

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 2/SRT/2024

Assessment Year: (2016-17)

(Physical Hearing)

Prarthana Gems, 6/2245, 205, Pooja Complex, Hawada Sheri, Mahidharpura, Surat - 395003	Vs.	The DCIT, Circle – 2(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAJFP5562F		
(Appellant)		(Respondent)

Appellant by	Shri Hiren Vepari, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	29/10/2024
Date of Pronouncement	14/11/2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 24.11.2024 by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2016-17.

2. The grounds of appeal raised by the assessee are as under:

“(1) On the facts and circumstances of the case, the learned CIT(A) was not justified in confirming addition in respect of unsecured loans received of Rs.25,00,000 particularly when the appellant satisfied all the ingredients viz. identity, genuineness and creditworthiness.

(2) The learned CIT(A) ought to have appreciated the bona fide of the creditor, given the circumstantial past reference.

(3) The learned CIT(A) was not justified in confirming disallowance of interest paid to the credit of Rs.1,25,000.

(4) The appellant craves leave to add, alter or vary any of the grounds of appeal."

3. Brief facts of the case are that assessee filed its return of income for AY.2016-17 on 22.09.2016, declaring total income at Rs.19,37,130/-. The Assessing Officer (in short, 'AO') issued notices u/s 143(2) and 142(1) of the Act. In response thereto, assessee filed various details, which were duly examined by the AO. During the year, the assessee derived income from the business of importing, exporting, processing and trading of rough and polished diamonds. The assessee had obtained loans and deposits from 5 persons amounting to Rs.3,45,00,000/- including Rs.25,00,000/- from Mr. Rafique Peer Mohammad during the year. The AO had received replies from four creditors, but not from Mr. Rafique Peer Mohammad. Hence, AO issued show cause notice to assessee stating that the loan from the above individuals is outstanding during him the year. He further informed assessee that notice u/s 133(6) was issued to the above party, requiring to submit various details such as ledger account of the assessee, bank statement, confirmation of unsecured loans, ITR filed for AY.2015-16 and 2016-17 and copy of capital account or FY.2014-15 and 2015-16. However, the party did not furnish any details. In this connection, the assessee informed AO that the lender expired on 29.06.2016 and hence there was no compliance. The AO asked the assessee as to why this amount of unsecured loan be not treated as income of the assessee. The reply of the assessee is at para 4.1 of the assessment order. The assessee stated that initially it has received Rs.25,00,000/- as loan from Mr. Rafique Peer Mohammad in FY.2009-10 by account payee cheque which was repaid in FY.2012-13. Again, assessee received loan from the above party on 01.10.2015. The lender

expired on 08.07.2016 and his legal heir and wife migrated to London. Hence, no reply was submitted by the lender. The AO was not convinced about the reply of the assessee. He observed that the creditworthiness of the person has not been established. On the request of assessee, another notice was issued before deciding the issue. The assessee further stated that Mr. Rafique Peer Mohammad had received back the loan given by him to M/s Pranjali Star on 01.10.2015 and the loan of Rs.25,00,000/- was given out of the fund received from M/s Pranjali Star. Subsequently, assessee submitted that the above loan was repaid on 18.05.2016 by selling polished diamonds worth 90.72 carats to the lender and the same has been added to the capital account of Shri Samir I. Mehta, partner of the assessee firm. The AO did not accept the explanation and added the amount as unexplained cash credit u/s 68 of the Act. He also disallowed interests thereon amounting to Rs.1,25,000/-, claimed to have been paid on this unsecured loan. Accordingly, total income was assessed at Rs.46,52,660/-.

4. Aggrieved by the order of AO, the assessee filed this appeal before CIT(A). The appellant submitted that the identity of lender and genuineness of transaction are established because the said late Mr. Rafique Peer Mohammad was having PAN as well as death certificate and he has also duly signed confirmation of accounts to prove the identity and genuineness of the transaction. As regards the creditworthiness, the assessee submitted that Mr. Rafique Peer Mohammad was having sufficient balance available in his bank account at the time of lending to the appellant. The fund available at the relevant time was not infused in the bank account by way of cash but was in fact credited to his account by way of cheque on

account of return of unsecured loan from third party. The lender has also advanced the loan to assessee by way of RTGS; and hence thus, the identity, genuineness of transaction and creditworthiness are duly established. The assessee had relied on the decision in cases of CIT vs. P. K. Nurjahan, 237 ITR 570 (SC), Kishanchand Chellaram, 125 ITR 713 (SC) and various other decisions as noted in page 19 of the appellate order. The appellant further stated that the liability was discharged in the next financial year by sale of diamonds of 90.72 carats, equivalent to Rs.25,06,140/- by Shri Samir I. Mehta, partner of the assessee firm. The same has also been added to the capital account of the said partner. The CIT(A) was, however, not satisfied with the reply of the assessee. He observed that the past transaction with reference to the alleged lender was not tested by AO in any assessment proceedings. The entries in the bank account also do not constitute conclusive evidence to prove the creditworthiness of the lender. The appellant was having transactions with the lender but he did not know the line of business of the lender. Besides, assessee was not sharing all relevant information and the claim of having settled the loan in kind was not found to be true by AO. For these reasons, the CIT(A) dismissed the appeal of assessee.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The Learned Authorized Representative (Ld. AR) of the assessee has filed paper book and submitted that the lender was a resident of Bulabhai Desai Road in South Mumbai and was operating a diamond factory in Kandivali, Mumbai by the name of "Arpee Cleavurs". The assessee had borrowed funds on two occasions from him i.e., on 21.01.2010 which was repaid on 31.05.2012 and on 01.10.2015

which was repaid in kind by selling diamond of 90.72 carats worth Rs.25,06,140/- by Shri Samir I. Mehta, partner of the assessee firm. Mr. Rafique P. Mohammad passed away on 29.06.2016 and his sole legal heir and wife moved to London, UK after his death. Regarding the creditworthiness, the Ld. AR submitted that the lender's residential address was on Bulabhai Desai Road in the upmarket Breach Candy locality of South Mumbai. The lender breath his last in Breach Candy Hospital which is a very expensive private hospital, renowned for catering to several wealth and famous patients. The Ld. AR also submitted that assessee has explained the 'source of source of source of source' of the fund through the chain of loan transactions. He further submitted that the loan was repaid in kind by sale of equivalent amount of polished diamonds by one of the partners of the firm and the same was later credited to the partners. It was also submitted that in the scrutiny assessment for AY.2010-11, there was no addition of the unsecured loan. Regarding the AO's contention, disputing claim of repayment which is not disclosed in clause 31c of Form 3CD, it was submitted that non-disclosure is regrettable but the audit report with detailed notes uploaded as an attachment to Form 3CB – 3CD for AY.2016-17 and 2017-18 clearly shows repayment of loan in the books of the assessee. Thus, repayment is disclosed in Form 3CB – 3CD, although it is missing in clause 31c of Form 3CB. The Ld. AR also submitted that interest was paid through banking channel and assessee had made TDS whenever interest was paid. Since repayment of loan was made in the next year, the addition is not sustainable in view of decisions in cases of Ayachi Chandrashekhar Narangji, 42 taxmann.com 251 (Guj.), Ojas Tarmake (P.) Ltd., 156 taxmann.com 75 (Guj.),

Ambe Tradecorp (P.) Ltd., 145 taxmann.com 27 (Guj.), Rajhans Construction (P.) Ltd., 140 taxmann.com 370 (Surat – Trib.) and Mega Construction (P.) Ltd., 151 taxmann.com 403 (Surat – Trib.). In view of the above, the Ld. AR requested to delete the addition.

6. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) of the revenue supported the orders of lower authorities. He submitted that no agreement for settlement between the lender and assessee has been submitted by the assessee. Hence, no credence should be given to such claim.

7. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the parties. There is no dispute regarding the fact that the appellant had received loan of Rs.25,00,000/- in cheque from Mr. Rafique Peer Mohammad during the year under consideration. The AO submitted that despite issue of statutory notices and show cause notice, the lender has not submitted relevant details and supporting evidences to establish genuineness of transaction and creditworthiness of the lender. On the other hand, the Ld. AR submitted that all three limbs of section 68, i.e., identity, genuineness of transaction and creditworthiness of lender have been satisfied. The contention/submissions of the parties have already been discussed in the preceding paragraph and hence not repeated here. Mr. Rafique Peer Mohammad had earlier given loan of Rs.25,00,000/- through banking channel to the appellant on 21.01.2010. The said loan was repaid to the lender on 31.05.2012. This amount was subsequently given to one M/s Pranjal Star by the said lender on 01.06.2012. M/s Pranjal Star repaid the loan to Mr. Rafique Peer Mohammad on

01.10.2015. Mr. Rafique Peer Mohammad again advanced loan to assessee on 01.10.2015, which was claimed to have been repaid in kind by selling 90.72 carats of polished diamonds by Shri Samir I. Mehta, one of the partners of the assessee firm. The AO and the CIT(A) have not accepted the creditworthiness of the lender. To rebut the said finding, the Ld. AR has stated that the lender was staying at Bhulabhai Desai Road in the upmarket Breach Candy locality of South Mumbai. Further, he was treated at Breach Candy Hospital which is a very expensive hospital. His legal heir and wife also migrated to London after his death. The lender was also operating a diamond factory at Kandivali, Mumbai. Therefore, it would be wrong to infer that the lender was not a man of means and lacked creditworthiness. Further, assessee has given PAN, ITR and confirmation of the lender to show that the loan was genuine. The loan was also undisputably advanced through account payee cheque. The immediate source of the fund was the repayment received by the lender in cheque and not in cash from one M/s Pranjal Star, who has given the confirmations from AY.2013-14 to 2015-16. Bank extracts of loan receipt and loan repayment by M/s Pranjal Star are enclosed at pages 35 and 44 of the paper books. Since the lender expired on 29.06.2016 in Breach Candy Hospital, he was not able to respond to the notices issued to him u/s 133(6) of the Act. This fact alone cannot negate the overwhelming factual and circumstantial evidences advanced by the appellant. In view of this fact discussed above, we are of the considered view that the appellant has satisfactorily explained the nature and source of the credit of Rs.25,00,000/- in its books for the

subject assessment year. Accordingly, the order of CIT(A) is set aside and the AO is directed to delete the addition of Rs.2,50,000/- made u/s 68 of the Act.

8. In the result, ground nos.1 & 2 are allowed.

9. Ground No.3 pertains to disallowance of interest paid to creditor amounting to Rs.1,25,000/-. The Ld. AR submitted that interest was paid through banking channel and assessee has made TDS wherever interest was paid. The Ld. AR has submitted bank statement where payment of Rs.56,250/- each on 01.01.2016 and 28.03.2016 were made through NEFT to Mr. Rafique Peer Mohammad. Therefore, assessee has paid interest after deducting TDS. We have already deleted the addition of cash credit u/s 68 of the Act of the impugned loan. Hence, disallowance of interest of Rs.1,25,000/- is also deleted and the ground is allowed.

10. In the result, the ground no.3 is allowed.

11. In the combined result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 14/11/2024.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 14/11/2024

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat