

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "G": NEW DELHI]**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 8476/Del/2019
Assessment Year: 2016-17

Supreme Build-Cap Pvt. Ltd., 8-A, Commissioner Lane, Civil Lines, New Delhi - 110 054. PAN : AABCS3168B	Vs	ACIT, Central Circle-05, New Delhi.
(APPELLANT)		(RESPONDENT)

Assessee by :	Shri Rohit Tiwari, Adv.;
Department by :	Shri Saras Kumar, Sr. D. R.;

Date of hearing :	16/06/2020
Date of Pronouncement :	09/07/2020

O R D E R

PER PRASHANT MAHARISHI, AM:

- 01 This appeal is filed for Supreme BuildCap Private Limited [Appellant or Assessee] against the order of The Commissioner of Income Tax (Appeals)-24, New Delhi [The Ld CIT (A)], dated 13th August 2019. The ld. CIT (Appeals) passed order in appeal filed against the order of The Asstt. Commissioner of Income Tax, Central Circle-05, New Delhi,[The Ld AO] passed on 17.12.2018 under Section 143(3) of the Income Tax Act, 1961 (the Act) for assessment year 2016-17 wherein the returned

income of the assessee amounting to Rs. 15,29,040/- was assessed at Rs. 5,44,34,780/-.

02 Assessee has preferred the 2nd ground of appeal, which is only substantive ground, against the addition made by the Id. Assessing Officer and confirmed by the Id. CIT (Appeals) of Rs. 5 crores under Section 68 of the Act being loan received by the assessee during the year from M/s . Maharasaa Visions Pvt Ltd on 18/09/2015 holding that assessee failed to establish the creditworthiness of the lender and genuineness of the transaction.

03 The brief facts of the case shows that the assessee is a company engaged in the business of real estate development deriving income from business as well as other sources. The assessee filed its return of income on 13.10.2016 declaring income of Rs. 4,32,810/-. Revised return was also filed on 18.02.2017 declaring income of Rs. 15,29,040/-.

04 During the course of assessment proceedings, Id AO made an addition of Rs. 5 crores on account of loan received from M/s. Maharaasa Visions Pvt. Ltd. on 18.09.2015 under Section 68 of the Act. The Id. Assessing Officer dealt with the whole issue as per under:-

“ Unsecured Loan :

4.1 A perusal of details filed by the assessee reveals that the assessee has availed a loan of Rs. 5,00,00,000/- (Rupees Five Crores only) from M/s Maharaasa Visions Private Limited on 18.09.2015. Vide notice u/\$ 142(1) of the act dated 27.11.2018, the assessee was asked to prove his claim of genuineness of unsecured loan and creditworthiness of the lender as required by section 68 of the act. The assessee was required to furnish his response by 03.12.2018. Since no response was received till 04.12.2018, the assessee was issued a show cause notice as to why provisions of section 68 of the act should not be invoked in relation of the said unsecured loan

transaction.

4.2 In response to the show-cause notice, the assessee company submitted the following reply:

“ In this regard, the Assessee humbly submits that the provisions of Section 68 of the Act considers any sum credited in the books of taxpayer in any financial year and not already offered to tax, as income of taxpayer during such financial year if the taxpayer offers no explanation about the nature and source of such credit; or the explanation offered by taxpayer about the nature and source of such credit is not satisfactory in the opinion of assessing officer.

In view of the provision, the onus on the Assessee is to prove identity' and genuineness of the transactions. In this regard, the Assessee would like to explain the source of credit by producing the bank statements, income tax returns, financial statements and confirmation of the parties as Annexure 2 to the submission. The company M/s Maharaasa Visions Pvt. Ltd. has received the loan from MKT Investments Private Limited, which has been extended to the Assessee Company. It is pertinent to note here that MKT Investments Private Limited is a company engaged in the business of making investments in securities etc and of granting loans / advances to parties. From the bank statements, your good-self would note that nowhere cash has been credited in the books. The Assessee has received the loan through proper banking channels only. The Assessee has passed necessary entry in the books of accounts. By producing the documentation, the assessee has evidenced and established the identity of the lender. The assessee has no-where hidden the identity of the lender. The assessee has also established the genuineness of the transaction by producing ample documentation. The assessee has clearly explained the nature and source of credit though producing the bank statements of parties. “

4.3 The reply of the assessee has been carefully examined but

found not tenable in view of the discussion in the succeeding paragraphs.

From evidence on record, it is seen that the assessee company has received unsecured loan from M/s Maharaasa Visions Pvt Ltd on 18.09.2015. It is seen that M/s Maharaasa Visions Pvt Ltd has filed return of income declaring Nil income for AY 2016-17. The lender company has no source of income and no income generating apparatus in place.

Further, it is noted that source of M/s Maharaasa Visions Pvt Ltd is unsecured loan received from M/s MKT Investments Pvt Ltd. A perusal of bank account statement of M/s Maharaasa Visions Pvt Ltd bearing number 10927630000274 with FIDFC bank reveals that loan from M/s MKT Investments has been received on 07.09.2018. The account has negligible transactions. On the same day i.e. 07.09.2018, a cheque is issued in favour of M/s Supreme Build Cap Private Limited. The transactions in the said account over a period of 07.09.2018 to 18.09.2018 are reproduced below:-

Date	Narration	Debit	Credit	Balance
Balance as on 07.09.2015				2411
07.09.2015	Incoming funds from MKT		50000000	50002411
07.09.2015	Cheque issued	50000000		2411

18.09.2015	Cheque dated 07.09.2015 Cancelled		50000000	50002411
18.09.2015	BC issuance charges	50		50002361
18.09.2015	Cheque issued	50000000		2361

From the above table, it is evident that there is very low balance in the account of M/s Maharaasa Visions Pvt Ltd. Also there are no transactions except the loan transaction under consideration. In view of the foregoing, it is established that the lender company has no creditworthiness to advance unsecured loan to the assessee.

Further, it is noted that M/s MKT Investments Pvt Ltd has availed loan of Rs. 93,53,49,000/- from the assessee. To establish the nexus of loan advanced to MKT Investments Pvt Ltd and loan received from M/s Maharaasa Visions Pvt Ltd, bank account statement of M/s MKT Investment Private Limited bearing number 10922560001292 with HDFC Bank was examined. It is seen that the following transactions related to issue under examination took place:-

Date	Narration	Debit	Credit
07.09.2015	Incoming funds from Supreme Build Cap Private Limited		50000000
07.09.2015	Outgoing funds to Maharaasa Visions Pvt. Ltd.	50000000	

From the above two tables, it is evident that the assessee company has routed its own money in the garb of unsecured loan.

In view of the foregoing, it is held that the lender company has no creditworthiness and explanation offered by the assessee regarding the transaction is not satisfactory and I consider it an insufficient and unsatisfactory explanation u/s 68.

Accordingly, it is held that unsecured loan availed from M/s Maharaasa Visions Pvt Ltd is not genuine and by invoking' provisions of section 68 of the act, the same is added to income of the assessee.

Addition : Rs. 50000000/- ”

05 Against this order, the assessee preferred an appeal before the Id. CIT (Appeals). The Id. CIT (Appeals) vide para Nos. 5.4.1 to 5.4.5 dealt with the addition as under :-

“5.4.1 Vide Ground Nos. II to 15 the appellant has contested the addition of Rs.5,00.00,000/- on account of non-genuine unsecured loan by invoking the provisions of section 68 of the Act. During the assessment proceedings the AO noted that the appellant has availed unsecured loan of Rs. 5,00,00,000/- from M/s Maharaasa Visions Pvt. Ltd. on 18.09.2015. The appellant was asked vide notice li/s 142(1) of the Act to prove genuineness of unsecured loan and creditworthiness of the lender. As there was no response the appellant was issued show cause notice as to why section 68 of the Act should not be invoked in relation to the unsecured loan transaction. The AO carefully examined the reply to the show cause notice but found it unacceptable. On analysis of the evidences on record the AO noticed that the lender company M/s Maharaasa Visions Pvt. Ltd. had filed return of income declaring Nil income for AY 2016-17. the AO found that the tender company has no source of income and no income generating apparatus in place. The AO noted

that source of M/S Maharaasa Visions Pvt. Ltd. is unsecured loan received from M/s MKT Investments Pvt. Ltd. A perusal of bank account statement of M/s Maharaasa Visions Pvt. Ltd. bearing number 10927630000274 with HDFC bank revealed that loan from M/s MKT Investments has been received on 07.09.2018. The AO further noticed that the said account has negligible transactions. On the same day i.e. 07.09.2018. a cheque was issued in favour of the appellant. On further perusal it is noticed that the said cheque was cancelled and thereafter, the amount of Rs.5,00,00,000/- was issued to the appellant on 18.09,2015. The AO noted that there is very low balance in the said account and there was no transaction except the loan transaction. The AO concluded that it was established that the lender company has no creditworthiness to advance unsecured loan to the appellant.

5.4.2 Or further analysis the AO noted that M/s MKT Investments Pvt. Ltd. has availed loan of Rs.93.53,49,000/- from the appellant. To establish the nexus of loan advanced to M/s MKT Investments Pvt. Ltd. and loan received from M/s Maharaasa Visions Pvt. Ltd., bank account statement of M/s MKT Investment Private Limited bearing number 10922560001292 with HDFC Bank was examined, it was noted that on 07.09.2015 there was credit of Rs.5,00,00.000/- from the appellant which was transferred to M/s Maharaasa Visions Pvt. Ltd. on the same date. It was evident that the appellant company has routed its own money in the garb of unsecured loan. The AO held that the lender company has no creditworthiness and explanation offered by the appellant regarding the unsecured loan transaction is not satisfactory. The AO further concluded that the unsecured loan availed from M/s Maharaasa Visions Pvt. Ltd. is not genuine and thereafter added the same as unexplained cash credit u/s 68 of the Act.

5.4.3 During the appellate proceedings the appellant in his written submission contended that it has explained the source of credit by producing the bank statements, income tax returns, financial statements and confirmations of the parties before the AO. The lender company received the loan from M/s MKT Investment Pvt. Ltd. which was extended to the appellant. It has been submitted that from the bank statements it has been established that nowhere cash has been credited in the books of accounts. The appellant received the loan through proper banking channel and passed necessary entry in the books of accounts. By producing documentation the appellant has established the identity of the lender and genuineness of the transaction. The appellant has explained the nature and source of credit through bank statements of concerned parties.

5.4.4 On thorough consideration I find that the AR of the appellant even in his written submission dated 10.05.2019 has not commented upon the creditworthiness of the lender which was the main issue raised by the AO in the assessment order. Neither during the assessment proceedings nor in the appellate proceedings, the appellant has been able to establish creditworthiness of the lender company. In the absence of creditworthiness of the lender the genuineness of the transaction is also not established. The AO has analysed the bank statements of the lender company M/s Maharaasa Visions Pvt. Ltd. and M/s MKT Investment Pvt. Ltd. and exposed the true nature of the transaction and conclusively held that the unsecured loan availed from M/s Maharaasa Visions Pvt. Ltd. was not genuine. In this connection reliance is placed on the following judgements :

- i. In the case of M/s Sanraj Engineering Pvt. Ltd. Vs CIT (ITA 79/2016) (Delhi) the Hon'ble

Delhi High Court held that addition made u/s 68 on account of unsecured loans was justified where initial onus of proving the creditworthiness of the lenders was not discharged by the asscssee.

ii. In the case of PC1T Vs Bikram Singh [2017] 181 taxmann.com 104 (Delhi)/(2017] 250 Taxman 273 (Delhi)/]2017] 399 ITR 407 (Delhi) the Hon'ble Delhi High Court held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establish the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy.

iii. In the case of Seema Jain Vs ACIT [2018] 181 taxmann.com 307 (Delhi) the Hon'ble Delhi High Court held that where AO made addition to asscssee's income in respect of loan availed, in view of fact that lender company did not have tangible or intangible fixed assets and, moreover, it had declared a meagre income of few thousand rupees and, thus, it was not in a position to give such a huge loan to assesses, impugned addition was to be confirmed.

iv. In the case of PRATHAM TELECOM INDIA

PVT LTD VS DCIT 2018-T10L- 1983-HC-MUM-IT the Hon'ble Bombay High Court held that mere production of PAN numbers & bank statements is not sufficient enough to discharge the burden on taxpayer to escape the realms of Section 68.

v. In the case of Pavankmnarm Sanghvi Vs ITO [2018] 90 taxmann.com 386 (Gujarat) the Hon'ble Gujarat High Court Held that where assessee received loan from two companies, in view of fact that on date assessee was given loan there were credit entries of almost similar amounts and balance after these transactions was a small amount and moreover assessee failed to produce these lenders for verification, impugned amount was rightly brought to tax under section 68.

vi. In the case of Sitaram Ramchanddas Patel Vs. ITO (2018) 95 taxmann.com 290 (Gujarat) the Hon'ble Gujarat High Court held that where assessee failed to prove capacity of concerned persons who alleged to have given unsecured loan and/or gift, impugned addition made under sec. 68 was to be confirmed.

5.4.5 Thus, in view of the facts stated above since the appellant has failed to establish the creditworthiness of the Lender Company as well as genuineness of transaction, the action of the AO in treating the non-genuine unsecured from M/s Maharaasa Visions Pvt. Ltd. As unexplained cash credit under Section 68 of the Act is fully justified and therefore, addition of Rs.5,00,00,000/- made by the AO under Section 68 of the Act on this account is confirmed. Accordingly, Ground Nos. 11 to 15 are dismissed. “

06 Thus, assessee, aggrieved has preferred this appeal.

07 The ld AR submitted that

- a. Assessee has received the above loan from M/s. Maharassa Visions Pvt. Ltd., which is one of the group concerns.
- b. Assessee has discharged its onus by providing the complete details with respect to the above company such as
 - (1) Confirmation of the company,
 - (2) Its annual accounts,
 - (3) Its Income Tax returns and
 - (4) The bank statement of the depositor,
 - (5) Source of the funds received by the lender from MKT Investments Pvt Ltd (Another Group Company) with the annual accounts and bank statement of that party (MKT Investments P Ltd) who provided funds to the lender
 - (6) source of the source of the funds is appellant itself, Assessee deposited money with MKT Investments Pvt Ltd which was given to the lender and in turn lender deposited with the assessee. Bank account/ statements of all these parties, audited accounts of all these parties and confirmation
- c. Source of the fund, which is invested in the assessee company, is a loan from Assessee Company to MKT Investments Private Limited and from KT Investments to M/s. Maharaasa Visions Pvt. Ltd, which deposited the sum with the appellant company. The whole cycle of funds is explained.

- d. The funds were repaid by the assessee company in the next year. He submitted that Rs. 5 crores were received by assessee on 18.09.2015 and it was re-paid by seven cheques in the next financial year. He submitted that all the transactions are through banking channels. He also submitted that the company from which the assessee has obtained loan is a sister concern.
- e. Source of the fund received he submitted that M/s. Maharaasa Visions Pvt. Ltd. received the sum of Rs.5 crores from another group company M/s MKT Investments Pvt. Ltd. To show this, he submitted the bank account of M/s MKT Investments Pvt. Ltd. wherefrom M/s. Maharaasa Visions Pvt. Ltd. received the sum. He submitted that the bank account of M/s MKT Investments Pvt. Ltd., which clearly demonstrated flow of transaction from the bank account of M/s MKT Investments Pvt. Ltd.
- f. Filed two different paper books wherein several documents with respect to the lender, the assessee as well as MKT Investments private limited including their bank statements, annual accounts, the list of directors, and the shareholding of the respective companies.
- g. These documents were shown to demonstrate that the lender is a group company, the source of money is also the group company, and the amount is through banking channel where the word transaction is traced out, source of funds available with the lender, the funds received by the assessee company.
- h. There is no allegation that any third party is involved or there is any malafide intention of the assessee. He submitted that there is no allegation at all that it is an accommodation entry. He submits that funds flow is not at all doubted.

- i. He submitted that Lender Company was for specific purposes of filing a real estate tender; therefore, assessee transferred the funds to the lender through MKT Investments Pvt Ltd, another Group company. Assessee paid Rs 5 Crore to MKT Investments, MKT Investments in turn Paid 5 Crore to lender. As the project did not fructify, the money was returned to the assessee by lender. However as in the group concerns there were accounting entries at the time of receipt of money, same needs to be reversed, in next year assessee returned this money to lender , lender returned , money to MKT Investments and In turn MKT Investments returned money to the appellant. He explained the whole cycle of the fund movement.
- j. He submitted that as the project for which the company was formed by the group, did not fructify, there are no assets and liabilities of that company. Above Transactions were sole accounting entries in the books of the company as per above transactions explained. There was unsecured loan from the MKT Investments as Liability, Loans, and advances in assets to the appellant in the books of lender. He submitted that when the above flow of fund is seen, there is clear cut source of funds are available, It is not necessary that there should be income always or assets always with lender. In these peculiar circumstances, it is not. He also submitted that directors are also same group is apparent. He submitted that creditworthiness of the lender is qua transactions. Otherwise, a loss making company cannot give any loan to anybody. With respect to genuineness, he submitted that the whole transaction is so transparent that there is nothing ingenuine in it.

In view of this it was the submission that lender company has source of funds available with it in form of unsecured loan from a group company and as it is a group company transaction, there is no doubt about the genuineness of these transaction also. Therefore, he submitted that the addition made by the learned assessing officer and confirmed by the learned CIT – A is to be deleted.

08 The learned departmental representative vehemently supported the order of the learned lower authorities. He submitted that merely because the assessee received money from its group company, the provisions of Section 68 could not be bypassed. Even in the group company cases according to him the assessee is required to prove the identity, creditworthiness of the lender as well as the genuineness of the transaction. He submitted that the lender does not have any income or income earning apparatus to give an unsecured loan to the assessee company. In fact, the assessee has routed its own money through the group companies. He further referred to the order of the learned and CIT – A who confirmed the above addition. In view of this, he supported the orders of the lower authorities.

09 We have carefully considered the rival contention and perused the orders of the lower authorities. In this case, the assessee has received an unsecured loan from one of the group concern M/s Maharashtra Visions Pvt Ltd of ₹ 5 crores on 18 September 2015. During the course of assessment proceedings, assessee was asked to substantiate the identity, creditworthiness of the lender as well as genuineness of the transaction. In support of this contention assessee submitted, that it has received the loan from a group concern, which was repaid in subsequent year. To substantiate its claim the assessee submitted the copy of the income tax return of the lender, bank statement, confirmation as well as the financial statements in the form of balance sheets of the lender. The assessee also submitted that in the balance

sheet, the assessee's name is shown as a debt by lender company. There is a creditor by the name of MKT investments private limited, which is also group concern, who has given a loan to the lender and that lender in turn has deposited the money with the assessee company. Subsequently, assessee returned the money to the lender, the lender returned money to the MK investments private limited and MKT investments private limited returned the loan taken from the assessee. Therefore, there is a complete trace of the transaction of the above loan received. To substantiate the above transaction the assessee has submitted a bank statement of the assessee, MKT Investments Pvt Ltd and lender i.e. Maharasaa Vision Pvt Ltd. The assessee by production of the balance sheet has shown that these are transactions from a group company and more precisely subsidiary of the appellant. It is shown by the balance sheet that appellant is owned by Mr Mithlesh Tripathy and his family as shareholders. Appellant company owns 51% share in the lender company as on 31st of March 2016. As on March 2015, in the lender company Mr. Mithlesh Tripathy and Mr Anmol Tripathy owned 50% each. From the above it is apparent that the year in which the loan was received the appellant company was holding 51% share in the lender company. In the balance sheet of the lender, it is apparently shown that there is an unsecured loan received from a related party i.e. MKT Investments Pvt Ltd and unsecured loan granted to a related party i.e. assessee, appellant. Thus, the creditworthiness of the amount given to the assessee by the lender is a source of fund from another group company. Therefore, it is not the case that the lender did not have the source of fund to give loan to the assessee. Further, with respect to the genuineness of the transaction, the loan was obtained from a group company where there is a clear-cut source of fund available; there is no allegation of any unaccounted money or tainted source.

Therefore, the genuineness of unsecured loan cannot be doubted. With respect to the no source of income i.e. the return of income filed by the lender at Rs. Nil, it was explained that the company was formed for a specific purpose and the amount was transferred to it for bidding, which did not happen, and therefore the money was returned. It was explained that appellant company itself transferred the money to MKT investment private limited, which in turn granted the loan to the lender company i.e. Maharasaa Visions Pvt Ltd. as the bidding did not happen; therefore, the money was available with the group concern, which was returned by the lender to the appellant, as there was no use of the group money in the books of lender. Creditworthiness not necessarily mean that company should have given the money out of profits only. It is merle ascertainment of the fact that when the lender deposits the money it has valid and genuine source available with it or not. In this case, the source of money lent is loan from another group company; group company received money from the assessee itself, the transactions is duly reflected in the balance sheets of respective companies. Even the assessing officer himself has stated that source of money lent to the assessee is the assessee itself. If the view of the ld AO is to be believed then, NBFC companies who have limited earning but lent the money out of the money borrowed will never pass the test of section 68 of the act. Thus, merely filing Nil return by lender, if the sources are clearly established with overwhelming evidences of the bank statements of all the concerned parties duly supported by the annual accounts, cannot lead to addition in the hands of the borrower. The various decision referred to by the ld CIT (A) does not help the case of the revenue and most of these decision merely recites the basic principles of taxation u/s 68 of the act. In view of this, we allow Ground no 2 of the appeal of the assessee, which is against the confirmation of the

additions of Rs 5 Crores u/s 68 of the act with respect to above unsecured loan.

10 All other grounds of appeal, other than ground no [2] , are dismissed

11 In the result, appeal is partly allowed.

Order pronounced in the open court on : **09/07/2020**.

-Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Date : **09/07/2020**.

MEHTA

Copy forwarded to:

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI