

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1037 of 2017

=====

PAVANKUMARM SANGHVI....Appellant(s)

Versus

INCOME TAX OFFICER....Opponent(s)

=====

Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

MS SHAILEE S MEHTA, ADVOCATE for the Appellant(s) No. 1

=====

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 12/02/2018

ORAL ORDER**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. Appeal is filed by the assessee challenging the judgment of the Income Tax Appellate Tribunal dated 17.05.2017 raising following questions for our consideration:

"[A] Whether on the facts and in the circumstances of the case and law, the ITAT is justified in confirming the addition of Rs.20 lakh as unexplained cash credit u/s 68 for unsecured loan though there is confirmation from lender ?

[B] Whether on the facts and in the circumstances of the case and law, the ITAT is justified in confirming the addition of Rs.3,66,041/- made on account of interest paid on unsecured loans which is wrongly treated as unexplained cash credit u/s 68 ? "

2. The issues pertained to additions made by the

Assessing Officer of two separate amounts of Rs.20 lakhs and Rs.3.66 lakhs (rounded off) under section 68 of the Income Tax Act, 1961 ('the Act' for short). The Commissioner (Appeals) also confirmed such additions, upon which, the issue reached the Tribunal. Tribunal by the impugned judgment, rejected the assessee's appeal making following observations:

"9. I have noted that the assessee has received an amount of Rs.10,00,000 from Natasha Enterprises on 12th August 2006, and, as a plain look at the Canara Bank statement of the lender, which is placed at pages 40 onwards of the paper book, would show, there is a credit of Rs.10,00,000 just before this cheque is paid. The bank balance before these two transaction, and after these two transactions, was only Rs.13.717. Quite interestingly, again on 14th August 2006 in the same bank account, there are debit and credit transactions of around Rs.15 lakhs each and the balance as on the end of that date is Rs.8,737. On 18th and 19th August 2006, again there are quite a few transactions aggregating to Rs.10 lakhs on debit as also credit side, and yet again closing balance is Rs.7,578. On 22nd August 2006, there are transactions of debits and credits of around Rs.32.50 lakhs each, and the closing balance at the end of the day is again Rs.7,578. As can be seen from this statement, on 29th August 2006, there are debit and credit transactions of Rs.15 lakhs each and once again the closing balance of the day is Rs.7,578. This kind of the state of bank account does not inspire any faith in the proposition that the entity in question is a genuine business concern. A look at the financial statements filed by the assessee does not lead to this conclusion either. The

lender has shown a turnover of Rs.122.92 crores but there is no closing stock, and a profit of almost 0.09% on the turnover leading to a tax payment of Rs.1,96,138. The lender makes purchases of Rs.123.04 crores in such diversified areas as cut and polished diamonds (Rs.73.15 crores), plywood and aluminum (Rs.11.72 crore), rough diamonds (Rs.4.36 crores), software (Rs.25.01 crores) and other items (Rs.8.79 crores), and sells these products too but all that the lender has spent on salaries is Rs.2,26,000, on office expenses is Rs.8,560, on office rent is Rs.27,600 and on printing and stationary is Rs.8,560. All this is simply not representative of what a genuine business would typically be. As regard Mohit International also, the story is no different. The bank statement, which is placed at pages 75 onwards, has the same theme of high transactions during the day and a consistently minimal balance at the end of the working day. On 28th April 2006, i.e. the day the assessee is given Rs.10,00,000, there are credit entries of almost similar amounts, and the balance after these transactions is a small amount of Rs.13,020. Similar is the pattern of transactions on all the days in respect of which this statement is placed before me. On 23rd March 2007, for example, the opening balance is Rs.1,36,611 and there are huge debits and credit entries on 23rd and 24th March, aggregating to almost Rs.4 crores on debit as also credit, and the closing balance at the end of 24th March is Rs.85,991. On a turnover of Rs.127.87 crores, the profit is less than 0.09% resulting in tax outgo of Rs.2,96,218. To effect this scale of operations, the lender incurs no travelling or telephone expense, and entire expenses of the business, except on brokerage and assortment of diamonds, are less than Rs.5 lakhs in the year. Interestingly, in today's world where an average human being, much less a business organization, can live without telephones,

this business entity has prospered without a rupees spent of telephones. The level of turnover and the expenditure incurred on achieving such high turnover donot match at all. The numbers do not add up and the details filed in respect of these lenders donot convince me that the lenders are routine businesses. Given this background the assessee's inability to produce the related persons or even given their current whereabouts makes the story of genuine transactions even more unbelievable. It is also important to bear in mind the fact that lending for an interest @12% p.a. Without any security is not something which people do for rank outsiders. There has to be some close association to get such a kind of unsecured credit at such low rates. When I consider this situation, coupled with the fact that (I) the assessee has not been able to produce these lenders for verification and reasonably explain the complete circumstances in which these lenders, who were not even routinely engaged in the business of giving loans and advances, gave him unsecured loans on 12% p.a. Interest – which essentially is possible in situations of close relationships and trust; and (ii) the assessee has maintained stoic silence on being told about these lenders being alleged to be shell entities, I am not inclined to believe that these are genuine business transactions."

3. Perusal of the orders on record and in particular, the above quoted portion of the order of the Tribunal would make it clear that the entire issue is based on appreciation of evidence on record and thus factual in nature. The Tribunal has given elaborate reasons to come to the conclusion that the entire transaction was not genuine. In absence of any

perversity, we do not see any reason to interfere.

4. Learned counsel for the assessee however vehemently contended that the assessee had received loans through cheques from lenders who had confirmed the same. Their accounts are audited and filed before the Revenue authorities. Thus, the genuineness of the transactions, the capacity of the lender and the factum of lending all have been established. Addition under section 68 of the Act there could not have been made. However, as noted, the Tribunal has minutely examined the position of the lenders, the circumstances under which, the amounts were allegedly loaned to come to the conclusion that the transactions were not genuine.

5. Under the circumstances, Tax Appeal is dismissed.

(AKIL KURESHI, J.)

(B.N. KARIA, J.)

ANKIT