

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.629/Mum/2020
(Assessment Year :2013-14)**

M/s. Nisarg Lifespace LLP 310, 3 rd Floor, Devavrata Building Plot No.83, Sector-17 Vashi, Navi Mumbai-400705	Vs.	ITO 28(2)(3) 3 rd Floor, Tower No.6, Vashi Railway Station, Commercial Complex, Vashi, Navi Mumbai – 400 704
PAN/GIR No.AAIFN9065A		
(Appellant)	..	(Respondent)

Assessee by	Shri Neelkanth Khandelwal
Revenue by	Shri Tharian Oommen
Date of Hearing	24/05/2021
Date of Pronouncement	11/06/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.629/Mum/2020 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-26, Mumbai in appeal No.CIT(A)-26/IT-10265/2016-17 dated 12/12/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2016 by the Id. Income Tax Officer – 28(2)(3), Mumbai (hereinafter referred to as Id. AO).

2. The Ground No.1 raised by the assessee was stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the Bar and hence the Ground No.1 raised by the assessee is dismissed as not pressed.

3. The Ground Nos. 2 & 3 raised by the assessee are challenging the action of the Id CITA upholding the addition made u/s 68 of the Act in respect of loans received by the assessee. The interconnected issue involved therein is challenged in Ground No. 4 by the assessee with regard to disallowance of interest on aforesaid unsecured loans.

3.1. We have heard the rival submissions and perused the materials available on record. We find that the assessee is engaged in the business of builders and developers. The return of income for the Asst Year 2013-14 was filed by the assessee LLP on 24.9.2013 declaring total loss of Rs 13,36,999/-. This return was duly processed u/s 143(1) of the Act accepting the same. Thereafter, the case was selected for scrutiny by issuance of notice u/s 143(2) of the Act on 3.9.2014. Various details and documents that were called for by the Id AO were duly submitted by the assessee during the course of assessment proceedings. The Id AO observed that on perusal of tax audit report for the year under consideration, it was seen that assessee had taken unsecured loans of Rs 4 crores from 4 parties. A search and seizure action u/s 132 of the Act was conducted by the investigation wing of Income tax department on Shri Praveen Kumar Jain and the concerns managed by him on 1.10.2013, wherein it was unearthed that they were found to be indulged in the business of providing accommodation entries of bogus sales / purchases / loans and advances to many parties. The Id AO alleged that the assessee

had taken accommodation entries of bogus loans from the concerns used by Shri Praveen Kumar Jain group to run its business.

3.2. We find that the assessee had received unsecured loans during the year under consideration from the following parties for the purpose of its business, apart from other parties together with the details of interest paid to these parties are as under:-

<u>Name of the Loan Creditor</u>	<u>Loan Amount</u>	<u>Interest Amount</u>
Sumukh Commercial Pvt Ltd	50,00,000	4,81,667
Olive Overseas Pvt Ltd	1,00,00,000	10,21,667
Josh Trading Co Pvt Ltd	1,00,00,000	9,01,667
Casper Enterprises Pvt Ltd	50,00,000	5,45,000
Nakshatra Business Pvt Ltd	1,00,00,000	10,20,000
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	4,00,00,000	39,70,001
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3.3. We find that the Id AO had observed that the aforesaid concerns were operated by Shri Praveen Kumar Jain and belong to his group. During the course of search action u/s 132(1) of the Act on 1.10.2013, Shri Praveen Kumar Jain had given statement on oath that his concerns are engaged in the business of providing accommodation entries and that his concerns do not indulge in real business activities. Accordingly, the Id AO issued a show cause notice to the assessee as to why the aforesaid loans should not be treated as unexplained cash credit u/s 68 of the Act and consequential disallowance of interest thereon should not be made.

3.4. We find that the assessee had responded to the Id AO by stating that a general confession made by a third party that all his transactions are bogus or that he had indulged only in bogus transactions cannot be the basis for addition in the hands of the assessee. It was specifically pointed out that in none of the statements given by Shri Praveen Kumar

Jain or his accomplices, the name of the assessee had been mentioned. It was pleaded that the Id AO had not found any material pointing that the transactions of the assessee with the aforementioned loan parties are not genuine. It was also pointed out to the Id AO that Shri Praveen Kumar Jain had retracted his statement subsequently on 15.5.2014 by way of an affidavit filed before the income tax department. The assessee filed a copy of the said affidavit before the Id AO. Accordingly, it was pleaded that the sole basis for proposal for addition u/s 68 of the Act is only statement of Shri Praveen Kumar Jain , which stood subsequently retracted by him. We find that the assessee from its part, had duly discharged its onus, by furnishing the following documents before the Id AO for all the 5 loan creditors:-

- a) Confirmation letter from the companies (loan creditors) duly confirming the amount of loan given by them.
- b) Master data of the companies (loan creditors) extracted from the website of the registrar of companies (ROC) showing that the compliance have been made by them with ROC and that the company is fully active.
- c) Copy of the financial statements of the companies (loan creditors) for the financial year 2012-13.
- d) Copy of ITR acknowledgement of the companies (loan creditors) for the Asst Year 2013-14.
- e) Extracts of the bank statements of the companies (loan creditors) showing the amounts paid by them to the assessee.
- f) Declaration given by the companies (loan creditors) duly confirming the loan transactions.
- g) Copy of the letter filed by the said companies (loan creditors).

3.5. It was pleaded that based on the aforesaid documents, the loans taken by the assessee from the aforesaid 5 parties are genuine loans taken for commercial expediency for business purposes and not accommodation entries. The assessee also sought for cross-examination of Shri Praveen Kumar Jain before the IdAO , which was not provided by the Id AO.

3.6. We find that the Id AO completely ignored the aforesaid contentions of the assessee and the documentary evidences filed hereinabove and concluded that the assessee had not been able to satisfactorily explain the nature and source and creditworthiness of the unsecured loan credits totalling to Rs 4 crores purported to have been taken from those 5 parties and accordingly treated the same as unexplained cash credit u/s 68 of the Act. Since the loans were added as income , the interest paid on such loans amounting to Rs 39,70,001/- was sought to be disallowed by the Id AO in the assessment. This action of the Id AO was upheld by the Id CITA.

3.7. From the perusal of the assessment order, we find that the Id AO had given more emphasis in the entire assessment order to discuss the modus operandi adopted by Shri Praveen Kumar Jain and his group which had been unearthed during the search action carried out on him on 1.10.2013. We find that the assessee had submitted before the Id AO that nowhere in the statements of Shri Praveen Kumar Jain or his accomplices, the name of the assessee LLP had been mentioned. This fact has not been controverted by the Id DR before us. Moreover, the assessee had also sought for cross-examination of Shri Praveen Kumar Jain, which was never afforded to the assessee either by the Id AO or by the Id CITA. Hence we hold that the entire addition made by the Id AO and confirmed by the Id CITA, merely based on the statement of Shri Praveen Kumar

Jain (third party) (which also stood subsequently retracted by him by way of an independent affidavit), deserve to be deleted on this count itself. No other corroborative evidence was brought on record by the revenue to even remotely suggest that the loan transactions carried out by the assessee with the aforesaid 5 loan creditors to be ingenuine.

3.7.1. It is pertinent to note that the assessee had duly discharged its onus by submitting all the relevant details (as listed supra) that are available with it before the Id AO. All these documents clearly prove the identity of the loan creditors, creditworthiness of the loan creditors and genuineness of transactions. We find that the Id AO had not even bothered to issue notice u/s 133(6) of the Act to the loan creditors to verify the veracity of the documents submitted by the assessee. In other words, the Id AO simply remained silent after receiving all the documentary evidences from the assessee. It is settled law that when documentary evidences are submitted by the assessee, the Id AO is duty bound to examine its veracity by making further enquiries in the manner known to law. Without testing such documents by making proper enquiries, no adverse inference could be drawn by the Id AO on those documents. We hold that once all the relevant documents are submitted by the assessee regarding the loan creditors together with the latest addresses available with it supported by confirmations from them, the onus cast on the assessee u/s 68 of the Act stands duly discharged and no addition could be made in its hands. Reliance in this regard is placed on the decision of *Hon'ble Jurisdictional High Court in the case of CIT vs Orchid Industries P Ltd reported in 397 ITR 136 (Bom)*. We further hold that no addition could be made on mere presumption that the assessee routed its own cash in the form of unsecured loans without any concrete evidence to this effect. Reliance in this regard is placed on the decision of

Hon'ble Jurisdictional High Court in the case of PCIT vs Aquatic Remedies P ltd in ITA No. 83 of 2016 affirming the tribunal decision in ITA No. 6356/Mum/2014. We further find that all the loans were duly repaid by the assessee either in the same assessment year or in the immediately succeeding assessment year with interest after subjecting the interest to due deduction of tax at source. These facts are not controverted by the revenue before us. Hence the addition made u/s 68 of the Act deserve to be deleted on merits also. Correspondingly, the interest paid on such loans would become allowable expenditure u/s 36(1)(iii) of the Act as there is no dispute that the monies received in the form of loans had been utilised by the assessee LLP for its business purposes.

3.8. Moreover, we also find that all the aforesaid loan parties had been accepted to be genuine and additions made u/s 68 of the Act had been directed to be deleted by this tribunal in the following cases :-

- a) DCIT vs D.N.H.Spinnners Pvt Ltd in ITA Nos. 6315 & 6316/M/2017 for Asst Years 2013-14 & 2014-15 dated 8.8.2019 (Mumbai Tribunal)
- b) ACIT vs Hetali Enterprises in ITA No. 421/Mum/2018 for Asst Year 2013-14 dated 9.4.2021 (Mumbai Tribunal)

3.9. In view of aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we direct the Id AO to treat the loans received from aforesaid 5 parties as genuine and delete the addition made u/s 68 of the Act. Correspondingly, the interest paid on such loans also should be allowed as deduction. Accordingly, the grounds 2 to 4 raised by the assessee in this regard are allowed.

4. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 11/06/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai; Dated 11/06/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai