

THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 4079/Mum/2019 (Assessment Year 2013-14)

JCIT(OSD)-CC-7(4) Room No. 659 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Shalimar Housing & Finance Ltd. 505, Shalimar Morya Park Andheri West Mumbai-400 053. PAN : AAACS6732N
(Appellant)		(Respondent)

Assessee by	Shri Vijay Mehta
Department by	Shri Rajesh Kumar
Date of Hearing	16.03.2021
Date of Pronouncement	01.06.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A) dated 22.3.2019 and pertains to Assessment Year 2013-14.

2. The grounds of appeal read as under :

1. "Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs. 13,10,50,000/- on account of unexplained cash credit u/s 68 of the I T Act, which the assessee obtained from dubious companies providing accommodation entries and having no justified financials for lending such money."

2. "Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs. 69,10,117/- made on account of deduction claimed by the assessee for interest payment on unexplained unsecured loan from dubious lenders."

3. Brief facts of the case are that the Assessing Officer observed in the assessment order that the assessee has shown unsecured loans from various parties totalling to Rs. 16,54,00,000/-. He had asked the assessee to furnish the details of the unsecured loans alongwith loan confirmations and interest paid. According to him, the assessee submitted a list of 22 parties

from whom loans of Rs. 13,87,50,000/- have been taken by the assessee during the year. The loans received by the assessee party-wise are as under:

S. No.	Name of The Parties	Loan Amount	Interest
1	Akt Consultancy Services P Ltd	1,000,000	52,603
2	Apnapan Mercantile Pvt Ltd	6,200,000	188,438
3	Bolero Commotrade Pvt Ltd	2,500,000	18,274
4	CMM Infra Projects Ltd	3,000,000	468,109
5	Confident Vinmay Pvt Ltd	13,200,000	247,671
6	Crest Vanjiya Pvt Ltd	1,500,000	61,644
7	East west Finwest India Ltd	14,000,000	105,891
8	Essar India Ltd	2,700,000	894,685
9	Gielle Investment Ltd	3,500,000	176,439
10	Improve Vintrade Pvt Ltd	1,000,000	72,877
11	Jayant Security & Finance Ltd	14,750,000	2,254,339
12	Jay Jyoti India Pvt Ltd	24,900,000	1,419,557
13	Shardha Buildcon Pvt Ltd	2,000,000	
14	Octagon Media Metrix Lvt Ltd	3,500,000	
15	Palasia Lesing and Investment P. Ltd	3,500,000	941,260
16	Purvi Finvest Ltd	5,000,000	-
17	Santima Logistics Services Pvt Ltd	600,000	26,959
18	Surya Tradecom Pvt Ltd	10,700,000	152,466
19	Tropical Vyapaar Pvt Ltd	8,500,000	260,904
20	Utsav Textile Traders Pvt Ltd	3,800,000	190,521
21	Veronica Vyapaar Private Limited	1,000,000	55,616
22	Winsher Commercial Pvt Ltd	11,900,000	684,658
	Total	13,87,50,000	82,72,911

4. The assessee has furnished the documents supporting the transactions, but the Assessing Officer was not satisfied with the same. He had issued notices u/s. 133(6) of the Income Tax Act to the parties advancing the loans to the assessee with a request to furnish the details of the unsecured loan along with confirmation and interest details, copy of the bank statement highlighting the payments made, copy of the return of income alongwith the audited balance sheet, profit and loss account alongwith annexures. All the parties have complied with the notices and furnished the details called for by the Ld.AO. The AO noted that assessee's explanation that the assessee being a borrower is not in control of the income and expenses of the lender. That the

interest paid by the assessee to the lenders has been duly confirmed and credited to their respective profit and loss account. That the companies are assessed to tax which is sufficient evidence of availability of sources of their assets, income and expenditure. That the financial statements of the investors clearly indicates substantial position of funds available with them for giving loans. That the assessee has submitted that they had proved the identity genuineness and creditworthiness and as such the onus to substantiate the unsecured loans has been discharged. After considering the assessee's submissions and the submissions made by the parties themselves directly to the AO, the Assessing Officer made observations in respect of 19 parties out of total 22. He was of the opinion that these parties do not have sufficient credit worthiness. This was based upon his observation that the parties have shown small income and their source of fund comprised of security premium and shares capital. Without referring to any reason AO held that the sources of these has not been proved. Therefore, AO made an addition of Rs.13,10,50,000/- which is the amount pertaining to 19 out of 22 parties. There is no discussion regarding the remaining three parties nor any disallowance with regard to the loans received from these three parties was made.

5. The AO also made disallowances of interest paid on these loans holding them to be not for business purpose.

6. Upon assessee's appeal learned CIT(A) noted that the assessee interalia made following submission :

"Your Honour, at the outset we wish to submit that there is no dispute that the appellant has borrowed money for the purpose of business in the course of construction of residential project at Indore. The details as required in order to justify and explain the unsecured loans are filed on record with the AO. The same comprises of the following:

- a) Ledger account confirmation of lenders
- b) Bank statement of lenders reflecting loans given to Appellant company by account payee cheques

- c) Financial statement of lenders including audit reports, balance sheet and Profit and Loss Account
- d) Copy of acknowledgement of Return of Income.

All the above clearly evidences the identity of lenders, genuineness of transaction and the creditworthiness of the lenders. There is no dispute raised by AO on the issue of identity and genuineness of the transaction.

IDENTITY OF LENDERS

All the lenders are duly incorporated Private Limited Companies. The copy of Acknowledgement of Returns are available with the AO which evidences that all the lender companies are assessed to tax. The fact that enquiries have been made by AO by issuing notices u/s 133(6) to parties and all have been duly complied and responded by the parties. Hence, the identity of the persons is completely established.

GENUINENESS OF TRANSACTION

With respect to the genuineness of the transaction, we wish to submit that the loans are utilized in course of business of residential project. The said loans have been received by account payee cheques. The bank statements of lenders clearly reflect the amounts paid to Appellant company. The transactions have been duly confirmed by them through the Appellant as well as directly to AO in their response to notice u/s 133(6). Thus, the genuineness of the transaction is also proved beyond doubt.

CREDITWORTHINESS OF LENDERS

With respect to the issue of creditworthiness, we wish to submit that the audited financial statements of all lender companies have been called on record. The same reflects volumes about the creditworthiness of the lenders in terms of their ability to lend to the appellant company. The creditworthiness can be best judged from the following:

- a) Net worth (assets minus liabilities)
- b) Fixed Asset holdings
- c) Investments and stock in hand
- d) Bank Balance as date of balance sheet
- e) Peak balance of the month in which amount lent to Appellant company.
- f) Turnover”

7. Thereafter, the assessee gave further detailed submission and finally submitted following conclusion :

- 1) The Appellant has furnished the details and source of Unsecured Loans obtained by filing the confirmation from lender companies.
- 2) The A.O. has made independent Enquiries by issuing notices U/s. 133(6) to all lenders, which have been duly complied and responded by respective lenders.

3) The genuineness of transaction, identity and capacity (creditworthiness) of lenders has been fully substantiated and explained with evidences filed on record.

4) The criteria of testing creditworthiness from the Profit and Loss Account, based on low income/low tax is incorrect, but the creditworthiness is adjudged from the Balance Sheet reflecting Net Worth, sources and application of Funds available with the entity.

5) The Bank Statement of Lenders reflects substantial peak Balance at the time of granting loans to appellant company.

6) The A. O.'s remark of Lender Company revealing Security Premium/share application in Balance Sheet and Source of same is not proved is an attempt to make an assessee do the impossible. The requirements to explain Source of Source as per Proviso to Section 68 is not applicable to the credits from Unsecured Loans/ Borrowings.

7) Most of the loans have been repaid in the next year within a short period of time by the Appellant. Loan from one party of Rs. 2.50 Crores has been squared off during the year itself.

In view of the above, we submit the additions made U/s. 68 is highly unjustified and may be deleted."

8. It was also submitted that the total of loans received during the year is Rs.13,72,50,000/- and not Rs. 13,87,50,000/- as mentioned by the Assessing Officer. The difference is arising because the loan received from M/s. Oxygen Media Metrics Pvt. Ltd. has been mentioned as Rs.35 lakhs by the Ld.AO whereas the actual borrowing is only Rs.20 lakhs. Perusing the above learned CIT(A) held that the assessee has proved the identity, creditworthiness and genuineness of the transaction. That the Assessing Officer has issued notice to the parties under section 133(6) and all the compliance has duly been made. That if Assessing Officer was still having same doubt he should have made further enquiry. That this is not a case of share capital but of loan which has also been repaid. Learned CIT(A) held as under :

"5.4 The submissions of the learned Counsel have been considered carefully alongwith the assessment order. It is the learned Counsel's contention that the assessee has discharged the primary onus cast on it by providing necessary documentary evidences to prove the three criteria i.e, identity, creditworthiness of the lender and the genuineness of the transaction. The Assessing Officer had also independently issued notices u/s.133 (6) to all the parties who have complied with the same and provided the Ld.AO with the required evidences. In a few cases, where the balance-sheet of the lender party was not enclosed by the party, the assessee had

obtained the same creditor and genuineness of the transaction. All the lenders are income-tax assesseees and have filed Returns of income. The transactions have taken place through banking channels. The bank account statements of all the lender parties have been furnished to the Ld.AO which did not evidence any cash deposits or anything abnormal. The Assessing Officer states that there are certain abnormal features noticed by him which are high turnover and high sundry creditors. High turnover and high sundry creditors are by no means abnormal features. Further, the returned income being less or more cannot be the sole factor in deciding whether the party is creditworthy or not. The returned income or loss can only be an indicator and cannot be a deciding factor to decide whether the transaction is genuine or not. There is no adverse evidence against either the assessee or any of the lender parties brought in by the Ld.AO to suspect the transactions as non-genuine. The lender companies have not been identified/recognised as shell companies by any authority. The Assessing Officer had issued notices u/s. 133(6) to all the parties which have been complied with. The Assessing Officer without bringing anything contrary on record and without assigning any reason has rejected the submissions made by the assessee and the creditors.

5.7 The Assessing Officer placed his reliance on the decision of the Hon'ble Apex Court in the case of Navodaya Castle Pvt. Ltd. vs. CIT [(2015) 230 taxmann 268], wherein the Hon'ble court held that certificate of incorporation, PAN etc, will not be sufficient for purpose of identification of subscriber company when there was material to show that subscriber was a paper company and not a genuine investor. In this case, the Assessing Officer has not discussed what is the material with him to show that the creditor was a paper company. Further, in cases where there was high securities premium in the balance-sheets of the creditor parties, the Assessing Officer stated that the source of the same was not proved. However, this is a case where the assessee has received loans from the said parties and not share capital and, therefore, the burden of proving the source of source is not required. This is a case where loans have been obtained by the assessee and have been subsequently repaid after payment of interest and deduction of tax at source. If the Assessing Officer suspected the transactions to be non-genuine, he should have done further enquiry to bring some evidence on record to show that the transactions are not genuine. The Assessing Officer is totally silent on this front. When the assessee has discharged its primary onus of proving the transactions as genuine, the onus shifted to the Ld.AO who had not discharged the onus but has merely brushed aside the evidences furnished by the assessee and made the addition on suspicion and presumption. An addition based only on the basis of suspicion and presumptions in the absence of any adverse finding cannot be sustained. The Ld.AO is directed to delete the addition of Rs. 13,10,50,000/- made u/s. 68.”

9. Learned CIT(A) further deleted the addition of alleged interest paid as under :

“The second ground of appeal is against the disallowance of interest expenditure of Rs.69,10,197/- by treating the same as not laid out or expended for the purpose of business. As discussed in the preceding paras the assessee had taken loans of Rs. 13,10,50,000/- during the year and made interest payment of Rs.69,10,197/- on the same. Some of these loans have been repaid in the very subsequent year and the others in later years. The assessee has paid interest after deducting tax at source. The parties to whom interest has been paid have shown this amount as their income in the Returns of income filed by them. Further, the loans on which this interest has been paid have been considered genuine while deciding the first ground of appeal in the preceding para. Therefore, the interest paid on these loans on which TDS is also made and which has been shown as income by the lender parties is also considered genuine. The Ld.AO is directed to delete the disallowance of Rs.69,10,197/-.”

10. Against the above order assessee is in appeal before us.

11. We have heard both the parties and perused the records.

12. Learned Departmental Representative relied upon the orders of the assessing officer. He submitted that Ld.CIT(A) should have done more enquiries. He further submitted that creditworthiness of the companies are not proved. That, without doing, further enquiry, he has allowed the assessee's appeal. Learned Departmental Representative relied upon the following case laws.

1. Hon'ble Calcutta High Court in CIT vs Precision Finance(P.) Ltd: [1995] 82 taxman 31(Cal.)
- 2.Hon'ble Delhi High Court in CIT vs Navodaya Castles(P.) Ltd: [2014] 50 taxmann.com 110(Delhi)
3. Hon'ble Kerala High Court in E.Ummer Bava vs CIT, Kozhikode: [2016] 72 taxmann.com 123(Kerala)
- 4.Hon'ble Supreme Court of India in PCIT(Central)-1 vs NRA Iron & Steel(P.) Ltd:[2019] 103 taxmann.com 48(SC)
5. Hon'ble ITAT Chennai Bench 'C' in Shantananda Steels(P.) Ltd. vs ITO, Corporate Ward 6(2), Chennai : [2020] 116 taxmann.com 335 (Chennai-Trib.)
- 6.Hon'ble ITAT Delhi Bench 'G' in ITO(Exemptions) Ward-7(4), New Delhi vs Synergy Finlease(P.) Ltd. :[2019] 105 taxmann.com 208 (Delhi-Trib.)
7. Hon'ble ITAT Kolkata Bench 'C' in ITO, Ward-5(3), Kol vs Blessings Commercial(p.) Ltd. :[2018] 91 taxmann.com 176 (Kolkata-Trib.)

13. On the other hand, Ld. Counsel of the assessee submitted that assessee has discharged its onus. That assessee has duly proved the identity, creditworthiness and genuineness of the transaction. He referred to the paper book submitted in this case, wherein the financials of the lending companies, the income tax returns and other necessary documents were attached. He also submitted documents, from the website of registrar of companies showing that all the lending companies are active and non-dormant companies. The Ld. Counsel submitted that assessee has also paid interest of these parties and has deducted tax at source. The same has duly been confirmed. The loan has been duly repaid by the assessee. Some of which even during the year itself. He submitted that in section 68 there is no provision of proving source of source of loan and that also without any reason or further enquiry. That the amendment made in section 68 is with respect to share application money and share capital. Hence, the addition made by the Assessing Officer was not at all justified. The Ld. Counsel of the assessee submitted that in view of the enormous details submitted, there is no reason why these loans should be added as unproved cash credit. He placed reliance upon several case laws in this regard.

14. We have carefully considered the submissions. We note that assessing in this case has submitted the following documents.

1. Confirmation from the lenders
2. Bank statement of lenders
3. Financial statement of lenders
4. Copy of acknowledgement of Return of Income.
5. Download of company master data from the MCA website.
6. Statement of loan repayment.

15. The Assessing Officer has duly issued notice u/s 133(6) to the above said parties. All the necessary confirmation and compliances have been made. The assessing officer thereafter has not brought on record result of any further enquiry made. The AO's observation from the financials of lenders submitted are in the nature of AOs surmise, devoid of any cogent enquiry.

16. The documents mentioned above with regard to all the lenders are also submitted before us, by way of paper book. We note that the identity of the lenders is duly proved. They have duly responded to assessing officers notice issued u/s 133(6) and have made due compliances. It is not even the case of the assessing officer that these parties are non-existent. The lending companies are also active companies as evident from the documents furnished from the website of Ministry of Corporate Affairs. The bank statement of the lending companies have also been furnished. Loan is granted through bank. No adverse inference has been noted by the assessing officer from the bank statement.

17. The grievance of the assessing officer is that these companies do not have substantial income and hence are not capable of giving loans. He has also expressed doubt about the position of reserves and fund position without bringing on record any cogent material from any further enquiry made by bench. We find that the funds position of the companies as noted by the Id.CIT(A) is quite capable of granting loans. The adverse inference drawn from the financial statement of lending companies is only a surmise by the assessing officer without making any enquiry. In this regard, we note that honorable jurisdictional High Court in the case of Pr.CIT vs Veedhata Tower Pvt.Ltd, order dated 21.04.2018 has held that when all the necessary details of the fund provider was available with the assessing officer, he was free to make the necessary enquiry and addition under section 68 in the hands of the recipient were unjustified. Furthermore, assessee has also paid interest to the lenders. It has also deducted tax at source. Loan have been duly repaid, some part has been repaid even in the present assessment year. In these circumstances, in our considered opinion assessee has discharged the onus. The assessing officer has not brought on record any cogent material to make the addition as unproved cash credit. Hence, the addition made by the assessing officer is not sustainable.

18. The case laws relied upon by the Ld. Departmental Representative are not at all applicable on the facts of the present case. In the case of Precision Finance(P.) Ltd (supra), the parties were found to be non-existent. In the case, we are dealing with it is nobody's case that the parties are non-existent. In Navodaya Castles(P.) Ltd (supra), share subscribers were found to be paper company. This is not at all the case here. In E.Ummer Bava (supra), the issue was gift from NRI where the creditworthiness of the donor was not proved. In Shantananda Steels(P.) Ltd (supra), the issue was share capital and huge share premium from entry providers from Kolkatta. In NRA Iron & Steel(P.) Ltd (supra), the issue was non-existent share applicants. In Synergy Finlease(P.) Ltd(supra), the issue was share capital and improbable share premium from accommodation entry providers. In Blessings Commercial(p.) Ltd(supra), the issue was share capital and huge share premium, where the providers had minimum balance in their bank account. Accordingly, we note these case laws do not help the case of the revenue.

19. Accordingly, in the background of aforesaid discussion and precedents, we do not find any infirmity in the order of Ld.CIT(A) regarding deletion of addition on account of loan. Accordingly, we are uphold the same.

20. As regard, the issue of interest on unsecured loan, the addition was made by the AO by holding that since the loan have been held by him to be unexplained the interest, thereon cannot be said to be for business purpose. Since, we have already held that addition of loan as unexplained credit is not sustainable, the disallowances of interest thereon, on the same reasoning is liable to be deleted. Hence, we uphold the order of the Ld.CIT(A) on the issue also.

21. In the result, this appeal filed by the revenue stands dismissed.

Pronounced in the open court on 1.6.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/06/2021

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai