

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 814/Del/2016 : Asstt. Year : 2010-11**

Smt. Gialso Devi, H. NO. 876, Sector-11, Huda, Panipat	Vs	Income Tax Officer, Ward-3, Panipat
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AHOPD3907A</b>		

**Assessee by : Sh. Rakesh Jain, Adv.**

**Revenue by : Sh. Bedobani Chaudhari, Sr. DR**

<b>Date of Hearing : 15.03.2017</b>	<b>Date of Pronouncement : 14.06.2017</b>
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**ORDER**

This is an appeal by the assessee against the order dated 22.12.2015 of Id. CIT(A), Karnal.

2. The only grievance of the assessee in this appeal relates to the sustenance of addition of Rs.9,75,000/- made by the AO by treating the same as income from undisclosed sources.

3. Facts of the case in brief are that the assessee e-filed the return of income on 07.03.2011 declaring a taxable income at Rs.1,37,782/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 15.05.2011. Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had purchased a Plot No. 100, 1A, Sector-25, Panipat measuring 535 Sq. mt. for Rs.26 lacs on 23.07.2009 and the

source of the said investment had been stated to be the unsecured loans raised from the below noted persons:

	<i>Amount of Loans</i>	<i>Dated</i>
<i>i) Naresh Kumar Jain &amp; Sons (HUF)</i>	<i>(+) 3.25 lacs</i>	<i>10.07.2009</i>
<i>ii) Mukesh Kumar Jain</i>	<i>(+) 3 lacs</i>	<i>10.07.2009</i>
<i>iii) Mukesh Kumar Jain &amp; Sons (HUF)</i>	<i>(+) 1 lac</i>	<i>10.07.2009</i>
<i>iv) Anju Jain</i>	<i>(+) 1 lac</i>	<i>10.07.2009</i>
<i>v) Rameshwar Dass &amp; Sons</i>	<i>(+) 1.50 lacs</i>	<i>10.07.2009</i>
<i>vi) Rameshwar Dass Jain (Incl.)</i>	<i>(+) 16.95 lacs</i>	<i>13.07.2009</i>

4. The AO asked the assessee to prove the genuineness and creditworthiness of the depositors. The AO discussed the said loans as under:

**“i.) Naresh Kumar Jain & Sons (HUF) Rs.3.25 lacs dated 10.07.2009**

*The above named assessee has issued cheque of Rs.3.25 lacs to you on 10.07.2009 but a perusal of his bank account with Oriental Bank of Commerce, Panipat reveals that he has deposited Rs.3.30 lacs in cash only on 10.07.2009 i.e. on the same day and the Saving Bank account has been opened only on 07.07.2009 with a initial deposit of Rs. 1000/- and thereafter, during the whole year, no deposit has been made which reflects the poor and inadequate credit worthiness of the loan creditor.*

**ii.) Mukesh Kumar Jain (+) 3 lacs dated 10.07.2009**

*In this case also, the loan creditor had advanced a loan of Rs. 3 lacs on 10.07.2009 by depositing cash of Rs. 3 lacs on the same day i.e. 10.07.2009. Before that date i.e. on 06.07.2009, the said person was having a credit balance of only Rs. 4229.*

**iii.) Mukesh Kumar Jain & Sons (HUF) (+) 1 lacs dated 10.07.2009**

*In this case also, the loan creditor had duly*

*advanced a sum of Rs. One lacs on 10.07.2009 by depositing Rs. One lacs on the same date i.e. 10.07.2009. In this case also, he was having a credit balance of Rs. 1902 on 06.07.2009 and no deposit, whatsoever, was made by the loan creditor during the whole year thereafter which reflects the poor and inadequate credit worthiness of the loan-creditor.*

**iv.) Anju Jain (+) 1 Lacs dated 10.07.2009**

*In this case also, the loan creditor had duly advanced a sum of Rs. One lac on 10.07.2009 by depositing Rs. One lacs in cash on the same day i.e. 10.07.2009 and she was having credit balance of Rs. 14663/- on 01.04.2009 which again reflects the poor and inadequate credit- worthiness of the loan creditor.*

**v.) Rameshwar Dass Jain & Sons (HUF) (+) 1.5 Lacs on 10.07.2009**

*In this case also, the loan creditor had advanced a sum of Rs. 1.50 lacs on 10.07.2009 by depositing Rs. 1.50 lacs in cash on the same date i.e. 10.07.2009 and the account was having credit balance of Rs. 6032/- prior to that and thereafter, no worthwhile amount was deposited in the account.”*

5. The AO finally made the addition of Rs.26,70,000/- by observing as under:

*“In all the above noted cases, the pattern is crystal clear and same i.e.*

*i) The loan creditor is not having sufficient credit balance in his/her Saving Bank account on the date of Loan-Transaction.*

ii) *The required cash is deposited on the same date or 2-3 days before the issuance of cheque to assessee.*

iii) *The loan cheque is issued to assessee on the same date i.e. 10.07.2009.*

iv) *All the above noted loan creditors are filling non-Audit Returns reflecting Net income/Net Profit less than Rs. 2 lac for the A.Y. 2010-11, out of which they have reflected very minor house hold withdrawals.*

v) *That assessee, herself, is not having any worthwhile credit balance in her saving bank account on the relevant dates i.e. assessee are having credit balance of Rs. 10456/- as on 09.07.2009 in OBC Bank account and Rs. Nil as on 10.07.2009 in State Bank of Bikaner and Jaipur (SBBJ) Account (this Saving bank account was opened only on 19.07.2009 with an initial deposit of Rs. 1000/- only).*

vi) *That, as assessee was not having proper and explained capital with her, so, assessee obtained loans from the above noted loan creditors in order to have explained capital for the purpose of purchase of above noted plot/property.*

*Perusal of above information reveals that the persons from whom the unsecured loan has been raised has deposited cash in their accounts on one or two days before from the date of giving unsecured loans to the assessee. Moreover, there is no sources of the persons from whom the unsecured loans has been raised regarding the depositing the cash in their accounts. Thus the modus operandi of the assessee is that the cash has been deposited by the assessee herself in the accounts of the depositors from her income as income from undisclosed sources. Therefore, the assessee was required vide show cause notice dated 04.01.2013 to prove*

*the genuineness and creditworthiness of the above noted depositors and the source and genuineness of the cash deposited in the accounts of the depositors. The case was fixed for hearing in this office on 14.01.2013. On the appointed date nobody attended nor any written request has been received in this office. Thus the assessee has failed to discharge his onus to prove the genuineness and creditworthiness of the depositors.”*

6. The reliance was placed on the following case laws:

- *Bharti (P) Ltd. Vs CIT (1978) 111 ITR 951 (Cal)*
- *CIT Vs W.J. Klarler & Co. (1979) 117 ITR 690 (Cal)*
- *CIT Vs United Commercial and Ind. Co. (Pvt.) Ltd. (1991) 187 ITR 596 (Cal)*
- *Precision Finance Ltd. (1994) 208 ITR 465 (Cal)*
- *Nizam Wood Agency Vs ICT (1992) 193 ITR 318 (All)*
- *Jalan Timber Vs CIT (1997) 223 ITR 11*
- *CIT Vs Karley Traders Co. (1998) 232 ITR 820 (Cal)*
- *Shanker Ind. Vs CIT (1978) 114 ITR 689 (Cal)*
- *C. Kant & Co. Vs CIT (198)) 126 ITR 63 (Cal)*
- *Parkash Textile Agency Vs ICT (1980) 121 ITR 890 (Cal)*
- *Oriental Wire Ind. (1981) 131 ITR 688 (Cal)*
- *CIT Vs United Commercials & Ind. Co. (1991) 187 ITR 597 (Cal)*
- *M. A. Uneer Kutly Vs CIT (1992) 198 ITR 147 (Ker)*
- *Sreelekha Banerjee Vs CIT (1963) 49 ITR 112 (SC)*
- *CIT Vs Jalan Timbers 223 ITR 11 (Gau)*
- *CIT Vs Sreelekha Bannerjee 491 ITR 112 (SC)*
- *Sanker Industries Vs CIT 114 ITR 689 (Cal)*

7. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the additional evidence and stated as under:

*“Assessee hereby prays for admittance of additional evidence enclosed at Pg. 31 to 138 being the Return*

*Acknowledgement, Computation of Income, Capital A/c Balance Sheet, Bank A/c and Cash A/c for the A.Y. 2007-08 to 2010-11 of unsecured 6 loan parties. The same could not be submitted before AO on dt. 14.01.2013 as the said documents were, third party documents and assessee could not procure the required documents. Wherein on the said date i.e. 14.01.2013, time of furnishing the details was prayed and granted and hence the required details furnished on dt. 16.01.2013, the affidavit of the Chartered Accountant to that effect is at Pg. VIII who has been regularly attending the proceedings whereas AO passed the order on dt. 15.01.2012, 2 and ½ months before getting time barred on 31.03.2013. All these documents are verifiable from respective parties and there is nothing to conceal by assessee."*

8. The Id. CIT(A) forwarded the additional evidences to the AO and asked his remand report, in response the AO submitted as under:

*"The assessee was allowed sufficient and reasonable due opportunities (i.e. almost 14 opportunities/dates over a period of more than 15 months) for providing the sources of cash deposited by the creditors in their bank accounts, specifically in the circumstances that all, the creditors are the family member of the assessee. Moreover, on the last day of hearing i.e. 14.01.2013 nobody attended nor any written request for adjournment has been received in this office. In spite of that no communication on-telephone was received for adjournment. Thus, there was fault on the part of the assessee and not to the part on the 'under signed."*

9. The Id. CIT(A) after considering the submissions of the assessee and remand report of the AO admitted the additional evidences by observing in para 3.3 of the impugned order as under:

*“3.3 In order to adjudicate on the admissibility of additional evidence, I perused the assessment record along with the submissions of the appellant and the remand report of the AO. The additional evidence filed by the appellant during the course of appellate proceedings is to substantiate the credit worthiness of the lenders whose loans have been treated as appellant's income u/s 68 of the I.T. Act. During the course of assessment proceedings, the AO, not being convinced with the credit worthiness of six lenders namely Sh. Naresh Kumar Jain & Sons (HUF), Mukesh Kumar Jain, Mukesh Kumar Jain & Sons (HUF), Anju Jain, Rameshwar Dass & Sons & Rameshwar Dass Jain (Individual) sought certain documents from the appellant vide letter dated 04.01.2013. The appellant was asked to file these documents and attend the case on 14.01.2013. Since, there was no compliance on the part of the appellant on 14.01.2013, the AO passed the assessment order on 16.01.2013 in which loans from the aforesaid six persons were treated as appellant's income from undisclosed sources u/s 68 of the I. T. Act. In view of these facts, the appellant submitted that the evidence, which had to be procured from third parties could not be produced before the AO within a period of 11 days as was demanded by him. The appellant submitted that since the evidence had to be procured from third parties, more time could have been given so that requisite documents could have been produced before the AO, This argument is all the more valid in view of the fact that the evidence was not available with the appellant and the case was not getting barred by limitation within the next couple of months. Considering all these facts in totality, I hold that the appellant was prevented by reasonable cause from filing the additional evidence within a period of eleven days as required by the AO. Hence, the appellant is covered by conditions (b) & (c) of Rule 46A of Income Tax Rules. Accordingly, the additional evidence filed by the appellant*

*during the course of appellate proceedings is hereby admitted.”*

10. The submissions of the assessee before the Id. CIT(A) were as under:

*“The appellant was asked to establish the identity and credit worthiness of lenders together with the genuineness of loan transactions.*

1.	Naresh Kumar Jain & Sons (HUF), H.No. 876, Sector-11, Huda, Panipat	AAFHN0144K	3,25,000/-	<p>1. Confirmation and Affidavit at Pg. 11-12.</p> <p>2. Bank Statement at Pg. 25.</p> <p>3. Balance Sheet as on 31.3.2010 PB Pg. 44</p> <p>4. Return Acknowledgement, Computation of Income, Capital A/c for the A.Y. 2007-08, 2008-09, 2009-10 and 2010-11 PB Pg. 31-46.</p>
2.	Mukesh Jain, House No. 876, Sector-11, Huda, Panipat	ADAPJ8965G	3,00,000/-	<p>1. Confirmation and Affidavit at Pg. 13-14.</p> <p>2. Bank Statement at Pg. 26.</p> <p>3. Balance Sheet as on 31.03.2007, 31.03.2008, 31.03.2009 and 31.03.2010 PB Pg. 49, 55, 61 &amp; 66.</p> <p>4. Return Acknowledgement, Computation of Income, Capital A/c</p>

				<i>for the A.Y. 2007-08, 2008-09, 2009-10 and 2010-11 PB Pg. 47-69.</i>
3.	<i>Mukesh Jain &amp; Sons (HUF), H.No. 876, Sector-11, Huda, Panipat</i>	<i>AAIHM4332D</i>	<i>1,00,000/-</i>	<i>1. Confirmation and Affidavit at Pg. 15-16. 2. Bank Statement at Pg. 27. 3. Balance Sheet as on 31.03.2007, 31.03.2008, 31.03.2009 and 31.03.2010 PB Pg. 72, 75, 78 &amp; 82. 4. Return Acknowledgement, Computation of Income, Capital A/c for the A.Y. 2007-08, 2008-09, 2009-10 and 2010-11 PB Pg. 70-83.</i>
4.	<i>Anju Jain, H.No. 876, Sector-11, Huda, Panipat</i>	<i>AFPPJ9285C</i>	<i>1,00,000/-</i>	<i>1. Confirmation and Affidavit at Pg. 17-18. 2. Bank Statement at Pg. 28. 3. Balance Sheet as on 31.03.2007, 31.03.2008, 31.03.2009 and 31.03.2010 PB Pg. 86, 91, 96 &amp; 103. 4. Return Acknowledgement, Computation of Income, Capital A/c for the A.Y. 2007-08, 2008-09, 2009-10 and 2010-11 PB Pg. 84-105.</i>
5.	<i>Rameshwar Dass &amp;</i>	<i>AAIHR8294M</i>	<i>1,50,000/-</i>	<i>1. Confirmation and</i>

	Sons, H.No. 876, Sector-11, Huda, Panipat			Affidavit at Pg. 19-20. 2. Bank Statement at Pg. 29. 3. Balance Sheet as on 31.03.2007, 31.03.2008, 31.03.2009 and 31.03.2010 PB Pg. 108, 113, 118 & 122.
6.	Ramesh Dass Jain (Husband), H.No. 876, Sector-11, Huda, Panipat	AJQPJ8336B	16,95,000/-	1. Confirmation and Affidavit at Pg. 21-22. 2. Bank Statement at Pg. 30. 3. Balance Sheet as on 31.03.2008, 31.03.2009 and 31.03.2010 PB Pg. 126, 131 & 136. 4. Return Acknowledgement, Computation of Income, Capital A/c for the A.Y. 2008-09, 2009-10 and 2010-11 PB Pg. 124-138.

*(d) It is not out of place to mention that AO has only-doubted .the creditworthiness of unsecured parties as the cash has been deposited in bank before issuing cheque to assessee. In this regard, it is submitted that AO has issued the show cause notice on 04.01.2013 fixing the date of hearing on 14.01.2013 and assessee was in the process of procuring the above mentioned details/documents to prove the source & creditworthiness of unsecured parties but being a third party documents assessee could not collect the documents before 14.01.2013 and AR on that basis has asked adjournment from AO. AR of assessee-appeared on dt. 16.01.2013 before AO*

and filed certain documents but AO had passed the order on 15.01,2013.

(c) Perusal of the Income Tax Return, Cash A/c and Balance Sheet as on 31.03.2007, 31.3.2008, 31.3.2009 and 31.03.2010, it is clear that said parties have sufficient cash in hand on the said day to deposit the same in their respective Bank Accounts. Party wise Chart of Cash Details and income earned in preceding assessment years is mentioned hereunder:-

Party Name	Cash in Hand As on	Loan given	Cash in hand As on	Income earned
	31.03.2009		31.03.2010 after giving Loan	
Naresh Kumar Jain & Sons (HUF), H.No. 876, Sector-11, Huda, Panipat	3,64,195	3,25,000	1,56,055	A.Y. 2007-08 Rs.94,840 A.Y. 2008-09 Rs.1,12,820 A.Y. 2009-10 Rs.1,54,480 A.Y. 2010-11 Rs.1,64,860
Mukesh Jain, H.No. 876, Sector-11, Huda, Panipat	3,20,489.50	3,00,000	1,99,255.80	A.Y. 2007-08 Rs.1,60,306 A.Y. 2008-09 Rs.2,00,669 A.Y. 2009-10 Rs.2,59,757 A.Y. 2010-11 Rs.2,76,566
Mukesh Jain & Sons (HUF), H.No. 876, Sector-11, Huda, Panipat	1,30,495	1,00,000	1,55,355	A.Y. 2007-08 Rs.96,720 A.Y. 2008-09 Rs.1,12,260 A.Y. 2009-10 Rs.1,55,342 A.Y. 2010-11 Rs.1,63,918

<i>Anju Jain, H.No. 876, Sector-11, Huda, Panipat</i>	<i>96,699</i>	<i>1,70,000</i>	<i>29,024.90</i>	<i>A. Y. 2007-08 Rs.1,20,750 A. Y. 2008-09 Rs.1,48,575 A. Y. 2009-10 Rs.1,86,025 A. Y. 2010-11 Rs.1,93,350</i>
<i>Rameshwar Dass &amp; Sons, H.No. 876, Sector-11, Huda, Panipat</i>	<i>1,62,033</i>	<i>1,50,000</i>	<i>2,093</i>	<i>A. Y. 2007-08 Rs.68,167 A. Y. 2008-09 Rs.68,000 A. Y. 2009-10 Rs.1,20,799 A. Y. 2010-11 Rs.1,90,959</i>
<i>Ramesh Dass Jain (Husband), H.No. 876, Sector-11, Huda, Panipat</i>	<i>3,51,684</i>	<i>(Cash Deposited in Bank is Rs.3,01,000 &amp; balance amount is already in bank through cheque</i>	<i>2,63,164</i>	<i>A. Y. 2008-09 Rs.2,00,477 A. Y. 2009-10 Rs.2,31,839 A. Y. 2010-11 Rs.2,09,233</i>

*f) In view of above submissions/evidence, it is being prayed that addition made u/s 68 be deleted.”*

11. The Id. CIT(A) after considering the submissions of the assessee and the remand report of the AO discussed the position relating to all the six lenders and sustained the addition of Rs.9,75,000/- and allowed the relief of Rs.16.95 lacs which was the amount received from Sh. Rameshwar Dass Jain by observing as under:

***a) Rameshwar Dass Jain (Ind.) (Rs. 16.95 Lacs).***

*The above named person happens to be the husband of the appellant, During the course of the year, a cheque of Rs.*

*16.95 Lacs was issued to the appellant from the bank account of Sh. Rameshwar Dass Jain. His bank account No. 00352151008924, maintained with Oriental Bank of Commerce, a copy of which was submitted during the course of appellate proceedings, shows that the said amount was given on 23.07.2009 by cheque no. 632702. The appellant submitted confirmation and affidavit of Sh. Rameshwar Dass Jain (Indi.). A copy of his bank account, Acknowledgment of his I.T. return and computation of income for the A.Y. 2008-09, 2009-10 and 2010-11 and Balance Sheet as on 31.03.2008, 31.03.2009 and 31.03.2010 was also produced and submitted. As per the details supplied, the amount of Rs. 16,95,000/- given by Sh. Rameshwar Dass Jain (Indi.) was financed out of loans taken from the following persons:-*

<b>Date</b>	<b>Name of the person</b>	<b>Amount (Rs.)</b>
4.7.2009	RajinderJain	2,40,000/-
6.7.2009	Sunita Jain	90,000/-
6.7.2009	Ashok Kumar Jain, HUF	3,50,000/-
8.7.2009	AmitJain	2,00,000/-
8.7.2009	Pawan Kumar, HUF	1,50,000/-
8.7.2009	Sheelawanti	3,65,000/-
8.7.2009	Naresh Gupta	3,00,000/-

*In order to substantiate the identity and credit worthiness of the aforesaid seven persons who lent money, to Rameshwar Dass Jain (Indi.), the appellant gave a copy of their PAN card, latest income tax return and a copy of their bank statements. As per these details given by the appellant together with the confirmations of the aforesaid seven persons, it is found that all these seven persons were assessed to tax and had been regularly filing their income tax returns. The AO, after examining all the relevant documents establishing the identity and credit worthiness of the lenders*

*together with the genuineness of the transactions submitted the following in his Remand Report:-*

*— "All the above deposits have been made through cheques in the account of the creditors from where he advanced a sum of Rs. 16,95,000/- to Smt. Gilaso Devi, the assessee. The assessee has now filed copies of bank statements and assessment particulars of all the persons from the creditors has raised loans and made advance to the assessee. On perusal of the documents now filed by the assessee during the enquiries made under remand report revealed that all the transactions have been made through account payee cheques and all the persons from the creditor has raised loans before advancing the loan to the assessee, are existing assessee with the different Assessing officers. Keeping in view the above facts, the assessee has proved the creditworthiness of the above persons and genuineness of the transactions."*

*The above facts clearly establish that the appellant could not only prove the identity of Sh. Rameshwar Dass Jain (Indi.) but also his credit worthiness since, the amount of Rs.16,95,000/- lent by him to the appellant was financed out of loans from seven persons whose identity and credit worthiness, in turn, was established by way of documents submitted during the course of appellate proceedings. Besides, the fact that the -entire amount of loan was given by cheque to the appellant together with, receipt of cheques by Sh. Rameshwar Dass Jain (Indi.) from the aforesaid seven persons, inter-alia establishes the genuineness of transaction. Considering all these-facts in totality, I hold that since the credit worthiness of Sh. Rameshwar Dass Jain (Indi.) is clearly established, the AO erred in making the addition of Rs.16,95,000/- on account of loan received from him. Accordingly, the appellant gets relief of Rs. 16.95 Lacs.*

**b) Naresh Kumar Jain & Sons (HUF)- Rs. 3.25 Lacs**

*On a perusal of the bank account of Sh. Naresh Kumar Jain & Sons (HUF), it was revealed that the said account was opened on 07.07.2009 with an initial deposit of Rs. 1,000/-. On 10.07.2009 a cash deposit of Rs. 3.3. Lacs is appearing in his bank account and on the same date, a cheque of Rs. 3.25 Lacs has been issued to the appellant. Apart from these transactions, there are no other deposits or withdrawals in this account during the entire year. As regards the credit worthiness of Sh. Naresh Kumar Jain & Sons (HUF) income tax return furnished by the appellant shows an income of Rs. 1,22,000/- only, which seems to be highly inadequate for giving a loan of Rs.3.25 Lacs/-. Considering these facts, I hold that the credit worthiness of this lender could not be established by the appellant. Besides, genuineness of transactions is highly doubtful considering the cash deposits of a slightly higher amount just before advancing the loans to the appellant. The AO in his Remand Report has held that the credit worthiness of lender could not be established. Hence, on the basis of these facts, I hold that addition of Rs. 3.25 Lacs made by the AO on account of loan received from Sh. Naresh Kumar Jain & Sons (HUF) was rightly made and is thus upheld.*

**c) Sh. Mukesh Kumar Jain -Rs. 3,00,000/- dated 10.07.2009**

*Perusal of the bank' account of Sh. Mukesh Kumar Jain reveals the fact that cash of Rs. 3,00,000/- was 'deposited-just before advancing the loan of Rs. 3,00,000/- to the appellant. Before the date of advancing the loan, the credit balance in the bank account of Sh. Mukesh Kumar Jain was a paltry Rs.4,229/-. These facts clearly prove that the genuineness of the loan transaction is highly doubtful. As regards credit worthiness of Sh. Mukesh Kumar Jain, the AO*

*rightly pointed out that a person having a net income of Rs.1,05,000/- only, cannot be credit worthy enough to advance a sum of Rs. 3,00,000/-. In order to establish the credit worthiness of Sh. Mukesh Kumar Jain, the AO recorded his statement which could not convince him regarding his credit worthiness. Keeping all these facts in mind, I hold that the credit worthiness of Sh. Mukesh Kumar Jain and the genuineness of loan transaction of Rs. 3,00,000/- received from him could not be established and therefore, the addition at Rs. 3,00,000/- made by the AO on this account is hereby upheld.*

***d) Mukesh Kumar Jain & Sons (HUF) - Rs. 1,00,000/- dated 01.07.2009.***

*As in the case of Naresh Kurnar Jain & Sons (HUF) and Sh. Mukesh Kumar Jain, perusal of bank account of Sh. Mukesh Kumar Jain & Sons (HUF) revealed that there was a cash deposit of Rs. 1,00,000/- on the day, the identical amount was lent to the appellant. Just prior to these two transactions, the credit balance of only Rs. 1,902/- was lying in the bank account of Sh. Mukesh Kurnar Jain & Sons (HUF). This puts a big question mark both on the credit worthiness of Sh. Mukesh Kumar Jain & Sons (HUF) and the genuineness of the said transaction. Perusal of the income tax return revealed the fact that the said person filed his return of income from trading of goods and that too on estimate basis. Furthermore, no documentary evidence was furnished to establish that Sh. Mukesh Kumar Jain & Sons (HUF) were engaged in any trading activity. Hence, the credit worthiness of the said person together with the genuineness of the loan transaction could not be established and thus, I hold that the addition of Rs. 1,00,000/- made on account of loan received from Sh. Mukesh Kumar Jain & Sons (HUF) was rightly made.*

**e) Anju Jain - Rs. 1,00,000/- dated 10.07.2009**

*In this case as well, bank account revealed that there was a cash deposit of Rs. 1,00,000/- on 10.07.2009 i.e. the day on which the same amount of loan was advanced to the appellant. Prior to the said transaction there was a credit balance of only Rs. 14,663/- in her bank account which again reflects inadequate credit worthiness of the loan creditor. Capital account and Balance Sheet for the year ending 31.03.2010 furnished by the appellant could not be corroborated by the return of income downloaded from the AST System. The AO, after examining the relevant documents and evidence during the course of assessment proceedings, held that the credit worthiness of Miss Anju Jain could not be established. Considering all these facts in mind, I hold that since the credit worthiness of Miss Anju Jain could not be established, the AO rightly made the addition of Rs. 1,00,000/- on account of loan received from the said person.*

**f) Rameshwar Dass & Sons - Rs. 1,50,000/- dated 10.07.2009**

*On a perusal of the bank account of Sh. Rameshwar Dass & Sons (HUF), it was revealed that there was a cash deposit of Rs. 1,50,000/- on the date the same amount was advanced to the appellant. Prior to the cash deposit and withdrawal, there was a credit balance of Rs, 6,032/- only. Apart from this, there was no other document which could have helped the AO in establishing the credit worthiness of the said person. The AO, in his Remand Report has held that the addition of Rs. 1.50 Lacs, made on account of loan received from Rameshwar Dass & Sons (HUF) was rightly made. After carefully considering all these facts, I hold that since the credit worthiness and genuineness of loan transaction with Sh. Rameshwar Dass & Sons (HUF) could not be established,*

*the AO rightly made the addition of Rs. 1.50 Lacs u/s 68 of the I.T. Act.*

*6.4 Hence, after a careful consideration of the facts of the case, the submission of the-appellant, the additional evidence filed during the course of appellate proceedings, the remand report of the AO and various other relevant documents, I hold that, out of a total amount of Rs. 26,70,000/- added back by the AO on account of unexplained unsecured loans, he erred in making the addition to the extent to Rs. 16,95,000/- since the identity and credit worthiness of the lender, namely Sh. Rameshwar Dass Jain (Indi.) could be established during the course of appellate proceedings on the basis of additional evidence filed by the appellant. However, as regards the remaining amount of loan of Rs. 9,75,000/-, I hold that the AO rightly made the addition, since the credit worthiness of Sh. Naresh Kumar Jain & Sons (HUF), Sh. Mukesh Kumar Jain, Mukesh Kumar Jain & Sons (HUF), Miss Anju Jain and Sh. Rameshwar Dass Jain & Sons (HUF) could not be established. Besides, the evidence given by the appellant during the course of appellate proceedings puts a big question mark on the genuineness of the loan transaction with the aforesaid five persons. Thus, out of total addition of Rs, 26.70 Lacs, the appellant gets a relief of Rs. 16.95. Lacs only. Ground No. 3 of the appeal is accordingly partly allowed.”*

12. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee discharged the onus cast upon her to prove the identity and creditworthiness of the lenders and genuineness of the transaction. Therefore, the addition made by the AO and sustained by the ld. CIT(A) was not justified. The reliance was placed on the following case laws:

➤ *CIT Vs Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC)*

- *Vishnu Jaiswal Vs CIT (2012) 137 ITD 259 (Lucknow TB TM)*
- *Saroj Devi Vs ITO (2012) 33 CCH 75 (Del. TB)*

13. In his rival submissions the ld. DR supported the order of the AO and reiterated the observations made in the assessment order.

14. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is not in dispute that the assessee received a sum of Rs.26,70,000/- as a loan from six persons. Since the AO did not allow a proper opportunity of being heard, the assessee furnished additional evidences to the ld. CIT(A). The said additional evidences were in the form of confirmation and affidavits, bank statement of the lenders, copies of their balance sheets and acknowledgment of Income Tax Returns filed etc. Those additional evidences were admitted by the ld. CIT(A) and a remand report was received from the AO. In the present case, it is not in dispute that the lenders furnished the bank statement which revealed that sufficient bank balance was there when the loan was advanced to the assessee all the depositors confirmed the giving of the loan to the assessee. Even the ld. CIT(A) accepted major amount i.e. Rs.16.95 lacs received from Sh. Rameshwar Dass Jain (individual) as genuine but the amount received from other five persons was considered as non-genuine and added to the income of the assessee. In my opinion, when the assessee discharged the onus cast upon her to prove the identity and

creditworthiness of the lenders in the form of confirmation and affidavits, bank statements, balance sheets, showing the loan given to the assessee, acknowledgment of filing the returns of income for the preceding years and the year under consideration, the transactions were through banking channel and the lender were having cash in hand before depositing in their respective bank account, so there was no occasion to make the addition in the hands of the assessee. If, there was any doubt relating to the deposits in the bank accounts of the lenders who were duly assessed having permanent account number than the AO could have taken the action in their respective hands but the loans given to the assessee could not have been considered as non-genuine. In that view of the matter the addition made by the AO and sustained by the Id. CIT(A) is deleted.

15. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 14/06/2017)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 14/06/2017**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**