

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, C, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C", MUMBAI**

**Before Shri Shailendra Kumar Yadav, Judicial Member, and  
Shri Ramit Kochar, Accountant Member**

ITA Nos.2790/Mum/2014  
Assessment Years : 2008-09

Income Tax Officer-9(2)(4) Mumbai	v.	Pushpak Plastics Pvt. Ltd. Q-1,Cama Industrial Estate Walbhat Road, Goregaon E Mumbai-400 063 PAN AAACP3424C
(Appellant)		(Respondent)

Appellant By : Sh. J.Saravanam  
Respondent By : Shri Piyush Chhajer

Date of Hearing :15.10.2015	Date of Pronouncement : 21.10..2015
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**ORDER**

**Per Ramit Kochar, Accountant Member**

This appeal has been filed by the Revenue against the order dated 14<sup>th</sup> February 2014 passed by the Commissioner of Income Tax(Appeals)-20, Mumbai,(Hereinafter called "the CIT(A)") for the assessment year 2008-09.

2. The grounds of appeal raised in this appeal by the Revenue in the memo of appeal filed are as under :

“1.“Whether On the facts and in the circumstances of the case and in law , the Ld.CIT(A) was correct in deleting addition of Rs.21,84,300/- made u/s 68 of the Income Tax Act,1961, without appreciating the facts that the assessee has failed to establish the genuineness of the transaction during the assessment proceedings as well as during the remand report proceedings?”

2.“whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in allowing the financial statements of the creditor for M/s. Pushpak Exports as documentary evidence of credit worthiness without appreciating the fact that the said firm was defunct partnership firm and had not filed income tax returns after assessment year 2004-05 and so the same cannot be considered as authentic document?”

3.“Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in accepting source of cash deposit of Rs.4,00,000/- by the said defunct firm as explained without appreciating the facts that satisfactory evidence of source of cash deposits are not brought on the records by the assessee?”

4. The appellant prays that the order of the CIT(A) on the grounds be set aside and that of the assessing officer be restored.”

3.The Brief facts of the case are that the assessee company is engaged in the business of manufacturing of plastic packaging containers and trading of plastic raw material. The case of the assessee company was selected for scrutiny by the Revenue and the assessment order dated 30<sup>th</sup> December 2010 u/s 143(3) of the

Income Tax Act,1961(Hereinafter called "the Act") was framed against the assessee company by the Revenue. During the course of assessment proceedings u/s 143(3) read with Section 143(2) of the Act, the assessee company was asked by the assessing officer (Hereinafter called "the AO") to file loan confirmations with respect to unsecured loan taken from M/s Pushpak Exports amounting to Rs.21,84,300/- along with Balance Sheet , P&L A/c and copy of Return of Income of Pushpak Exports filed with the Revenue. In response , the assessee company filed loan confirmation with respect to Pushpak Exports which was signed by the Director of the assessee company itself Sh. Mithalal J.Jain while no other evidence such as Return of Income, copy of P&L A/c and Balance Sheet of Pushpak Exports were filed by the assessee company before the AO. Thus, the AO held that the assessee company has failed to discharge onus cast u/s 68 of the Act to prove the genuineness of the unsecured loan taken from M/s Pushpak Exports and hence additions of Rs.21,84,300/- was made by the AO to the income of the assessee company u/s 68 of the Act.

4. Aggrieved by the assessment orders of the AO, the assessee company filed first appeal with the CIT(A).

5. The assessee company submitted before the CIT(A) that :

- a) the assessee company has taken loan from M/s Pushpak Exports of Rs.21,84,300/- during the assessment year which is a partnership firm in which Sh. Mithalal Jain and Smt. Manju Jain are the partners.

b) Due to no business activities of the said partnership firm M/s Pushpak Exports, no Return of Income was filed with the Revenue after assessment year 2004-05.

c) The said firm M/s Pushpak Exports has received an amount of Rs.22,85,800/- from M/s Affluent Poly Plast Ltd. on 24.05.2007 which was deposited vide account payee cheque in the assessee company bank account with Lord Krishna Bank.

d) These loans were later repaid by the assessee company to Pushpak Exports on 19.09.2008, 22.09.2008, 4.6.2009, 8.1.2010 and 23.2.2010 through banking channels.

The assessee company submitted details and evidences before the CIT(A) along with application under Rule 46A of Income Tax Rules, 1962 for admission of additional evidences and the CIT(A) called for the remand report from the AO.

6. The AO submitted remand report and held that the partnership firm M/s Pushpak Exports is defunct partnership firm from 2001-02 and last return was filed for the assessment year 2004-05. The AO submitted that in remand report proceedings the assessee company has submitted the copy of Balance Sheet and Cash Book of Pushpak Exports which was never submitted before the Revenue or before any other authority and hence the authenticity of these document is not verifiable . Further, the AO submitted that the Pushpak Exports deposited cash of Rs.4,00,000/- in the bank on 23.05.2007 just before advancing the loan to the assessee company.

On being asked by AO for the source of deposit, Mr Mithalal Jain submitted on behalf of Pushpak Exports that the firm withdrew cash of Rs.2,65,000/- from bank and Rs.3,00,000/- was introduced by himself and hence total cash balance of the firm as on 31.03.2007 was Rs.4,04,546/- and out of the same Rs.4,00,000/- was deposited in the bank. The AO held that the explanation of the said partnership firm, Pushpak Exports is not acceptable as the said firm, Pushpak Exports is not filing its Return of Income with the Revenue and such deposit is not directly proved nor is the nexus of cash introduced by Mr Mithalal Jain in Pushpak Exports is established.

7. The assessee company submitted before the CIT(A) in rejoinder to remand report of the AO as under:

a) That the assessee company has taken a loan from partnership firm M/s Pushpak Exports of Rs.24,55,0000/- on 23.5.2007 and Rs.2,00,000/- on 30.08.2007 and outstanding as on 31.03.2008 was Rs.21,84,300/-.

b) M/s Pushpak Exports is partnership firm and filing regular return of income with the Revenue till assessment year 2004-05. After that the business activity of said partnership firm , Pushpak Exports discontinued . The last return of income filed with the revenue for assessment year 2004-05 was enclosed along with copies of Balance Sheet and cash and bank book.

c) That in the financial year 2005-06 , M/s Pushpak Exports gave loan of Rs.27,00,000/- to M/s Affluent Polyplast Limited through banking channels and the bank statement enclosed. The copy of audited Balance Sheet of Affluent Polyplast

Limited were enclosed where the said unsecured loans payable to M/s Pushpak Exports were duly reflected.

d) The said loan of Rs.22,85,800/- outstanding as on 31.03.2007 as per audited accounts of Affluent Polyplast Limited as payable to Pushpak Exports was repaid on 23.05.2007 through account payee cheque which was deposited in the bank account with Lord Krishna bank of Pushpak Exports.

e) The audited balance sheet and return of income of Affluent Polyplast Limited as on 31-3-2008 was enclosed to show that outstanding payable to Pushpak Exports was NIL.

f) Regarding cash deposit of Rs.4,00,000/- in the bank account of Pushpak Exports on 23-05-2007 , it was submitted that cash in hand as on 31-03-2004 was Rs.3,58,046/- , the year for which the return of income was filed by the Pushpak Exports with the Revenue and the cash in hand was Rs.4,04,546/- as on 31-3-2007. The cash balance as on 1-4-2006 as per cash book was Rs.1,40,546/- with M/s Pushpak Exports while Rs.1,94,000/- was withdrawn from bank during financial year 2006-07 against which Rs.2,30,000/- was withdrawn by Mr Mithalal Jain and further Mr Mithalal Jain introduced Rs.3,00,000/- as cash in Pushpak Exports on 31-12-2006. Thus, there was cash balance of Rs.4,04,546/- as on 31-3-2007 out of which cash of Rs.4,00,000/- was deposited by Pushpak Exports in its bank account on 23.5.2007. The copies of return of income and balance sheet of Mr Mithalal Jain was enclosed and it was submitted that the income tax case of Mr Mithalal Jain for

assessment year 2008-09 was processed under scrutiny by the Revenue u/s 143(3) read with Section 143(2) of the Act, copy of which was furnished to the CIT(A) .

8. The CIT(A) accepted the contentions of the assessee company and vide orders dated 14-02-2014, deleted the addition of Rs.21,84,300/- made by the AO u/s 68 of the Act in the assessment order dated 30-12-2010 passed u/s 143(3) read with Section 143(2) of the Act. The CIT(A) held that the AO has made additions without any valid reasons and the order of the AO is full of infirmity of reasoning . The CIT(A) held that the assessee company has duly explained the source of deposit in the appellate proceedings before him.

9. Aggrieved by the orders of the CIT(A), the Revenue is in appeal before us.

10 The Ld. DR contended at the outset that the partnership firm Pushpak Exports is not filing its return of income with Revenue since assessment year 2005-06 and is a defunct firm. The entire submissions of the assessee company along with evidences submitted to explain the source of deposits of money in Pushpak Exports to grant loan of Rs.21,84,300/- to the assessee company has remained un-verified by the authorities below as to the authenticity and genuineness of these submissions as well evidences as no return of income has been filed by Pushpak Exports since assessment year 2005-06 and the CIT(A) has merely accepted the contentions of the assessee company , in rejoinder proceedings to remand report submitted by the AO, without checking the authenticity and genuineness of submissions of the assessee company and also of the documents/evidences submitted by the assessee company . Thus, the Ld. DR submitted that the matter need to be restored to the

file of the AO so that the authenticity and genuineness of the contentions of the assessee company as well of the documents and evidences submitted by the assessee company to justify the genuineness of the loan of Rs.21,84,300/- may be undertaken by the AO. The assessee company has received loan of Rs.21,84,300/- from Pushpak Exports during the assessment year and hence the primary onus is on the assessee company to prove the identity, creditworthiness and genuineness of these loans of Rs.21,84,300/- received by the assessee company in accordance with the provisions of Section 68 of the Act.

11. On the other hand , the assessee company relied upon the orders of the CIT(A) and reiterated its submissions as made before the authorities below and submitted that all necessary documentary evidences has been submitted to prove that the loan received by the assessee company of Rs.21,84,300/- is genuine loan and even the source of deposit of the money into the account of Pushpak Exports stand fully established by evidences. The said firm Pushpak Exports which granted loan to the assessee company is defunct firm and the return of income was last filed with Revenue last for the assessment year 2004-05. The main contentions of the assessee company are:

- a) That the assessee company has taken a loan from partnership firm M/s Pushpak Exports of Rs.24,55,0000/- on 23.5.2007 and Rs.2,00,000/- on 30.08.2007 and outstanding as on 31.03.2008 was Rs.21,84,300/-.
- b) M/s Pushpak Exports is partnership firm and filing regular return of income with Revenue till assessment year 2004-05. After that the business activity of said firm

Pushpak Exports discontinued and no return of income was filed by Pushpak Exports with Revenue since assessment year 2005-06.

c) That in the financial year 2005-06 , M/s Pushpak Exports gave loan of Rs.27,00,000/- to M/s Affluent Polyplast Limited through banking channels .

d) The said loan of Rs.22,85,800/- outstanding as on 31.03.2007 as per audited accounts of Affluent Polyplast Limited was repaid on 23.05.2007 through account payee cheque which was deposited in the bank account with Lord Krishna bank of Pushpak Exports.

e) The audited balance sheet and return of income of Affluent Polyplast Limited as on 31-3-2008 was enclosed to show that outstanding payable to Pushpak Exports was NIL while as on 31-3-2007 , the unsecured loan outstanding for payable was Rs.22,85,800/-.

f) Regarding cash deposit of Rs.4,00,000/- in the bank account of Pushpak Exports on 23-05-2007 , it was submitted that cash in hand as on 31-03-2004 was Rs.3,58,046/- , the year of which return of income was filed for Pushpak Exports and the cash in hand was Rs.4,04,546/- as on 31-3-2007. The cash balance as on 1-4-2006 as per cash book was Rs.1,40,546/- with M/s Pushpak Exports while Rs.1,94,000/- was withdrawn from bank during financial year 2006-07 against which Rs.2,30,000/- was withdrawn by Mr Mithalal Jain and further Mr Mithalal Jain introduced Rs.3,00,000/- as cash in Pushpak Exports on 31-12-2006. Thus, there was cash balance of Rs.4,04,546/- as on 31-3-2007 out of which cash of Rs.4,00,000/- was deposited by Pushpak Exports in its bank account on 23.5.2007.

The copies of balance sheet of Mr Mithalal Jain was enclosed as at 31<sup>st</sup> March 2008 and it was submitted that the income tax case of Mr Mithalal Jain for assessment year 2008-09 was processed under scrutiny by the Revenue u/s 143(3) read with Section 143(2) of the Act, copy of which was furnished in paper book filed .

12. We have considered the rival contentions and perused the material on record. We have observed that the assessee company has received unsecured loan of Rs.21,84,300/- from partnership firm M/s Pushpak Exports during the assessment year which is an defunct firm not filing its return of income with the Revenue since assessment year 2005-06. Since, the assessee company has received the unsecured loan during the assessment year, the onus is cast u/s 68 of the Act on the assessee company to establish creditworthiness , identity and genuineness of the said loan through cogent material. We have observed that the assessee company contentions and evidences submitted to discharge the onus u/s 68 of the Act were not accepted by the AO even in remand report proceedings undertaken at the direction of the CIT(A) . We also find merits in the contentions of Ld. DR that the submissions so made by the assessee company and evidences so produced by the assessee company to substantiate the genuineness of the unsecured loan of Rs.21,84,300/- received by the assessee company from M/s Pushpak Exports during the assessment year have remained unverified and un-authenticated so far and need verification as to the authentication and genuineness of these submissions and the evidences submitted by the assessee company more so when the lender partnership firm M/s Pushpak Exports is an defunct firm not filing its return of income with Revenue since assessment year 2005-06. In our considered view, the interest of

justice will be best served, if the orders of the CIT(A) is set aside and the matter is restored to the file of AO for de-novo determination of the genuineness of the unsecured loan of Rs.21,84,300/- received by the assessee company from M/s Pushpak Exports during the assessment year after considering and verifying the authenticity of the submissions and the evidences led by the assessee company in its defence. Needless to say , proper and reasonable opportunity of hearing will be provided to the assessing company by the AO in accordance with the principles of natural justice as enshrined in doctrine of audi alteram partem.

13. Thus, the appeal of the Revenue is partly allowed for statistical purposes.

14. This Order is pronounced in the open court on this day of 21<sup>st</sup> October 2015.

Sd/-  
**(Shailendra Kumar Yadav)**  
**JUDICIAL MEMBER**

Sd/-  
**(Ramit Kochar)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated : 21/10/2015.

Pooja

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'C' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
Income Tax Appellate Tribunal, Mumbai