

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.592/MUM/2023
(Assessment Year : 2007-08)

ITA No.593/MUM/2023
(Assessment Year : 2010-11)

M/s. Sapphire Fintech Pvt. Ltd.

6th Floor, 1 Plot 165,
161/169 Hirachand Fulchand Trust Building,
Perin Nariman Street, Fort,
Mumbai - 400001

..... Appellant

PAN: AAHCS0312H

v/s

DCIT, Circle-3(3)(1),

Room No.609, Aaykar Bhavan,
M.K. Road,
Mumbai - 400020

..... Respondent

Assessee by : Shri Mahavir Jain
Shri Shobhit Mishra

Revenue by : Shri Swapnil Choudhary, Sr. AR

Date of Hearing - 07/10/2025

Date of Order - 17/10/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the separate impugned orders of even date 03/01/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment years 2007-08 and 2010-11.

ITA No. 592/Mum./2023
Assessee's appeal- A.Y. 2007-08

2. Vide its application dated 25/09/2023, the assessee raised the following revised grounds of appeal: –

"1. That the Ld. CIT(A) erred in facts and in law in confirming the reopening u/s 148 of the Income Tax Act, 1961.

2. Without prejudice to other grounds of appeal it is submitted that on the facts and circumstances of the case and in law the Ld. CIT(A) erred in law in upholding the proceeding u/s 147 without appreciating the fact entire reason to believe is based on the statement of Shri Rajendra Jain which was already retracted, hence notice issued u/s 148 on the basis of such incorrect reason to believe is bad in law and consequential assessment order is also bad in law and liable to be deleted.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the additions without appreciating the fact that the Ld. AO has passed the assessment order based on the retracted third-party statement of Shri Rajendra Jain, without providing an opportunity to cross examine the same, and thus the addition is made in violation of the principles of natural justice.

4. That on the facts and circumstances of the case and in law, La CIT(A) erred in confirming the reopening assessment ignoring the fact that Ld. AO has reopened the assessment without application of mind and entire reopening is based on borrowed satisfaction of information received from investigation wing, hence such order of assessment passed u/s 147 is bad in law and liable to be deleted.

5. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the order of the Ld. AO without considering the fact that the re-opening cannot be initiated without any tangible new material and for the purpose of adding an amount of Rs. 1,56,00,000/- u/s. 68 of the Act, to the total income of the appellant.

6. That on the facts and circumstances of the case and in law, the CIT(A) erred in not considering the fact that re-opening is bad-in-law since the same was done merely based on change of opinion.

7. That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the order of the Ld. AO without considering the fact that re-opening is bad-in-law since the reopening proceeding was initiated after the expiry of 4 years from the end of relevant assessment year and there was no failure on the part of the appellant to disclose fully and truly all material facts.

8. a. That the Ld. CIT(A) has erred in upholding the order of the Ld.A.O. in confirming the addition of Rs.1,00,00,000 from M/s.Avi Exports us. 68 of the Act as unexplained cash credit, ignoring the fact that appellant has discharged its onus by providing all the necessary documents.

b. The Ld. CIT(A) erred in facts and in law in confirming the addition by merely placing reliance on the uncontroverted statement of Mr. Rajendra Jain and without considering the fact that the said statement has been retracted by him.

9. a. That the Ld. CIT(A) has erred in upholding the order of the Ld.A.O. in confirming the addition of Rs.56,00,000 from M/s. Beautiful Diam us 68 of the Act as unexplained cash credits, even though the appellant has discharged its onus by providing all the necessary documents and further ignoring the same.

b. The Ld. CIT(A) erred in facts and in law in confirming the addition by merely placing reliance on the statement of Mr. Sachin Pareek u/s133A of the Income Tax Act, 1961 and without considering the fact that the said statement has no evidentiary value as held by the Hon'ble Supreme Court in the case of S. Khader Khan. [25 taxmann.com 413]

c. Without prejudice to the above grounds, addition of Rs. 52,00,000/- should be made, as the amount of loan received from M/s Beautiful Diam is Rs. 52,00,000/- and not Rs. 56,00,000/-

10. The Ld. CITA) erred in facts and in law in confirming the disallowance of interest expense amounting to Rs. 13,54,427/- on account of loans being treated as non-genuine."

3. During the hearing, the learned Authorised Representative ("learned AR"), at the outset, pressed ground no.3, and submitted that the assessment order was passed without providing an opportunity to cross-examine the person whose statement was relied upon by the Assessing Officer ("AO") for making the impugned additions.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is engaged in a financing business. For the year under consideration, the assessee filed its return of income on 29/03/2008, declaring a total income of INR 77,329. The return filed by the assessee was selected for scrutiny, and vide order dated 30/11/2009 passed under section 143(3) of the Act, the scrutiny proceedings were concluded accepting the returned income. Subsequently, on the basis of the information received from the office of DGIT

(Investigation), Mumbai, pursuant to the search and seizure action carried out in the case of Shri Rajendra Jain Group, which was engaged in the business of providing accommodation entries, that the assessee is a beneficiary of accommodation entry transaction of bogus unsecured loan, notice under section 148 of the Act was issued on 24/03/2014 and proceedings under section 147 of the Act were initiated. The reasons recorded by the AO for reopening the assessment are reproduced as follows: –

"This office received information from the office of the DGIT(inv), Mumbai vide letter dated 14.03.2014, that a search and seizure action was carried out in the case of Shri Rajendra Jain Group on 03/10/2013, which is engaged in the business of providing accommodation entries.

One of the beneficiaries of such accommodation entry in the nature of bogus sales and unsecured loan collected by the Investigation Wing, is the assessee company M/s. Sapphire Fintech Pvt. Lid. It has been further gathered that from the documentary evidences collected from the entry provider is that the assessee has taken accommodation entry of Rs. 1,00,00,000/- in the nature unsecured loan from AVI Exports during A.Y. 2007-08. During the course of search action, Mr. Rajendra Jain, admitted to being involved in provided in providing bogus accommodation entries in form of loan/share application/ share premium/ investment through managed/owned/controlled by him directly or indirectly:

The information received was carefully perused, it is revealed that

- a) The entry providers are non-existent at the Registered address or the place of operation.*
- b) The directors/ proprietors of the different concern (entry provider) are dummy directors.*
- c) Books of accounts of the suspected concerns are not available/ maintained.*

During the course of post search operation, the statement of Mr. Rajendra Jain was recorded which. inter-alia, establishes the following:-

Shri Rajendra Jain, has indulged in providing only accommodation entries and has not carried out any genuine business.

2. Books of accounts all shell companies are under the control Mr. Rajendra Jain. There is no place from where any genuine business activity is carried out.

In view of the above facts and the material available on record, it is clear that the accommodation entry of loan amounting to Rs. 1,00,00,000/- Introduced during the current financial year 2006-07 relevant to A.Y.2007-08 in the books of accounts of the assessee, M/s. Sapphire Fintech Pvt. Ltd. is non-genuine and a bogus accommodation entry, which needs to be brought to tax.

In view of the totality of the facts and the documents on records coupled with the information gathered during the course of search operation, it is clear that the assessee has failed to disclose fully all material facts necessary for completion of its assessment at the time of the original assessment and the income arising out of the said transactions made by the assessee has therefore escaped assessment for the reasons of failure on the part of the assessee company to disclose truly and correctly all material facts relevant for completion of the assessment. In view of the above, I have reason to believe that in the present case the income the income has escaped assessment by the reasons of failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment coming within the meaning of section 147 of the Income Tax Act 1961.”

5. From the record, it is evident that during the course of reassessment proceedings, the assessee requested a copy of the statement of Shri Rajendra Jain, proprietor of M/s Avi Exports, which was provided to the assessee. Since the assessee had shown an unsecured loan of INR 1 crore from the entity controlled by Shri Rajendra Jain and had also availed a loan of INR 56 lakh from another entity, M/s Beautiful Diam, which was also under the control of Shri Rajendra Jain, the assessee was asked to file justification in respect of the loan received from the aforesaid two entities. In response, the assessee submitted that M/s Avi Exports and M/s Beautiful Diam have given genuine loans to the assessee, and there is no income chargeable to tax that has escaped assessment.

6. The AO, vide order dated 11/03/2015, passed under section 143(3) read with section 147 of the Act, disagreed with the submissions of the assessee after taking into consideration the statement of Shri Rajendra Jain recorded during the course of search and seizure action. The AO also considered the statement of Shri Rajendra Jain, recorded during the post-search proceedings, and held that it was merely an afterthought to divert the

investigation process. Accordingly, the reliance placed by the assessee on the retracted statement of Shri Rajendra Jain, wherein he submitted that the loans given, inter alia, to the assessee are not accommodation entry transactions, was rejected by the AO and treated as an afterthought process. The AO also noted that no evidence has been filed to show that the loan given by Shri Rajendra Jain is genuine. The AO also rejected the plea of the assessee to cross-examine Shri Rajendra Jain on the basis that the investigation carried out by the Investigation Wing establishes the fact that Shri Rajendra Jain was involved in giving accommodation entries for commission. In this regard, the AO placed reliance on the admission of Shri Rajendra Jain during the search and post-search proceedings. Accordingly, the AO did not entertain the request for cross-examination. Hence, the AO made the addition under section 68 of the Act in respect of the loans received by the assessee from entities controlled by Shri Rajendra Jain.

7. During the hearing, the learned Departmental Representative ("*learned DR*") vehemently objected to the request of the assessee seeking cross-examination of Shri Rajendra Jain and by referring to page no. 7 of the assessment order submitted that the AO rejected a similar request on the basis that the assessee, on one hand, himself submitted the retraction affidavit of Shri Rajendra Jain and on the other hand sought cross-examination.

8. Having considered the submissions of both sides and perused the material available on record, it is pertinent to note that even though the assessee submitted the retraction affidavit of Shri Rajendra Jain during the

reassessment proceedings, wherein Shri Rajendra Jain stated that the loan given to entities, including the assessee company, was not accommodation entry transaction, the AO did not accept the said affidavit and the same was treated merely as an afterthought. The AO also rejected the retraction affidavit on the basis that no evidence was furnished to support the contention in the retraction affidavit. Therefore, for treating both loans received by the assessee as non-genuine, the AO relied on the statement of Shri Rajendra Jain recorded during the search and seizure action. Thus, we are of the considered view that the fact that the assessee submitted the retraction affidavit cannot be the basis for rejecting the request of the assessee to cross-examine the person whose statement was relied upon by the AO, when one of the bases for making the addition is that statement itself. Thus, the objection of the Revenue is rejected.

9. Furthermore, we find that the Hon'ble Supreme Court in *Andaman Timber Industries vs. Commissioner of Central Excise*, reported in [2015] 314 ELT 641 (SC), observed as follows: -

"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected."

10. Thus, merely providing the evidence relied upon by the AO cannot substitute the fundamental requirement of providing the opportunity for cross-examination. We further find that the Hon'ble Supreme Court in *I.C.D.S. Ltd. vs CIT*, reported in [2020] 273 Taxman 12 (SC) held that where the issue

involved was about not extending an opportunity to the appellant to cross-examine witnesses relied upon by Assessing Officer, the entire matter would be considered by First Appellate Authority afresh by giving fair opportunity to both sides to espouse their claim.

11. Therefore, in view of the above findings, we set aside the impugned order and restore the matter to the file of AO for *de novo* adjudication after providing the assessee the opportunity to cross-examine the party on whose statement reliance was placed for making the impugned additions. Since the matter is remanded to the AO for *de novo* adjudication, the assessee shall be at liberty to file all the documents/evidence in support of its claim. Further, the AO, if required, may issue necessary notices/summons to adjudicate the issue involved. The assessee is also directed to fully cooperate with the AO in completing the assessment by furnishing all the details that may be called for. Accordingly, ground no.3 raised by the assessee is allowed for statistical purposes. As the matter is remanded to the AO, the other grievances raised by the assessee do not call for adjudication at this stage. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

12. In the result, the appeal by the assessee for the assessment year 2007-08 is allowed for statistical purposes.

ITA No. 593/Mum./2023
Assessee's appeal- A.Y. 2010-11

13. Vide its application dated 25/09/2023, the assessee raised the following revised grounds of appeal: –

"1. That the Ld. CIT(A) erred in facts and in law in confirming the reopening u/s 148 of the Income Tax Act, 1961.

2. *Without prejudice to other grounds of appeal it is submitted that on the facts and circumstances of the case and in law the Ld. CIT(A) erred in law in upholding the proceeding u/s 147 without appreciating the fact entire reason to believe is based on the statement of Shri Rajendra Jain which was already retracted, hence notice issued u/s 148 on the basis of such incorrect reason to believe is bad in law and consequential assessment order is also bad in law and liable to be deleted.*

3. *"That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the additions without appreciating the fact that the Ld. AO has passed the assessment order based on the retracted third-party statement of Shri Rajendra Jain, without providing an opportunity to cross examine the same, and thus the addition is made in violation of the principles of natural justice."*

4. *That on the facts and circumstances of the case and in law, the entire re-opening done by the Ld. A.O. is without any application of mind as in the reasons given, it is stated that there is failure on part of the assessee company to disclose truly and correctly all material facts at the time of original assessment whereas, no proceedings u/s 143(3) of the Act have actually taken place.*

5. *That on the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the reopening assessment ignoring the fact that Ld. AO has reopened the assessment without application of mind and entire reopening is based on borrowed satisfaction of information received from investigation wing, hence such order of assessment passed u/s 147 is bad in law and liable to be deleted.*

6. a. *The Ld. CIT(A) erred in facts and in law in confirming the addition of Rs. 56,70,000/- u/s 68 of the Income Tax Act, 1961 as unexplained cash credits without considering the documents submitted by the appellant.*

b. *The Ld. CIT(A) erred in facts and in law in confirming the addition by merely placing reliance on the uncontroverted statement of Mr. Rajendra Jain and without considering the fact that the said statement has been retracted by him.*

7. *The Ld. CIT(A) erred in facts and in law in confirming the addition of Rs. 84,15,000/- u/s 68 of the Income Tax Act, 1961 without considering the documents submitted by the appellant and summarily alleging that the capital introduction lacks creditworthiness.*

8. *The Ld. CIT(A) erred in facts and in law in confirming the disallowance of Rs.1,50,799 /- u/s 14A of the Income Tax Act, 1961 without appreciating that the disallowance could not exceed the exempt income of Rs.11,40%/- as held by the Hon'ble Bombay High Court in the case of Nirved Traders Put. Ltd.*

9. *The Ld. CIT(A) erred in facts and in law in confirming the disallowance of interest expense amounting to Rs.11,23,315/- on account of loans being treated as non – genuine."*

14. In this appeal also, the learned AR pressed ground no.3 and raised a similar plea that the assessment order was passed without providing an opportunity to cross-examine the person whose statement was relied upon by the AO for making the impugned additions. The learned DR reiterated the arguments made in the appeal for the assessment year 2007-08.

15. We have considered the submissions of both sides and perused the material available on the record. Since a similar issue arising out of the similar factual matrix has already been adjudicated in the assessee's appeal for the assessment year 2007-08, we are of the considered view that our findings/conclusions rendered therein shall apply *mutatis mutandis* to this appeal. Accordingly, following the similar directions, we set aside the impugned order and restore the matter to the file of AO for *de novo* adjudication after providing the assessee the opportunity to cross-examine the party on whose statement reliance was placed for making the impugned additions. Since the matter is remanded to the AO for *de novo* adjudication, the assessee shall be at liberty to file all the documents/evidence in support of its claim. Further, the AO, if required, may issue necessary notices/summons to adjudicate the issue involved. The assessee is also directed to fully cooperate with the AO in completing the assessment by furnishing all the details that may be called for. Accordingly, ground no.3 raised by the assessee is allowed for statistical purposes. As the matter is remanded to the AO, the other grievances raised by the assessee do not call for adjudication at this stage. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

16. In the result, the appeal by the assessee for the assessment year 2010-11 is allowed for statistical purposes.

17. To sum up, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 17/10/2025

Sd/-
PRABHASH SHANKAR
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 17/10/2025

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai