

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM**

**ITA No. 280/Mum/2024**

**(Assessment Year: 2014-15)**

M/s Sankpal Developers  
101-104, Haripriya Apartment,  
Sundervan Complex,  
Lokhandwala Cross Road,  
Andheri (West),  
Mumbai-400 053

**(Appellant)**

Vs.

Income Tax Officer,  
Ward-25(1)(1)  
203, Kautilya Bhavan,  
Bandra Kurla Complex,  
Bandra (East),  
Mumbai-400 051

**(Respondent)**

**PAN No. ABWFS4025Q**

**Assessee by** : Shri Jitendra Singh, AR  
**Revenue by** : Shri R.R. Makwana, DR

**Date of hearing:** 10.06.2024  
**Date of pronouncement :** 09.07.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 280/Mum/2024 in case of Sankpal Developers (assessee / appellant) against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2014-15, dated 27<sup>th</sup> December, 2013, wherein the appeal filed by the assessee against the assessment order under Section 143(3) read with section 147 of the Act dated 17<sup>th</sup> December, 2018, passed by the Income Tax Officer, Ward-25(1)(1), Mumbai, was dismissed.

02. The assessee is aggrieved and has preferred this appeal raising following grounds:-

*"1. On the facts and circumstances of the case, the National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "NFAC") erred in passing the order dated 27th December, 2023 upholding the action of the Income Tax Officer, Ward - 25(1)(1), Mumbai [hereinafter referred to as "Ld. A.O.'] in passing the assessment order dated 17th December 2018 under section 143(3) read with section 147 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] determining total income of the Appellant at Rs.40,75,000/- as against Nil returned income. The Appellant strongly objects to the impugned order passed by NFAC as the same is illegal, arbitrary and perverse on the following amongst other grounds which are urged without prejudice to one another: -*

*2. Treating the unsecured loan as unexplained cash credit under section 68 of the Act unjustified- Rs.40,75,000/-*

*i. The NFAC fell in error of law in upholding the action of the Ld. A.O. in treating the unsecured loan amounting to Rs.40,75,000/- borrowed from Nazar Impex Pvt. Ltd as unexplained cash credit under section 68 without appreciating that provision of section 68 of the Act is not applicable in the Appellant's case. Hence, the addition made by Ld. A.O. is bad in law and the same may be deleted.*

- ii. *The NFAC failed to appreciate that the appellant has furnished all the relevant documentary evidences in the form of PAN Card, IT Return, Confirmation and Bank Statement to prove the identity, capacity and genuineness of loan transactions. Hence, the Appellant has duly discharged the primary onus cast upon it under the provisions of section 68 of the Act. The Appellant, therefore, prays that the addition of Rs.40,75,000/- under section 68 of the Act is unjustified and the same may be deleted.*
- iii. *The NFAC further failed to appreciate that the loan was borrowed in the normal course of business activity through banking channel and the same was repaid also through banking channel. Hence, treating the unsecured loan amounting to Rs.40,75,000/- borrowed from Nazer Impex Pvt. Ltd as unexplained cash credit under section 68 of the Act is unjustified and the same may be deleted.*
- iv. *The NFAC further failed to appreciate that the Ld. A.O. has made the addition relying on the statements of certain parties obtained during the search and seizure action carried out under section 132 of the Act on the said parties, without providing the appellant an opportunity to cross examine them. Thus the impugned addition of Rs.40,75,000/- is made against the gross violations of principals of natural justice and the same may be deleted.*



*3. The Appellant denies any liability to pay interest under sections 234A, 234B and 234C of the Act. Hence, the same are not leviable.*

*4. The Appellant craves leave to add, alter, amend, delete, rescind or withdraw any of the grounds of appeal mentioned hereinabove."*

03. The brief fact of the case shows that assessee is engaged in the business of property developers. It filed its return of income on 8<sup>th</sup> October, 2014, at ₹nil. The return was not picked up for scrutiny. Notice under Section 148 of the Act was issued on 30<sup>th</sup> March, 2018, wherein based on the information received from DGIT, Investigation, Mumbai vide letter dated 13<sup>th</sup> March, 2018, that the assessee has obtained an accommodation entry of ₹40,75,000/- from M/s Nazar Impex Pvt. Ltd., which is a company operated by accommodation entry provider Shri Rajendra Jain. The assessee is found to be the beneficiary. The learned Assessing Officer asked the assessee to prove the identity and creditworthiness and genuineness of the above loan. The assessee submitted the copy of income tax return, the confirmation along with the bank statement. The assessee was also issued show cause notice and asked to produce the party which was also replied similarly but none was produced. The learned Assessing Officer rejected the explanation and stated that the assessee has obtained the accommodation entry providers and therefore, the creditworthiness and genuineness of the transaction is not proved accordingly, he passed the assessment order under Section 143(3) read with section 147 of the Act on 17<sup>th</sup>



December, 2018, by making an addition of ₹40,75,000/- under Section 68 of the Act.

04. The assessee preferred the appeal before the learned CIT (A), wherein the addition was confirmed for the reason that assessee failed to substantiate the creditworthiness of the lender and genuineness of the transactions. He further held that M/s Nazar Impex Pvt. Ltd. has a meager profit of ₹2.83 lacs and net worth only ₹17 lacs which did not correspond to the amount of loan of ₹40,75,000/- given to the assessee. The assessee aggrieved with that and is in appeal before us.
05. The learned Authorized Representative submitted on identical facts in earlier year the addition of ₹50 lacs was made on account of bogus loan in the hands of the assessee, In ITA No.1064/Mum/2023, for A.Y. 2013-14, dated 14<sup>th</sup> July, 2023, the SMC bench has deleted the addition by allowing the appeal of the assessee. Therefore, the issue is squarely covered in favor of the assessee.
06. The learned Departmental Representative vehemently supported the orders of the lower authorities. It was submitted that assessee is found to have obtained loan from the bogus accommodation entry provider from Mr. Rajendra Jain, an accommodation entry provider of ₹40,75,000/- for which the assessee has failed to prove the genuineness and creditworthiness of the transactions. It was submitted that the order of SMC bench stated by the learned Authorized Representative goes against the assessee for the simple reason that in the last year same

company has provided loan to the assessee of ₹50 lacs. He submitted that repayment of the accommodation entry by account payee cheque does not absolve the assessee from the rigors of the Section 68 of the Act. He submits that every accommodation entry on loan is always repaid by cheque otherwise, how it can be squared off. He further referred to the provisions of Section 68 of the Act, which provides that the amount of Provisions of Section 68 is required to be decided only at the time of credit of such sum all other subsequent events are irrelevant. He submits that when the language of law of Section 68 of the Act is plain and simple there is no need to look at the subsequent events. He submits that merely the accommodation entry is repaid. Subsequently, how it can be stated that assessee has proved the genuineness and creditworthiness of the transactions at the time of receipt of such sum. He submits that therefore, there is no error in the order of the lower authorities.

07. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also perused the order of the SMC in ITA No.1064/Mum/2023, for A.Y. 2013-14 dated 14<sup>th</sup> July, 2023, in case of the assessee, wherein the addition was made in the hands of the assessee under Section 68 of the Act of ₹50 lacs on account of accommodation entries from M/s Nazar Impex Pvt. Ltd. entity operated by accommodation entry provider Mr. Rajendra Jain, was deleted. The facts in this case shows that when assessee was questioned about obtaining the loan of ₹40,75,000/- from M/s Nazar Impex Pvt. Ltd.

for this year, the assessee presented the income tax return confirmation and the bank statements of the above party. The learned Assessing Officer gave show cause notice to the assessee for production of the loan parties for his examination to prove the genuineness, identity and creditworthiness. The assessee reiterated the same documents but did not produce the loan party and therefore, the learned Assessing Officer made the addition of ₹40,75,000/- under Section 68 of the Act. The learned CIT (A) confirmed the addition. It is not in doubt that assessee has produced the Permanent Account Number, Income Tax Return, confirmation of the party, extract of the bank statements of the party and extract of the bank statement of the assessee. However, the learned Assessing Officer specifically asked the assessee to produce the lender , the assessee did not. The assessee was also confronted with the show cause notice but assessee reiterated the submission made earlier and producing the same document.

08. We have carefully considered the order of the SMC dated 14<sup>th</sup> July, 2023, in this case also in paragraph no.3, it was recorded that assessee was directed to produce the party but assessee did not. The co-ordinate Bench was specifically of the view that assessee has produced the bank statement of the lender and bank statement of the assessee. We find that if cheque of Rs.40,75,000/- has been obtained by the assessee naturally, such transactions will appear in the bank statement of the lender as well as the bank statement of the assessee. This evidence does



not help in either proving the creditworthiness nor the genuineness of the transactions. Merely transactions are through banking channel does not prove the creditworthiness of the lender and genuineness of the transaction. Furthermore, it is apparent that Mr. Sanjay Choudhary is the director of the lender. Search was conducted on the same person on 3<sup>rd</sup> October, 2013, wherein he was found to be on accommodation entry provider through this company. It is not denied by the assessee that M/s Nazar Impex Pvt. Ltd., the lender in this case is not the company operated by Sanjay Chowdhary. In fact the order of the ITAT record specifically that Sanjay Chowdhary is the director of the company since inception. On plain reading of the Provisions of Section 68 of the Act, nature and source of the credit is required to be explained by the assessee when the same is found to be credited in the books of account. Subsequent repayment of the accommodation entry which is but naturally does not show that the originally credit is genuine and provider of the credit is creditworthy of the same. However, the co-ordinate Bench has referred to this statement recorded in case of survey of Mr. Sanjay Chowdhary and others and Mr. Rajendra Jain. Such statement was stated to be retracted. However, the fact stated that before us clearly shows that it was not statement during the course of survey but search conducted by the Income Tax Department on these persons on 3<sup>rd</sup> October, 2013. It was a nationwide search on accommodation entry provider Mr. Rajendra Jain,





Sanjay Choudhury and Shri Dharmichand Jain and their group, so far these were the statements of the accommodation entry provider during the course of search and not the survey as recorded in the order of the coordinate Bench for the A.Y. 2013-14. Even if for a second if it is believed that the statements are retracted, then neither the admission nor retraction is required to be considered. Assessee on the basis of independent evidence is required to be proved creditworthiness and genuineness of the transaction. In this case, the assessee was directed to produce the lender but no efforts were made by the assessee to produce the lender. Thus, the enquiry by the learned Assessing Officer was prevented by the assessee. It is rather unusual that a company which gives loan to the assessee from year to year of huge sum and assessee fails to produce that party in each of the year and still gets away from the rigors of section 68 of the Act. The decision of the Hon'ble Bombay High Court reported in 423 ITR 531 is in favor of the Revenue which categorically says that assessee is duty bound to explain the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. The learned Assessing Officer did not ask the assessee to prove the source of source but asked the assessee to prove the source of credit in the books of the assessee. In view of this the facts in this case of the assessee for A.Y. 2013-14 are distinguishable and does not apply for this year. In view of this, we restore this appeal back to the file of the learned Assessing Officer with a direction to the assessee



to produce the directors of Nazar Impex Pvt. Ltd. before the learned Assessing Officer. The learned Assessing Officer may examine the same and after detail enquiry decide the issue about the loan of ₹40,75,000/- from Nazar Impex Pvt. Ltd. We also clarify that there is no requirement for cross examination of the assessee because the assessee is required to prove the three ingredients of cash credit independently. The learned Assessing Officer is also directed to not to get swayed by the statement of confession and subsequent retraction of several accommodation entry providers but as to independently examine these transactions according to the parameters of Section 68 of the Act. In view of this, the appeal filed by the assessee is allowed for statistical purposes.

09. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 09.07. 2024.

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.07. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.



BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai