

आयकर अपीलीय अधिकरण, 'डी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2451/Chny/2017

(निर्धारणवर्ष / Assessment Year: 2009-10)

M/s. K.P.Manish Global Ingredients Pvt.Ltd. 41, Raghunayakulu Street, Park Town, Chennai-600 003.	Vs	The Assistant Commissioner of Income Tax, Company Circle-II(4), Chennai.
PAN: AABCL 3843N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.Banusekar, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Ms.R.Anita, JCIT

सुनवाईकीतारीख/Date of hearing	:	13.04.2021
घोषणाकीतारीख /Date of Pronouncement	:	09 .06.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the learned CIT(A)-9, Chennai dated 15.06.2017 and pertains to assessment year 2009-10.

2. The assessee has raised the following grounds of appeal:-

"1. For that the order of Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance of unsecured loans of Rs.3,26,00,000/- from C.K.Exports (Prop Prema U Mehta), Mehta Motors & General Finance Co (Prop C Umedmal HUF) and Swastik Trading Corporation.

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the unsecured loans are genuine and the disallowance of the same is not warranted in the facts and circumstances of the case.

5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 68 are not invocable in the facts and circumstances of the case.”

3. Brief facts of the case are that assessee company engaged in the business of dealing in drugs, chemical ingredients etc. filed its return of income for the assessment year 2009-10 on 29.09.2009 declaring total income of Rs. 36,45,533/-. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that assessee has received unsecured loan to the tune of Rs.9,90,56,567/- from several persons. Therefore, he called upon the assessee to file necessary information including name and address of persons from whom unsecured loans were taken. The Assessing Officer, thereafter issued letters

u/s.133(6) to all persons calling for information to confirm transactions with the assessee, for which parties have filed various details called for by the Assessing Officer, including confirmation letters to confirm loan transactions with the assessee. The Assessing Officer on perusal of confirmation received from parties noticed that unsecured loans shown to have been received from Mr. Umed Mehta and his floated concerns are dubious as Mr. Umed Mehta has stated during the course of survey that entire transactions related to M/s.Kawarlal group was only accommodation entries. The Assessing Officer, after analyzing entire transactions of Mr.Umed Mehta, observed that transactions involved circulation of funds among group concerns. Therefore, he opined that unsecured loans in the books of account was nothing but a device adopted to introduce its own unexplained money into account. The Assessing Officer further observed that just because impugned transactions have been routed through banking channels, the same cannot be considered as genuine. Accordingly, he opined that entire transactions routed through various company accounts are sham transactions and hence, made additions

towards unsecured loan received from three companies belonging to Mr.Umed Mehta u/s.68 of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee preferred appeal before the learned CIT(A). Before the learned CIT(A), the assessee has reiterated its arguments made before the Assessing Officer. The sum and substance of the arguments of the assessee before learned CIT(A) are that unsecured loans received from M/s. C.K. Exports, M/s. Mehta Motors & General Finance Company and M/s. Swastic Trading Corporation are genuine transactions, which are routed through proper banking channels. Further, creditors have established source of income to explain loans given to the assessee. The Assessing Officer has ignored all the evidences filed by the assessee and made additions on suspicious ground without bringing on record any evidence to prove that unsecured loans received from above concerns are unaccounted income of the assessee.

5. The learned CIT(A), after considering relevant submissions of the assessee and also relied on various judicial

precedents including the decision of Hon'ble Supreme Court in the case of M/s. Kachwala Gems Vs. JCIT (2006) 206 CTR (SC) 585 held that payment by account payee cheque is not sufficient to establish genuineness of transactions. What is relevant to see is transactions are passed the test of genuineness in real sense, that means the assessee should prove beyond doubt the nature of credits and source for such credits. In this case, it is admitted fact that the assessee has routed its unaccounted income in the form of unsecured loans through various group concerns, which is nothing but sham transaction. Therefore, he opined that there is no error in the findings recorded by the Assessing Officer to disallow unsecured loan received from three entities as undisclosed income of the assessee. The relevant findings of the learned CIT(A) are as under:-

“7. I have carefully considered the observation of the AO under para 5 and the submissions of the appellant under para 6. The appellant's submission that the above mentioned sums have not been added in the search assessment u/s 153A, therefore the addition made prior to search must be deleted is not acceptable. The original assessment was made prior to the search. It is altogether a different issue whether the sums added in original assessment must be once again added in

153A assessment or not. Not adding the same amount in the search assessment u/s 153A is no reason to delete the addition already made. The entire addition has been made on the basis of the statement recorded from Shri. Umesh Mehta that the unsecured loans taken from the said group companies as mentioned in the assessment order are nothing but accommodation entries which are bogus in nature. The appellant never contended that the statement given by Shri. Umesh Mehta is not true. The appellant's submission in the ground that the transactions are made through cheque, therefore the same must be genuine is not acceptable. It is held in the case of M/s. Kachwala Gems vs JCIT, ITA No.134/JP/2002 dated 10.12.2003, which has been affirmed by the Supreme Court in the case of M/s. Kachwala Gems vs. JCIT (2006) 206 CTR (SC) 585, 288 ITR 10 (SC), that payment by account payee cheque is not sufficient to establish the genuineness of purchases. Also in the case of CIT vs Precision Finance Pvt. Ltd. (1994) 121 CTR (Cal.) 20, the Calcutta High Court has held that even payment by account payee cheque is not sacrosanct and it would not make an otherwise non-genuine transaction genuine.

8. The appellant also contended in the ground that the book entries must be accepted is not an acceptable argument because of the statement given by Shri. Umesh Mehta as per which these are mere accommodation entries and not genuine transactions. It is also contended in the grounds that no opportunity was granted by the AO before making the additions, but the perusal of the assessment order shows that Shri. Rajendrakumar, AR of the appellant appeared and it is only after discussing the issues with him that the order was passed.

Even during the appeal proceedings, the appellant had sufficient opportunity to explain its case, therefore the ground regarding opportunity for rebuttal was not granted is not acceptable. In view of the above, the addition of Rs.3,26,00,000/- is hereby confirmed.”

6. The learned A.R for the assessee submitted that the learned CIT(A) has erred in confirming additions made towards unsecured loan received from M/s. C.K.Exports, M/s. Mehta Motors & General Finance Company and M/s. Swastic Trading Corporation, without appreciating the fact that unsecured loans are genuine which are supported by necessary evidences. The AR for the assessee referring to paper book filed by the assessee submitted that the assessee has filed ledger account copies of loan creditors along with bank statements and established that all transactions are routed through proper banking channel . The assessee has also explained source of income for unsecured loans, as per which a sum of Rs.1,75,00,000/- received from M/s. Mehta Motors & General Finance Company represented by Umed Mehta HUF was out of commission received from M/s. Kawarlal & Sons, a group company of the assessee by cheque dated 03.11.2008. The

said sum of Rs.1,75,00,000/- was received from M/s. Kawarlal & Sons has been routed through Umed Investments & Marketing Co. Pvt. Ltd. Further, said sum has been finally transferred to assessee company by Umed Investments & Marketing Co. Pvt.Ltd vide cheque No.932791. Similarly, unsecured loan received from M/s. C.K.Exports was once again received from M/s. Kawarlal & Sons routed through Kesaria Marketing Pvt. Ltd. Likewise, unsecured loan received from M/s. Swastic Trading Corporation was also out of commission income received from M/s. Kawarlal & Sons. All these evidences are part of assessment records. In fact, the assessee has filed necessary details including income offered before Settlement Commission in the name of group companies and has further clarified that group company has paid commission to M/s. Kawarlal & Sons and therefore, source has been satisfactorily explained and hence, there is no reason for the Assessing Officer to doubt genuineness of the transactions and credit worthiness of the parties.

7. The learned DR, on the other hand, strongly supporting the order of the learned CIT(A) submitted that entire

transactions of unsecured loans amongst group companies are sham transactions, which is evidenced from facts brought out by the Assessing Officer that assessee has routed its unaccounted income in form of unsecured loans through group companies. This fact has been further strengthened by survey conducted in the group companies cases where Mr.Umed Mehta has categorically admitted that unsecured loans are accommodation entries. Therefore, there is no error in the findings recorded by the Assessing Officer as well as learned CIT(A) to make additions towards unsecured loans received from three companies u/s.68 of the Income Tax Act, 1961.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer has made additions towards unsecured loan received from three firms belongs to assessee group on the ground that said loan transactions are nothing but accommodation entries of assessee own unaccounted income in form of unsecured loans. Therefore, in order to ascertain whether transactions of unsecured loans received from three companies are genuine transactions which pass test of

ingredients provided u/s.68 of the Act or not, one has to understand provisions of section 68 of the Act. The provisions of section 68 of the Act deals with cases where any sum found credited in books of account of the assessee for any previous year for which the assessee fails to establish identity, genuineness of transactions and creditworthiness of parties, then said sum found in the books of account of the assessee shall be treated as income of that year. Therefore, to come out of shadow of provisions of section 68 of the Act, one has to prove identity of the creditor, genuineness of transaction and creditworthiness of parties. Once initial burden of proving all three ingredients are discharged, then burden shifts to the Revenue to prove otherwise that the said unsecured loans are unaccounted income of the assessee.

9. In this legal background, if you examine facts of this case, we find that the assessee has received a sum of Rs.1,75,00,000/- from M/s. Mehta Motors & General Finance Company, a proprietary concern of Mr. Umed Mehta (HUF). The assessee has filed various details including bank statement and financial statement of creditor. From the details filed by the

assessee, we find that a sum of Rs.1,75,00,000/- was received from Umed Investments & Marketing Co. Pvt.Ltd. on 03.11.2008 by cheque No.932791. The said sum was received from M/s. Kawarlal & Sons by Umed Investments & Marketing Co. Pvt. Ltd. Further, the said sum has been finally paid to the assessee by Umed Investments & Marketing Co. Pvt.Ltd. All these transactions are routed through proper banking channel. The assessee has also proved source of income for said sum of Rs.1,75,00,000/-, which is out of commission received from M/s. Kawarlal & Sons by Umed Investments & Marketing Co. Pvt.Ltd. Therefore, from the above details, it is very clear that the assessee has proved identity, genuineness of transaction and creditworthiness of loan creditors. Coming to unsecured loan received from M/s. C.K. Exports of Rs. 50,00,000/-, the assessee has explained that a sum of Rs.50.00 lakhs was received from M/s. Vim Mines & Minerals vide cheque No.336605. Further, said sum was ultimately received from Kesaria Marketing Pvt.Ltd. out of commission income received from Kawarlal & Sons. All these evidences are part of paper book filed by the assessee. Therefore, it is incorrect on the part

of the Assessing Officer to allege that unsecured loans received from M/s. C.K. Exports was not explained with necessary evidences. Similarly, unsecured loan received from M/s. Swastic Trading Corporation amounting to Rs.85,00,000/- was received out of commission income from Kawarlal & Sons and routed through M/s. Swastic Trading Corporation, a proprietary concern of Monica Mehta, daughter of Mr. Umed Mehta. The assessee has filed necessary evidences including financial statement and bank statement of M/s. Swastic Trading Corporation. From the details filed by the assessee, we find that transaction was routed through Kawarlal & Sons out of commission income. Further, the assessee has also filed necessary evidences to prove that Kawarlal & Sons has received commission income from various group companies, which is part of findings recorded by the Income Tax Settlement Commission in their order dated 31.05.2016 u/s.245D(4) of the Act. Therefore, we are of the considered view that the assessee has discharged its burden cast upon u/s. 68 of the Income Tax Act, 1961 by filing various details including financial statement of creditors, their bank statements and confirmation letters to

prove transactions. Once an assessee discharged its burden, then burden shifts to Assessing Officer to prove otherwise that said transaction was nothing but undisclosed income of the assessee. In this case, the Assessing Officer has not brought on record any evidence to prove that said sum was undisclosed income of the assessee. Therefore, we are of the considered view that the Assessing Officer was completely erred in making additions towards unsecured loans received from three companies of assessee group. We further noted that the Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports (2008) 216 CTR 198 has clearly held that once initial burden of identity was proved, then the Assessing Officer is at liberty to proceed on the creditors in accordance with law, but said sum cannot be treated as unexplained credit of the assessee. A similar view has been expressed by the Hon'ble Supreme Court in the case of M/s. Steller Investments Ltd. 115 taxmann.com 99(SC).

10. Insofar as case law relied on by the learned CIT(A) in the case of M/s. Kachwala Gems Vs, JCIT (supra), we find that no doubt mere payment by cheque is not sufficient enough to

prove genuineness of transactions, but what is relevant is whether transactions are passed the test of three ingredients provided u/s.68 of the Act. In this case, it is not only transactions are routed through proper banking channels, but also other ingredients including identity and creditworthiness of parties has been satisfactorily explained. Therefore, we are of the considered view that the case law relied upon by the learned CIT(A) is not applicable to facts of present case.

11. In this view of the matter and considering facts and circumstances of the case and also by following judicial precedents discussed hereinabove, we are of the considered view that assessee has discharged burden cast upon u/s. 68 of the Act to prove unsecured loans received from M/s.C.K.Exports, M/s. Mehta Motors & General Finance Company and M/s. Swastic Trading Corporation. The Assessing Officer as well as learned CIT(A) without appreciating the evidences filed by assessee has simply made additions on suspicious ground that said sum was undisclosed income of the assessee. Hence, we set aside the order of learned CIT(A) and direct the Assessing Officer to delete

additions made towards unsecured loans received from three entities.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 9th June, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 9th June, 2021
DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.