

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri Mahavir Singh, JM & Shri M. Balaganesh, AM]

**I.T.A No.1076/Kol/2012**  
**Assessment Year: 2008-09**

M/s. Rajsadan Overseas Sales (P) Ltd. Vs. Deputy Commissioner of Income-tax,  
(PAN: AADCR0755P) Circle-2, Siliguri  
(Appellant) (Respondent)

Date of hearing: 25.08.2015  
Date of pronouncement: 17.09.2015

For the Appellant: Shri Subhas Agarwal, Advocate  
For the Respondent: Shri Amitabha Choudhury, Addl. CIT

**ORDER**

**Per Shri Mahavir Singh, JM:**

This appeal by assessee is arising out of order of CIT(A), Siliguri in appeal No. 79/CIT(A)/Slg/10-11 dated 17.05.2012. Assessment was framed by DCIT, Circle-2, Siliguri u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the Act) for AY 2008-09 vide its order dated 29.12.2010.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the addition of Rs.7,00,000/- made by AO on account of unsecured loans as unexplained cash credit u/s. 68 of the Act. For this, assessee has raised following sole ground:

*“For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs.7,00,000/- made by the AO on account of unsecured loans as unexplained cash credit u/s. 68 of the I. T. Act, 1961.”*

3. Briefly stated facts are that the assessee company is engaged in real estate development and promoter-ship business. During the course of assessment proceedings, on perusal of the Balance Sheet, the AO observed that during the previous year relevant to assessment year under appeal, the assessee company had received the following unsecured loans:

i)	Amar Singh Sharma	Rs. 1,30,000/-
ii)	Madhulika Sharma	Rs. 1,50,000/-

iii)	Vandana Sharma	Rs. 6,00,000/-
iv)	Subhas Jain	Rs. 2,00,000/-
v)	Phoolchand Jain	<u>Rs. 1,00,000/-</u>
vi)	Phoolchand Sarwogi	Rs. 1,00,000/-
vii)	Softy Jain	Rs. 1,00,000/-
viii)	Pannadevi Jain	Rs. 2,00,000/-

On verification of income tax returns, balance sheet and bank statement of the loan creditors filed by the assessee, the AO observed that the loan creditors mentioned in Sl. No. (i) to (iii) are the family members of the directors of the assessee company and their creditworthiness is there and transaction of was loan found genuine. However, in respect of remaining five loan creditors i.e. Subhas Jain, Phoolchand Jain, Phoolchand Sarwogi, Softy Jain and Pannadevi Jain, the AO was not satisfied with their creditworthiness. The AO found from the examination of the bank accounts of these loan creditors it was found on all occasion, that an equivalent amount of cash were deposited in the bank accounts and on the same day cheques were issued to the assessee. Hence, the AO observed that the sources of income of these loan creditors do not justify their creditworthiness. He also observed that the income shown in their returns does not justify and substantiate their claim of advancing interest free loans to the assessee company. It was also observed that there were no substantial transactions made in their bank account during the year. Hence, the claim of advancing interest free loans by these five loan creditors to the assessee company is not acceptable to the AO in view of the fact that they are not financially well off and their creditworthiness is not proved beyond doubt. He, therefore, added the sum of Rs.7,00,000/- to the income of the assessee on account of unsecured loans as unexplained cash credit u/s. 68 of the Act.

4. Aggrieved, assessee preferred appeal before CIT(A), who confirmed the action of AO by observing as under:

*"I have carefully examined and considered the submission of the Ld. AR and also perused the assessment order. As mentioned in the assessment order, the assessee company had claimed receipt of unsecured loan to the tune of Rs.15,80,000/- from eight loan creditors. On perusal of the documentary evidences produced by the assessee, the Assessing Officer found the claim of receipt of unsecured loans from three loan creditors viz. Amar Singh Sharma, Madhulika Sharma and Vandan Sharma out of eight loan creditors as genuine. The Assessing Officer found that*

*these three loan creditors were the family members of the Directors of company, their creditworthiness was substantial and the loan transactions were genuine. However, in respect of the remaining five loan creditors Phool Chand Jain, Panna Devi Jain, Subhash Jain, Softy Jain and Phool Chand Saraogi (HUF) the Assessing Officer after perusing the documentary evidences and recording statements (of Shri Phool Chand Jain and Shri Subhash Jain) was not satisfied with their creditworthiness.*

*In course of appellate proceedings documentary evidences relating to the unsecured loan from five loan creditors Phool Chand Jain, Panna Devi Jain, Subhash Jain, Softy Jain and Phool Chand Saraogi (HUF) produced before the Assessing Officer were submitted along with the written submission dated 15.03.2012. On examination of the Bank Accounts of these loan creditors it is found that in all occasions equivalent amounts of cash were deposited in the Bank Accounts on the same day cheques were issued to the assessee. Due to the deposit of equivalent amounts of cash just on the day of issuance of cheques to the assessee, the genuineness of the transactions comes within the sphere of doubt and is therefore not proved beyond doubt. The sources of income of these loan creditors do not justify their creditworthiness. The income shown in their Returns does not justify and substantiate their claim of advancing interest free loans to the assessee company. Meagre bank balances were found in their Bank Accounts from which loan cheques were issued to the assessee company. There were no substantial transactions made in their Bank Accounts during the whole year. The claim of advancing interest free loans by these five loan creditors to the assessee company is not acceptable in view of the fact that they are not financially well off and their creditworthiness is not proved beyond doubt. The Assessing Officer has rightly highlighted the incongruities and contradictions in the statements recorded u/s.131 of Shri Phool Chand Jain and Shri Subhash Jain. The inference drawn by the Assessing Officer of these five loan creditors not being creditworthy on the basis of analysis of the documentary evidences produced before him and the incongruities noticed in the statements recorded u/s.131 of Shri Phool Chand Jain and Shri Subhash Jain is justified.*

*It has been held in various judgements that the assessee must prove identity of credits, capacity of creditor to advance money and genuineness of transaction e.g. as in Shankar Industries Vs. CIT (Cal) 114 ITR 689, Nanak Chandra Laxman Das Vs. CIT (Cal) 140 ITR 151, Hari Chand Virender Paul Vs. CIT (P&H) 140 ITR 148, CIT Vs. Biju Patnaik (SC) 160 ITR 674, ITO Vs. Sky jet Aviation (P) Ltd. (ITAT, Ahd- TM) 71 ITD 95, CIT Vs. Precision Finance P. Ltd. (Cal) 208 ITR 465, Oriental Wire Industries (P) Ltd. Vs. CIT (Cal) 131 ITR 688, Malabar Agricultural Co. Ltd. Vs. CIT (Ker) 229 ITR 548, Roshan De Hatti Vs. CIT (SC) 107 ITR 938, C. Kant & Co. Vs. CIT (Cal) 126 ITR 63, Bharat P. Ltd. Vs. CIT (Cal) 111 ITR 951, Dhanalakshmi Steel Re-rolling Mills Vs. CIT (AP) 228 ITR 780, Prakash Textile Agency Vs. CIT (Cal) 121 ITR 890, Northern Bengal Jute Trading Co. Ltd. Vs. CIT (Cal) 70 ITR 407, Sanil K.M.P. Vs. CIT (Ker) 177 Taxman 481 etc.*

*It is also a fact that mere filing of Income Tax file number or PAN is not enough to prove genuineness of cash credit as held in CIT Vs. Korlay Trading Co. Ltd. (Cal) 232 ITR 820. Further, cash credit can be assessed even if transaction is through cheques as held in CIT Vs. Precision Finance P. Ltd (Cal) 208 ITR 465, K.C.N. Chandrasekhar Vs. ACIT (ITAT, Bang) 66 TTJ 355 and CIT Vs. United Commercial & Industrial Co. (P) Ltd. (Ca!) 187 ITR 596.*

*In the instant case, the assessee has failed to prove the creditworthiness of these five loan creditors. It is necessary for the assessee to prove prima-facie the genuineness of the transactions with identity of the creditor and' his capacity. Only*

*after these three things are proved prima facie, then the burden shifts to the Department. Merely establishing the identity of the creditor is not enough [ref. Prakash Textile Agency vs CIT (1980) 121 ITR 890 (Cal)]. In the case of CIT vs Baishnav Charan Mahanti (1995) 212 ITR 199 (Ori), it was held that only when three conditions are fulfilled by the assessee then the burden shifts to the Department. The assessee has utterly failed to discharge the onus of proving prima-facie the creditworthiness of these five loan creditors and genuineness of the transactions.*

*The contention of the AR that the very fact that statements u/s.131 were not recorded in the case of Smt. Softy Jain, Smt Panna Devi Jain and Phool Chand Saraogi (HUF) implies that the A.O. was satisfied with their creditworthiness and genuineness of the loan transactions is not acceptable. The A.O. was courteous enough not to call the lady members of the family of Shri Phool Chand Jain and Shri Subhash Jain. It may be clarified that Shri Phool Chand Jain is the Karta of Phool Chand Saraogi (HUF) and the statement of Shri Phool Chand Jain under u/s.131 was recorded by the A.O. The contention of the AR that since the loan creditors do not have good bank balance their creditworthiness has been questioned is also not correct. The A.O. had not taken meagre bank balances as the sole criterion for judging creditworthiness of these loan creditors. The A.O. 's decision on creditworthiness of the loan creditors is based on examination of all the relevant facts emanating from their I. T. Returns, Computation of total income, Balance Sheets, Bank Accounts statements recorded u/s.131 etc. The contention of the AR that necessary documentary evidences in support of the claim of receipt of unsecured loan from the loan creditors were produced before the A.O. and the assessee has discharged its duty properly and therefore it was for the A.O. to verify the documents before treating the loans as not genuine is also devoid of constructive logic. The A.O. has definitely gone through the documents produced before the A.O. and only after thorough examination of the documents and statements recorded u/s.131 came to the conclusion that these five loan creditors are not creditworthy enough to advance the loan amounts. The case laws cited by the AR invariably lay emphasis on the fulfillment of three basic criteria by the assessee - identity of the creditor, creditworthiness of the creditor and genuineness of the transactions. If the assessee has not been able to prove the creditworthiness of the loan creditors, the cash credits are liable to be treated as unexplained and added back under u/s.68 of the I.T. Act, 1961. Some of the case laws are relating to share application money and are not relevant. The AR has not cited any such case law where even without the satisfaction of the Department in respect of the creditworthiness of the loan creditors the addition of unexplained cash credit u/s.68 of the Act has been deleted. To sum up, the creditworthiness of the loan creditors must be proved beyond doubt by the assessee to substantiate the claim of receipt of unsecured loan from them. In this case, the assessee has utterly failed to prove the creditworthiness of the five loan creditors and therefore failed to substantiate the receipt of unsecured loan totalling Rs.7,00,000/- from them.*

*In view of the above facts, and legal position discussed, I find no reason to interfere with the order of the A.O. and the addition of Rs.7,00,000/- as unexplained cash credit u/s.68 of the I.T. Act, 1961 is confirmed.”*

Aggrieved, assessee is now in appeal before us.

5. We have heard rival submissions and gone through facts and circumstances of the case. We find from the facts of the case that the assessee has failed to prove

the creditworthiness of these five loan creditors. It is necessary for the assessee to prove prima-facie the genuineness of the transactions with identity of the creditor and his capacity. Only after these three things are proved prima facie, then the burden shifts to the Department. We find from the case records that documentary evidences relating to the unsecured loan from five loan creditors Phool Chand Jain, Panna Devi Jain, Subhash Jain, Softy Jain and Phool Chand Saraogi (HUF) produced before the AO as well before CIT(A). By the AO on examination of the Bank Accounts of these loan creditors, it is found that in all occasions equivalent amounts of cash were deposited in the Bank Accounts on the same day cheques were issued to the assessee. Due to the deposit of equivalent amounts of cash just on the day of issuance of cheques to the assessee, the genuineness of the transactions comes within the sphere of doubt and is therefore not proved beyond doubt. The sources of income of these loan creditors do not justify their creditworthiness. The income shown in their Returns does not justify and substantiate their claim of advancing interest free loans to the assessee company. Meagre bank balances were found in their Bank Accounts from which loan cheques were issued to the assessee company. There were no substantial transactions made in their Bank Accounts during the whole year. The claim of advancing interest free loans by these five loan creditors to the assessee company is not acceptable in view of the fact that they are not financially well off and their creditworthiness is not proved beyond doubt. The Assessing Officer has rightly highlighted the incongruities and contradictions in the statements recorded u/s.131 of Shri Phool Chand Jain and Shri Subhash Jain. The inference drawn by the Assessing Officer of these five loan creditors not being creditworthy on the basis of analysis of the documentary evidences produced before him and the incongruities noticed in the statements recorded u/s.131 of Shri Phool Chand Jain and Shri Subhash Jain is justified. We find that the AO has tabulated the information in relation to bank statements filed by the assessee in respect to cash creditors, which shows that there were nominal deposits and withdrawals all along and all of a sudden at the time of advancement of these loans, required amounts were deposit in lump sum and

cheques were issued. The tabulated form as brought out by AO in his assessment order reads as under:

Name	Bank & Account Number	Details of deposit in bank account	Details of withdrawal from bank
Subhash Jain	No. 1276355361 of Central Bank of India, Siliguri Branch	Cash deposit of Rs.2,00,000/- on 29.01.2008	Transfer of Rs.25,000/- and Rs.1,75,000/- by cheque No. 110024-25 on 29.01.2008
Phool Chand Jain	No. 1276395847 of Central Bank of India, Siliguri Branch	Cash deposit of Rs.1,00,000/- on 24.01.2008	Transfer of Rs.1,00,000/- by cheque No. 079229 on 24.01.2008
Panna Devi Jain	No. 1276417603 of Central Bank of India, Siliguri Branch	Cash deposit of Rs.2,00,000/- on 24.01.2008	Transfer of Rs.2,00,000/- by cheque No. 121566 on 24.01.2008
Softy Jain	1276471309 of Central Bank of India, Siliguri Branch	Cash deposit of Rs.1,00,000/- on 30.01.2008	Transfer of Rs.1,00,000/- by cheque No. 117542 on 30.01.2008
Phool Chand Saraogi (HUF)	No. 1276465023 of Central Bank of India, Siliguri Branch	Cash deposit of Rs.1,00,000/- on 30.01.2008	Transfer of Rs.1,00,000/- by cheque No. 121163 on 30.01.2008

6. In view of the facts above and also that AO had not taken meagre bank balances as the sole criterion for judging creditworthiness of these loan creditors but creditworthiness of the loan creditors is based on examination of all the relevant facts emanating from their I. T. Returns, Computation of total income, Balance Sheets, Bank Accounts statements recorded u/s.131 etc. The contention of the Ld. Counsel for the assessee that necessary documentary evidences in support of the claim of receipt of unsecured loan from the loan creditors were produced before the A.O. and the assessee has discharged its duty properly and therefore it was for the A.O. to verify the documents before treating the loans as not genuine is without any basis. The AO has definitely gone through the documents produced by assessee and only after thorough examination of the documents and statements recorded u/s.131 came to the conclusion that these five loan creditors are not creditworthy enough to advance the loan amounts. If the assessee has not been able to prove the creditworthiness of the loan creditors, the cash credits are liable to be treated as unexplained and added back under u/s.68 of the Act. To sum up, the

creditworthiness of the loan creditors must be proved beyond doubt by the assessee to substantiate the claim of receipt of unsecured loan from them. In this case, the assessee has failed to prove the creditworthiness of the five loan creditors and therefore failed to substantiate the receipt of unsecured loan totalling Rs.7,00,000/- from them. Therefore, we confirm the findings of CIT(A) and the appeal of assessee is dismissed.

7. In the result, appeal of assessee is dismissed.
8. Order is pronounced in the open court on 17.09.2015.

Sd/-  
(M. Balaganesh)  
Accountant Member

Sd/-  
(Mahavir Singh)  
Judicial Member

Dated : 17th September, 2015

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT óM/s. Rajsadan Overseas Sales (P) Ltd., Nayabazar  
(Khalpara), Siliguri, Pin code 734405
2. Respondent ó DCITl, Circle-2, Siliguri.
3. The CIT(A), Siliguri
4. CIT Siliguri
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.