

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**BEFORE SHRI BR BASKARAN, AM
&
SHRI N. K. CHOUDHRY, JM**

आयकरअपीलसं./ I.T.A. No. 1540/Mum/2023
(निर्धारणवर्ष / Assessment Year: 2012-13)

&

आयकरअपीलसं./I.T.A. No. 1539/Mum/2023
(निर्धारणवर्ष / Assessment Year: 2013-14)

Shri Darshan K Vakharia Mumbai.
7/A, Rekha industrial Estate, Navghar
Road, Bhayandar(E). Thane
Maharashtra- 401105

Vs

**Income Tax Officer
Ward2(1),Mumbai.
401105**

PAN No. ABYPV8945Q

(अपीलार्थी/**Appellant**)

:

(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ Appellant by	:	Shri. Vimal Punmiya
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri. Nagnath B. Pasale
Date of Hearing	:	19.07.2023
Date of Pronouncement	:	28.07.2023

आदेश / **ORDER**

Per N K Choudhry, Judicial Member:

These appeals have been preferred by the Assessee against the orders even dated 10-02-2023, impugned herein passed by the Ld. Commissioner of Income Tax(Appeals)/National Faceless Appeal Centre(NFAC) Delhi, u/s.250 of the Income Tax Act 1961 (in short 'the Act') for AYs 2012-13 & 2013-14.

2. At the outset, we observe that there is delay of 23 days in filing of the instant appeal, for which the Assessee has claimed that though

the appeal was prepared and signed and necessary appeal fee was deposited on 9th March, 2023 and handed over to Mr. Sanghavi for filing, however the same could not be filed due to death of father in law of Mr. Sanghavi. Somehow the same was filed on 2nd May 2023 with a delay of 23 days and the hence the delay of 23 days may be kindly be condoned. On the contrary the Ld. DR refuted the claim of the Assessee. We do not find any material/reason contrary to the claim of the Assessee qua occurring of delay and therefore considering the reason for delay as genuine and bonafide, we are inclined to condone the delay of 23 days in filling the instant appeal, hence the same is condoned.

3. Because, the facts and issues involved in these appeal are common, hence for the sake of brevity, we are inclined to decide ITA 1540/Mum/2023 as a lead case, and result of the same shall be applicable to both the appeals.

4. In ITA 1540/Mum/2023, the Assessee had declared its total income of Rs 4,19,950/- by filing its return of income on dated 28th Sep, 2012. Subsequently, on the basis of information received from the DDIT(Inv) unit 7(4) Mumbai, the following reasons for re-opening of the case u/s.147 of the Act, were recorded.

03. In this case the following information was received from DDIT (Investigation) Unit 7(4), Mumbai.

01. A Search and Seizure action u/s 132 of the Income-tax Act, 1961 was carried out in the case of Mr. Vipul Vidur Bhatt his other related entities uz (1) M/s. Sunrise Asian Limited, (ii) M/s. Sampada Chemicals Limited, (ii) M/s. P. Sajt Textile Limited, (iv) M/s. Shyam Alcohol and Chemicals Ltd, (v) M/s. Shipra Fabrics Pvt. Ltd., (vi) M/s. Victory Sales Private Limited, (vu) M/s. Lunked Textile Private Limited (viii) M/s. Eagar Corporation, (ix) M/s. Vikrant Marketing,

(x) M/s. Acute Consultancy Limited and (xi) M/s. Dolex Commercial Private Limited on 05.02.2016.

During the search action the statement of Mr. Vipul Vidur Bhatt was recorded u/s 132(4) of the Income-tax Act, 1961 in which he has accepted that he is an entry operator and all the above mentioned entities/ companies which are used by him for providing various bogus accommodation entries to the various beneficiaries for commission Mr. Vipul Vidur Bhatt also accepted that he is a director in these entities/companies and all other directors of these entities/companies are dummy directors appointed by him. Mr. Vipul Vidur Bhatt further accepted that he controls the entire activities/affairs of these entities/companies and these entities/companies were incorporated for providing bogus accommodation entries only. In the statement recorded u/s 132(4) of the IT Act, 1961, Shri. Vipul Vidur Bhatt also accepted that he controlled, managed and operated as many as 347 bogus entities, which are operated by lum for providing bogus accommodation entries to the various beneficiaries for commission.

02. During the search action u/s 132 of the Income-tax Act, 1961, the entire books of accounts, Income Tax related documents, company law matter related documents, VAT/Sales tax etc. of all the 347 bogus entities/companies were found at an undisclosed premise 1407, 14th floor, New jaiphalwadi, Police colony, Tardeo, Mumbai-400034, which is neither registered office of these bogus entities/companies nor this premise is related to these bogus entities/companies in any way. In the statement recorded on 09.02.2016 u/s 132(4) of the Income-tax Act, 1961 Shri. Vipul Vidur Bhatt was asked to explain why the books of accounts and other documents of these entities/companies are kept and maintained, in the computer, kept at the above premuse. In response, Shri. Vipul Vidur Bhatt submitted that "Sir I am into the business of providing accommodations entries and I am managing and controlling various entities for this purpose. As this work is illegal, hence I am maintaining the books of accounts of these entities at my back office at 1407, 14th floor, new jaiphalwadi, Police colony, Tardeo, Mumbai-400034."

03. On perusal of the ledger account of the bogus entities/ companies managed, controlled and operated by Shri. Vipul Vidur Bhatt, it is seen that the assessee (Shir Darshan Kumarpal Vakharia) was one of the beneficiaries who has taken the bogus

accommodation entries worth Rs. 27,40,000/- in F.Y. 2011-12 from Santoshima Tradelinks Limited and Vasudev Rawal HUF being bogus entities which were managed, controlled and operated by Mr. Vipul Vidur Bhatt for providing bogues accommodation entities, the details of which are as under:

Sr. No.	Name of the bogus entities	Name of the Assessee/ beneficiary (3)	PAN (4)	Assessing officer (5)	F.Y. (6)	Amount (7)	
						Debit 7(1)	Debit 7(2)
1	Santoshima Tradelinks Limited	Darshan Kumarpal Vakharia	ABYPV 8945Q	WARD 2(1) THANE	2011-12	22,40,000	2,40,000
2	Vasudev Rawal HUF	Darshan Kumarpal Vakharia	ABYPV 8945Q	WARD 2(1) THANE	2011-12	5,00,000	0.00
Total						27,40,000	2,40,000

04. The above mentioned entities in column-2 of the table-1, above are bogus entities managed, controlled and operated by Mr. Vipul Vidur Bhatt for providing bogus accommodation entries".

5. Consequently, on the basis of aforesaid reasons, notice u/s. 148 of the Act, was issued on dated 7th March, 2017, in response to which the Assessee claimed that the original return of income filed for AY: 2012-13, may be treated as return of income, filed in response to the notice u/s. 148 of the Act. Subsequently, the statutory notices have also been issued to the Assessee.

5.1 The Assessee by filling it replies claimed to be an individual and proprietor of M/s. Mangal Industries, which is engaged in the business of manufacturing of S. S. utensils and during the year consideration, offered its business income at Rs. 5,20,897/- and income from other sources at Rs. 13,754/-. The Assessee during the financial year 2010-

11, relevant to AY: 2011-12 borrowed loans/funds of Rs. 20,00,000/- & Rs. 5,00,000/- from M/s. Santoshima and M/s. Vasudev respectively and during the year under consideration, has not taken any fresh loan from such concerns but paid interest of Rs. 2,40,000/- and Rs. 60,000/- respectively to the above two parties/entities.

5.2 In order to verify the said loan transactions, the Assessing Officer issued the notices u/s. 133(6) of the Act to M/s Santoshima and M/s. Vasudev. However, notice issued to M/s. Santoshima returned as un-served with the remarks “**not known**” and notice sent to the Vasudev P. Rawal (HUF) remained un-complied.

5.3 The AO therefore construed that said parties have no explanation to offer and treated the interest amount of Rs. 3,00,000/- { Rs. 2,40,000/- paid to M/s. Santoshima trade links Ltd. and Rs. 60,000/- paid to M/s. Vasudev P. Rawal (HUF)} as unexplained expenditure u/s. 68 of the Act, and added to the total income of the Assessee, by observing under :

“That interest paid by the Assessee to the above entities, which are managed and operated by Mr. Vipul Vidur Bhatt and hence, the interest paid in on the accommodation entries provided by Mr. Vipul Vidur Bhat in the form of loan. The onus is on the borrower/the Assessee to prove the identity of creditors, credit worthiness of the creditors and genuineness of the transaction. However, in this case the Assessee has failed to discharge its onus. Mere filing of confirmatory letters does not discharge onus that lies on the Assessee. During the search action conducted by the investment wing, Mr. Vipul Vidur Bhatt in his statement recorded u/s.132(4) of the Act, has accepted that he is an entry operator and all the above mentioned entities/companies are used by him for providing various bogus accommodations entries to various beneficiarie for commission. The parties from whom the Assessee has taken loan are bogus parties. Therefore, the interest claimed to have paid to these parties is nothing, but Assessee’s un-explained expenditure routed through proper channel. In view of this, the interest amount of Rs. 3,00,000/- { Rs. 2,40,000/- paid to M/s. Santoshima trade links Ltd. and Rs. 60,000/- paid to M/s. Vasudev P. Rawal

(HUF)} is treated as unexplained expenditure u/s. 68 of the Act, and added to the total income of the Assessee.

6. The Assessee being aggrieved before the Ld. Commissioner, not only challenged the addition made by the AO, but also the re-opening of the re-assessment proceedings u/s 147/148 of the Act.

7. The Ld. Commissioner not only affirmed the re-opening of the assessment proceedings u/s. 147 of the Act as valid, but also affirmed addition of Rs.3 Lacs (2,40,000/- 60,000/-) by concluding as under:

5.11 In view of the afore-stated position of law as also held by the Hon'ble Courts in the judgments cited hereinabove it is abundantly clear that the information received from the Investigation Wing is tangible material for assuming jurisdiction under the provisions of section 147 of the Act. It is not in dispute that the appellant has received money from the concerns admittedly controlled by Mr Vipul Vidur Bhatt.

5.12 From the above discussion, it is clear that the case was validly reopened by invoking the provisions of section 147 of the Act by the AO after it was found that the appellant had received accommodation entries from a shell company. The AO had cogent material in the form of information/material gathered by the department at the time of search and seizure operation on Mr. Vipul Vidur Bhatt who admitted that the transactions with the assessee company were bogus. According to the appellant details/list of parties were not available with the AO to verify the information hence AO cannot form the belief. However, it is a fact that the AO had received information that M/s Santoshimaa Tradelinks Ltd and Vasudev Rawal HUF were bogus company/firm controlled by an entry operator i.e. Vipul Vidur Bhatt, which is enough for the AO to form a belief that income of the assessee has escaped the assessment. The argument of the appellant that the AO could not verify the information of loan received from the DDIT(Inv) as AO was not in possession of list of parties from where loans were taken is not acceptable The appellant on one hand stated that in the present case there is no cash credit found in the books of accounts of the appellant since the appellant has not maintained books for transaction in personal capacity, hence provision of section 68 is not applicable to his case In this regard, it is noticed that the appellant is filing ITR in its Individual capacity and showing the income from business or profession with other heads of income Hence, when any loan was found to be obtained by the appellant then the appellant cannot take advantage by saying that the said loan is obtained

in its individual capacity and not recorded in its books of account maintained for his business.

5.13 On the facts, it has been clearly proved that AO has applied his mind independently. Since in this case return was only processed under section 143(1), therefore, A.O was justified in reopening of the assessment on bringing the material on record that there was an escapement of income from assessment in the matter Hence the grounds raised by the appellant challenging validity of assessment/reassessment notice are not tenable on facts and in law Thus, there is no merit in the appeal of the appellant as regards the technical ground on reopening of the assessment is concerned Accordingly, the assessment is held to be validly re-opened and related grounds of appeal i.e. 3 and 4 of both the appeals are hereby dismissed.

6. The ground of appeal 1 is against the disallowance of interest paid of Rs 3,00,000/- on loans taken from two parties i.e. M/s Santoshimaa Tradelinks Ltd and Vasudev Rawal HUF in AY 2012-13 and the disallowance of interest paid of Rs.2,40,000/- on loan taken from M/s Santoshimaa Tradelinks Ltd in AY 2013-14, thereby making addition as unexplained expenditure.

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6.11 The appellant finally contended that in the present case there is no cash credit found in the books of accounts of the appellant as the appellant has not maintained books for transactions undertaken in personal capacity. Thus provisions of section 68 are not applicable to his case. In the present case the appellant paid interest on loan taken and therefore payment made is out of purview of section 68 of the Act.

6.12 The impugned orders u/s 143(3) rws 147 and the submissions of the appellant have been thoroughly considered. It is undisputed fact that the assessee has filed returns of income which have been processed under section 143(1) of the Act accepting income returned by the appellant. Subsequently, the AO has issued notice u/s 148 on the basis of information received from the DDIT(Inv), Unit 7(4), Mumbai. The appellant during the FY 2010-11 relevant to AY 2011-12 has taken loan of Rs. 20,00,000/- from M/s Santoshima Tradelink Ltd and Rs. 5,00,000/- from M/s Vasudev P Rawal (HUF). During the AY 2012-13 the appellant has paid interest of Rs. 2,40,000/- to M/s Santoshima Tradelink Ltd and Rs. 60,000/- to M/s Vasudev P Rawal (HUF) on such loans. During the AY 2013-14 the appellant has paid interest of Rs. 2,40,000/- to M/s Santoshima Tradelink Ltd on such loan. The appellant contended that he has not claimed deduction of this amount of interest

paid of Rs. 3,00,000/- out of his taxable income for AY 2012-13, i.e. neither in his profit and loss account nor in computation of total income. Since the appellant has not made claim of deduction of interest paid of Rs. 3,00,000/- out of his taxable income the question of disallowance of interest paid does not arise and same cannot be added to his total income. This contention of the appellant is found to be partly acceptable on the reason that the appellant has not received any fresh loan from these two parties during the year under consideration i.e. AY 2012-13. The accommodation entries alleged by the AO i.e. loan of Rs. 20,00,000/- from M/S Santoshima Tradelink Ltd and Rs. 5,00,000/- from M/s Vasudev P Rawal (HUF) do not pertain to the AY 2012-13. The appellant has paid interest on the said loans to the two parties i.e. Rs. 2,40,000/- to M/s Santoshima Tradelink Ltd and Rs. 60,000/- to M/s Vasudev P Rawal (HUF). The accommodation entries pertain to the AY 2011-12 and necessary addition u/s 68 could be made in that particular AY only. It was not clear whether regular assessment/reassessment was done in AY 2011-12 in which the accommodation entries were received by the appellant. Hence, the appellant had been asked to submit the details of assessment of AY 2011-12. In response to the same, the appellant has submitted copy of intimation u/s 143(1) issued by the /CPC for AY: 2011-12.

6.13 In the AY 2012-13, the AO treated the interest paid to the above parties, on the loan/accommodation entry, as unexplained expenditure, which was not claimed by the appellant as expenditure in its P&L account or in its computation of total income. However, it is further noticed that the appellant in the very next AY 2013-14 has claimed the interest expenditure as deduction in its computation of total income. Hence, the contentions of the appellant that it got the loans in his individual capacity, not maintaining books of account, there is no credit entry in books of account, hence no addition could be made, is not acceptable. The appellant has paid the interest on the loan to the two entities, which were shell companies providing accommodation entries to various parties (one of the beneficiary was the appellant) as admitted by their director/operator. The appellant has provided the copies of confirmation letters, part of bank statements/pass book of these two entities will not help the appellant as both the entities are proved to be bogus/shell companies. Their confirmations or transactions through banking channel have no value. Mere filing of confirmatory letters does not discharge onus that lies on the assessee as held by the Rajasthan Synthetics Pvt. Ltd. Vs. CIT (2003) 131 Taxman 391 (Raj.) Merely showing that transactions were carried out through Banking channel in the facts and circumstances of the case is not sufficient to prove the genuineness of the transaction in the matter. The Hon'ble Supreme Court in the case of CIT, West Bengal- II vs., Durga Prasad More [1971] 82 ITR 540 [SC] and Smt. Sumati Dayal vs., CIT, Bangalore [1995] 214 ITR 801 [SC] have held that "Courts and Tribunals have to Judge the evidence before them by applying the test of human probability." If the said test is applied in this matter, it is clearly established that assessee failed to prove identity of the accommodation entry providers, their creditworthiness and genuine of the transaction.

6.13 Considering all these facts, Judicial pronouncements and discussion made in previous paras addition made by the AO i.e. explained expenditure (even though the same has not been debited to the P&L Account) on account of interest payment of Rs. 3,00,000/- in AY 2012-13 and Rs. 2,40,000/- in AY 2013-14 is hereby confirmed The grounds of appeal no. 1 of both the appeals are dismissed.

8. The Assessee being aggrieved is in appeal before us.

9. Heard the parties and perused the material available on record. As per balance sheet, as on 31st March, 2012 the Assessee has shown the amount of Rs. 20,00,000/- and Rs. 50,000/- as liability towards M/s. Santoshima and M/s. Vasudev respectively and also shown to have paid the interest amount of Rs. 2,40,000/- and Rs. 60,000/- respectively to M/s. Santoshima and M/s. Vasudev. It is not in controversy that the Assessee had taken the said loans in the financial year 2010-11 (AY: 2011-12) which continued in the assessment year under consideration as well. During the course of assessment proceedings, the Assessee also submitted the following documents in order to substantiate its claim.

- (i) The confirmation of loans.
- (ii) Acknowledgment of returns of income of loan parties.
- (iii) Copies of relevant pages of bank statements of loan parties.
- (iv) Copies of bank statements of the Assessee, in which interest payments have been debited.

9.1 However, the Assessing Officer doubted and rejected the same while relying upon the statement of Mr. Vipul Vidur Bhatt, without providing copy of the his statement to the Assessee and even without affording any opportunity of cross examination of Mr. Bhat. The Assessee in this case, has not only discharged its primary onus by

establishing the identity of the parties etc. , providing confirmation of loans, acknowledgment of return of income filed by the parties who have duly shown the amount of loan in their returns of income and banks statement of loan parties and the Assessee showing the transactions held, but also shown to have deducted TDS on the interest payment made to the parties, which also strengthen the genuineness of the claim of the Assessee. Therefore, on the basis of the general statement made by any 3rd party, without demolishing the case/claim of the Assessee, making of an addition is not logical.

9.2 We also observe as noted above that the loan of Rs. 20,50,000/- was taken by the Assessee from the said entities in 2010-11 (AY:2011-12) and during the year consideration, no such amount was found credited in the books of an Assessee maintained, if any and even otherwise the Assessee has claimed the he is not maintaining any books of account . It is a settled law that mere suspicion cannot takes place for the purpose of passing an order, in fact there must be something more than suspicion in support of an assessment. The Hon'ble Apex Court in the case of CIT vs. P. Mohankala {Civil Appeal no. 2540 of 2007 decided on dated 15.05.2007} has clearly laid down the dictum *“that there has to be credited amount in the books of account of the Assessee and such credit has to be sum during the previous year and the Assessee offers no explanation.* In the instant case, it is a fact that neither the Assessee has received any cash nor paid any cash and there was no real cash credit during the year under consideration, therefore the amount in question as unexplained expenditure could not arise, hence on this count also, the provisions of section 68 is not applicable and therefore addition u/s. 68 of the Act is un-sustainable. Consequently, we are inclined to delete the addition of Rs. 3 Lacs in total. Resultantly the instant appeal is allowed.

10. In view of our decision in ITA No. 1539 /Mum/2023, both the appeals stands allowed.

Orders pronounced in the open court on 28.07.2023.

Sd/-
(BR Baskaran)
Accountant Member

Sd/-
(N. K. Choudhry)
Judicial Member

Ms.Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT- concerned
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
5. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai