

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री गगन गोयल लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI GAGAN GOYAL, AM

आयकर अपील सं./ITA No. 1441/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18

M/s. Graphtech Exim Pvt. Ltd. 151, Satya Niketan Nanak Pura New Delhi 110 021	बनाम Vs.	The ACIT Central Circle-3 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG 3505 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Mrs. Suhani Meharwal, CA
राजस्व की ओर से / Revenue by: Shri Manoj Kumar, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 06/02/2025
उदघोषणा की तारीख / Date of Pronouncement: 26 /02/2025

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A), Jaipur-4 dated 14-11-2024 for the assessment year 2017-18 in the matter of Section 143 (3) of the Act wherein the assessee has raised the following grounds of appeal.

“1. On the facts and in the circumstances of the case as well as the AO erred in making addition u/s 68 of the Act amounting to Rs.49.00 lacs and simultaneously the Id CIT(A) also erred in sustaining addition on account of cash deposits into bank ignoring the nature of receipts, cash balance, availability of audited books of accounts, which is grossly unjustified, double jeopardy, illegal, without acquiring valid justification and liable to be quashed.

2. On the facts and in the circumstances of the case as well as law Id. AO erred and simultaneously Id CIT(A) also erred in sustaining in

disallowing interest amounting to Rs.36,34,372/- for want of interest not charged on loans and advances without establishing (i) nexus between interest bearing unsecured loan and interest free advances (ii) In spite of making interest free advance out of our capital and free reserves (iii) Without appreciating fact that loan and advances are made during the year.”

2.1 Brief facts of the case are that the assessee filed its return of income declaring income of Rs.1,00,12,420/- on 17-06-2017. The case of the assessee was selected for scrutiny and notice u/s 143 (2) of the Act was issued on 16-08-2018 through ITBA e-assessment portal which was duly served upon the assessee company. It is noted that the reply of various details as asked for by the AO were received from the assessee through e-portal which were examined by the AO and discussed in his order. It is noted that the Assessee company is engaged in the business of collecting Mining Royalty under contracts with Government Departments. Mining leaseholders transport their minerals from the mines to their factory sites for sale or further processing. The Royalty Check Posts are situated along the roads and highways through which the minerals are transported from dumpers, loaders, tractors, or other means of transport. The company is authorized to collect Royalty at these check posts on the basis of weighing slips of the vehicles. Nearly 99% of the Royalty collection is made in cash at various check posts. The Assessee company was awarded two government contracts, under which approximately 125 check posts were established at different locations across the state of Rajasthan. The order under Section 143(3) of the Income Tax Act,

1961 was passed on 26/12/2019, making the additions by the AO under Section 68 of the Income Tax Act, 1961, in respect of the cash deposit of ₹49,00,000/- just after declaration of demonetization and disallowance of proportionate interest of ₹3634372/- 36(1)(iii) of the Act.

2.2 In first appeal, the ld. CIT(A) has confirmed the action of the by sustainin the addition made by the AO.

2.3 During the course of hearing, the ld. AR of the assessee submitted that the additions so made by the AO and confirmed by the ld. CIT(A) are not justified which should be deleted for which the ld AR of the assessee has filed following written submission.

“Ground No 1 : On the facts in the circumstances of the case as well as law ld. AO erred in making addition u/s 68 of I.T Act, 1961 amounting to Rs.4900000/-and simultaneously Ld.CIT (A) also erred in sustaining the addition on account of cash deposits into bank ignoring the nature of receipts, cash balance availability, audited books of amounts, which is grossly unjustified, double jeopardy, illegal, without acquiring valid justification and liable to be quashed.

Ground No 2: On the facts in the circumstances of the case as well as law ld. AO erred and simultaneously Ld.CIT(A) also erred in sustaining in disallowing interest amounting to Rs.3634372/- for want of interest not charged on loans and advances without establishing i. Nexus between interest bearing unsecured loan and interest free advances ii. In spite of making interest free advances out of our capital and free reserves iii. Without appreciating fact that loan and advances are made during the year.

Ground No 1:

During the year under consideration, the assessee has deposited cash of Rs.218926200/- in bank account out of which cash of Rs.49,00,000/- was deposited in old currency notes just after the declaration of demonetisation. Ld.AO stated that due to incomplete cash deposits details the cash deposits of Rs. 49,00,000 in old currency note would be treated as unexplained money credited in

the books of accounts u/s 68 of the I.T Act 1961. The same was also sustained by Ld.CIT(A).

Your honours, during the assessment proceedings assessee submitted: -

“During the year under review (AY 2017-18), the total turnover of the company was **Rs. 42.09 Crore**. Most of this amount was received in cash. During 01.04.2016 to 08.11.2016 (before de-monetization), **the total cash collection of Royalty by the Assessee was Rs. 22,33,20,086**. The assessee has also produced **the month wise chart of cash in hand, royalty collection, cash deposits and closing balance of cash which as under: -**

Details as under:

Month wise	Opening Balance	Royalty Collection Cash	Cash Withdrawal from Bank	Other Receipt	Expenses	Cash Deposited in Bank	Closing Balances
April, 2016	84273	24156414	300000			2880000	21660687
May, 2016	21660687	39302953		12118	145270	54676000	6154488
June, 2016	6154488	33515505			145270	23900200	15624523
Jul, 2016	15624523	28236487			410	39014000	4846600
August, 2016	4846600	20871033			0	21323000	4394633
September, 2016	4394633	32634382	10000		259725	31760000	5019290
October, 2016	5019290	40134644			1233151	39215000	4705783
as on 08.11.2016	4705783	4468668			0	3850000	5324451

There was approx. 125 check posts, from where the cash collection of Royalty was received. Partial collection was spent on at the check post depending upon the requirement viz. salary, travelling, conveyance, food, mess and naka expenses. Therefore, there was delay in depositing cash at different offices of the company from various check posts. The cash on hand as on 08.11.2016 (date of demonization) was Rs. 53,24,451. Notes in old currency of Rs. 1000 as well as Rs. 500 were available amounting to Rs. 49,00,000 in addition to small denomination notes of Rs. 4,24,451. The Assessee has deposited these old currency notes in the Bank of Baroda Account No. 17130200000376 as under :

Date	Currency Note of Rs. 500	Currency Note of Rs. 1000	Total (Amt. in Rs.)
10.11.2016	1700	450	13,00,000
11.11.2016	1160	1820	24,00,000
11.11.2016	1200	600	12,00,000
	Total		49,00,000

Confirmation of the Bank is enclosed as per Annexure – 1. This cash was deposited in respect of collection made on or before 08.11.2016. It is not an unexplained money. It was duly disclosed in the books of accounts of the company and also duly audited by Independent Chartered Accountant.

The Assessee has explained all these facts and submitted evidences to the Ld. Assessing Officer. However, the Ld. AO did not take note of the audited books of accounts and made addition amounting to Rs. 49 lacs as unexplained money u/s 68 of the Income Tax Act, 1961.”

My Contentions are as under:

1. Nature of the Receipts

The appellant provided a detailed explanation regarding the nature of the cash deposits in the bank account. These receipts were from legitimate business transactions, which were fully reflected in the appellant’s books of account. The appellant maintains that the cash deposits in question were not unexplained, but rather were part of regular business operations, and there is no evidence to suggest otherwise.

2. Availability of Cash Balance and Audited Books of Accounts

The appellant’s books of accounts are audited and maintained in accordance with the prescribed accounting standards. The audited books of accounts reflect adequate cash balance to support the cash deposits in question. The Ld. AO failed to consider the available cash balance and the business’s operational dynamics while making the addition. Moreover, the appellant maintains a proper record of all cash transactions, including the sources of such funds. The cash balance as per the appellant’s books is consistent with the deposits made into the bank (**Cash book and Audited Financials attached herewith**) **paper book reference 1-17**

Your honours you may see the above-mentioned chart of month wise cash balance that assessee carried opening balance of cash:

Date	Amount
1st May 2016	2.16 crores
1st June 2016	61 Lacs
1st July 2016	1.56 crores
1st Aug 2016	48.46lacs
1st Sep 2016	43.94 lacs
1st Oct 2016	50.19 lacs

When the both the lower authorities did not question the cash deposits of Rs 214026200/- of cash deposits in banking account from 1.4.2016 to 8.11.2016 (pre demonetarizing period) on the basis

of opening cash balances of each month, cash collections on account of royalty and other outgoings. Then what is the sanctity behind invoking deeming fiction u/s 68 of I.T Act 1961 for this addition of Rs. 4900000.00 deposited on dated 10.11.2016 . Even the books of was not rejected by Ld.AO . Your honours the assessee is a company required to maintained his books of accounts as per accounting standards prescribed in companies act 2013. Further the books of accounts are required to be audited under the companies act. Being the turnover exceeded Rs. 1Cr the books of assessee were also audited Income tax act under the provision of section 44AB. Bothe the auditors issued unqualified reports.

Reliance placed on , Mahesh Kumar Gupta, Jaipur vs Acit ,Circle-4, Jaipur on 23 March, 2023 ITA 149/JP/2022 place on page no 18-44 of paper book held” assessee had duly substantiated its claim from the documentary evidences and also with the facts. It is also observed from the assessment order that the AO had not rejected the books of account of the assessee as no contrary material was available with him to reject the books of account of the assessee. As regards the addition of Rs.2,90,93,500/- made by the AO by applying the provisions of Section 68 of the Act, it is noted that Mahesh Kumar Gupta vs ACIT, Circle-04, Jaipur provisions of Section 68 are not applicable on the sale transactions recorded in the books of accounts as sales are already part of the income which is already credited in P&L account. Hence, there is no occasion to consider the same as income of the assessee by invoking the provisions of Section 68 of the Act. In view of the above deliberations and case laws relied upon by both the parties, we find that the AO was not justified in making an addition of Rs.2,90,93,500/- u/s 68 of the Act which has rightly been deleted the ld. CIT(A) and we concur with his findings. Thus the appeal of the Revenue is dismissed. 9.8 Respectfully following the consistent view and after considering the factual matrix of the cash on hand in our considered view the addition made cannot sustain and therefore, we vacate the addition of Rs. 80,00,000/- made under section 68 of the Act as the same cannot be made without rejecting the books of account of the assessee regularly maintained by the assessee and the said cash deposited is duly supported by the entries passed in the books of account and part of the sale accepted by the AO. In terms of these observations ground no. 1 raised by the assessee is allowed.”

3. Double Jeopardy and Lack of Justification

The appellant contends that the addition under section 68 of I.T Act 1961 amounts to double jeopardy. The amount deposited in the bank was already reflected as part of the appellant’s business turnover, and any further taxability of the same amount under section 68 I.T Act 1961 is an unjustifiable and illegal action. There is no independent evidence or material to establish that the deposits were unaccounted or that they represent unexplained income. It is well-established in various judicial pronouncements that if the books of account are audited, and the cash deposits are duly reflected therein, the burden of proof lies with the assessing officer to disprove the legitimacy of such transactions. In the present case, the Ld. AO has failed to discharge this burden, and the addition under section 68 is therefore unsustainable in law. The following case laws may be referred to in support of the appellant’s contentions:

Income Tax Appellate Tribunal – Chennai Deputy Commissioner Of Income-Tax vs Ms Dar Paradise Pvt. Ltd., Coimbatore on 21 March, 2024 held that “ the decision of coordinate bench of ITAT, Chennai in the case of ITO vs M/s. [Sahana Jewellery Exports Pvt Ltd](#) (Supra), we are of the considered view that the assessee has

satisfactorily explained source for cash deposits into bank account during demonetization period, out of cash balance in hand as on 08.11.2016 and further, said cash in hand has been explained out of known source of income. The Assessing Officer, without appreciating relevant facts simply made additions towards cash deposits u/s. 68 of the Act and also brought to tax u/s. 115BBE of the Act. The ld. CIT(A), after considering relevant facts, has rightly deleted additions made by the Assessing :-64-: ITA. No: 1106/Chny/2023 Officer. Thus, we are inclined to uphold the findings of the ld. CIT(A) and dismiss appeal filed by the revenue.”

ITAT Jaipur bench in case of Suwalka and Suwalka Properties and Builders Pvt. Ltd. @ITA No.302/JP/2024

“As we hold a view that the revenue cannot be accept the part of the sales as explained and part of the sales not explained on the same set of evidence. Therefore, the cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in statement of profit & loss account. Therefore, there is no occasion to consider the same as unexplained credit entry of the assessee by applying the provisions of section 68 of the Act.

We get support of our view from the decision of our High Court of Rajasthan in the case of Smt. Harshila Chordia vs Income-tax Officer [2008] 298 ITR 349 (Rajasthan) “wherein it was held that no addition could be made in respect of the amount standing in the books of the assessee, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.” As the fact of this cash being similar that part of the sales is considered by the revenue has explained and part of it not is not correct and therefore, we 65 ITA No. 302/JP/2024 Suwalka and Suwalka Properties and Builders Pvt. Ltd. vs. ACIT hold that cash deposited by the assessee out of sales proceeds of stone cannot be considered attributable to the provision of section 68 or that of 69A of the Act. Based on these observations ground no. 2 raised by the assessee is allowed.

Ground No 2 :

Assessee advanced Rs 36343726/- to Various concerns / individuals which are as under:-

Name	Amount
Bayan Contractors and Builders Pvt Ltd	Rs.64,21,388/-
Dayaram Nayak	Rs.12,50,000/-
Devgange Contractors Pvt. Ltd	Rs.2,78,76,716/-
Parth Network Pvt. Ltd.	Rs.4,94,622/-
Vijay Pratap Singh Chittorgarh	Rs.3,01,000/-
Total	Rs 3,63,43,726/-

Ld. AO noted that the advances shown to above parties are interest free and from the interest-bearing funds, therefore, proportionate disallowance of Rs.36,34,372/- calculated @ 10%

(though show cause was issued for disallowance @ 12% but considering the interest rates being charged by the banks, the disallowance is restricted @ 10%) on the amount of interest free advances is hereby made.

My Contentions are as under:

A. No Nexus Established Between Interest-Bearing Loans and Interest-Free Advances:

The primary basis of the AO's disallowance is the assumption of a nexus between the interest-bearing loans and interest-free advances. However, it is submitted that the AO has failed to establish any direct or indirect nexus between the interest-bearing loans and the interest-free advances. The interest-free advances were made out of the appellant's own funds, specifically the capital and reserves. These funds were not borrowed or tied to any specific interest-bearing loans. The mere fact that the company had both interest-bearing loans and interest-free advances does not automatically establish that the interest-free advances were financed by the interest-bearing loans. The learned CIT(A) has failed to appreciate this crucial distinction. There is no evidence to suggest that the interest-free advances were funded by any specific loan, especially considering that such advances were made during the year from the company's own accumulated capital and free reserves.

Ld.AO did not establish the nexus between interest bearing funds and non-interest-bearing lending. Loans and advances are regular feature during the year. Assessee made advances and also got repayment during the year many time. Whereas, no funds are additionally raised during the year by assessee. Assessee enjoys term loan on car, which was sanctioned on purchase of car. Further the working capital limits is reduced compare to last year. Please see that the closing balance of last year was more than 10 crores which is reduced to this year (see the balance sheet schedule no 5). Therefore, there is no presumptions that assessee used interest bearing fund to make interest free advances. Ledgers of above-mentioned parties are also enclosed herewith. **Ledgers and bank statement enclosed on page no 45-88**

B. Interest-Free Advances Made Out of Own Capital and Free Reserves

Assessee has interest free funds by way of share capital, share application money and reserve & surplus to the extent of Rs.241448153/- (More than 24 Crores). (Audited balance sheet enclosed herewith) This is more than the interest free advances of Rs.3.63 crores. Thus, when interest free funds are more than the interest free advances, no disallowance out of interest can be made.

In support, reliance was placed on the following decisions: -

- Hero Cycles Pvt. Ltd. Vs. CIT (2016) 379 ITR 347/ 236 Taxman 447 (SC)
- CIT Vs. Ram Kishan Verma(2016) 132 DTR 107 (Raj)
- CIT Vs. Vijay Solvex Ltd. (2015) 113 DTR 382 (Raj)
- CIT Vs. Reliance Utilities & Power Ltd. 313 ITR 340 (Bom)

C. Loans and Advances Were Made During the Year

It is further submitted that the loans and advances in question were made during the assessment year in question. The timing of these advances is crucial, as they were made from funds available in the company's reserves and capital base during the year. There is no requirement under the law to charge interest on such advances, especially when they are made out of non-borrowed capital and reserves. It is respectfully submitted that in the absence of any borrowed funds being used for such advances, no disallowance of interest can be made. The AO and CIT(A) have not demonstrated any specific instance where funds borrowed during the year were used for the purpose of making these advances. **(Audited balance sheet enclosed herewith)**

Your honour, here I want to place the decision of **Hon`ble ITAT Jaipur bench in case of M/s Morani Cars Pvt. Ltd. Vs The ACIT, Circle-6, Jaipur @ ITA. No. 1088/JP/2018** where bench held “ **The assessee has explained the business necessity of taking the premises on rent and placing the security deposit. Further, the AO has not established the nexus between the interest bearing borrowed funds and amount placed as security deposit. Therefore, where the interest free funds are sufficient towards placing the security deposit and the commercial expediency of taking the premises on rent having been established and the rent payment has been allowed, there is no basis for notional disallowance of interest expenses. In the result, the addition so made by the AO is hereby set aside. In the result, the ground of appeal is allowed.** “(copy of judgment is enclosed on page no 89-94 of paper book.

Your honour, here I want to place the decision of **Hon`ble high court of Rajasthan in case of CIT Kota vs Ram Kishan Verma (copy of judgment is enclosed)**. In this case hon`ble High Court held that to the extent of his own capital the assessee could advance money without interest for business expediency or/and relatives and none can be forced to charge interest. In this case admittedly had it's own fund, as referred to earlier and admittedly such funds being substantially higher than, even otherwise, the advances to the debtors, no notional interest or hypothetical interest could have been disallowed on such facts. The revenue has failed to prove nexus.

Please allow both the grounds and oblige us.”

To support the submissions as made above, the ld. AR of the assessee has filed the paper book whose details are as under:-

S.N.	Particulars	Page No.
1.	Cash Book F.Y. 2016-17	1-9
2.	Audited financials	10-17
3.	Mahesh Kumar Gupta, Jaipur vs ACIT, Circle-4, Jaipur on 23-03-2023 (ITA No. 149/JP/2022)	18-44
4.	Advances Ledger	45-48
5.	Bank statements	49-58
6.	M/s, Morani Cars Pvt Ltd. vs ACIT, Circle-6, Jaipur ITA No. 1088/JP/2018	89-94

2.4 On the other hand, the Id.DR supported the order of the lower authorities.

2.5 We have heard both the parties and perused the materials available on record. In this case, it is noticed that the AO made additions/disallowances as under:-

(i) Addition u/s 68 r.w.s. 115BBE of the Act being cash Deposit Rs.49,00,000/-

(ii) Disallowance of proportionate interest Rs.36,34,372/-

The same has been confirmed by the Id CIT(A). The Bench notices that the assessee contended that the addition under section 68 of I.T Act 1961 amounts to double jeopardy and the amount deposited in the bank was already reflected as part of the assessee's business turnover, and any further taxability of the same amount under section 68 I.T Act 1961 is an unjustifiable and illegal action. The Bench noticed that there is no independent evidence or material to establish that the deposits were unaccounted or they represent unexplained income. It is also noticed that when both the lower authorities did not question the cash deposits of Rs 214026200/- of cash deposits in banking account from 1.4.2016 to 8.11.2016 (pre demonetarizing period) on the basis of opening cash balances of each month, cash collections on account of royalty and other outgoings then what is the sanctity behind invoking deeming fiction u/s 68 of I.T Act 1961 for this addition of Rs.

4900000.00 deposited on dated 10.11.2016 . Even the books of was not rejected by the AO . It is pertinent to mention that the Revenue cannot accept the part of the sales as explained and part of the sales not explained on the same set of evidence. Therefore, the cash deposited in the demonetized currency added as income of the assessee by applying the provisions of section 68 of the Act while the provisions of 68 as such are not applicable on the sale transactions recorded in the books of accounts because the sale transaction are already part of the income which is already credited in statement of profit & loss account. Therefore, there is no occasion to consider the same as unexplained credit entry of the assessee by applying the provisions of section 68 of the Act. The Bench found that there is merit in the submissions of the assessee and the case laws relied upon above. Hence this ground No. 1 of appeal of the assessee is allowed.

2.5.1 As regards the Ground No. 2 of the assessee, it is noticed that assessee has interest free funds by way of share capital, share application money and reserve & surplus to the extent of Rs.241448153/- (More than 24 Crores) and the assessee has also filed the audited balance sheet. This is more than the interest free advances of Rs.3.63 crores. Thus, when interest free funds are more than the interest free advances then no disallowance out of interest can be made. It is noted that the AO did not establish the nexus between interest bearing funds and non-interest-bearing lending. Loans and advances are regular feature during the year. The Assessee

made advances and also got repayment during the year many time whereas, no funds are additionally raised during the year by the assessee. It is noticed that Assessee enjoys term loan on car which was sanctioned on purchase of car. Further the working capital limits is reduced as compared to last year. Hence, in view of the above facts and circumstances of the case and the case laws (supra), the Bench does not concur with the findings of the Id.CIT(A). Thus the Ground No. 2 of the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-
(गगन गोयल)
(Gagan Goyal)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26/02/2025

*Mishra

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

1. The Appellant- M/s. Graphtech Exim Private Ltd. New Delhi
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle-3, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1441/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar