

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri B.R. Baskaran (AM)

I.T.A. No. 2556/Mum/2017 (Assessment Year 2007-08)

ITO 19(1)(3) Room No. 220 Mataru Mandir Mumbai-400 007.	Vs.	Champalal Devichand Mehta (HUF) 319, 1 <sup>st</sup> Floor, Jariwala Building, Sadashiv Cross Lane, V.P. Road Mumbai-400 004. PAN : AAAFE0499H
(Appellant)		(Respondent)

Assessee by	Ms. Aasifa Khan
Department by	Shri S.K. Bepari
Date of Hearing	14.9.2017
Date of Pronouncement	14.9.2017

ORDER

The Revenue has filed this appeal challenging the order dated 23.1.2017 passed by the learned CIT(A)-30, Mumbai and it relates to A.Y. 2007-08. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the addition of ₹ 30 lakhs made by the Assessing Officer u/s. 68 of the Act.

2. The Assessing Officer reopened the assessment on receiving information that the assessee has availed loan from two concerns namely M/s. Surya Diam and M/s. Daksh Diamonds aggregating to ₹ 30 lakhs. Both the concerns belonged to Bhanwarlal Jain group, who were subjected to search on 3.10.2013 and during the course of Bhanwarlal Jain had admitted his group was providing only accommodation entries. The Assessing Officer accordingly added the amount of ₹ 30 lakhs as non-genuine loan u/s. 68 of the Act. The learned CIT(A), however, deleted the addition on noticing that the assessee has furnished all the details to prove cash credit. Aggrieved, the Revenue has filed this appeal before the Tribunal.

3. I heard the parties and perused the record. I noticed that the learned CIT(A) has deleted the addition by properly analysing the facts surrounding the issue. For the sake of convenience I extract below the relevant observation made by the learned CIT(A).

*7.3 I have carefully considered the rival contentions on the issue on hand. Assessing Officer treated the loan amounts received from M/s Surya Diam of ₹ 20 lakhs and ₹ 10 lakhs from M/s Daksh Diamonds, treating the same as non-genuine transactions, based on the information received from the DGFT(Inv.). The appellant filed details like procurement of loan through account payee cheque, interest payment made through account payee cheque, parties from whom loans are taken have valid PAN and are showing substantial income and also disclosing the interest income received, TDS have been duly deposited on the interest income and the books of accounts are duly audited.*

*7.3.1 During the course of assessment proceedings sufficient documentary evidences like loan confirmation from the party, TDS certificate reflecting TD8 on the interest income, Bank statement reflecting the receipt of interest, Statement of Balance Sheet where the TDS claim as from the tax payments, Amount of loan shown in the Balance Sheet. From the bank statements submitted the lenders had substantial bank balance through which the loan was provided.*

*7.3.2 The AR filed the Balance Sheet and Profit & Loss a/c and annexures for the year ending March, 2007 of M/s Surya Diam, wherein it is noticed that the loan of 20 lakhs given to M/s Classic Metals was duly reflected. As per the confirmation filed the loan of ₹ 20 lakhs was received on 21-04-2006 (15 lakhs) & on 26-04-2006 (₹ 5 lakhs). For the year the appellant paid interest of ₹ 1,69,520/- and on such interest payment TDS of ₹ 17,291/- was duly deducted. The copy of the Bank account held with IndusInd Bank of M/s Surya Diam, clearly shows that the amounts were paid to the appellant through cheque and it is also noticed that there is no cash credited in that account before giving the loan to the appellant. The interest amount of ₹ 1,52,229/-, after deducting the TDS of ₹ 17,291/- was also duly credited to the bank account of M/s Surya Diam, held with ING Vysya Bank. The loan was outstanding up to the A.Y. 2013-14 and every year the amount of interest payable on such loan was duly credited and TDS was made and the loan was finally repaid on 29-08-2012 through their bank account. AR also furnished the repayment details paid through the bank account of the appellant. As seen from the account copies, all through*

*the years interest was paid after duly deducting the TDS.*

*7.3.3 Likewise, loan taken from M/s Daksh Diamonds, AR filed the Balance Sheet and Profit & Loss a/c and annexures for the year ending March, 2007, wherein it is noticed that the loan of 10 lakhs given to Classic Metals was duly reflected. As per the confirmation filed, the loan of ₹ 10 lakhs was received on 7.8.2006. For the year the appellant paid interest of ₹ 58,438/- and on such interest payment TDS of ₹ 5,961/- was duly deducted. The loan was outstanding up to the A.Y. 2013-14 and every year the amount of interest payable was duly credited and TDS was made, and the loan was finally repaid on 23-04-2012 through their bank account. AR also furnished the repayment details paid through the bank account of the appellant. As seen from the account copies, all through the years interest was paid after duly deducting the TDS.*

*7.3.4 All the evidences submitted, establishes the genuineness of the loan transaction of 20 lakhs received from M/s Surya Diam and ₹ 10 lakhs from Daksh Diamonds, which were repaid by the appellant subsequently on different dates. The loan was accepted and repaid through proper banking channels and no suspicious credits of cash deposits or withdrawals were noticed in the bank accounts to establish that the loan is met out of the unaccounted cash held by the appellant.*

*7.3.5 From the impugned assessment order it is seen that though the Assessing Officer appears to have taken the view that the impugned loan creditor is mere entry provider and that the impugned loan entry is unexplained in its books of account, no specific material has been brought on record to show that creditor is entry provider and that entry for the loan in question has actually been obtained against payment made by the appellant in cash outside regular books of account.*

*7.3.6 From the evidences furnished, it is obvious that there is no scope for arriving at a conclusion that the appellant had taken hawala entry in the form of loan, to introduce the unaccounted cash in its books of account. Hence, the only issue that remains to be seen is whether on the basis of facts brought on record the impugned loan could be treated as unexplained within the fore-corners of section 68 of the Act. At the outset, it is necessary to look at some legal precedents with regard to the intent and application of section 68 of the Act. It needs no elaboration that through a catena of decisions the Courts have laid down the following three fundamental test which have to be established to discharge the burden under section 68 of the Act*

- Identity of the creditor
- Creditworthiness of the creditor, and
- Genuineness of the transaction.

7.3.7 The Hon'ble Supreme Court in case of CIT V. P. Mohanakata [2007J 291 ITR 278 / 161 Taxman 169; it is held that the expression "assessee offers no explanation" means where the assessee offers no proper, reasonable and acceptable explanation as regards the sum found credited in the books maintained by the assessee. It further held that the opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material & other attending circumstances available on record. The opinion of the AO is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion.

7.3.8 The law is well-settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him and where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source [Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC)].

7.3.9 The initial burden to prove the genuineness of cash credit lies on the taxpayer. If the assessee fails to prove satisfactorily the source and nature of amounts of cash received and creditworthiness of the creditor, the AO is entitled to draw inference that the receipt's are of an assessable nature [A. Govindarajulu Mudalliar v. CIT [(1958) 34 ITR 807 (SC)]

7.3.10 In the case of Rohini Builders [2002] 256 ITR 360/[2003] 127 Taxman 523 (Guj) it was held that if the identity of the creditors is proved and the amounts are received by account-payee cheques, the initial burden of proving credit is discharged and the source of credits need not be proved.

7.3.11 In the case of CIT vs. Smt. Sushiladevi Khadaria [2009] 319 ITR (Bom) the Hon. Bombay HC held that when loans were taken by account payee cheques and the record indicated that there was no cash payment in the account of the borrower prior to the issuance of such cheques, the loans and interest paid on such loans were not includible in the total income of the assessee u/s.68 of the Act.

7.3.12 In the case of ITO v. Anant Shelters (P) Ltd. [2012] 051 SOT 0234, the Hon'ble [TAT (Mumbai) held that in matters regarding cash credit the

*onus is of proof was not a static one. As per the provisions of the section 68, the initial burden of proof lies on assessee. Amount appearing in books or accounts or assessee was considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of transaction could be proved by showing that money was received by an account payee cheque or by draft. Credit worthiness of the lender could be established by attending circumstances. Once assessee produces evidences about identity, genuineness and credit worthiness of the lender, onus of proof shifts to revenue. Therefore, it was held that assessee had furnished all the details regarding genuineness of cash credit, i.e., he had discharged his burden of proof. AO did not make any attempt to discharge his burden of proof to rebut the evidences produced by the assessee. No addition can be sustained.*

*7.3.13 In the case of CIF v. Jai Kumar Bakliwal [2014] 366 ITR 217 (Raj) it was held by the Rajasthan High Court that all the cash creditors were assessed to Income-tax and they provided a confirmation as well as their permanent account number. They had their own respective bank accounts which they had been operating and it was not the claim of the Assessing Officer that the assessee was operating their bank accounts. Most of the cash creditors appeared before the Assessing Officer and their statements under section 131 of the Income-tax Act, 1961, were also recorded on oath. There was no clinching evidence nor had the Assessing Officer been able to prove that the money actually belonged to non but the assessee. The addition of ` 17,27,250 under section 68 was not justified.*

*7.3.14 The question whether an assessee is required to prove the source of source also has been answered by the Hon'ble Gauhati High Court in case of Nemi Chand Kothari v. CIT [2004] 13 Taxman 213. The High Court held that the assessee's burden is confined to proving the creditworthiness of creditor with reference to transaction between assess and creditor and it is not the business of the assessee to find out the source of money of his creditor or of genuineness of transaction which took place between the creditor and sub-creditor and/or the creditworthiness of the sub-creditors.*

*7.3.15 Hence, it is to be inferred that in a case where the assessee has supplied all possible information to the Assessing Officer to explain the credit transaction, he has satisfactorily discharged the burden cast on him and it would be for the revenue to prove that the transaction is not satisfactorily explained and provisions of section 68 of the Act are applicable.*

*7.3.16 In the case before Me, the record shows that to prove the genuineness of the impugned loan entries from M/s Surya Diam & M/s*

*Daksh Diamonds, the appellant has furnished to the Assessing Officer the following details copies of which were also furnished in the present proceedings:*

- I Ledger account Confirmation*
- II Bank statements of the lender [These show that the loan amount was paid through legitimate banking channels.]*
- III Audited financial accounts (including balance sheets) of the creditors [These show that the loan is duly reflected in the books of account of Account of the creditor.]*
- IV Accounts confirmed the loan transaction with full details of the loan received and repaid along with the interest payment details and the TDS made on the interest.*

*7.3.17 As such, in so far as the appellant is concerned, they have provided all possible documentary evidences to prove the Identity or the creditors from whom the impugned loan of ₹ 30,00,000/- was obtained. These evidences also prove creditworthiness of the creditors and the genuineness of the transactions. Moreover, as seen from the account copies and bank account copies filed, the loans were repaid through banking channels. The Appellant also paid interest, after duly deducting the IDS, which is evident from the account copies. From this it has to be said that the appellant had done everything in its power to prove the three ingredients required to prove the satisfactory nature of the loan transaction. In these circumstances, the onus had shifted to the Assessing Officer. Further, if the Assessing Officer was not satisfied with what had been given to him by the appellant, he was duty bound to specify what more material he wanted the appellant to furnish. The Assessing Officer never asked for any further material, which leads to the inescapable conclusion that the Assessing Officer could not think of any further material to ask for and proceeded to reject the appellant's claim. The unequivocal conclusion is that all the three ingredients having been satisfied, the impugned loan of ₹ 30,00,000/- have to be treated as explained satisfactorily and the Assessing Officer was wrong in having disregarded overwhelmingly supportive evidence. No cogent material was adduced by him, to show that loan was unexplained. Therefore, the impugned addition of ₹ 30,00,000/- made in the Assessment Order, fails on the count that evidence that is relied upon is totally inadequate and failure to recognise the satisfactory nature of the explanation/evidence tendered by the appellant to explain identity of creditor, creditworthiness of the creditor and the genuineness of the loan transaction. Hence, the impugned addition of ₹ 30,00,000/- is hereby deleted. Grounds raised against the addition of unsecured loan are treated as Allowed.*

4. On careful perusal of the order passed by the learned CIT(A), I am of the view that the learned CIT(A) has taken conscious decision on the impugned issue by duly considering the facts surrounding the issue and legal principles relating thereto. Before me, the Revenue could not file any document to controvert the findings given by the learned CIT(A). Under these set of facts, I have no other option but to confirm the order passed by the learned CIT(A).

5. In the result, appeal filed by the Revenue is dismissed.

Order has been pronounced in the Court on 14.9.2017.

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 14/9/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai