

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 2348/Ahd/2015
(Assessment Year: 2012-13)

The I.T.O., Ward- 2(1)(1),
Navjivan Trust Bldg., Off. Ashram
Road, 1st Floor, Room No.104,
Ahmedabad-380014

Appellant

Vs.

Gujarat Craft Industries Pvt. Ltd.,
35, Omkar House, Nr. Swastik Char
Rasta, C. G. Road, Navrangpura, Ahmedabad

Respondent

PAN: AAACG5615N

राजस्व की ओर से/By Revenue : Nidhi Srivastava, CIT. D.R.
आवेदक की ओर से/By Assessee : G. C. Pipara, A.R.
सुनवाई की तारीख/Date of Hearing : 04.10.2017
घोषणा की तारीख/Date of
Pronouncement : 10.10.2017

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This Revenue's appeal for assessment year 2012-13 arises against the CIT(A)-2, Ahmedabad's order dated 27.05.2015 in case no. CIT(A)-4/241/ITO.6(2)/14-15, reversing Assessing Officer's action making Section 68 addition of unexplained cash credits amounting to Rs.6,87,47,490/- in respect of unsecured loans obtained from 13 parties, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard both sides. Case file perused.

2. The Revenue's solitary substantive grievance seeks to revive the abovestated unexplained cash credits addition in the nature of unsecured loan. This assessee is a company manufacturing HDPE/PP woven fabrics, woven sacks and tarpaulin sheets. The Assessing Officer noticed in the course of scrutiny that it had received unsecured loans in question from 13 entities namely M/s. Bosco Chemtex, APA Finance Ltd., Decent Fabrics Pvt. Ltd., Ethnic Apparels Pvt. Ltd., Castle Housing & Development Pvt. Ltd., Indian Agrotech Ltd., Worldwide Impex Pvt. Ltd., Sigma Polyfilms, Technomad Properties Pvt. Ltd., Typhoon Financial Services Ltd., Sanwaria Vintrade Pvt. Ltd., Rishabh Business Pvt. Ltd. & Woodland Cons. Services Pvt. Ltd. involving corresponding sums of Rs.25 40lacs, Rs.14lacs, Rs.35,000/-, Rs.1lac, Rs.2.5lacs, Rs.19lacs, Rs.67.40lacs, Rs.14.25lacs, Rs.26.45lacs, Rs.454.45lacs, Rs.13lacs, Rs.3.35lacs & Rs.46 32lacs; respectively. He asked the assessee to produce genuineness/creditworthiness qua the said parties. We notice from assessment order dated 29.12.2014 that 9 parties hereinabove are the same as in assessment year 2010-11 wherein the Assessing Officer had made identical additions accepting cases of M/s. Indian Agrotech Ltd., Worldwide Impex, Sigma Polyfilms and Sanwaria Vintrade Pvt. Ltd. The CIT(A) deleted the said addition in assessment year 2010-11 in his lower appellate orders 20.05.2014. The Assessing Officer however reiterated his findings in the impugned assessment year as well that these 13 entities inter alia did not have capacity to advance above huge sums. He therefore doubted genuineness/creditworthiness of the impugned unsecured loans so as to treat the same as unexplained cash credits amounting to Rs.6,87,47,490/-.

3. The CIT(A) reverses Assessing Officer's action as under:

“2.3. Decision:

I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The Assessing Officer in the assessment order has held that since the assessee has failed to prove the creditworthiness & capacity of the depositors to make such huge interest free advances for the year under consideration for an amount of Rs. 6,87,47,490/-, the same is treated as unexplained cash credit & addition of the said amount is made to the total income of the assessee company under section 68 of the Act.

The appellant on the other hand has stated in its written submission that the said observations of the AO is merely on surmises and without proper consideration and appreciation of the details and comprehensive evidences were placed on record during the course of assessment proceedings. Further, the impugned addition has been made by following the assessment order for A.Y. 2010-11 on which the Ld. CIT(A) has allowed the appeal in favour of the appellant and the department has preferred second appeal before ITAT, Ahmedabad. The appellant has further stated that it is evident that the AO has made the impugned addition in respect of same parties which were there in A.Y. 2010-11 and there are same set of facts and circumstances of the case and no new material or evidences have been brought in by the AO in support of the addition made. The appellant has also stated that its case is covered by the decision given by the CIT(A) - VIII, Ahmedabad for A. Y. 2010-11 vide order dated 20/05/2014.

On a careful consideration of entire facts of the case, it is noted that most of the depositors from whom the appellant has accepted unsecured loans during the year are old and the appellant had accepted unsecured loans from them during A. Y. 2010 - 11. The appellant has accepted unsecured loans from 13 depositors out of which only four parties are new. In respect of the 9 depositors, the issue has been dealt by me in the case of the appellant for the A.Y. 2010-11 in appeal No. CIT(A)-VIII/DCIT/Cir.4/67/13-14 dated 20/05/2014. For the sake of clarity, the findings given by me in para-3.3 are reproduced here under: -

"I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The AO has made the addition under section 68 of the Act amounting to Rs 1,89,63,000/- as the appellant could not satisfactorily prove the genuineness of the loans taken by it. The AO has observed that since the appellant company did not produce even a single party and proved the genuineness, he was treating the loans as unexplained as the appellant could not prove the credit worthiness and genuineness of the depositors.

The appellant on the other hand has submitted that it has given all the information related to the deposits accepted by it. It has been submitted by the appellant that it had given confirmation of the parties with details of their address and PAN as well as indicated that the transactions were through banking channels. It furnished and had also explained the source of the source as certified by the parties. It has also been pointed out by the appellant that the AO had, issued 133(6) notices to the depositors directly and all the depositors' have confirmed the fact of giving loans. It has been contended by the appellant that no useful purpose would be served by producing the depositors as the appellant had given sufficient information to prove the deposits. It has therefore, been submitted by the appellant that the identity, genuineness and creditworthiness of the depositors have been proved and therefore, the addition made should be directed to be deleted.

I have carefully examined all the facts related to various depositors. It is noted that the appellant has given sufficient information in respect of the deposits accepted by it. Out of the 13 depositors from home the appellant has accepted deposits it companies are group companies of the appellant company. The appellant has given a chart compiling the information related to the deposits and the evidences furnished by it during the course of assessment proceedings

in respect of all the deposits. For the sake of convenience and clarity the chart is reproduced hereunder: -

| Sr. No. | Name | Opening Balance | Received During the year | Paid During the Year | Closing Balance | Evidences Furnished | Pate No. of submission | Remarks |
|---------|-------------------------|-----------------|--------------------------|----------------------|-----------------|---|--|---|
| 1 | Bosco Chemtex Pvt. Ltd. | Nil | 18,30,000 | 3,61,000 | 14,69,000 | Name and address of the party PAN Confirmation which also indicates that the transactions are through banking channels and by account payee cheques Retur of income along with Acknowl dgement for A.Y. 2010-11 Audited Balance sheet as at 31.03.2010 Party's letter giving details of source of the funds from where unsecured loan was given to the appellat company | 8 8 14,54 51 to 53 55 to 56 309 | Group Company Amount of Rs. 3,61,000/- repaid during the year itself |
| 2 | APA | 68,76,872 | 9,29,000 | Nil | 78,05,872 | Name and address of the party PAN Confirmation which also indicates that the transactions are through banking channels and by account payee cheques Return of income along with Acknowledgement for A.Y. 2010-11 Audited Balance sheet as at 31.03.2010 Party's letter giving details of source of the funds from where unsecured loan was given to the appellat company | 8 8 16,70 67 to 69 71 to 84 310 | Group Company Deposits have also been received in earlier years and there is opening balance |

| | | | | | | | | |
|---|------------------------------|----------|-----------|----------|-----------|--|---|--|
| 3 | Decent Fabrics Pvt. Ltd. | 1,38,000 | 11,02,000 | 4,79,000 | 7,61,000 | <p>Name and address of the party</p> <p>PAN</p> <p>Confirmation which also indicates that the transactions are through banking channels and by account payee cheques</p> <p>Return of income along with Acknowledgement for A.Y. 2010-11</p> <p>Audited Balance sheet as at 31.03 2010</p> <p>Pa ty's etter giving details of ource of the funds from where unsecured loan was given to the appellat company</p> | <p>8</p> <p>8</p> <p>18,88</p> <p>85 to 87</p> <p>89 to100</p> <p>311</p> | <p>Group Company</p> <p>Deposits have also been received in earlier years and there is opening balance</p> <p>Amount of Rs. 4,79,000/- repaid during the year itself</p> |
| 4 | GUDOO Texcraft Pvt. Ltd. | NIL | 10,00,000 | Nil | 10,00,000 | <p>Name and address of the party</p> <p>PAN</p> <p>Confirmation which also indicates that the transactions are through banking channels and by account payee cheques</p> <p>Acknowledgement of Return of income for A.Y. 2010-11</p> <p>Party's letter giving details of source of the funds from where unsecured loan was given to the appellat company</p> | <p>8</p> <p>8</p> <p>24,132</p> <p>312</p> <p>25</p> <p>312</p> | |
| 5 | Komal Jyot Grahship Pvt.Ltd. | Nil | 10,00,000 | Nil | 10,00,000 | <p>Name and address of the party</p> <p>PAN</p> <p>Confirmation which also indicates that the transactions are through banking channels and by</p> | <p>8</p> <p>8</p> <p>26,133</p> | |

| | | | | | | | | |
|---|--------------------------------|-----------|-----------|-----------|-----------|---|--|--|
| | | | | | | <p>account payee cheques</p> <p>Acknowledgement of Return of income for A.Y. 2010-11</p> <p>Party's letter giving details of source of the funds from where unsecured loan was given to the appellant company</p> | <p>27</p> <p>313</p> | |
| 6 | Meridian Hotels Pvt. Ltd. | 10,00,000 | 10,00,000 | 10,00,000 | 10,00,000 | <p>Name and address of the party</p> <p>PAN</p> <p>Confirmation which also indicate th t the transactions are through banking channels and by account payee cheques</p> <p>Acknowledgement of Return of income for A.Y. 2010-11</p> <p>Party's letter giving details of source of the funds from where unsecured loan was given to the appellant company</p> | <p>8</p> <p>8</p> <p>28,134</p> <p>29</p> <p>314</p> | <p>Deposits have also been received in earlier years and there is opening balance</p> <p>Amount of Rs. 10,00,000/- repaid during the year itself</p> |
| 7 | Technomod Properties Pvt. Ltd. | Nil | 21,90,000 | 6,93,600 | 14,96,400 | <p>Name and address of the party</p> <p>PAN</p> <p>Confirmation which also indicates that the transactions are through banking channels and by account payee cheques</p> <p>Return of income along with Acknowledgement for A.Y. 2010-11</p> <p>Audited Balance sheet as at 31.03.2010</p> <p>Party's letter giving details of source of the funds from where</p> | <p>8</p> <p>8</p> <p>30,138</p> <p>135 to 137</p> <p>139 to 137</p> <p>315</p> | <p>Group Company</p> <p>Deposits have also been received in earlier years and there is opening balance</p> <p>Amount of Rs. 6,93,600/- repaid during the year itself</p> |

| | | | | | | unsecured loan was given to the appellant company | | |
|----|------------------------------------|-------------|-----------|-----------|-------------|--|---|--|
| 8 | Typhoon Financial Services Limited | 1,01,37,000 | 34,37,000 | 22,25,000 | 1,13,49,000 | Name and address of the party PAN Confirmation which also indicates that the transactions are through banking channels and by account payee cheques Return of income along with Acknowledgement for A.Y. 2010 11 Audited Balance sheet as at 31.03.2010 Party's letter giving details of source of the funds from where unsecured loan was given to the appellant company | 8 8 32,138 149 to 151 153 to 169 316 | Group Company Deposits have also been received in earlier years and there is opening balance Amount of Rs. 22,25,000/- repaid during the year itself |
| 9 | Deepjyot Commodities Pvt. Ltd. | Nil | 40,00,000 | Nil | 40,00,000 | Name and address of the party PAN Confirmation which also indicates that the transactions are through banking channels and by account payee cheques Acknowledgement of Return of income for A.Y. 2010-11 Party's letter giving details of source of the funds from where unsecured loan was given to the appellant company | 8 8 34,170 35 317 | |
| 10 | Rishabh Business Pvt. Ltd. | 21,35,000 | 18,88,000 | 15,61,000 | 24,62,000 | Name and address of the party PAN Confirmation | 8 8 36,174 | Group Company Deposits have also been received in |

| | | | | | | | | |
|----|---|-----|--------------------|----------|----------|---|--|--|
| | | | | | | <p>which also indicates that the transactions are through banking channels and by account payee cheques</p> <p>Return of income along with Acknowledgement for A.Y. 2010-11</p> <p>Audited Balance sheet as at 31.03.2010</p> <p>Party's letter giving details of source of the funds from where unsecured loan was given to the appellant company</p> | <p>171 to 173</p> <p>175 to 184</p> <p>318</p> | <p>earlier years and there is opening balance</p> <p>Amount of Rs. 15,61,000/- repaid during the year itself</p> |
| 11 | Woodland Consultancy Services Pvt. Ltd. | Nil | 5,87,000 | 2,95,000 | 2,92,000 | <p>Name and address of the party</p> <p>PAN</p> <p>Confirmation which also indicates that the transactions are through banking channels and by account payee cheques</p> <p>Return of income along with Acknowledgement for A.Y. 2010-11</p> <p>Audited Balance sheet as at 31.03.2010</p> <p>Party's letter giving details of source of the funds from where unsecured loan was given to the appellant company</p> | <p>8</p> <p>8</p> <p>38,187</p> <p>185 to 186</p> <p>188 to 195</p> <p>319</p> | <p>Group Company</p> <p>Deposits have also been received in earlier years and there is opening balance</p> <p>Amount of Rs. 2,95,000/- repaid during the year itself</p> |
| | Total | | 1,89,63,000 | | | | | |

It is seen from the above chart that the appellant has given sufficient information about the depositors. In all the cases the appellant has given confirmation, complete postal address, PAN, return of income" for the relevant year and also the balance sheet of the depositors. It is noted that the transactions are through banking channel. The AO has made enquiries under section 133(6) from the depositors and the facts of deposits have been confirmed by the depositors. It is further noted that the appellant has also given the source of the source, i.e., the source from where the depositor has

deposited the money with the appellant. It is further observed that in none of the cases there is any fact on record indicating that any of the depositors was in the business of giving entry or accommodation loans. The majority of the depositors were the group Company.

In view of the above discussion, it is clear that the appellant has given sufficient explanation about the identity, genuineness and the capacity of the person who has given the deposit. The AO has held that the loans were not explained merely on the ground that the appellant did not produce the depositors for examination. Considering the fact that the appellant has given every information related to the deposit no useful purpose would have been served by examining the depositors. Seven depositors out of the 13 are having the same correspondence address and therefore, it is clear that no adverse fact would have come to light on examination of these depositors. The, other depositors also are regularly assessed to tax and therefore, no purpose would have been served by further examination of these depositors. The AO is however, directed to pass the information to the concerned assessing officer, exercising jurisdiction over these depositors.

I have also carefully perused the judgements relied by AO. It is noted that the facts of the cases relied by the AO are different and are accordingly not applicable in the present case. In the case of N R Portfolio relied by the AO, the honourable Delhi High Court had upheld the disallowance as the applicant's of share did not respond to summons. In the present case the appellant has given all information and also, the notices issued by the AO under section 133(6) have been complied with by the depositors. The other cases, similarly, are clearly distinguishable on facts. In the present case, the appellant has duly discharged its onus under section 68 of the Act. Honourable Gujarat High Court in the case of Hindustan Inks and Resins Ltd, 68 DTR 18, has held that, in the case of share application money, that the Dept was free to proceed to reopen the individual assessments of shared applicant's case it is considered that source of deposit as well as credit worthiness of the depositor was not explained. The decision of honourable Supreme Court in the case of Lovely Exports Private Limited (supra) is squarely applicable on the present facts of the case.

In view of the above discussion the addition of Rs. 1,89,63,000/-, made by the AO, is directed to be deleted.

*The grounds of appeal are accordingly, **allowed.**"*

It is further noted that in respect of this 9 parties for which the findings have been given by me in A. Y. 2010 - 11, the AO has not brought on record any new facts. In fact, the addition has been made by following the findings given in earlier assessment order. Since the facts are similar in respect of the 9 parties which were there in earlier assessment year also, the addition under section 68 in respect of those creditors is directed to be deleted.

Further the following depositors are there which are new and the loans have been accepted in this year: -

- i) Indian Agrotech Ltd.*
- ii) Worldwide Impex Pvt. Ltd.*
- iii) Sigma Polyfilms Pvt. Ltd.*

iv) Sanwaria Vintrade Pvt. Ltd.

It is noted that the party at SI. No 1, 2& 3 are group companies. Two of them are situated at the same address from which the appellant company is operating and the other is operating from a different address at Gandhinagar. The directors are common. During the course of appellate proceedings, the appellant had given all necessary evidences which are required to prove the creditworthiness and the genuineness of the transaction. It had given confirmation, contra account confirmation, copy of bank statement and copy of the income tax return for the year under consideration. Therefore, in my opinion the appellant duly discharged the onus under section 68 of the Act. The addition made in respect of the above parties is directed to be deleted.

In respect of the fourth company namely; Sanwaria Vintrade Private Limited, it is noted that the company is situated at Kolkata. The appellant has submitted that it has duly discharged the onus and the management of the company, are known to the directors of the appellant company as the directors of the appellant company are also from Kolkata. It is noted from the details available that the notice issued under section 133(6) by the AO has been duly complied with and the company, the depositor, has furnished the information as required by the AO. Further there is no adverse comment by the AO regarding the creditworthiness, genuineness and the identity of the company. In view of these facts, I am of the considered opinion that the appellant has duly discharged its onus in respect of this depositor. The addition made under section 68 of the Act is therefore directed to be deleted.

However, the AO is directed to pass the information to the AO's having jurisdiction over the depositor for further necessary action at their end.

The ground of appeal is accordingly allowed.”

This leaves the Revenue aggrieved.

4. We have heard rival submissions. It has come on record that nine out of thirteen parties advancing the relevant unsecured loans are the same as they were in assessment year 2010-11. Learned counsel representing assessee files before us a co-ordinate bench order in ITA No.2288/Ahd/2014 dated 14.08.2017 upholding the CIT(A)'s findings in respect of the above said nine parties in earlier assessment year. The Revenue is fair enough in not disputing this factual position. We sought to know about the nature of evidence tendered at assessee's behest regarding the remaining four parties. We are informed that the very documents are filed qua these entities as well. We therefore quote above co-ordinate bench decision placing reliance on hon'ble jurisdictional high court's decision in Ranchhod Jivabhai Nakhawa Tax Appeal No. 50 of 2011 reported as 21 taxmann.com 159 and in case

of Chanakya Developers 43 taxmann.com 91 that it is for the Assessing Officer to conduct further enquiry in such cases after an assessee files confirmation, bank statements, PAN details as well as copy of income tax returns. We notice that the Assessing Officer in the instant case has not taken into account the fact that the present assessee has discharged its initial onus. The issue is otherwise squarely covered as per the above co-ordinate bench decision. We therefore find no reason to accept Revenue's sole substantive ground pleaded in the instant appeal.

5. This Revenue's appeal is therefore dismissed.

[Pronounced in the open Court on this the 10th day of October, 2017.]

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER
Ahmedabad: Dated 10/10/2017

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।