

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

**BEFORE: SHRI R.C.SHARMA, AM**

**&**

**SHRI PAWAN SINGH, JM**

**ITA No.593/Mum/2015**

**(Assessment Year : 2010-2011)**

|                     |     |  |
|---------------------|-----|--|
| ACIT, 25(2), Mumbai | Vs. | M/s. H.K.Pujara Builders,<br>2 <sup>nd</sup> Floor, Penninsula<br>Heighters<br>C.D.Barfiwala Road<br>Andheri (W), Mumbai -<br>400058 |
| PAN/GIR No.         | :   | <b>AAAFH7230H</b>  |
| <b>(Appellant)</b>  | ..  | <b>( Respondent)</b>   |

Revenue by : Shri K.C.Kanoja

Assessee by : Shri Prakash K. Jotwani

**Date of Hearing : 18/10/2016**

**Date of Pronouncement : 27 / 12 / 2016**

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the revenue against the order of CIT(A) for the Assessment Year 2010-11 wherein following ground has been taken by the revenue.

- i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.5,12,50,000/- u/s 68 of the Act."*
- ii. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that a company with a meager income of Rs.20,000 / - can advance such huge amounts of loans."*

- iii. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the report of DDI(Inv) that these companies were upfront loan givers and the company from whom the funds were received shared same address and common chambers as well as the fact that the sources of the loan givers were from Private Ltd. Co most of whom shared common directors and thus providing beyond doubt that the whole thing is to route the funds."*
- iv. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that these were planned accommodation entries as the assessee was not being charged any interest and that there was no written agreement about the sharing of profit, interest etc."*
- v. *"The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*
- vi. *"The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary."*

3. We have heard the rival contentions and found that assessee is a partnership firm engaged in the business of builders and developers and during the year under appeal has claimed to have received unsecured loans from the following two companies.

| <b>Sr. No.</b> | <b>Name and Address of the Loans Parties</b> | <b>Amount of Loan<br/>(Rs.)</b> |
|----------------|--|---------------------------------|
| 1.             | M/s. Albright Consultants Pvt. Ltd.,         | 1,12,50,000/-                   |
| 2.             | M/s. Sital Mercantile Pvt. Ltd.,             | 4,00,00,000/-                   |
|                | <b>Total</b>                                 | <b>5,12,50,000/-</b>            |

4. It is seen from the order of the A.O. that addition of Rs. 5,12,50,000/- was

made mainly relying upon the report of the DDIT (Inv.) Kolkata dated 22/03/2013 which was called for by CIT-21, Mumbai vide his letter dated 04/10/2012 by making reference -to the Investigation Wing, Kolkata to verify the followings loans for the assessment year 2009-10 as under:-

| Sr. No.      | Name and Address of the Loans Parties   | Amount of Loan<br>(Rs.) |
|--------------|---|-------------------------|
| 1.           | M/s. Albright Consultants Pvt. Ltd.,<br>P-27, Princep Street, 3 <sup>rd</sup> Floor, Kolkata – 72 | 9,85,00,000/-           |
| 2.           | M/s. Natraj Vinimay Pvt. Ltd.,<br>2E, Cornfield Road, Kolkata - 19                                | 1,30,00,000/-           |
| 3.           | M/s. Spectrum Vintrade Pvt. Ltd.,<br>P-27, Princep Street, 3 <sup>rd</sup> Floor, Kolkata – 72    | 25,00,000/-             |
| <b>Total</b> |   | <b>11,40,00,000/-</b>   |

5. The A.O in its order observed that during the year under consideration, the assessee has received loan of Rs. 4 crores from a new party i.e. the party which was not a loan creditor during the assessment year 2009-10 and hence was not referred to in the report of DDIT(Inv), Kolkota. However, the party from whom another loan of Rs. 1,12,50,000/- was received during the year under consideration was referred to in the report of investigation by the DDIT(Inv) kolkota. The A.O. issued notice u/s. 133(6) to the aforesaid parties. The A.O. also asked the assessee as to why the said loans should not be considered as non-genuine. The assessee vide letter dated 22/03/2013 filed his reply (a copy of which has been filed during appellate proceedings) wherein he has submitted the confirmations from these two parties along with detailed books of accounts of the loan parties such as copy of Pan card of lender company, copy of Audited annual

accounts, balance sheet & profit & loss account of lender company, copy of acknowledgement of return filed by the lender, copy of ITR for the assessment year 2010-11, ledger confirmation and ledger account & copy of bank statement of the lender company highlighting the transaction in order to prove the identity, creditworthiness and genuineness of the loan transaction during the year under consideration. The AO received a copy of the aforesaid report of DDIT(Inv.),Kolkata on 25/3/2013 while he was on the verge of completing the assessment for the assessment year 2010-11. The A.O., based on the observations in the aforesaid report, issued a show cause letter to the assessee as to why the loan of Rs. 5,12,50,000/- should not be treated as cash credit u/s 68 of the Act. Not satisfied with the assessee's reply, AO added the same u/s. 68 of the IT Act.

7. By the impugned order CIT(A) deleted the addition after having the following observation:-

*5.8. I have carefully gone through the assessment order, advance report of DIT(Inv.), Kolkata dated 22-03-2013, remand report dated 1-10-2014, submissions of Ld. A.R. and the facts of the case.*

*5.8.1. The AO has made the addition based on the observations in the report of investigation dated 22-03-2013 by the DDIT (Inv.) Kolkata that the identity, genuineness of the transaction and the credit worthiness of the lenders were not established. The DDIT was of the opinion that the loans of the assessment year 2009-10 were nothing but accommodation entries only. He was also of the opinion that it was the money of the appellant which has been routed through these lender companies. The AO while making the*

assessment for the assessment year under consideration Le 2010-11 has based his findings and conclusion on the aforesaid opinion as given in the report of DDIT-Kolkata. The gist of the reasonings given by the AO for making the impugned addition u/s. 68 of Rs. 5,12,50,000/- is that credit worthiness of both the lenders is highly doubtful as they have declared a very meager amount of income in their returns of income.

Further both the loan companies are operating from the same address. AO also observed that all three loan parties of the assessment year 2009-10 were also operating from the same address. One of the loan parties is common in both the assessment years namely M/s Albright consultants pvt. Ltd. Thus all the four parties viz M/s. Albright Consultants Pvt. Ltd., M/s. Natraj Vinimay Pvt. Ltd., M/s. Spectrum Vintrade Pvt. Ltd. & M/s Sital Mercantile Pvt. Ltd. were operating from the same address. The AO has also observed that the appellant has not charged any interest on the aforesaid loans. Similarly there was no written agreement about the sharing of profit or interest or anything of that sort. Finally the AO held that in the garb of loans, the appellant is routing its own unaccounted money by making an arrangement to this effect.

5.8.2. As opposed to the above observation's of the AO, the Ld. AR very vehemently argued that addition made by the AO is not justified and is not legally tenable in the case of the appellant as the identity, creditworthiness and genuineness of the loan transactions stands proved beyond doubt in the light of the various evidences/documents submitted by it by vide letter dated 22.03.2013. The Ld. A.R. argued that AO has not brought on record any fresh material to disprove the contention of assessee in respect of identity, creditworthiness and genuineness of the said loan transactions.

5.8.3. The Ld. AR further argued that the present AO has not given any new reasoning's for making the impugned addition. The AO has given the same reasons which were given by the DDIT(Inv.)-Kolkata for the assessment year 2009-10. The then CIT(A)-32 discussed all the reasons and ground given by the DDIT(Inv.)-kolkata in his said report for treating the loans as not genuine and then deleted the whole addition of Rs. 9.85 crore in the case of M/ s. Albright Consultants Pvt. Ltd. and held that identity and creditworthiness of other two lenders viz M/s. Natraj Vinimay Pvt. Ltd., M/s. Spectrum Vintrade Pvt. Ltd was established and proved. However, he disallowed the loans from later two parties as no interest / benefit was

paid to these parties. Therefore, in my view, the observations and findings of the then CIT(A)-32 are very relevant and applicable for this assessment year also.

5.8.4. Furthermore, it is also a fact that during the assessment proceeding for the assessment year 2010-11, the appellant filed numerous evidences such as confirmations from these two parties along with detailed books of accounts of the loan parties, copy of Pan card of lender company, copy of Audited annual accounts, balance sheet & profit & loss account of lender company, copy of acknowledgement of return filed by the lender, copy of ITR for the assessment year 2010-11 ledger confirmation and ledger account & copy of bank statement of the lender company to prove the identity, credit worthiness and genuineness of M/ s. Albright Consultants Pvt. Ltd. & M/ s. Sital Mercantile Pvt. Ltd.

5.8.5. Further, it is also the fact of the case that during the assessment proceeding for the assessment year 2010-11, A.O. made independent enquiry by issuing notice u/s 133(6) to M/s. Albright Consultants Pvt. Ltd. & M/ s. Sital Mercantile Pvt. Ltd. to ascertain the identity, creditworthiness & genuineness of the said loans from M/s. Albright Consultants Pvt. Ltd. & M/ s. Sital Mercantile Pvt. Ltd. Both the loan creditors have complied with the notice by filing details and evidences as called for by the AO. Apart from this, the lender parties also explained the sources of each cheque deposited in their bank account against which loans were advanced to the appellant. Further in the remand report, the present A.O. has confirmed that a compensation of Rs.20,00,000/- was paid to M/s. Sital Mercantile Pvt Ltd.

5.8.6. Furthermore, it is also evident from the order of my predecessor that a lump sum compensation of Rs. 1,00,00,000/- was paid to M/s. Albright Consultants Pvt. Ltd.

5.9. The AO in the assessment proceedings has questioned the creditworthiness of the creditor parties and has observed that the lender companies which have shown such a meager income, probably cannot extend such huge loans to the appellant. In this regard, it is stated that the test of creditworthiness of a particular creditor cannot be based on the returned income during a particular year under consideration. What is required to be seen is the availability of funds with them from explained sources which both the loan creditors proved by submitting the requisite

*documents/evidences in reply to notice u/s 133(6) issued to them. The AO has not been able to pin point any discrepancy in respect of such details filed by the appellant and / or filed by the both the loan parties which shows that creditors have sold their investments to the third party companies and consequent availability of the funds with them which was advanced to the appellant.*

*5.9.1. It is also submitted by the Ld. AR that the assessed own fund / capital of M/s. Albright Consultants Pvt. Ltd. was Rs.16.74 crores till the A.Y. 2006-07 which has also been noted in the assessment order of this company passed by the AO u/s 143(3) dated 08.04.2008. Further such own fund got increased to Rs. 20.03 crores up till A.Y. 2009-10 and such funds were available with M/s. Albright Consultants Pvt. Ltd. for deployment as per their discretion. The facts of availability of funds are also ascertainable from the Annual Report of the company for the period ended on 31.03.2009.*

*5.9.2. It is also submitted by the Ld AR that the assessed own fund/capital of M/ s. Sital Mercantile Pvt. Ltd. was Rs.16.61crores till the A.Y. 2007 -08 which has also been noted .in the assessment order of this company passed for the assessment year 2007-08 by the AO u/s. 143(3) dated 025-05-2009 and such funds were available with M/ s. Sital Mercantile Pvt. Ltd. for deployment as per their discretion. The fact of availability of funds is also ascertainable from the Annual Report of the company for the period ended on 31.03.2009 and 31.03.2010.*

*5.9.3. Such position of funds/own capital available with the creditor companies clearly establish the creditworthiness of these companies to advance the amounts to the extent of fund credited in the appellant's books of accounts. It is also a fact that such amounts advanced to the appellant have clearly been reflected in the accounts of the creditor companies and as such have been confirmed. Under such facts and. circumstances of the case creditworthiness of these two creditors to advance the funds to the extent fund credited in the assessee's books of accounts cannot be doubted.*

*5.9.4. The A.O. has also observed that both the loan creditors and the companies whose shares were held by the creditor companies and the companies to whom such shares were sold to generate the liquid funds to advance loan to the appellant, belong to the same group, bear common addresses, have common set of directors and are represented by a common authorized representative and therefore he*

*has a reason to believe that such credits given to the appellant were accommodation entries. In this regard, it is stated that if the companies belong to common group, have common directors, share their addresses or are represented by the common authorized representative, the same does not take away the factum of their individual identity and capacity to advance the loan as long as their individual identity is bonafide and they have funds available and source of which is not questionable. Such observations made by the AO / DDIT (Inv.) Kolkata cannot dispute the creditworthiness of such creditors.*

*5.9.5. Even if circumstantially such loans advanced to the appellant appear to be in-genuine or accommodation in nature, the same have to be proven with respect to their individual identity, creditworthiness and genuinity of the transactions. In the facts of the case discussed hereinabove the identities of the creditor companies together with their creditworthiness are not found to be disputable.*

*5.9.6. The appellant in its submission has contended that since the entire credits from these two companies have been taken through the banking channels, the genuinity of such transactions also cannot be disputed. In this regard it is stated that the creditor companies are registered NBFCs and the money which has been advanced is for the commercial purposes of the appellant and the creditors. It is also submitted by the Ld. AR that the funds which has been advanced to the appellant should meet the stated purpose of advancing loan to the appellant.*

*5.10. The Ld AR has submitted that the amount of Rs.1,12,50,000/- which was advanced to the assessee during the year together with certain opening balance was returned to M/ s. Albright Consultants Pvt. Ltd together with compensation of Rs. 1 crore. It is further the submission of the assessee that the fund was received from M/s. Albright Consultants Pvt. Ltd. for investment in certain project of the appellant and as the concerned project could not take off and did not result in any mutual gain, the money was returned back to the creditor along with the compensation of Rs. 1 crore. These set of facts clearly establish that the fund which was borrowed from M/ s. Albright Consultants Pvt. Ltd. by the appellant, was for the business purposes of the appellant and, the creditor had advanced such money for its own benefit as well. The transaction has taken place through banking channel. The receipt of advance / loan, corresponding repayment of the entire .advance / loan together with a lumpsum compensation of*

*Rs. 1 crore is clearly evidenced from the records, from the ledger account and from the confirmation of accounts submitted by the appellant in this regard. Accordingly the genuinity of this transaction of credit of Rs.1,12,50,000- crores from M/s. Albright Consultants Pvt. Ltd. stands substantiated.*

*5.10.1. Similarly, it is also submitted by the Ld. A.R. that the amount of Rs 4,00,00,000/-, which was advanced to the assessee by M/S.Sital Mercantile Pvt. Ltd. during the assessment year 2010-11 was returned back along with advance received in the succeeding assessment year to M/ s. Sital Mercantile Pvt. Ltd. during assessment year 2014-15 together with lumpsum compensation of Rs. 20 lakh. It is further the submission of the assessee that the fund was received from M/ s Sital Mercantile Pvt. Ltd. for investment in certain project of the appellant for the minimum period of 4-5 years but lender company withdrew the loan amount prematurely for their own reason. The money was returned back to the creditor along with the, compensation of Rs. 20 lakh. The said compensation was arrived at after long deliberation with the lender as the original demand of the lender was at the rate of 12% on the loan amount. These set of facts clearly establish that the fund which was borrowed from M/ s Sital Mercantile Pvt. Ltd by the appellant, was for the business purposes of the appellant and the creditor had advanced such money for its own benefit as well. The transaction has taken place through banking channel. The receipt of loan, corresponding repayment of the entire loan together with a lumpsum compensation of Rs. 20 lakh is clearly evidenced from the records, from the ledger account and from the confirmation of accounts submitted by the appellant in this regard. Accordingly the genuinity of this transaction of credit of Rs.4,00,00,000/- crores from M/s. Sital Mercantile Pvt. Ltd stands substantiated.*

*5.11. In view of the above facts and circumstances of the case, the identity, creditworthiness and genuinity of the transaction in respect of loan received from M/ s Albright consultants Pvt. Ltd. of Rs. 1,12,50,000/- .and loan received from M/s Sital mercantile Pvt. Ltd. of Rs. 4,00,00,000/ - clearly gets proved and therefore the addition of these credits of Rs. 5,12,50,000/- u/s 68 of the Act in the hand of appellant is not found to be justifiable and therefore, the AO is directed to delete the addition of Rs. 5,12,50,000/-. In the result, the ground No.1-14 of the appellant which are related to the addition of Rs.5,12,50,000/- u/s 68 are allowed.*

8. Against the above order of CIT(A), revenue is in further appeal before us.

9. Learned AR placed on record the order of the tribunal in assessee's own case wherein addition made in the immediate preceding year was deleted by Tribunal vide its order dated 09/05/2016 in ITA No.2034/Mum/2014, wherein Tribunal observed as under:-

*11. We heard the rival contentions and perused the record. The dispute before us relates to the addition made u/s 68 of the Act. It is a well settled proposition that the primary onus is placed upon the assessee u/s 68 of the Act to prove the cash credits. In order to discharge the primary onus, the assessee has to prove the identity of the creditor, credit worthiness of the creditor and the genuineness of the transactions. If the assessee discharges the initial onus, then the burden shifts to the shoulder of the AO to disprove the claim made by the assessee. With these settled legal propositions, we shall now examine the facts prevailing in the instant case.*

*12. We have noticed that the AO did not consider various documents furnished by the assessee during the course of assessment proceedings in order to discharge the initial onus placed upon him u/s 68 of the Act. The AO gave importance to the report of the Inspector belonging to the investigation wing, who had stated that the loan creditors did not exist at the address given by them. However, it is pertinent to note that the said report of the Inspector was proved to be false during the course of subsequent enquiries.*

*13. The Ld CIT(A) also requested the DDIT, Kolkatta to carry out certain investigation. Even though all the companies were represented by a single authorised representative, yet the fact remains that all these companies have furnished necessary details. Further the assessee herein also furnished necessary documents to prove the M/s. H.K. Pujara Builders identity of the creditors and credit worthiness of the creditors. There is no dispute with regard to the fact that the funds have been routed through banking channels. Hence the Ld CIT(A) himself has observed that the identity of the creditors and credit worthiness of the creditors have been established by the assessee.*

*14. The Ld CIT(A) has accepted the genuineness of the transactions in respect of loan obtained from M/s ACPL. However with regard to the other*

two loans, the Ld CIT(A) has gone a step further and expressed doubt as to how these companies, being NBFC, could have given loan interest free, as the same is not in accordance with their objectives.

15. We have earlier noticed that the provisions of sec. 68 places initial burden of proof upon the assessee. In the instant cases, there is no dispute between the parties that the identity of the loan creditors has been established. Even though the assessing officer has expressed doubt about the credit worthiness of the creditors on the basis of low income reported by them, yet the Ld CIT(A) has rightly appreciated the fact that these companies have used their own capital funds for advancing loan to the assessee company. The quantum of own funds held by these companies has also been discussed by Ld CIT(A). In our view, the Ld CIT(A) was justified in holding that the income declared by these loan companies are not the criteria, but the source for giving the loans to the assessee company is the determinative of the credit worthiness. Thus, the Ld CIT(A) has rightly held that the credit worthiness of the loan creditors has also been established.

16. It is a well settled proposition that the genuineness of the transactions shall stand established if the transactions are routed through banking channels. In the instant case, the loan transactions have been routed through the banking channels. Hence the genuineness of the transactions also stand established. However, the Ld CIT(A) has expressed doubt about the genuineness in respect of loan taken from M/s NVPL and M/s SVPL, since he was of the view that a NBFC company shall not give interest free advances to unrelated parties. In our view, the doubt so expressed by the M/s. H.K. Pujara Builders Ld CIT(A) is beyond the scope of the provisions of sec. 68 of the Act. Since the provision of sec. 68 is a deeming provision, the same is required to be interpreted strictly. The Courts have held that the assessee is required to discharge the initial burden of proof placed on his shoulders. In the instant case, we are of the view that the assessee has discharged the initial onus placed upon it. Hence the burden of proof gets shifted to the assessing officer.

17. From the foregoing discussions, we notice that the tax authorities have not discharged the burden of proof shifted upon their shoulders by bringing any material on record to disprove the claim of the assessee. On the contrary, the tax authorities have merely suspected the genuineness by making certain adverse inferences. It is pertinent to note that they have not disputed the genuineness of various documents furnished by the assessee to prove the identity and credit worthiness of the creditors and genuineness of the transactions. Accordingly, we are of the view that the tax authorities have not discharged the burden of proof placed upon them.

18. We have noticed earlier that the Ld CIT(A) has deleted the addition pertaining to M/s ACPL, but confirmed the addition pertaining to M/s NVPL and M/s SVPL. Since we have held that the tax authorities have failed to discharge the burden of proof shifted upon them, we are of the view that they are not justified in making the addition in respect of all the three loans. Accordingly, we confirm the order of Ld CIT(A) in granting relief in respect of loan taken from M/s ACPL . Accordingly, we set aside the order passed by Ld CIT(A) in respect of loan taken from M/s NVPL and M/s SVPL and direct the AO to delete the additions relating to them.

10. We had carefully gone through the order of the Tribunal. The facts and circumstances during the year under consideration are exactly same, respectfully following the order of Tribunal in assessee's own case for immediately preceding assessment year, we do not find any infirmity in the order of CIT(A).

**11. In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on this 27 / 12 / 2016.

**Sd/-**  
**(PAWAN SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 27 / 12 / 2016

Karuna, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार  
(Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai