies of the returns of income of the lenders \*
- (4) *copies of the bank statement of the lenders*
- (5) *copies of bank account of the Assessee*

*(6) copies of balance sheet and profit & loss account of the lenders as well as those of the Assessee etc.*

The Ld. Commissioner thus on the aforesaid documents in short on being satisfied with the identity of the loan creditors, their creditworthiness and genuineness of the transactions as comprehensively established by the Assessee, ultimately deleted the aforesaid additions by not only considering the peculiar facts and circumstances of the case but also relying on the judgment passed by the Hon'ble Tribunal in Assessee's own case for the A.Y. 2012-13, wherein the similar transactions were carried out with the same parties, as involved in the instant case. The conclusion drawn by the Ld. Commissioner is reproduced herein below for the sake of brevity and ready reference:

*"8.2. Respectfully following all these decisions and the decision of the jurisdictional ITAT, reproduced above, and keeping in mind the spirit of the order of the ITAT, AO is directed to delete additions of Rs.2,00,000/- made u/s 68 of the Act. Ground of Appeal at 1 succeeds.*

*9. As the AO in the order had treated unsecured loans, old and new alike, as unexplained cash credits u/s 68 of the Act, he had added back payments of interests of Rs. 16,71,764/-, made during the year, on such loans as fictitious. However, considering the order of the Id. ITAT reproduced above and also findings made in this order, unsecured loans appearing in the accounts of the appellant are treated as genuine. Accordingly, interests paid on these loans can never be treated as bogus. As a result, addition made by the AO on account of payments of Interests is also deleted. Ground of Appeal at 2 is, therefore, upheld."*

**8.** The Revenue Department, being aggrieved, is in appeal before this Court.

**9.** Having heard the parties and perused material available on record and given thoughtful consideration to the rival claims of the parties. The Ld. D.R. has submitted that impugned order passed by the Ld. Commissioner is un-sustainable as the Ld. Commissioner

has not considered the peculiar facts and circumstances in its right perspective and without considering the modus operandi adopted by various entities, including Bhanwarlal Jain Group in the instant case, granted the relief by deleting the additions, while relying on the documents filed by the Assessee only. On the contrary, the Ld. A.R./Adv Mr. Ajay Singh, drew the attention of this Court to the order dated 08.07.2024 in the Assessee's own case for the A.Y. 2009-10, wherein the identical additions were made and the then Ld. Commissioner by considering all factual aspects as involved in this case, vide order dated 08.07.2024 in the A.Y. 2009-10 case, has deleted the addition of Rs.1,37,50,000/- in respect of the identical parties as involved in this case, which was treated as unexplained cash credit u/s 68 of the Act by the AO and the addition Rs. 4,12,500/- u/s 69C of the Act, being corresponding expenditure incurred as commission for securing such cash credit and the addition/disallowance of Rs. 8,78,409/ being interest expenditure.

The Ld. A.R. further drew the attention of this Court to the order dated 11.06.2019 passed by the Co-ordinate Bench of the Tribunal in the Assessee's own case for the A.Y. 2012-13 in ITA No.5562/M/2017, wherein the Hon'ble Tribunal also, as reproduced by the Ld. Commissioner in the impugned order, dealt with the identical additions and ultimately deleted the same. For ready reference and completeness, conclusion drawn by the Hon'ble Tribunal as reproduced by the Ld. Commissioner in para 8 of the impugned order, is also reproduced herein below:

*"7. We have heard the rival submissions and perused the relevant material on record. The reasons for our decisions are given below.*

*In the case of Bikram Singh (supra), relied on by the Ld. DR, it is held that "where the AO made addition to assessee's*

*income u/s 68 in respect of loan taken from various parties, since the assessee failed to prove that any of those creditors had financial strength to lend such huge sums of money to assessee, that too without any collateral security, without interest and without a loan agreement, impugned addition deserves to be confirmed".*

*In the case of NRA Iron & Steel Pvt. Ltd. (supra), relied on by the Ld. DR, the AO had issued summons to the representatives of the investor companies. Despite the summons having been served, nobody appeared on behalf of any of the investor companies. The Department only received submissions through dak, which created a doubt about the identity of the investor companies. Thereafter, the AO independently got field enquiries conducted with respect to the identity and creditworthiness of the investor companies and to examine the genuineness of the transaction. Enquiries were made at Mumbai, Kolkata and Guwahati, where these Companies were stated to be situated. On the basis of the detailed enquiries conducted, the AO held that the assessee had failed to prove the existence of the identity of the investor companies and genuineness of the transaction.*

*As mentioned earlier, in the instant case the entire focus of the AO was on the modus operandi adopted by Bhanwarlal Jain Group of cases to provide bogus accommodation entries of loan. The main reason of the AO for making addition u/s 68 was on the basis of information provided by the Investigation Wing of the Department. No independent enquiry has been conducted by the AO as was done in NRA Iron & Steel Pvt. Ltd. (supra). In the case of Bikram Singh (supra), the assessee was unable to establish the identity, creditworthiness and genuineness of the said persons and transactions.*

*As recorded by the Ld. CIT (A), during the course of assessment proceedings, the assessee filed before the AO (i) loan confirmations from lenders, (ii) PAN of the lenders, (iii) copy of the return of income of lenders, who advanced the loan, (iv) copy of bank account of lenders (v) copy of bank account of the assessee and (vi) copy of balance sheet and P & L account of the lenders.*

*Therefore, the instant case is distinguishable from the above case laws relied on by the Ld. DR.*

*7.1 It is well settled that in order to discharge the onus u/s 68, the assessee must prove the following:*

- (i) the identity of the creditor,*
- (ii) the capacity of the creditor to advance money; and*
- (iii) the genuineness of the transaction.*

*After the assessee has adduced evidence to establish prima facie the aforesaid, the onus shifts to the department. In the instant case, though the onus shifted to the department, the AO has failed to make necessary enquiry to reject the contentions of the assessee.*

*In view of the above factual matrix and position of law, we uphold the order of the Ld. CIT (A).”*

Considering the peculiar facts and circumstances and the judgments passed by the then Ld. Commissioner and the Tribunal in Assessee's own cases pertaining to A.Ys 2009-10 and 2012-13 respectively, in the identical facts and additions, as demonstrated above and the admitted fact *“that in the instant case except the loan of Rs.2,00,000/-, other loans were already taken in the previous assessment years, as per opening balance as on 01.04.2009 reflects. Even otherwise, subsequently the loans have already been repaid”* this Court is of the considered opinion that the Assessee has been able to establish the prima-facie case and to discharge its onus cast u/s 68 of the Act by producing the relevant documents as mentioned by the Ld. Commissioner in the impugned order itself and therefore established the identity, creditworthiness and genuineness of the transactions, hence, simply on the retracted statement(s) without any corroborative evidence and on the conjectures or surmises, no addition is warranted and consequently this Court is inclined to affirm the order of the Ld. Commissioner in deleting the additions under consideration, as the impugned order, does not suffer from any impropriety, perversity and/or illegality.

**10.** In the result, the appeal filed by the Revenue Department stands dismissed.

**Order pronounced in the open court on 10.12.2024.**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.