

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.3066/Ahd/2015  
Assessment Year: 2007-08**

Savitaben Mangaldas Trust, vs. Income Tax Officer,  
Amola Chambers, Ward – 10(4), Ahmedabad.  
Nr. Navrangpura Telephone Exchange,  
C.G. Road,  
Ahmedabad – 380 009.  
[PAN – AABTS 1322 E]

**ITA No.3067/Ahd/2015  
Assessment Year: 2007-08**

Surendra Mangaldas Shah (HUF), vs. Income Tax Officer,  
G-7, Amola Chambers, Ward – 10(4), Ahmedabad.  
Nr. Navrangpura Telephone Exchange,  
C.G. Road,  
Ahmedabad – 380 009.  
[PAN – AACHS 6590 R]  
(Appellants) (Respondents)

Appellants by : Shri D.R. Thakkar, A.R.  
Respondent by : Shri Prasoon Kabra, D.R.

Date of hearing : 28.12.2017  
Date of pronouncement : 29.12.2017

**ORDER**

**PER S.S. GODARA, J.M.**

These two assesseees have filed their respective instant appeals; both for assessment year 2007-08 against the CIT(A)-5 Ahmedabad's separate orders dated 24.08.2015 in case no. CIT(A)-5/ITO.Wd.10(4)/461/2014-15 & CIT(A)5/ITO.Wd.10(4)/454/2014-15 confirming Assessing Officer's action imposing penalties of Rs.4,11,430/- and Rs.4,87,686/-; respectively imposed under section 271(1)(c) of the Income Tax Act 1961; in short "the Act".

1.1 Heard both the parties. Case file perused.

2. It emerges at the outset that the above impugned penalties pertain to quantum additions of unexplained unsecured loans added under section 68 of the Act amounting to Rs.89,93,000/- and Rs.1,59,51,199/- followed by disallowance of consequential interest paid amounting to Rs.3,46,656/- and Rs.18,45,588/-; respectively made in the relevant quantum assessments framed on 24.12.2009 in these two cases before us. The Assessing Officer initiated the impugned penalty proceedings alleging furnishing of inaccurate particulars under section 271(1)(c) of the Act. The assessee preferred their respective separate appeals. The CIT(A)'s separate orders dated 24.12.2009 and 21.03.2013 deleted major portions of the above two quantum issues in both assessment years. He granted relief of Rs.77,87,425/- and Rs.1,47,45,512/- qua former issue and that of Rs.16,08,589/- and Rs.1,63,230/- qua latter interest in his separate quantum lower appellate order. The Assessing Officer thereafter finalised the impugned penalty proceedings holding in both the cases that the above two issues involve an instance of intentional furnishing of inaccurate particulars of income as these assessee had failed to prove all the relevant parameters of identity, genuineness and credit worthiness of the unsecured loans as well as consequential interest payment in question. The CIT(A) upholds the same in both the impugned orders under challenge.

2.1 We have given our thoughtful consideration to rival submissions. It is evident that this Tribunal's co-ordinate bench has first of all declined Revenue's appeal against the CIT(A)'s quantum lower appellate order deleting major portion of section 68 addition in question on 16.06.2017 as follows :-

*"11. We have heard the rival contention and perused the record placed before us and gone through the judgements referred and relied by the Ld. Counsel for the assessee. Issue raised by Revenue in this appeal for A.Y.2007-08 in ITA no.1529/Ahd/2013 centred around the relief given by Ld.CIT(A) by way of deleting addition u/s.68 of the Act, made for unexplained cash credit of Rs.1,47,45,512/- and also deleting disallowance of proportionate interest paid by the assessee on this cash credit.*

*12. From perusal of the record we observe that assessee is engaged in the Sarafi business under two sole proprietorship concerned namely Mangaldas Services and Surrendra Mangaldas HUF. Ld.AO in order to satisfy himself with identity, genuineness and creditworthiness of the*

*unsecured loans taken during the year called for necessary information from the assessee. In compliance thereto assessee submitted copy of ledger account of each cash creditors in its books of accounts and also supplied the copies of bank statement. Information were directly called for by the Assessing Officer from both the banks and as per the information given by these two banks all the impugned loans and advances were accepted by account payee cheque. Confirmation letters along with PAN number were also submitted to the Assessing Officer. However Ld.AO further demanded the copies of Income tax return of each cash creditors along with their bank account in order to examine the genuineness and creditworthiness of the alleged cash credits. Assessee was unable to file these documents for the reason that all these cash credits were repaid back in subsequent years and assessee lost connection with these parties and therefore whatever documents which were collected at the time of taking and repaying the loans were forwarded to the assessing authorities. Even then addition was made by the Assessing Officer and matter travelled to the first appellate authority.*

13. *Ld.CIT(A) after going through the documents filed by the assessee as well as admitting additional evidence under Rule 45A of the Income Tax Rule by accepting assessee's plea of some medical problem faced by one of the person who was at the helm of affairs of business concerns restraining to file details before the assessing authority during the course of assessment proceedings. Ld.CIT(A) called for the remand report from the assessing authority along with a direction to gather details from the PAN data and also examine some of the income tax return of the alleged cash creditors on test check basis to verify as to whether assessee's name appear under the list of loans and advances given by such cash creditors. Assessing Officer carried out remand proceedings and except few in all other cases, it was established that PAN number are correct and most of the cash creditors (as on test check basis) have filed return of income. Information received from banker of the assessee also certified that transaction of loans taken have been carried out through account payee cheque. Ld.CIT(A) after examining remand report and documents filed by the assessee concluded that assessee has been successful in establishing the identity, genuineness and creditworthiness of the cash creditors amounting to Rs.1,47,45,512/- out of the total addition u/s.68 of the Act of Rs.1,59,51,199/- and also deleted disallowance of proportionate interest paid thereon of Rs.16,08,589/- by giving a detailed findings observing as follows:-*

2.4 I have carefully considered the request of appellant for admission of additional evidences in the light of facts of the case and submissions made by the appellant. In para 5.1 on page-2 of the assessment order the AO records that the appellant had given certain submissions on 04-09-2009 & 24-09-09. On 7-12-2009, the AO issued another show cause for filing of confirmation which remained un-complied. The assessment order was finally passed by the AO on 24-12-2009. No doubt AO had accorded opportunities to the appellant for filing for of confirmations, the fact however remain that one of the managing trustee was suffering from some heart problem for which he was operated subsequently. The AO has given few opportunities to the appellant between the period 24-11-2009 to 10-12-2009 and has concluded in the assessment order that 'numerous opportunities' and in the remand report that 'sufficient opportunities' were given to the appellant. Rule 46A stipulates admission of additional evidences in cases where a particular evidence was requested by the A O, which could not be produced on account of some genuine cause with the appellant, provided an opportunity of being heard is given to the AO before admission of such evidence as additional evidence in the appellate stage. As mentioned supra, the arguments of the A O against admission of impugned evidences as additional evidences are untenable since the same are not supported by facts on records. It is further seen that as reportedly one of the managing trustees was suffering from compelling medical problems , the appellant was prevented by sufficient cause to provide evidences in support thereof. Accordingly, it is held that in this case there exist sufficient merits in the request of the appellant for admission of additional evidences. It is further seen that the impugned additional evidences have an important bearing in deciding the correctness of additions made by the Id A O. The additional evidences are therefore directed to be admitted for the purpose of adjudication of relevant grounds of appeal.

**3.0** The first effective grounds of appeal is regarding an addition of Rs. 1,59,51,199/- u/s.68 of the Act treating cash credits as bogus and the second effective ground of appeal is regarding the addition of interest of Rs. 18,45,588/- in respect of said deposits. The two grounds being inter connected, for the purposes of brevity are taken together. The facts of the case have been discussed by the A O in para-5 from page-2 to para-6.1 on page-9 of the assessment order. According to A O, the appellant is doing business in the names of Suredra Mangaldas HUF and Mangaldas Services. From the balance sheet of these two concerns, it was noted that appellant had shown deposits of Rs. 1,42,08,968/- and Rs. 98,75,743/- ( para 4 , pg 2) in the case of Mangaldas Services and Surendra Mangaldas HUF respectively. On comparing balance sheet of the appellant for two entities, between A Y 2006-07 and 2007-08, the A O noted receipt of loans as per following details :-

Mangaldas Services A Y 2007-08 - Unsecured loans			
No.	Name	As on 31-3-2007	As on 31-3-2006
1.	Aritar Plastic Ind	677212	353735

2.	<i>Ashwin P Shah</i>	1163096	-
3	<i>Jayesh A Shah</i>	1345459	27632
4	<i>Kailsah Textile</i>	469431	416802
5	<i>Mahendra Ravji &amp; Co</i>	1003547	134763
6	<i>Manek Moti Textile</i>	779550	414027
7	<i>Vlanish Textile</i>	374997	297250
8	<i>Nikhil G Shah</i>	1080293	0
9	<i>Niraqjan Chandravedan</i>	1283545	41898
10	<i>Niranjan Raval</i>	971755	39810
11	<i>Omkar Plastic</i>	619930	188400
12	<i>Paval Industries</i>	833414	361250
13	<i>Pravinkumar &amp; Co</i>	723765	479780
14	<i>R k Furniture</i>	710023	464518
15	<i>Shailesh Sheth</i>	1470983	41197
16	<i>S K Plastic</i>	701968	388988
	<i>Total</i>	14208968	3650050

	<i>Surendra Mangaldas HUF</i>		
<i>No</i>	<i>Name</i>	<i>As on 31-3-2007</i>	<i>As on 31-3-2006</i>
<i>1</i>	<i>Ashokkumar Popatlal</i>	<i>436503</i>	<i>331623</i>
<i>2</i>	<i>Bindi H Parikh</i>	<i>10000</i>	<i>0</i>
<i>3</i>	<i>Dipak J Sheth</i>	<i>901474</i>	<i>839023</i>
<i>4</i>	<i>Dinesh O Patel</i>	<i>325944</i>	<i>283430</i>
<i>5</i>	<i>Dinesh P Kantawala</i>	<i>723589</i>	<i>629208</i>
<i>6</i>	<i>Gautam N Patel</i>	<i>486647</i>	<i>423172</i>
<i>7</i>	<i>Hemant N Shah</i>	<i>310099</i>	<i>645340</i>
<i>8</i>	<i>Kiran P Shah</i>	<i>398051</i>	<i>346132</i>
<i>9</i>	<i>Kirti M Shah</i>	<i>210450</i>	<i>183000</i>
<i>10</i>	<i>Mahendra R Shah</i>	<i>527079</i>	<i>202450</i>

11	Niranjan Chandravadan	442395	384692
12	Omprakash G Sharma	541509	199500
13	Pankaj A Jain	754297	639235
14	Rekha D Shah	247250	215000
15	SharadBShah	310907	402844
16	-§4ini S Padshah	334148	290564
17	"-Vftibd Desai	271717	236276
18	'VirvodG Shah	183684	209350
	Total j	7415743	6460839

*In view of above, the A O concluded that new loans received from the above parties amounting to Rs. 1,33,90,000/- in the case of Mangaldas Services and Rs. 25,61,199/- ( para 5.5 pg 6 ) in the case of Surendra Mangaldas HUF aggregating to Rs. 1,59,51,199/- and corresponding interest of Rs. 8,57,022/- and Rs. 9,88,566/- in the two entities respectively aggregating to Rs. 18,35,588/- are bogus and in-genuine and are liable for addition u/s. 68 since the appellant had failed to file confirmation, prove genuineness of transaction and identity of the lenders. He accordingly made the addition of impugned amounts.*

**3.1** *It is the case of appellant that the Id A O has erred in making the impugned addition. It has been submitted that it was prevented by sufficient cause being health problem of one of the managing trustees to file the confirmations, which were filed during the course of the remand proceedings alongwith P A Nos of the depositors. The appellant has also argued that during the remand proceedings, the A O has also done a test check in respect of depositors and have noted that the depositors have disclosed the impugned deposits and the interest income earned thereupon in their returns of income. The appellant has submitted that since the during F Y 2007-08 relevant to AY 2008-09, it has*

lost contact with the lenders and hence could not produce them before the Id A O for deposition. The appellant has also argued that in respect of assessment proceedings for A Y 2008-09 and 2006-07 u/s. 143(2), the Id A O has collected information from his bankers which indicates that all the loan transactions for acceptance and repayment of impugned deposits were made through account payee cheques. The appellant has accordingly submitted that the identity of the depositors, genuineness of transaction and the creditworthiness of the creditors stands established u/s.68 and hence the addition of Rs.1,59,51,199/- and the corresponding interest of Rs.18,45,588/- deserve to be deleted.

3.2 I have carefully considered the facts of the case and the submissions made by the appellant. At the outset, it is seen that the figure of addition of Rs. 1,59,51,199/- per se made by the A O is based upon some incorrect understanding of the facts and figures. A perusal of the table extracted from the assessment order, shows that the total deposits shown by the appellant in respect of impugned 34 depositors as on 31-3-2007 comes to Rs. 2,16,24,7117/- only. The corresponding figure as on 31-3-2006 was Rs. 1,01,10,8897-. The argument of the AO is making the addition of Rs. 1,59,51,1997- being the differences in values of loan from 31-3-2006 to 31-3-2007 is incorrect. The difference between the figures as on 31-3-2006 and 31-3-2007 comes to Rs. 1,15,13,822/- (2,16,24,711/- minus 1,01,10,889/-) thus the maximum addition that could have been made in the case of the plea of new loans have been received comes to Rs. 1,15,13,822/- only. Accordingly, the addition made by the A O to the extent of Rs. 44,37,377/- (1,59,51,199 minus 1,15,13,822 ) is excessive and unwarranted and deserves to be deleted.

3.3 Coming to the merits of the addition, it is seen that in this case upon receipt of A Os remand report dated 7-03-2011, my predecessor vide his letter dated CIT(A)XVI/Remand/2011-12 dated 30-6-2011 addressed to the A O had conveyed that in view of the fact that the deposits were taken by account payee cheques, bank inquiries indicated routing of acceptance and repayment of deposits through bank of the appellant, and only in view of the fact that appellant was unable to produce the depositors / provide their addresses, the impugned deposits cannot be considered as unexplained. He accordingly directed the A O to explore other method of verification like ascertaining address from the P A Nos., accessing bank account of depositors through details available from cheques of repayment. The A O was accordingly directed to do a test check in respect of few depositors from the ITD data base. The said letter dated 30-6-2011, is reproduced hereunder :-

"..... Please refer to your remand report dated 07-03-2011 received in this office on 09-03-2011 through the JtCIT, Range-10, Ahmedabad. A copy of the remand report was made available to the Counsel of the appellant for his comments. In the rejoinder, it was submitted by the Ld. Counsel that all the depositors are income tax payers and they have confirmed the deposits given by them in the confirmations filed. The copies of confirmations of account for the relevant period have been filed before you in the remand proceedings. It was noticed that the confirmations were found signed both by the assessee as well as by the depositors. The PAN was also mentioned in each of such confirmations.

2. I have gone through the confirmations, copies of which were filed during the cause of appellate proceedings, and noticed that in most of the cases, the deposits are in lakhs of rupees which indicate that the depositors are not the persons of no means or puppets. All the deposits have been taken by account payee cheques and the deposits were also repaid by account payee cheques. It was brought to my notice

that you have made necessary inquiries from the respective banks and found that the deposits were taken by account payee cheques and also repaid by account payee cheques. If it is correct then the deposits cannot said to 'arranged. Though, the appellant was unable to produce the depositors before the leer for examinations, the deposits cannot be considered as unexplained only accounts of the fact that the depositors were not produced for examination. There were other method of examination of the depositors. The address can be ascertained from PAN. The bank accounts of the depositors are accessible on the basis of repayment by account payee cheques. If the assessee had filed the confirmations and the PAN are available, the initial burden is established as accepted by the Hon'b/e Gujarat High Court in the case of Rohini Builders. The Hon'ble Gujarat High Court and the Hon'ble Ahmedabad Tribunal have admitted the deposits as explained in various cases where the depositors were not produced and the deposits were taken and repaid by account payee cheques. Since the deposits have been repaid to the depositors, it is actually difficult for the appellant to trace out the depositors and produce them before the Assessing Officer. From the confirmation filed, it was noticed that substantial amount of interest was paid to the depositors and if they are assessed to tax, they would have disclosed the interest in their returns of income filed for the A.Y. 2006-07 to A.Y. 2008-09.

3. Considering these facts, it is advisavle not to press the appellant for producing the depositors. For verification of the creditworthiness, you are requested to please ensure whether the 34 depositors, whose PANs are available on record, are assessed to income tax. If they are assessed to tax, the details of filing of income tax returns for the A.Y. 2006-07 to A.Y. 2008-09 can be verified from the departmental computer system and if required the assessment records can be examined from the respective Assessing Officers on test check.

4. You are therefore, requested to please collect the assessment details of these depositors from the computer system of the department and try to examine at random, the assessment records of 5-6 depositors. If on test check, it is found that the depositors had disclosed the interest income in their returns of income for the A.Ys. 2006-07 to A.Y. 2008-09 the cash credits can be treated as explained. A further report therefore, is required to be sent by you latest by 14-07-2011 if possible. If required, further time may be taken.

5. Similar exercise may be done in the case of appeal filed by M/s. Savitaben Mangaldas Trust....."

in response, the A O submitted a remand report bearing No ITO/Wd.10(4)/Abd/Appeal-Corres/2010-11 dated 20-9-2011 conveying as under

No	Name	PAN	AO	Remarks
1	Jayesh A Shah	ACJPS9026K	12(4)	Deposits are reflected in b/s.

2	Mahendra Ravji & Co	ADSPP7244C	14(4)	Records not available, weded out
3	Niranjan Raval	AAQPR466R	15(4)	Records not available, weded out
4	Payal Industries	AADFP8528R	11(2)	No reply reed from AO
5	Shailesh Sheth	ACAPS6902P	15(4)	Records not available, weded out
	Surendra Mangaldas HUF			
No	Name	PAN	AO	Remarks
1	Ashokkumar Popatlal	ADFPS9860G	11(1)	Deposits are reflected in b/s.
2	Pankaj A Jain	ABTPJ5493Q	11(2)	No reply reed from AO
3	Rekha D Shah	AKGPS8914H	1514)	Records not available, weded out
4	Vinod Desai	AAPPD7626L	15(4)	Records not available, weded out

The A O thus informed that total verification of the depositors could not be made on account of unavailability of assessment records / co-operation from respective AOs.

Again, my predecessor vide his letter No CIT(A)XVI/Remand/2011-12 dated 19-12-2011 directed the A O to once again ascertain whether all the 34 depositors are assessed to tax or not. The A O replied by letter No ITO/Wd.10(4)/Abd/Appeal-Corres/2010-11 dated 16-12-2011 that out of total 34 depositors, the P A No of one Shri Gautam N Patel, and Kiran P Shah was found invalid and PAN of Nikhil G Shah and Smt Bindi H Parikh was not available on records and therefore no verification could be conducted, the balance depositors were found to be assessed to tax. During the course of current appellant proceedings, the case records of the impugned depositors was called from respective AOs to conduct a test check. It was noted that the deposits and the corresponding interest stood disclosed in the respective returns. A perusal of the above shows that out of the impugned 34 depositor in respect of which addition was made by the Id AO verifications could not be done in respect of Shri Gautam N Patel,(loan of 63745/-) Kiran P Shah(Loan of Rs. 51919/-), Nikhil G Shah(loan of Rs. 10,80,293/-) and Smt Bindi H Parikh.(Rs.10,000/-) Fresh deposits received from these four depositors cumulatively aggregate to Rs. 12,05,687/- . Test check conducted by the Id A O also indicated that the deposits received from balance depositors were disclosed in their returns of income. In the case of Rohini Builders, Hon'ble Gujarat High Court has held that if the confirmations are filed and the PA nos are available, the initial burden u/s.68 stands discharged by an appellant. In several other cases, both Hon'ble Gujarat High Court as well as ITAT Ahmedabad have held that deposits which were taken and repaid by way of account payee cheques are to be accepted and held as genuine, even if the appellant fails to produce the depositors. Accordingly, in view of the facts of the case discussed above, it is held that the addition made by the Id AO of Rs.1,59,51,199/- cannot be sustained in its entirety. As discussed above, the unsecured loan in respect of Shri Gautam N Patel,( loan of 63745/-) Kiran P an of Rs. 51919/-), Nikhil G Shah(loan of Rs. 10,80,293/-) and Smt Bindi H Parikh !(Rs.10,000/-) could not be verified on account of their PA No's being invalid etc. The total of these loans comes to Rs. 12,05,687/-. Therefore out of total addition of Rs 1,89,91,199/- , an amount of Rs 12,05,687/- is confirmed and the balance is deleted. The first effective ground of appeal is therefore partly allowed. Further the addition on account of interest of Rs. 18,45,588/- paid by the appellant in respect of impugned cash credits was also added by the A O on the plea that the loans were bogus. As held in the preceding paras that except for four, all the other 34 loans have been found to be genuine and the addition therein has been deleted. Consequently, the addition on account of interest of Rs.18.45.5887- also cannot be sustained in its entirety. The rate of interest paid by the appellant in respect of these loans is not available on records. The same is keeping in view the prevalent market rates is estimated at 12%. The amount of unexplained loan in respect of above 4 parties as 31/03/2007 on which interest was paid by the appellant appears at Rs19,74.991/- . Corresponding interest in respect of said loan at the rate of 12% comes to Rs2,36,999/-. Accordingly, the addition in respect of interest is confirmed to the extent of Rs.2,36,999/- and the balance is deleted. The second effective ground of appeal is also therefore partly allowed.

14. We observe that Ld.Counsel has relied upon various judgments and decisions dealing with similar issues and we will like to take note of few of them.

We observe that the Co-ordinate Bench, Ahmedabad in ITA nos.1263 & 1572/Ahd/2014 in case of Income Tax Officer V/s Mahendra Kataria has held as under

"6. We have heard both the learned representatives. There is no dispute that we are now left with four creditors. First one Shri Dinesh Arvind Raval invokes a sum of Rs.75,000/-. Page 118 of the paper book reveals that the assessee had filed his bank statement, return of income with acknowledgement and his ledger copy stating opening balance of Rs.21acs to prove genuineness. This follows a confirmation from the said creditors and at page 125 of the paper book. We take into account all these details as well as this tribunal's decision in ITA No.1335/Ahd/2014 M/s. R. Kantilal & Co. vs. CIT following hon'ble apex court's decision in Orissa Still Corporation case 159 ITR 78 as well as that of hon'ble jurisdictional high court's judgment in Ranchhod Jivabhai Nakhava 208 taxmann.com 35 to conclude that the assessee has discharged his onus whereas there is no specific evidence for disbelieving the said explanation. Coming to next case of M/s. S. K. Developers, it is evident from pages 135 in the paper book that its tax consultant had sent all details i.e. loan confirmation letter, loan ledger, balance sheet copy as on 31.03.2009 showing the loan transaction in question, PAN Card, Income tax return acknowledgement as well as bank statement. It further clarified the fact that the postal authority's remark in not serving Section 133(6) notice was not correct. We find herein as well that the authorities below nowhere rebut the said explanation with concrete evidence. We therefore adopt our preceding reasoning in this case as well. The third creditor is M/s. Kesar Agency qua the sum in question of Rs.1.5lacs. The assessee claimed that this amount was deposited in his firm Ms. Padmavati Infracon Pvt. Ltd. which was later on transferred by way of a journal entry. The Assessing Officer issued Section 133(6) notice. One Shri Dinesh B. Kataria filed reply alongwith copy of balance sheet, the above entities' ledger account and other details. The Assessing Officer observes at page 111 of the paper book containing in his remand report that M/s. Padmavati Infracon's books duly show these accounts an amount of Rs.1.5lacs in question. We therefore observe that the assessee has proved his case by discharging the primary onus as not rebutted by the lower authorities. The last creditor M/s. Raj Motor involves a sum of Rs.31acs. The Assessing Officer himself observes in his remand report at page 133 of the paper book that this assessee's claim regarding the said entity is very much acceptable. We therefore find no reason to aggrieve with the impugned addition. The Assessing Officer is directed to delete Section 68 addition in question of Rs.16.251acs. This first substantive ground is partly allowed.

**Further Hon'ble Jurisdictional High Court in the case of DCIT v. Rohini Builders (2002) 256 ITR 360 (Guj) held that "if identity of creditors is proved and amounts is received by account payees cheque than initial burden of proving credits stands discharged and such source of credits would not automatically result in deeming amounts as income includible in total income of assessee."**

**We further observe that Hon'ble Jurisdictional High Court in the case of CIT V. Micro Metal (P) Ltd. (2010) 327 ITR70(Guj) has held that "in case of cash credit if transactions are genuine and identity of depositors is established then amount representing cash credits could not be added to income of assessee."**

**Further Hon'ble Jurisdictional High Court of Rajasthan in the case of Labh Chand Bohra v. ITO (2008) 219 CTR 571 (Raj.), has held that "if the**

*explanation is not supported by any documentary or other evidence, then the deeming fiction created by s. 68 can be invoked. In the present case, so far as this requirement is concerned, it is very much there in existence, inasmuch as the amount has been advanced by accounts payee cheques, through bank, and is duly supported by documentary evidence as well as the two lenders, and that also satisfies the requirement about the discharge of burden on the part of the assessee, to prove identity and genuineness of the transaction. So far as capacity of the lender is concerned, capacity of the lender to advance money to the assessee was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source of the source. The addition with respect to the entries of V and D, for the amounts of 50,000/- each respectively made in the income of assessee, are ordered to be deleted. CIT Vs Daulat Ram Rawat Mull 1972 CTR (SC) 411: (1973) 87 ITR 349 (SC) and Late Mangilal Agarwal through LRs vs. Asstt. CIT (2007) 208 CIR(Raj) followed; CIT vs Kishorilal Santoshilal (1995) 129 CTR (Raj) 450 1995, 216 ITR 9 (Raj) not followed'.*

*15. Respectfully following the judgments of Hon'ble Jurisdictional High Court and other Hon'ble High Court as well as decision of Co-ordinate Bench and after examining the facts of the case in light thereof, we are of the view that assessee has successfully proved the identity, genuineness and creditworthiness of the impugned cash credit of Rs.1,47,45,512/- by providing details of name, address, confirmation letters, bank statement, PAN number and also proving that impugned transactions were carried out through banking channel which have been found to be correct by the assessing authority in the remand proceedings. Further there was no estoppel with the Revenue authorities to call information as required by them from these alleged cash creditors u/s.133(6) of the Act. It seems that Revenue restrained from carrying out this activity for the reasons best known to them. We therefore find no reason to interfere with the order of Ld.CIT(A), deleting the addition u/s.68 of the Act at Rs.1,47,45,512/- and also deleting disallowance of interest of Rs.16,08,589/-. In the result ground no. 1 and 2 raised by Revenue are dismissed."*

3. The net result that flows from the above detailed discussions is that these two assessees had successfully proved identity, capacity as well as repayment through banking channel in the quantum issue of unsecured loans. It has come on record that some of the PAN details turned out to be invalid. It was however not the Revenue's case that the said PANs were altogether incorrect as pertaining to some other persons than the creditors in question. It is therefore an instance therein these assessees proved almost 90 percent of the impugned credits to be genuine in quantum lower appellate proceedings as upheld by this Tribunal. We accordingly keep in mind the fine distinction between quantum and penalty proceedings as per hon'ble apex court's landmark judgement in CIT vs. Reliance Petroproducts 322 ITR

158 (SC) that each and every addition made in case of former does not *ipso facto* attract latter penal provision to conclude that both the lower authorities have erred in law as well as in facts in imposing the penalties in question in these two cases. The same are accordingly directed to be deleted.

4. These two assessee's appeals are accordingly allowed. Order pronounced in the open Court on this 29<sup>th</sup> day of December, 2017.

*Sd/-*  
**MANISH BORAD**  
(Accountant Member)

*Sd/-*  
**S.S. GODARA**  
(Judicial Member)

**Ahmedabad, the 29<sup>th</sup> day of December, 2017**

**PBN/\***

<i>Copies to:</i>	(1) <i>The appellant</i>	(2) <i>The respondent</i>
	(3) <i>CIT</i>	(4) <i>CIT(A)</i>
	(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*