

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “J”, MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.6368/M/2014
Assessment Year: 2010-11**

M/s. Jaico Textiles Pvt. Ltd., 329, Sandesara House, Jawahar Nagar, Goregaon (West), Mumbai – 400 062 PAN: AAACJ 3155A	Vs.	Income Tax Officer 9(2)(1), 225, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sunil M. Lala, A.R.
Revenue by : Shri Alok Johri, D.R.

Date of Hearing : 30.06.2016
Date of Pronouncement : 28.09.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 02.09.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The sole issue agitated by the assessee through its grounds of appeal is regarding the confirmation of addition of Rs.26,02,00,000/- made by the Assessing Officer (hereinafter referred to as the AO) under section 68 of the Income Tax Act.

3. The brief facts of the case are that during the assessment proceedings, the AO noted that the assessee had shown substantial unsecured loan to the extent of Rs.26,02,00,000/- and had invested the same with group concern M/s. Sterling Oil Reserves Ltd. The assessee was therefore asked to explain the genuineness of loan and also to establish the identity and creditworthiness of the creditors. The assessee explained that during the relevant year, the

assessee received unsecured loans amounting to Rs.26.02 crores. The assessee received funds from two companies, namely Ved Investments Ltd. and Niranwal Credit and Holding Pvt. Ltd. and that this fact was also evident from its bank account. The receipt of loan was recorded in the books of the assessee in the name of Flair and Wisdom, pursuant to request letters issued to the assessee by Ved Investments Ltd. and Niranwal Credit and Holding Pvt. Ltd., asking the assessee to record the loans in Flair and Wisdom's names in view of the respective schemes of amalgamation. The AO, however, observed that the assessee had failed to establish the genuineness of the transactions. He observed that though the loan was appearing in the name of Flair Engineering Pvt. Ltd. and Wisdom Engineering Pvt. Ltd., however, these two companies had been floated for rotating the accommodation entries in question. The directors of the said companies were men of meager means. Further, the claim of the assessee that such amount of Rs.26.02 crore was received from Ved Investments and Trading Company Pvt. Ltd. and Niranwal Credit and Holding Pvt. Ltd. was found to be false because assessee had failed to establish the legal identity of such companies. He observed that the addresses of these companies given to Registrar of Companies were apparently dubious one; that the persons related to the assessee company were the introducers at the time of opening of the bank accounts of Ved Investments and Trading Company Pvt. Ltd.; that in the annual report submitted in the name of Ved Investments Ltd. and Niranwal Credit and Holding Pvt. Ltd. to the Registrar of Companies there was no mention of advance given to the assessee company; that such loan of Rs.26.02 crore shown to have been taken from Flair Engineering Pvt. Ltd. and Wisdom Engineering Pvt. Ltd. or in the name of Ved Investments and Trading Company Pvt. Ltd. or Niranwal Credit and Holding Pvt. Ltd. was not from any explained source nor was there any genuine transaction; that the proper identity of such parties had also not been established.

The AO, therefore, found that all these companies had been floated in connivance with each other to channelize black money through bank and

utilize the same by giving white colour by way of filing return of income, filing annual A/c with ROC and by filing of other related documents. The AO came to the conclusion that these companies had been floated for entry operation and did not have any business of their own. All the money appearing in their bank accounts originated from some other accounts. He held that the assessee had introduced its own unaccounted funds/income in the name of these floated companies. He, therefore, made addition of the above amount into the income of the assessee as unexplained credits under section 68 of the Act.

4. Being aggrieved by the above order, the assessee preferred appeal before the Ld. CIT(A). However, the Ld. CIT(A) held that the AO had made adequate enquiries to unearth the truth and that the assessee had failed to prove the genuineness of the transactions and creditworthiness of the creditors. He, therefore, confirmed the additions so made by the AO. Being aggrieved by the order of the Ld. CIT(A), the assessee has come in appeal before us.

5. The Ld. A.R. of the assessee, before us, has submitted that the assessee has had submitted the bank statements, confirmations, ITR, PAN, amalgamation request letters, Ledger Accounts, financials, grouping of assets and liabilities and the scheme of amalgamation of all parties involved in the loan transaction. Even the parties had responded to notices issued u/s 133(6) of the Act. In respect of loan taken from Ved/Wisdom amounting to Rs.16.02 crores, the assessee explained that the name of the assessee was not reflected in the balance sheet of Ved in view of the letter received by the assessee from Ved, counter signed by Wisdom, wherein Ved requested the assessee to record the loan transaction in the name of Wisdom due to the impending amalgamation between Ved and Wisdom. Further, the paying party viz. Ved had received funds from 4 companies viz. Aim Infrastructure Pvt. Ltd., Powerlinks Projects & Engineering Pvt. Ltd., Relish Infrastructure Pvt. Ltd. and Shiny Infrastructure Pvt. Ltd., which in turn was further paid to the

assessee. Since Ved was to be amalgamated with Wisdom, the balance in the accounts of these four parties along with the balance in the account of the assessee was transferred to the account of Wisdom, which has been reflected in the Grouping of assets and liabilities of both these companies. In respect of loan taken from Flair Engineering Pvt. Ltd. and Niranwal Credit and Holding Pvt. Ltd. amounting to Rs.10 crores, the Ld. A.R. explained that the name of the assessee was not reflected in the balance sheet of Niranwal in view of the letter received by the assessee from Niranwal, counter signed by Flair, wherein Niranwal requested the assessee to record the loan transaction in the name of Flair due to the impending amalgamation between Niranwal and Flair. Further, the paying party viz. Niranwal had received funds from Sulabhya Engineering Pvt. Ltd. Since Niranwal was to be amalgamated with Flair, the balance in the account of Sulabhya along with the balance in the account of the assessee was transferred to the books of Flair, which has been reflected in the Grouping of assets and liabilities of both these companies. He has, therefore, stressed that due to the amalgamation between Niranwal and Flair, the accounts of the creditors and debtors in Niranwal's books were squared off and transferred to Flair and therefore merely because the name of the assessee was not reflected on the face of the balance sheet of Niranwal, the genuineness of the loan taken by the assessee could not be doubted. He has further submitted that the assessment orders had been passed under section 143(3) of the Act in the case of Ved, Flair & Niranwal and a notice under section 148 of the Act has been issued in the case of Wisdom. Though as per settled law, the assessee is not obliged to explain the source of source, the assessee has submitted the bank statements, ITR, PAN, ledger accounts, financials even of the source of source in its paper book. Further, that none of its bank statements or the bank statements of the parties involved reflect the loan as a cash deposit and that the loan received by the assessee from its lenders has travelled through banking channels which are highly regulated. Further, the fact that the name of the assessee has been reflected in the books of accounts of Wisdom and Flair

shows that the lenders had the capacity to lend. In support of the above, he has placed reliance on the following case laws:

1. CIT v Tania Investment P. Ltd. (2010) 322 ITR 394 (Bom)
2. Yamuna Synthetics Pvt. Ltd. (2004) 3 SOT 35 (Del)

The Ld. Counsel, therefore, has submitted that as per settled law, the onus of the assessee under section 68 of the Act is discharged when the assessee proves the identity of creditors, creditworthiness/capacity of creditors and the genuineness of the transactions. He has further contended that courts have consistently held that where the assessee submits the name, address, PAN and confirmation of the creditors, the onus under section 68 of the Act gets discharged and no addition can be made. The Ld. Counsel relied upon various case laws to stress that where the assessee who is the recipient of an unsecured loan, furnishes the PAN of its creditors, confirmations issued by the creditors affirming the grant of loan, their income tax returns/acknowledgement of filing income tax returns, bank statements and balance sheets (wherein all corresponding transactions were recorded), he is considered to have successfully discharged his onus under section 68 of the Act and notwithstanding non-appearance of the creditors, no addition can be made under the said section. Further that where the books of accounts of the creditors recorded the corresponding entries of credits, the books of accounts itself would indicate capacity of the party to advance loan and there was no further need for the assessee to prove capacity of the creditors. He, in this respect, has further relied upon the following case laws:

1. CIT vs. Dharamdev Finance Pvt. Ltd. (2014) 43 taxmann.com 395 (Guj)
2. ACIT vs. Sanjay M Jhaveri (2015) 61 taxmann.com 28 (Mum)
3. CIT v Tania Investment P. Ltd. (2010) 322 ITR 394 (Bom)
4. CIT v Pithampur Konzima P Ltd. (2000) 112 Taxman 353 (MP)
5. CIT v Meera Engg & Commercial Co. P. Ltd. (1998) 96 Taxman 234 (Jabalpur) (MAG)
6. Kamal Engineering Works v ITO (1995) 52 TTJ 75 (Del)
7. GG Films v ITO (1993) 45 TTJ 0644
8. Subbiah Ramanathan and RM Janaki v ITO TS-352-ITAT-2015 (CHNY)

9. DCIT v Overseas Infrastructure Alliance (I) Pvt. Ltd. (ITA No.1470/Mum/2011)

The Id. Counsel for the assessee has further submitted that in order to fasten liability on the assessee by including such credits as income from unexplained source, a nexus has to be established that the sources of creditors' deposit flow from the assessee. In the absence of any such link, additions of cash credits found in the books of account of the assessee could not be considered to be unexplained income of the assessee. That where the AO has drawn adverse inference finding some discrepancies, the issue could not be converted into an addition of income under section 68 of the Act in the hands of the assessee and appropriate cause was that the AO of the assessee could have informed the concerned Assessing Officer, assessing the respective cash creditors for appropriate action in their case. He, in this respect, had relied upon the following case laws:

1. Aravali Trading Co. v ITO (2010) 187 Taxman 338 (Raj)
2. CIT v. Jai Kumar Bakliwal (2014) 45 taxmann.com 203 (Raj)
3. CIT v Metachem Industries (2001) 116 Taxman 572 (MP)
4. Jawahar Lal v ITO (2014) 35 ITR (Trib) 0071 (Chand)

6. The Ld. D.R., on the other hand, has relied upon the findings of the lower authorities and has vehemently stressed that the AO had made inquiries and had come to the conclusion that the creditors companies were paper entities of the assessee and that the money was introduced by the assessee firstly into the paper companies and then travelled to the assessee company through banking channel. He, therefore, has stressed that the AO had rightly made additions in the hands of the assessee.

7. We have heard the rival contentions and have also gone through the records. The Assessing Officer (hereinafter referred to as the AO) in this case has treated the transactions of loan by the assessee as sham transactions for the two reasons i.e. non establishment of the genuineness of transactions and secondly for not proving the creditworthiness of the creditors.

So far as the genuineness of the transactions is concerned, as submitted by the Ld. A.R., all the funds were transferred to the assessee through banking channel, confirmation from the respective parties have also been filed, the parties have responded to the summons issued under section 133 of the Act by the AO, their PAN number and copy of income tax returns have also been submitted. The amount advanced to the assessee has also been reflected in their books. The more peculiar fact is that there was no cash deposited in the accounts of the creditors. The creditors have also explained their source. The assessee has also produced evidences regarding the amalgamation of the Ved Investments and Trading Company Pvt. and Niranwal Credit and Holding Pvt. into Wisdom Engineering Pvt. Ltd. and Flair Engineering Pvt. Ltd. respectively. The assessee therefore has explained the reasons for recording the name of creditors as Wisdom Engineering Pvt. Ltd. and Flair Engineering Pvt. Ltd. in its books of account.

So far as creditworthiness of the of the creditor companies is concerned, it has been explained that the creditor companies are legal entities and are already assessed to income tax. The Ld. Counsel for the assessee has brought our attention to the assessment order dated 30.03.15 passed under section 143(3) of the Act in the case of Ved Investments and Trading Company Pvt. wherein an amount of Rs.16,02,00,000/- has been added into the income of the said company under section 69A of the Act for the A.Y. 2010-11. The Ld. A.R. of the assessee has further brought our attention to the assessment order dated 03.03.15 in the case of Flair Engineering Pvt. Ltd. passed under section 143(3) read with section 147 of the Act vide which an addition under section 68 of the Act of an amount of Rs.20,00,00,000/- has been made in the hands of the Flair Engineering Pvt. Ltd. for A.Y. 2010-11. In the case of Niranwal Credit and Holding Pvt., the assessment had been completed under section 143(3) read with section 147 of the Act for A.Y. 2010-11 and addition of Rs.20,00,00,000/- has been made by the AO. In the case of other party i.e. Wisdom Engineering Pvt. Ltd. the Ld. Counsel has invited our attention to the

notice under section 147 of the Act dated 29.03.16 issued in the name of Wisdom Engineering Pvt. Ltd. and has stated that assessment in the case of said company has been reopened and the reassessment proceedings are in progress. The contention of the Ld. Counsel, in this respect, has been that all the creditor companies are assessed to income tax, the assessment in their case has been completed under section 143(3) of the Act, certain amounts were found credited in their accounts regarding which the AO had also made additions. Though the said creditors have their right to challenge or contest the additions made in their hand but one thing is proved that the said creditors were having sufficient credit/finances in their accounts which fact has been proved from the fact that the additions have been made by their respective AOs in their hands. The said creditors have credited the impugned amounts to the assessee through banking channel. Moreover, the assessee has also explained the source of the creditors also. He has invited our attention to a table to show that an amount of Rs.10 crores had been advanced by Niranjwal Credit and Holding Pvt. to the assessee. The said Niranjwal Credit and Holding Pvt. had amalgamated with Flair Engineering Pvt. Ltd. and further that the source of this Rs.10 crores was the amount received from Sulabhya Engineering Pvt. Ltd. Similarly, an amount of Rs.16.02 crores was advanced to the assessee by Ved Investments and Trading Company Pvt. which has amalgamated with Wisdom Engineering Pvt. Ltd. The assessee has also explained the source of credits in the account of Ved Investments. Though the AO had made thorough investigations but the AO could not establish a link that the money had actually travelled from the assessee to the creditors or even to their source companies. Under such circumstances, so far as the creditworthiness of the creditors of the assessee was concerned, the same is established on the file. When the assessee has proved that the money has been credited to the account of assessee through banking channel, through legal entities who are assessed to income tax and their assessment has also been completed under scrutiny assessment proceedings under section 143(3) of the Act and the said companies were also

found to have possessed of sufficient amount in their accounts, then, under such circumstances, the assessee has discharged the burden on its part. Once the assessee has discharged the burden on its part, the burden shifts upon the AO to prove that the funds have travelled from the hands of the assessee. The AO, however, has failed to establish the link or the chain or route of funds from the assessee to the creditors or even to their source despite adequate investigations. The Hon'ble Rajasthan High Court in the case of "Aravali Trading Company" (supra) has held that once the existence of persons in whose names credits are found in the books of the assessee is proved and such persons own such credits with assessee, assessee is not required to prove source from which creditors could have acquired money to be deposited with it. Similar view has been taken by the Hon'ble Rajasthan High Court in the case of "Jai Kumar Bakliwal" (supra). In the case of "Dharmadevi Finance Pvt. Ltd." the Hon'ble Gujarat High Court has observed that where it was found that in respect of the creditors the assessee had filed PAN of creditors, their confirmation and their bank statement which established their creditworthiness and the transactions were made through banking channel then additions under section 68 cannot be made in the hands of that assessee. Almost similar observations have been made by the different Hon'ble High Courts in various decisions as relied upon by the Ld. A.R. of the assessee as mentioned above. Though the Ld. D.R. has relied upon the decision of the Hon'ble Calcutta High Court in the case of "Raj Mandir Estates Pvt. Ltd. vs. CIT" GA No.509/2016 decided vide order dated 13.05.16 wherein the issue was regarding the source of share application money. The Hon'ble Calcutta High Court has considered various facts and circumstances that wherein the creditors could not disclose the nature of receipts at their end and the matching amounts were deposited into the accounts of the subscribers shortly before the cheques issued in favour of the assessee were presented for collection. It was held by the Hon'ble Calcutta High Court that though identity of the shareholders were proved but the genuineness of the transactions was not

proved. There were several other factors considered by the Hon'ble Calcutta High Court for holding that the genuineness of the transactions was not proved. However, the facts and circumstances of the case of the assessee as discussed above, are on different footing. Moreover, we, at this stage, are guided by the decision of the Hon'ble Supreme Court in the case of "Lovely Exports Pvt. Ltd." (2009) 319 ITR (st.) 5 wherein it has been held that once the assessee has given the complete details and information of the investors who have made investments in the share capital of the company and proved their identity, then no addition can be made in the hands of the assessee company in respect of such investments and that the Department should proceed against the individual investors. Even the Jurisdictional Hon'ble Bombay High Court in the case of "CIT vs. Tania Pvt. Ltd." (supra) has held that wherein in the books of the accounts of the creditors, corresponding entries of advancement of loan have been made, the books of accounts itself would indicate the capacity of the party to advance loan and there was no further need on part of assessee to prove the capacity of creditors. The Hon'ble Gujarat High Court in the case of "CIT vs. M.K. Brothers" (1987) 163 ITR 249 in relation to the issue of alleged bogus purchases has held that where there was nothing to indicate that the amount given by the assessee for the purchases made had come back to the assessee in any other form and where there was no evidence that the said concerns gave bogus vouchers to the assessee and even the statements made by the alleged suppliers in no way implicate the transaction with the assessee then under such circumstances it cannot be said that entries for the purchase of goods made in the books of account of the assessee were bogus and no addition in this respect can be made.

The facts of the assessee, as discussed above, are on better footing than that of the cases cited/discussed above. Hence, in view of our observations made above and in the light of the case laws as discussed above, the additions made by the AO treating the loans as unexplained is not held to be justified. The same is accordingly ordered to be deleted.

8. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 28.09.2016.

**Sd/-
(G.S. Pannu)
ACCOUNTANT MEMBER**

**Sd/-
(Sanjay Garg)
JUDICIAL MEMBER**

Mumbai, Dated: 28.09.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.