

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'B' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAM LAL NEGI, JM

**ITA No.1250/Mum/2016
(Assessment Year :2010-11)**

ITO 20(2)(2) Room No.212, Piramal Chamber Lalbagu, Mumbai – 400 012	Vs.	Smt. Manjudevi Joitkumar Bhansali Room No.12, Pratiksha Tower, New Municipal Building, R.S.Nimkar Marg Mumbai – 400 008
PAN/GIR No. AABPJ8422J		
(Appellant)	..	(Respondent)

Revenue by	Shri Oommen Tharian
Assessee by	Shri Veerkumar Shah
Date of Hearing	23/11/2020
Date of Pronouncement	30/12/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1250/Mum/2016 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-32, Mumbai in appeal No.CIT(A)-32/IT-447/ITO-15(2)(1)/13-14 dated 23/12/2015 (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 22/03/2013 by the Id. Income Tax Officer – 15(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition made by the Id. AO u/s.68 of the Act in respect of loans received from certain parties by the assessee in the facts and circumstances of the instant case. We find that the revenue has also raised an additional ground stating that the Id. CIT(A) erred in admitting the additional evidences which were not produced by the assessee before the Id. AO during the course of assessment proceedings as well as in remand proceedings.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual deriving income from house property and income from other sources. During the year under consideration, assessee has also shown that an immovable property situated at Vasai was sold for consideration of Rs.16 lakhs and claimed index cost on acquisition thereon at Rs.17,32,622/- thereby reporting long term capital loss. During the year under consideration, the assessee had purchased one immovable property for a consideration of Rs. 4 Crores on 07/05/2009. The details of payments made towards purchase of the said property were duly furnished by the assessee. The assessee submitted before the Id. AO that she had borrowed unsecured loans from the following parties which were utilized for the purpose of property:-

(i) *Rs.1,00,00,000/- from M/s. Khushi Gems Pvt. Ltd.,(PAN - AADCK4106D), 802, CZ/22, Shrinathji Apt., Hathfaliya Road, Haripura, Surat-03;*

(ii) *Rs.1,00,00,000/- from M/s. Kothari Impex(PAN - APTPK2971A); 6/1874, Mahidharapura, Balisheri Sheet, Surat;*

(iii) *Rs.2,25,00,000/- from M/s. Shriram Exports(PAN - ADMPT2009D), 305, Super Diamond Apt., 7/3024, Saiyedpura Hagorwad, Surat;*

(iv) Rs.51,61,655/- from Shri Pravin Kumar B. Jain (PAN - ADMPT2009D).

3.1. We find that the Id. AO issued notices u/s.133(6) of the Act to three parties i.e. Khushi Gems Pvt. Ltd., M/s. Kothari Impex and M/s. Shriram Exports. The notices issued to M/s. Shriram Exports and M/s. Kothari Impex were returned back by the postal authority with the remark "left". The notice was duly served on M/s. Khushi Gems Pvt. Ltd., but no compliance was made by the said party. Accordingly, the Id. AO vide letter dated 19/03/2013 issued a show-cause notice to the assessee asking her to establish the identity and creditworthiness of the persons from whom unsecured loans were taken by producing the above mentioned parties before the Id. AO. The assessee's authorized representative filed written submissions dated 22/03/2013 before the Id. AO but could not produce the above mentioned three persons. The Id. AO in the absence of parameters for verification of unsecured loans concluded that the unsecured loans remained unverifiable and unexplained and accordingly, proceeded to treat the same as unexplained cash credit and made addition u/s.68 of the Act while completing the assessment.

3.2. The assessee submitted before the Id. CIT(A) that she had furnished copy of confirmations from the aforesaid three parties, their bank statements together with their return of income before the Id. AO. The assessee once again submitted before the Id. CIT(A) the copy of confirmation from these parties, their bank statements, their balance sheets, their return of income as well as ledger copy of those parties as appearing in the books of accounts of the assessee. Some of these documents were filed as additional evidences under Rule 46A of the IT

Rules. The Id. CIT(A) sought for a remand report from the Id. AO on the additional evidence filed by the assessee. The Id. AO submitted his remand report dated 09/10/2014 which was received by the Id. CIT(A) on 14/10/2014. In the said remand report, the Id. AO had submitted that the case of Mr. Vijay Narendra Kothari, proprietor of Kothari Impex, scrutiny in his file has been completed in a routine manner and the loan advanced to the assessee has been shown as advance on the asset side of his balance sheet. Similarly in the case of Mr. Sanjay Tiwari, Proprietor of Sriram Exports, the asset side of the balance sheet shows the advance given to the assessee. The Id. AO further submitted in his remand report that the case of Khushi Gems Pvt. Ltd., is with another Assessing Officer and the details of the same are being collected. The Id. CIT(A) observed in his appellate order at page 4 that another remand report was received from the new Assessing Officer of the assessee on 01/06/2015 vide letter dated 26/05/2015 wherein the Range Head i.e. Additional CIT had objected to the admission of additional evidences itself on the ground that there was failure of the assessee to produce these details before the Id. AO at the time of assessment proceedings. In the said remand report, the Additional CIT had also questioned the creditworthiness of the aforesaid three loan creditors stating they are not creditworthy to advance huge loans to the assessee. The Addl. CIT in his remand report even said that in the case of Mr. Vijay Narendra Kothari, Proprietor of M/s. Kothari Impex, though the turn over disclosed by him in his balance sheet was Rs.208.20 Crores, the total income as per return of income disclosed by him was only Rs.4,75,986/-. Similarly, in the case of Mr. Sanjay Tiwari, Proprietor of Shriram Exports, the Addl. CIT pointed out that the capital in business was Rs.22,11,118/-, gross turnover was Rs.153.47 Crores and income as per P & L account was only Rs.3,45,213/-. The Addl. CIT further stated that assessment in the case of Mr. Sanjay Tiwari, Proprietor

of Shriram Exports was completed after making disallowance of Rs.52,432/- and he further submitted that a sum of Rs.2.25 Crores given to the assessee as loan was duly reflected in the balance sheet of Shriram Exports. Similar observation was also made by the Addl. CIT in respect of third loan creditor i.e. Khushi Gems Pvt. Ltd., The Addl. CIT also pointed out in the remand report that all these three parties were covered by a search action u/s.132 of the Act as part of the search on the Surat Diamond Group and have during the course of search admitted on oath that they are not conducting genuine business who are engaged in giving accommodation entries.

3.3. The Id. CIT(A) forwarded both the remand reports received from the Assessing Officer to the assessee for her rebuttal. The assessee filed a rejoinder to the remand reports before the Id. CIT(A) by stating that the entire details that are available with the assessee and that could be filed in the instant case had been duly filed by the assessee before the authorities. The assessee also submitted in the rejoinder that entire borrowings had been duly repaid by the assessee and interest was also paid on such borrowings. It was also pleaded that the Id AO had duly allowed deduction towards interest paid on such borrowings. All the repayment of loans and payment of interest were indeed made by account payee cheques, accordingly it was pleaded that there is absolutely not a ray of evidence which indicate that there is some doubt regarding the genuineness of the transactions and the Id. AO had disbelieved the entire gamut of transactions with surmise and conjecture. It was pleaded vehemently that identity and creditworthiness were proved beyond doubt and genuineness of the loan transactions were also proved beyond doubt not only by the assessee alone but also by the concerned

Assessing Officers of the loan creditors. The assessee further sought to explain the entire loan transactions party wise as under:-

1. M/s. Shriram Exports:- The assessee borrowed a sum of Rs.2,25,00,000/- from the said party which was repaid in F.Y.2011-12 relevant to A.Y.2012-13 as committed. The repayment was made by issue of account payee cheques and through RTGS payments (Real Time Gross Settlement) as evident in the bank statement enclosed. The assessee also furnished the ledger copy of the accounts upto F.Y.2014-15 to prove the veracity of the transactions beyond doubt.

2. M/s. Kothari Impex:- The assessee borrowed a sum of Rs.1 Crore out of which assessee had repaid a sum of Rs.87 lakhs by way of RTGS on 23/11/2013 and Rs.13 lakhs was payable as on the date of making the submission before the Id. CIT(A). The assessee further submitted the ledger copy of the concerned loan creditor for the F.Yrs. 2009-10 to 2014-15 to prove the veracity of the transactions beyond doubt.

3. Khushi Gems Pvt. Ltd:- The assessee borrowed a sum of Rs.1 Crore from this party which was duly repaid within the agreed credit period by way of RTGS as evident in the bank statements enclosed. The assessee further submitted the ledger account copies of the said loan creditor for the F.Yrs.2009-10 to 2014-15 to prove the veracity of the transaction beyond doubt.

3.4. The assessee also produced copies of affidavit of Mr. Vijay Narendra Kothari who had retracted his statement made u/s.132(4) of the Act and also denied having given any accommodation entry. The said party had categorically stated that the statement u/s.132(4) of the Act was given out of mental pressure and was given in abnormal circumstances. It was also submitted by Mr. Vijay Narendra Kothari in the said affidavit that he is a proprietor of Kothari Impex and Director of Khushi Gems Pvt. Ltd.

3.5. The Id. CIT(A) duly appreciated the aforesaid transactions and factual submissions made by the assessee together with all the supporting evidences and deleted the addition made u/s.68 of the Act. The Id. CIT(A) also with regard to admission of additional evidences had dedicated an exclusive paragraph in para 11.1 in his appellate order stating that the assessee had infact submitted basic details of confirmations before the Id. AO which was not found satisfactory by the Id. AO as the assessee had not submitted the copy of PAN and balance sheets of the concerned loan creditors before the Id. AO. The said deficiencies were set right by the assessee by filing additional evidences before the Id. CIT(A). Hence, the said additional evidences need to be admitted and had to be examined as to its evidentiary value.

4. Aggrieved by the decision of the Id. CIT(A), the revenue is in appeal before us by filing regular grounds as well as additional ground for the admission of additional evidences as stated supra.

5. We find that assessee had ultimately submitted the following documents in respect of each of the loan creditors as under:-

- a. Copy of the PAN card of the loan creditor
- b. Copy of the return of income for the relevant assessment year of the loan creditor
- c. Copy of the financial statements of the concerned loan creditor for the relevant assessment year
- d. Copy of scrutiny assessment orders, wherever applicable, of the concerned loan creditors for the relevant assessment years.
- e. Copy of the specific annexure / schedule to the following statements, wherein the loan advanced to the assessee has been duly reflected on the asset side of the balance sheet of the concerned loan creditor for the relevant assessment year.
- f. Copy of the ledger account of the concerned loan creditors as appearing in the books of accounts of the assessee for the F.Yrs.2009-10 to 2014-15.
- g. Copy of the bank statements of the concerned loan creditors by also explaining the source of source.
- h. Copy of bank statement of the assessee to prove that the said loans were also repaid in subsequent years by account payee cheque / RTGS.
- i. Copy of confirmation from the concerned loan creditors accepting the said loan transactions with the assessee.

5.1. We find that the Id. CIT(A) had deleted the addition by making various factual and legal observations as under:-

“11.2 The situation which emerges is summarized. The AO examined the loans availed by the appellant of Rs 1 Cr each from Kothari Impex & Khushi Gems Pvt Ltd and of Rs 2.25 Cr from Shriram Exports. The appellant was able to produce confirmations, bank account statements and the ROIs of these 3 parties at the time of assessment. The AO however did not accept the same as he examined the source of funds in the hands of these 3 parties. The AO noted that the balance sheets of these parties were not produced, neither was their identity established. The AO held that the appellant was not able to produce the parties before him for examination and that the so called ROI was only the ITR V copy which was also unsigned. The AO therefore held that the identity of the parties, their creditworthiness as well as genuineness of transaction was not proved by the appellant. He therefore added the loans as unexplained cash credits. In appeal, the appellant produced all the documents filed at the time of assessment, as well as the PAN Card copies, balance sheets of these parties. The appellant submits that the PAN Cards prove the identity of these parties. Before the AO also documents were produced to prove the genuineness of the transactions which inter alia included the confirmations from these parties. However the AO brushed this aside on the grounds that the identity itself was not proved. On remand, the AO has fairly conceded that the loans availed by the appellant was shown as advance in the balance sheets now filed. However the AO held on to his ground that the genuineness was not proved because these parties were not credit worthy to advance loans of such magnitude. I am unable to appreciate this position of the AO. The AO himself states in his remand report, not once but twice that the turnover of these parties is in hundreds of Crores. In the same breath he states that these parties are not credit worthy. The AO goes on to state that these parties have confessed during search that they have not conducted genuine business but only given accommodation entries. This has been rebutted by the appellant stating that not only have these parties retracted their confession, but that the loans have been repaid through banking channels subsequently. I find that apart from the statement of these parties, the AO has no other corroborative evidence to show that cash had been paid by the appellant to these parties for availing the loans. An accommodation entry of this nature would perforce require the appellant to part with cash in his hands and obtain a cheque in lieu of the same. The AO has not been able to establish the cash trail at all. The appellant has filed the entire documents required to establish the identity of the creditors (PAN Card copies), their creditworthiness (balance sheet copies showing loan entries), as well as the genuineness of the transaction (being confirmations from these three parties). The appellant has also met the grievance of the AO that 2 out of 3 parties have confessed during search that the loan was actually an accommodation entry. The AO has also lost sight of the fact that these loans have been subsequently repaid by the appellant through banking channels. Thus, the appellant is able to prove that not only did he take genuine loans, but the same has also been repaid. If these loans were not genuine, then

there would have been a question of repayment. I find that the weight of evidence is in favor of the appellant as he has been able to satisfy all ingredients of cash credit i.e. identity, creditworthiness and genuineness of transactions. Accordingly, I delete the addition of Rs 4,25,00,000 made by the AO on this count.”

5.2. None of the aforesaid factual observations recorded by the Id. CIT(A) had been controverted by the Id. DR before us with cogent evidences. We find that the Id. DR reiterated the contentions made by the Id. AO in his assessment order. We find after that, much water has flown in the instant case by way of additional evidences and by way of two remand reports from the Id. AO etc.

5.3. We find that the revenue had raised an additional ground that the Id. CIT(A) ought not to have admitted the additional evidences filed by the assessee. In this regard we find as already stated hereinabove, the Id. CIT(A) had dedicated an exclusive paragraph in para 11.1 at page 8 of his appellate order narrating why he had to admit the additional evidences filed by the assessee in the facts and circumstances of the instant case. Moreover, two remand reports were submitted by the Id. AO through his Range Head i.e. Additional CIT wherein no adverse inference was drawn by the Id. AO on the evidences submitted by the assessee. In these circumstances, the additional ground raised by the revenue deserves to be admitted and we hold that there is absolutely no basis and merit in the said additional ground raised by the revenue.

5.4. Considering the detailed factual finding recorded by the Id. CIT(A) as narrated above which remain uncontroverted before us and in the light

of various supporting documentary evidences submitted by the assessee proving the veracity of the loans beyond doubt, we do not deem it fit to interfere in the said order of the Id. CIT(A) in the peculiar facts and circumstances of the instant case. Accordingly, the grounds raised by the revenue together with additional ground are dismissed.

6. In the result, appeal of the revenue is dismissed.

Order pronounced on 30/12/2020 by way of proper mentioning in the notice board.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/12/2020
KARUNA, sr.ps

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