

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

BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**ITA No. 1629/Mum/2024
(Assessment Year: 2013-14)**

Tarun Manish Jain Plot No. 117, Prabhat Colony, Santacruz (E) Maharashtra – 400055.	Vs.	ITO, Ward-22(3)(4)
PAN/GIR No. ACZPJ4618A		
(Applicant)		(Respondent)

Assessee by	Shri Viraj Mehta, CA
Revenue by	Shri Vithal Machindra Bhosale, Sr. DR

Date of Hearing	17.12.2024
Date of Pronouncement	19.12.2024

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi / ('Ld. CIT(A)'), for the assessment year 2013-14.

2. At the very outset, the Ld.AR straight way taken my attention to ground No. 3, wherein the assessee has challenged sustaining the additions made by AO u/s 68 of the Act. In this regard Ld.AR reiterated the same arguments as were raised by him before the revenue authorities and also

relied upon paper book containing loan confirmation document, bank statement and submissions made before the AO for seeking permission for cross examination and also relied upon the following decisions:

1. *H R Mehta Vs. ACIT (2016) 387 ITR 561 (Bombay HC)*
2. *PCIT Vs. M/s. Skylark Build (ITA No. 616 of 2016) Bombay HC.*
3. *CIT Vs. Ambe Tradingcorp (P) Ltd (2023) 209 taxman 471 (Gujarat HC)*
4. *CIT Vs. Kapoor Chand Mangesh Chand (2013) 218 taxman 157.*
5. *M/s Savita mercantile Pvt Ltd Vs. ITO (ITA No. 168/M/2023)*

3. Whereas on the contrary the Ld.DR supported the orders of the revenue authorities and also relied upon the decision in the following cases.

1. *J.K Global Vs. ITO in ITA Nos. 3260, 3259 & 3258/Mum/2023.*
2. *Praveen Kumar Jain Vs. DCIT, in ITA Nos. 7191 to 7197/Mum/2018 & Pankj Jain Vs. ITO in ITA Nos 4977 to 4980/Mum/2018.*

4. I have heard the counsels for both the parties and perused the material placed on record, judgments cited before me and also the orders passed by the revenue authorities. From the records, I noticed that assessee had taken unsecured loan of Rs. 10,00,000/- from M/s Fastline Multi Trade Pvt Ltd and in this regard had placed on record loan confirmation, relevant bank statement, application filed

before AO for seeking permission to cross examine and undisputedly the said amount of loan has also been **'returned back'** in the subsequent years for which supporting documents have been filed. However, the AO made the addition on the ground that one Mr. Praveen Kumar Jain is controlling different companies and is providing accommodation entries in the shape of unsecured loan etc. To my mind the addition cannot be made in the hands of assessee u/s 68 of the Act only on the ground that one Mr. Praveen Kumar Jain is controlling web of companies by providing accommodation entries because at the very first instance i.e during the assessment proceedings the assessee had submitted that he is not concerned in any manner whatsoever and even does not know said Mr. Praveen Kumar Jain and there is no nexus between M/s. Firstline Multi Trade Pvt Ltd with Mr. Praveen Kumar Jain and had also sought permission to cross examine the said Mr. Praveen Kumar Jain vide its letter dated 14.12.2018 which is at paper book page No. 10 & 11. Moreover it has been time and again held by Higher Judicial Authorities that no addition can be made in the hands of assessee if the loan was taken and repaid through proper banking channel and in this regard supporting documents have been placed on record and proved by the assessee, for this proposition I draw reliance on the following judgments:

1. ***H R Mehta Vs. ACIT (2016) 387 ITR 561 (Bombay HC)***

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 on this very issue..

2. PCIT Vs. M/s. Skylark Build (ITA No. 616 of 2016) Bombay HC.

9 Mr. Mohanty's reliance on the judgment in the case of Commissioner of Income Tax vs. P. Mohanakala rendered by the Hon'ble Supreme court of India and reported in (2007) 291 ITR 278 is apposite to the extent of the legal principle. The legal principle and heavily relied upon, according to Mr. Mohanty, is that the Court must examine every single aspect and by a proper process. The doubtful nature of the transaction and the manner in which the sums were found credited in the books of account maintained by the assessee may be taken into consideration, according to Mr. Mohanty, but that was not enough. Even the money being paid by cheques is of no consequence according to Mr. Mohanty. It may be so, but when these principles are invoked, their application would depend upon the facts and circumstances in each case. There, the Hon'ble Supreme Court endorsed the findings and dismissed the Revenue's Appeal. While relying upon paragraph 26 of this judgment in P. Mohanakala (supra) what Mr. Mohanty submits is that in that paragraph the Hon'ble Supreme Court was referring to its prior decisions. The reliance thereon was to the extent of the Revenue's submissions and to give support to it. The argument was that the issue relating to the

propriety of the legal conclusion that could be drawn on the basis of the proved facts gives rise to a question of law and, therefore, the High Court is justified in interfering in the manner since the authorities below failed to draw a proper and logical inference from the proven facts. The Hon'ble Supreme Court expressly rejects this submission and says that findings of fact are arrived at on a proper appreciation of the material available on record and the surrounding circumstances. The doubtful nature of the transaction and the manner in which the sums were found credited in the books of account maintained by the assessee have been duly taken into consideration by the authorities even in the case before us. The transactions were found to be genuine. It is not only that the moneys came by way of cheques and through proper banking channels, but even the repayment has been verified and the Assessing Officer, while giving effect to the Tribunal's order records that this is not a transaction which can be said to be hit by the principles relied upon.

3. CIT Vs. Ambe Tradingcorp (P) Ltd (2023) 209 taxman 471 (Gujarat HC)

5. As discussed above, since the requisite material was furnished by assessee showing the identity and since the assessee was not beneficiary when the loan was repaid in the subsequent year, even the ingredients of creditworthiness and genuineness of transaction were well satisfied.

4. CIT Vs. Kapoor Chand Mangesh Chand (2013) 218 taxman 157.

Where there was sufficient funds in lenders account and loan was taken and repaid through cheque, there was no unexplained cash credit.

5. On the contrary, the Ld.DR relied upon the decision in the case of **JK Global (Supra) & Praveen Kumar Jian & Pankaj Jain (Supra).**

6. After having gone through the decisions placed on record by Ld.DR, I found that same are not applicable in the facts and circumstances of the present case, more particularly when the decision of the Coordinate Bench of ITAT in the case of **M/s Savita Mercantiles Pvt Ltd (supra)** P.B page No. 31 has clearly distinguished the decision referred by Ld. DR and the operative portion of the decision of the Coordinate Bench of ITAT is reproduced herein below:

8. Before parting, we note that the Ld. DR's reliance on the order of the Tribunal in the case of Shri Pravin Kumar Jain v DCIT (ITA. Nos. 7191/Mum/2018 and Others) dated 19.01.2023 in favour of the revenue cannot be treated as a binding judicial precedent because it is an exparte order qua assessee; whereas the assessee had relied on the decision of the Tribunal in the case of ACIT v M/s. Meena Elastomers Pvt. Ltd. (ITA. No.2641/Mum/2019 for AY. 2011-12) dated 23.11.2021 wherein the Tribunal held in favour of the assessee by holding as under: -

"5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has considered the relevant documents produced before him in accordance with law. The assessee furnished the copies of returns of investor companies accompanied by their audited financial statements, bank accounts of the investor companies and sworn affidavits of the directors investor companies confirming the investments. All the lender companies had duly filed their returns for assessment year under consideration. A perusal of bank accounts nowhere speaks about the immediate deposit of cash prior to the issuance of cheques towards investors money to the assessee. The transactions were effected through cheques i.e. normal banking channels. The assessee submitted necessary documents with regard to the identity creditworthiness of the creditors and genuineness of the transactions. The AO nowhere bring any evidence to controvert the claim of the assessee. The AO nowhere issued the summon u/s 131 of the Act to the investor companies. The AO did not discharge his obligation to disprove the

evidences adduced by assessee. The CIT(A) has relied upon the number of decisions mentioned in the appellate order while allowing the appeal of the assessee. Taking into account of all the facts and circumstances, we are of the view that the CIT(A) has decided the issue judiciously and correctly which is not liable to be interfered with at this appellate stage.

7. After having gone through the facts of the present case as well as legal proposition as discussed by me above, I found that money in the present case was advanced in the shape of loan apparently by account payee cheque and was also 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 the roots of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the Ld. CIT(A) and AO vulnerable. Therefore in my view, the assessee was bound to be provide with the material used against him apart from being permitting him to cross examine the said Mr. Praveen Kumar Jain. Despite the request dated 14.12.2018 seeking an opportunity to cross examine the said Mr. Praveen Kumar Jain and furnished the assessee with the copies of statement, these were denied to him. In this view of the matter I am inclined to allow this ground of appeal on this very issue. Accordingly, this ground of appeal stands allowed and addition sustained and

confirmed by Ld. CIT(A) stands deleted, I ordered accordingly.

7. Since I have deleted the additions on merits therefore there is no need for adjudicate the other grounds raised by the assessee.

8. In the result, appeal filed by the assessee stands allowed.

Order pronounced in the open court on 19.12.2024.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 19/12/2024

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai