

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JMITA No. 1064/Mum/2019
(Assessment Year 2009-10)

M/s Opel paper Mills Limited
97, Dadiseth Agiary Lane,
Kalbadevi Road,
Mumbai-400 002
(Appellant)

Vs.

The Dy. Commissioner of
Income Tax,
Central Circle 4(3)(1)
Aayakar Bhavan,
6th Floor, MK Road,
Mumbai-400 020
(Respondent)

PAN No.AAACO7129H

ITA No. 1186/Mum/2019
(Assessment Year 2009-10)

The Dy. Commissioner of
Income Tax,
Central Circle 4(3)(1)
Aayakar Bhavan,
6th Floor, MK Road,
Mumbai-400 020
(Appellant)

Vs.

M/s Opel paper Mills Limited
97, Dadiseth Agiary Lane,
Kalbadevi Road,
Mumbai-400 002
(Respondent)

Assessee by : Mr. Hari S. Raheja, AR
Revenue by : Mr. Sandeep Raj, DR

Date of hearing: 27.06.2022
Date of pronouncement : 26.07.2022

ORDERPER PRASHANT MAHARISHI, AM:



01. These are cross appeals filed by parties against the Appellate Order passed by The Commissioner of Income tax (Appeals)-9, Mumbai [the learned CIT (A)] on 11 December 2018 for A.Y. 2009-10. By this appellate order appeal filed by assessee against the assessment order passed on 23rd March, 2015 by The Dy. Commissioner of Income Tax, circle 4(3)(1), Mumbai (The learned A O) u/s 144 read with section 147 of the Income-tax Act, 1961 (The Act) was partly allowed. Both the parties are aggrieved, have preferred these appeals.

02. In ITA No. 1064/Mum/2019 filed by the assessee raising following grounds of appeal: -

"1. On the facts and circumstances of the case and in law Hon'ble Commissioner of Income Tax (A) erred in confirming validity of re-opening of the assessment under section 147 on the ground or grounds as stated in the appellate order or otherwise.

2. On the facts and circumstances of the case and in Law the Id. Commissioner of Income Tax (Appeals) (referred as CIT(A)) erred in confirming the ex parte order passed by the Assessing Officer (referred as AO) on the ground or grounds as contained in the appellate order or otherwise.

3. On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the addition on account of disallowance of expenditure of Rs. 11,29,59,517/- by adopting estimated G.P. Ratio of 12.5% of purchases on the ground or grounds as contained in the appellate order or otherwise.

4. The Appellant crave leaves to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another."



03. In ITA No. 1186/Mum/2019, the learned Assessing Officer has raised following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to restrict the disallowance to 12.5% of the total expenditure debited by the assessee of Rs.94.89Cr., on account of purchase disallowed by the Assessing Officer without appreciating the fact that the purchase shown by the assessee are bogus purchase from sister concern."

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to restrict the disallowance to 12.5% of the total expenditure debited by the assessee of Rs.94.89Cr., disallowed by the Assessing Officer without considering the Apex Court decision in the case of M/s. N.K Proteins(SLP No.769 of 2017) wherein Hon'ble Apex Court has concluded that once a findings of fact has been given that entire purchases shown on the basis of fictitious invoices and debited in the P&L account are established as bogus, restricting the addition to a certain percentage goes against the principles of section 68 and 69C of the I.T Act.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to delete the addition made u/s.68 of the IT Act, 1961 on account of unproved unsecured loans from M/s. Global Paper Impex Pvt. Ltd., of Rs.3,58,07,576/- ignoring the fact that the assessee failed to prove the creditworthiness of the said creditors.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to delete the addition made u/s.68 of the I.T Act, 1961 on account of unproved unsecured loans from Shri Nemchand J. Gala of



Rs.8,12,600/- ignoring the fact that the assessee failed to prove the creditworthiness of the said creditors.

5. The appellant craves leave to amend or alter any ground or add new ground which may be necessary."

04. Facts extracted from assessment and appellate order, it is found that assessee is a company who did not file its return of income, and notice under Section 142(1) of the Act was issued on 30 September 2011. In response to that assessee filed return of income on 18th September, 2012 at a loss of ₹1,82,82,029/- .
05. Subsequently, notice under Section 148 of the Act was issued on 27th March, 2014 for reasons recoded by the Id AO shows that :-
- i. There was a tax evasion petition from Department of Central Investigation Bureau of Investigation, Anti Corruption Bureau, Mumbai vide letter dated 27 December 2011. It states that the CBI has investigated and concluded that assessee's books of account are manipulated and fabricated to suit the personal purposes and diversion of funds for personal purposes. The Chief promoter of reliable group of companies Mr. Nemachand Gala has used Assessee Company. The allegations were;
 - a. Last return of income of above company is not filed for last two to three years.
 - b. In All books of accounts, fabrication and manipulation are done at address of company.
 - c. Company is engaged in manufacturing and financial statements were showing business loss.
 - d. Entries are recorded on adhoc and arbitrary basis without supporting document



- e. Books are manipulated to suit personal purposes
 - f. Books of accounts till 31st March, 2011 are not recorded and are in process of manufacturing
 - g. Intentional loss with deliberate intention to default the bank and avoiding the liabilities is the main business of the company
 - h. Diversion of the funds of the bank
 - i. Directors and their families acquired huge personal wealth.
 - j. Significant benami properties acquired in Gujarat
06. Therefore, Id AO noted that as assessee has not filed return of income, notice under Section 148 of the Act was issued. Ld AO issued several notices. However, nobody turned up and therefore, final show cause notice was issued on 27 February 2015 and there was no response. Accordingly, Id AO passed assessment order under Section 144 read with section 147 of the Act at Total Income of Rs ₹105,85,28,778/- by making following three disallowances / additions:-
- i. Expense claimed under various heads disallowed of ₹94,89,69,104/-.
 - ii. Receipts credited to the bank account of ₹94,49,009/- was added as income
 - iii. Loan liability outstanding added under Section 68 of the Act of ₹ 11,83,92,694/-.
07. Assessee preferred the appeal before learned CIT (A) challenging disallowances/additions on the merits as well as against reopening of assessment under Section 147 of the Act. Learned CIT (A)



upheld the reopening of assessment as valid, however, after obtaining remand report of Ld AO and rejoinder of assessee, he :-

- a. out of the disallowance of the expenses of ₹94,89,69,104/- confirmed the disallowance of ₹11,29,59,517/- and deleted the balance disallowance of ₹83,60,91,587/-.
- b. Out of the addition of ₹94,49,009/- because of receipts credited to the bank account deleted the addition.
- c. On account of addition u/s 68 of The Act of loan liability of ₹11,83,92,694/-, the addition was deleted. He noted that bank loans of ₹6,91,91,053/- cannot be added under Section 68 of the Act and in other accounts in 11 unsecured loan accounts same are opening balance and further there is no movements by way of credit or debit in 9 accounts, therefore, whatsoever is the credit during the year are very meager. With respect to two accounts he held that in those accounts identity, creditworthiness and genuineness of transaction is proved and therefore, he deleted the addition of ₹11,83,92,694/-.

08. Therefore, on the reopening of the assessment confirmed by the learned CIT (A) and on disallowance of expenditure confirmed, assessee is in appeal. The learned Assessing Officer is in appeal on the issue of deletion of disallowances/ addition by the learned CIT (A).

09. On the appeal of the assessee, learned Authorized Representative on the issue of reopening submitted that;

- i. Assessee has filed return of income, which is recorded in the assessment order itself. Further, wrong facts are mentioned in the reasons recorded and merely, based on tax evasion petition, the learned Assessing Officer has reopened the assessment. Therefore, reasons to belief are based on borrowed satisfaction.



- ii. The learned Assessing Officer has not made any addition on the reasons recorded and therefore, no addition could have been made on any other issues by the learned Assessing Officer, he relied on the decision Hon'ble Bombay High Court in case of CIT vs. Jet Airways in Income Tax appeal No. 1714 of 2009 (Bom) dated 12th April, 2010 [331 ITR 236] where in it is held that, if after issuing a notice under section 148, he accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income
- iii. Mere intimation by the CBI i.e. third party information cannot be the basis of the reopening of the assessment. For this proposition, he relied on the decision of Hon'ble Supreme Court in case of Anirudhsinhji Karansinhji Jadeja v. State of Gujarat, (1995) 5 SCC 302 and Hon'ble Bombay High court in case of Principal Commissioner of Income-tax-5 vs Shodiman Investments (P.) Ltd 422 ITR 337 where it is held that Where Assessing Officer had issued a reassessment notice on basis of intimation from DDIT (Inv.) about a particular entity entering into suspicious transactions, this was clearly in breach of settled position in law that re-opening notice has to be issued by Assessing Officer on his own satisfaction and not on borrowed satisfaction.
- iv. On the issue of disallowance, he submitted that assessee has shown a turnover of 91 crores and has claimed expenses of ₹94.89 crores. The learned Assessing Officer has disallowed various expenditure but has taxed the income of the assessee of ₹91 crores.



On the issue of deletion of various additions, he relied upon the order of the learned CIT (A).

- v. On the disallowance confirmed by the LD CIT (A), he submitted that the accounts are audited and therefore, the disallowance could not have been confirmed by the learned CIT (A). He further submitted that the gross profit chart of the assessee also do not support the confirmation of any addition.

010. The learned Departmental Representative on the appeal of the assessee supported the order of the learned CIT (A).he submitted that

- a. On the issue of reopening of the assessment, he submitted that assessee has not filed return of income and even otherwise, there is no assessment made u/s 143 (3) of the act , therefore, reopening has been validly confirmed.
- b. With respect to the argument of the assessee, that there is no addition on the reason recorded under Section 147 of the Act. It was stated that all the additions made by the learned Assessing Officer are based on the reasons recorded, therefore, the decision of the Hon'ble Bombay High Court in case of Jet Airways (supra), do not apply to the facts of the case.
- c. He submitted that reopening has been validly initiated by the learned Assessing Officer.
- d. On the various disallowances, he supported order of the LD AO and stated that assessee has not given any details to the assessing officer. Therefore, no fault can be found with that order.



e. On the issue of two additions paid by the learned assessing officer u/s 68 of the income tax act, he submitted that both these additions have been deleted without looking at the basic provisions of Section 68 of the income tax act. He submitted that the learned CIT – A did not consider that addition of the credit during the year is required to be made at least. He submitted that in both these cases, the creditworthiness and genuineness of the transaction is not proved. It was also stated that assessee has not submitted anything except by confirmation and in one case copy of acknowledgement of return of income. The annual accounts of the lender company also do not show the creditworthiness of the party or do not confirm the amount. Reasons given by the learned CIT – for deleting addition are not germane to the addition u/s 68 of the act.

011. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also perused the paper book filed by the assessee containing 222 pages, which also included the submission made, by the assessee during the remand proceedings.

012. Now we first come to the appeal of the assessee on the issue of reopening. The appellant is a company engaged in the business of manufacturing and trading of industry papers. The assessee has not filed its return of income on or before the due date u/s 139 (1) of the Act . Subsequently, notice u/s 142 (1) was issued on 4/10/2011 which was responded by filing the return of income on 18/9/2012 declaring loss of Rs 1,82,82,029/-. Subsequently notice u/s 148 of the income tax act was issued on 27/3/2014. On 26/9/2014 assessee submitted a letter stating that original return filed on 18/9/2012 in response to notice u/s 142 (1) may be considered as return filed in response to notice u/s 148 of the act. The reasons



recorded by the learned assessing officer shows that there was a tax evasion petition received by the income tax Officer 1 (2) (4), Mumbai on 10/1/2014 , that assessing officer has received a tax evasion petition from the Department of Central investigation bureau, anticorruption bureau, Mumbai on 27/12/2011 wherein the central bureau of investigation has investigated and come to the conclusion that the assessee's books of accounts are manipulated and fabricated to suit the personal purposes and diversion of funds for the personal purposes of the chief promoter of Reliable group of companies Mr. Nemchand Gala. There were also finding with respect to the investigation made by the Department of Central investigation bureau stating that all books of accounts maintained by the assessee are fabricated and are not reliable, as not maintained day to day. There was also an allegation of diversion of funds of the banks and the company used for the personal purpose of the directors. On the receipt of this letter from the ITO 1 (2) 4), Mumbai, the learned assessing officer found that assessee has not filed return of income for assessment year 2009 - 10 and therefore he has reason to believe that income has escaped assessment. The assessee has challenged this reopening of the assessment stating that the reasons recorded are borrowed satisfaction, no enquiries have been made by the learned assessing officer before issuing notice u/s 148 of the act, and therefore, the reopening of the assessment is not valid. We examine various arguments of Id AR:-

- a. It is an admitted fact that assessee has not filed any return of income u/s 139 (1) of the act. Therefore notice u/s 142 (1) of the act was issued to the assessee on 30/9/2011 which was served on assessee on 4/10/2011. This notice was complied on 18/9/2012 by filing the return of income. Thus it is clearly shown that that notice issued u/s 142 (1) of the act was complied with after one year. Thus, it cannot be said that assessee has filed any return of income. Assessee has also not shown that in the notice issued u/s 142 (1) of the act learned assessing officer has granted time to the assessee to



file the return of income in response to that notice of 12 months. Thus, the return filed by the assessee on 18/9/2012 does not have any validity. In view of this, we do not find any infirmity in the finding of the learned assessing officer in the reasons recorded for reopening of the assessment that assessee has not filed return of income for assessment year 2009 - 10.

- b. As assessee has not filed any return of income for the impugned assessment year, the allegations made in the tax evasion petition forwarded by Central investigation bureau is correct that assessee has not filed the last return of income for at least 2 to 3 years. Even before us it was not shown that assessee has filed any return of income for the earlier years. It was also not shown before the learned CIT - A. Therefore, it is evident that for this assessment year as well as for earlier years no return of income is available with the income tax department.
- c. Further, the allegations that the books of accounts are not maintained in the regular course of business of the assessee as alleged in tax evasion petition can also be inferred from the fact that before the assessing officer assessee did not submit any information.
- d. The assessee was also issued show cause notices for penalty proceedings u/s 271F as well as show cause notice u/s 276 CC. Despite this, the assessee did not produce relevant details before the assessing officer.
- e. Even the basic information like audited annual accounts as well as the tax audit report was not filed. It was also the statement of the assessee that company is closed since last five years and banks have taken possession of the property and there are no activities.



- f. However, this does not absolve assessee from filing the return of income as assessee is a company and Cos are required to file the return of income mandatorily as per provisions of Section 139 (1) (a) of the act.
- g. Further, for last several years no information is available on the file of the learned assessing officer with respect to the company and its activities, no fault can be found with the assessing officer that he did not carry on any enquiry before issuing a notice u/s 148 of the act.
- h. As there is no information with respect to the filing of the return by the assessee company, tax evasion petition on any enquiry by Central bureau of investigation, Mumbai the learned that AO was having a reason to believe that income has escaped assessment.
- i. Further, at the time of issue of notice, the adequacy of such reasons cannot be tested. Had that been the case, there would not have been any requirement of making an assessment subsequently. Thus, it is clear that the learned assessing officer is not required to establish escapement beyond any doubt at all at the time of issue of notice u/s 148 of the act.
- j. The learned CIT (A) has followed the decision of the honourable Bombay High Court in case of ECGC versus additional CIT in writ petition number 502 of 2012 dated 11/1/2013 wherein the honourable Bombay High Court upheld the reopening of the assessment following the decision of the honourable Supreme Court in assistant Commissioner of income tax versus Rajesh Jhaveri stockbrokers private limited.
- k. Further, the investigation made by the Central bureau of investigation is a tangible material available with the assessing officer.



- l. Assessee on the receipt of tax evasion petition from the other assessing officer, examine whether the assessee has filed return of income for this year or not. He did not find the return of income for this year, therefore, it cannot be said that the learned assessing officer has not applied his mind. In view of this the decision of the honourable Bombay High Court relied upon by the assessee in case of Shodiman investment Pvt Ltd [supra] also do not help. Hence it cannot be said that it is a borrowed satisfaction of the learned assessing officer.
- m. With respect to the reliance on the decision of the honourable Bombay High Court in case of Jet Airways (supra), it is apparent that the learned assessing officer has made the addition/disallowances based on reasons recorded by him. Even the CIT - A has also upheld part of the addition/disallowances on such reasons. Therefore, reliance on that decision does not help.
013. In view of this, we do not find any infirmity in the order of the learned CIT - An in upholding the validity of the reopening of the assessment. Accordingly, ground number 1 of the appeal of the assessee is dismissed.
014. The learned authorised representative did not press grounds number two of the appeal, did not advance any argument, therefore, it is dismissed.
015. Ground number 3 is with respect to the disallowance confirmed by the learned CIT - A of ₹ 112,959,517/-. Before the learned assessing officer assessee did not produce any information therefore the learned assessing officer disallowed a sum of ₹ 948,969,104/- being various expenditure debited to the profit and loss account. On appeal before the learned CIT - A relief of ₹ 83,60,09,587/- was granted and the balance disallowance of ₹ 112,959,517/- was confirmed. The learned CIT appeal noted that the major items of the expenditure is a purchase of paper from the sister company specialty



papers Ltd amounting to ₹ 888,827,942/-. These transactions were doubted by the learned assessing officer during the remand proceedings as the purchases are transacted only through the journal entries and there are no bank transaction as well as there is no transportation receipts connected with these purchases. The claim of the assessee is that these are parties, who are separate and distinct and all of them have duly acknowledged these transactions, which are entered in the books of accounts and in their financial statements. It was also noted that assessee has purchased raw material from another sister concern global paper Impex Ltd amounting to Rs 1 48,48,200/- out of the total raw material consumed of ₹ 36,240,709. The manufacturing expenses are claimed of only ₹ 6,410,223 out of which a sum of ₹ 4,116,000/- is paid to a related party global paper Impex Ltd at the same address. Major amount of Rs. 15,97,805/- was also paid to a related party without any address. On examination of the documents during the appellate proceedings, the learned CIT - A noted that the purchases and sales are made with the related parties are in the nature of circular transactions made repeatedly. The transactions are not settled through banking channel but are rooted through journal entries. The AO has further stated that there is no evidence of transportation of the goods from buyer to the seller. Therefore, following the decision of the honourable Gujarat High Court in CIT versus Smit P Sheth 356 ITR 451 he sustained the disallowance in court to 12.5% of bogus purchases he noted that the total purchases of ₹ 888,827,942/- is made from specialty papers private limited and ₹ 14,848,200/- is from another sister concern global paper Impex Ltd amounting in all to ₹ 903,676,142/- and 12.5% of the same comes to ₹ 112,959,517/-. He sustained this addition. He also considered the gross profit ratio of the assessee and stated that it is shown too less by the assessee and therefore it should be ignored. He noted that gross profit ratio of the assessee over a period of 3 years ranges from 0.14% to 1.07% and gross profit ratio in manufacturing segment is 6.38% to 104.67 % . On careful reading



of the order of the learned CIT – A, we do not find any infirmity in the reasoning given for sustaining the disallowance of ₹ 112,959,517/-. Further it is a case of the circular trading entered into by the assessee along with its related parties where there is no evidence whether the rates charged by the parties in the circular rate were at market rate and further when the goods are sold without any physical movement of the goods, the sales and the purchases are not at all reliable. The transactions are also rooted through journal entries. The quantity of goods involved in the circular trading is also not ascertained that how much is involved in circular trading and what is the actual sale and purchase of the assessee. The assessee has purchased 2,44,29,155 KG and sold the same quantity and there is no opening stock and closing stock during the year. Therefore, the explanation of the assessee becomes unreliable with respect to the gross profit shown by the assessee. In view of this, we do not find any infirmity in the order of the learned CIT – A in upholding disallowance of expenditure of ₹ 112,959,517/- estimating income at the rate of 12.5% of such bogus purchases. Accordingly, ground number 3 of the appeal is dismissed.

016. In the result, appeal filed by the assessee is dismissed.

017. Now we come to the appeal of the learned assessing officer wherein as per ground number 1 and 2 of the appeal are with respect to the restriction of the disallowance of various expenditure by the learned CIT – A to 12.5% of the total bogus purchases made by the assessee. As we have already dealt with this issue in ground number 3 of the appeal of the assessee, for the same reasons that we did not find any infirmity in the order of the learned CIT – A, both these grounds are dismissed.

018. Ground number 3 and 4 are with respect to the deletion of addition u/s 68 of the act. The briefly fact shows that total addition of liability standing in the books of accounts of the assessee of ₹ 118,392,694/- has been added by the learned assessing officer u/s 68 of the income



tax act. During the course of remand proceedings it was found that ₹ 69,191,053/- is on account of secured loan from UCO bank and a sum of Rs 4,92,01,641/- is on account of unsecured loan. Naturally, the amount of secured loan from the bankers of the company cannot be added u/s 68 of the act. Therefore the same has rightly been deleted by the learned CIT-A.

019. We also find that if there are only opening balances in the account and no credit during has been made in these accounts, in absence of any credit during the financial year, the provisions of Section 68 cannot be applied. This has also been deleted rightly by the learned CIT appeal.

020. However, the grievance of the AO is that the learned CIT - A has erroneously deleted the addition of ₹ 35,807,576/- being credit during the year with respect to the global paper Impex private limited. We find that the global paper Impex private limited is a sister concern where the opening balance in the account was ₹ 28 lakhs and credit during the year were ₹ 35,807,576/- and debited in the account of Rs 2, 49,84,201/- resulting into a closing balance of Rs. 1,36,23,375/-. This is challenged as per ground number 3 that sum of ₹ 35,807,576/- received from this company added by the learned assessing officer u/s 68 of the income tax act should have been upheld by the learned CIT - A. With respect to this account, the learned CIT - A held that assessee has produced the copy of account which shows that the money is transferred from the cash credit account of UCO bank of assessee to global paper Impex private limited and thereafter the money is received back from that party. He noted that these kind of circular transactions are repeated. He also noted that the ultimate source of fund remains the cash credit account maintained in UCO bank.

021. As per ground number 4 was found that Mr. Nemchand J Gala had the opening credit balance of ₹ 6,969,166/-, ₹ 8,12,600/- was received during the year, ₹ 136,500/- is repaid during the year



resulting into the closing balance of ₹ 7,645,266/-. The claim of the learned assessing officer is that a sum of ₹ 812,600 received during the year has rightly been added by the learned AO u/s 68 of the income tax act and wrongly deleted by the learned CIT – A. With respect to the account of Mr. Nemchand gala who is one of the promoter directors of the group, the identity and genuineness of the transactions are not in doubt. Therefore, he deleted the total addition.

022. On careful consideration of the order of the learned CIT – A we find that global paper Impex private limited has deposited a sum of ₹ 35,807,576/- with the assessee during the year. On this sum the provisions of Section 68 of the income tax act applies, assessee is required to prove the genuineness of the transaction of the sum credited in the books of accounts of the assessee. Assessee has merely submitted income tax return acknowledgement for assessment year 2009 – 10 of the above party wherein the loss of ₹ 35,446,940/- is shown. Further, during the course of remand proceedings only the annual accounts of global paper Impex Ltd were produced by letter dated 28/9/2017. We find that merely producing the confirmation does not prove the genuineness of the loan transaction. Even the finding of the learned CIT – A does not show that how assessee has proved the genuineness of the about transaction, the credit becomes more doubtful when during the course of proceedings before the lower authorities it is established that assessee engaged into only circular trading with the sister concern.
023. Further with respect to the credit of Nemchand J Gala, the learned CIT – A has deleted the addition stating that he is one of the promoter/director of the entire group and therefore he is identity and genuineness of the transactions are not in doubt. We failed to understand that how this finding has been arrived at by the learned CIT – A as there is no evidence available on record. Merely because a person is a promoter/director of the group, the genuineness of the



transaction and creditworthiness of that person requires to be proved independently. Even before us, no evidence is produced except the copy of reply of the assessee dated 28/9/2017 wherein the bank statement of Mekan Gala for the month of March 2009 was produced. The learned CIT – A also did not care to identify whether the amount of credit is in the name of Mr. Nemchand J gala or Mekan J Gala, whether these are different persons or one person, and if they are different, what is the relationship. Thus, assessee has failed to show the genuineness of the transaction with respect to this party also as far as the credit received during the year in that account are concerned.

024. In view of this we find that the findings of the learned CIT – A cannot be sustained. Accordingly, the amount credited in the account of global Impex paper private limited and Mr. NJ Gala are required to be added u/s 68 of the income tax act as assessee has failed to prove the genuineness of the transaction. In view of this ground number, 3 and 4 of the appeal of the learned assessing officer are allowed.
025. In the result, appeal filed by the assessee is dismissed and appeal of the learned assessing officer is partly allowed.

Order pronounced in the open court on 26. 07.2022.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26. 07.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai