

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI

Before Shri Joginder Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.6611/Mum/2017  
(Assessment year: 2010-11)

Gopal Swaroop Kishanchand Khanna, 501, Kanta Building, Phirozshah Mehta Road, Santacruz (W), Mumbai-400 0054 PAN : AAMPK9870G	vs	ITO 16(3)(1), Mumbai
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	Shri Rakesh Kapoor
Respondent by	Smt. M Hemalatha

Date of hearing	01-05-2018
Date of pronouncement	15-05-2018

**ORDER**

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against the order of the CIT(A)-6, Mumbai dated 16-08-2017 and it pertains to AY 2010-11.

The assessee has raised the following grounds of appeal:-

"1. The Ld CIT (A) 6 has erred by upholding the addition made by Assessing Officer of making addition of Rs. 18,35,000/- on account of loan taken from his wife Late Bina Khanna. The appellant received Rs.18,35,000/- as loan from his wife Late Bina Khanna on various occasion during the period under consideration. She was assessed to tax under PAN:AAMPK9867H. She was director in Seaking Caterers Pvt Ltd earning salary. The loan was received by way of account payee cheques and the source of the loan was explained. The addition made by assessing officer on this ground is erroneous and the appellant prays for the deletion of the same.

2. The Ld CIT(A) has erred by upholding the addition made by assessing officer of Rs.1,79,500/- on account of cash deposit in bank from own funds during the year. The appellant is a senior citizen and is income tax payee and main source of income is from salary for many years as director of Seaking Caterers Pvt Ltd.. For the status of appellant

the cash accumulation of Rs. 179500/- during the year out of his own funds can not be considered as unexplained. The appellant prays to you for deleting the addition.”

2. The brief facts of the case are that a notice u/s 148 of the Act was issued to the assessee on 17-03-2015 after recording reasons. In response to notice, the assessee filed his return of income for AY 2010-11 on 11-09-2015 declaring total income at Rs.3,89,010. The case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued. In response to notices, the authorized representative of the assessee appeared from time to time and furnished the details, as called for. During the course of assessment proceedings, the AO noticed that the assessee has taken unsecured loans from various persons and accordingly called upon the assessee to file necessary evidences to prove the identity, genuineness of transaction and creditworthiness of loan creditors by filing confirmation letters from the parties, bank statement of the loan creditor and copy of their income-tax return. In spite of repeated opportunities given on various occasions, the assessee failed to file necessary evidences to justify loans and advances shown in his books of account. Therefore, the AO has made additions towards loans and advances u/s 68 of the Income-tax Act, 1961 as unexplained credits.

3. Aggrieved by the assessment order, the assessee preferred appeal

before the CIT(A). Before the CIT(A), the assessee has submitted that the AO was erred in making addition towards loans and advances received from late Bina Khanna despite furnishing necessary evidences to prove identity, genuineness of transactions and confirmations from the party. The assessee further submitted that the loan creditor is his wife assessed to income-tax regularly and also she was director in M/s Seaking Caterers Pvt Ltd from where she derives income from salary, therefore, she was capable of explaining the sources for loans given to the assessee. The assessee further submitted that the loans were taken through proper banking channel and also necessary confirmation from the party has been furnished. Therefore, the AO was completely erred in making addition towards loan creditors u/s 68 of the Act. The CIT(A), after considering relevant submissions of the assessee and also relying upon certain judicial precedents including the decision of Hon'ble Supreme Court in the case of Durgaprasad More (1971) 82 ITR 540 (SC) observed that the assessee has failed to prove neither the creditworthiness of the lender nor the genuineness of transactions and hence, the AO was right in making addition u/s 68 of the Income-tax Act, 1961. The relevant portion of the order is extracted below:-

"8. I have considered the facts of the case, discussion of the A.O. in the impugned order as well as oral contentions and written submissions of the appellant. It is the fact of the case and not disputed by the appellant that the appellant and his Late wife were both liable to file return of income tax for the assessment year under consideration but had not filed the same within the

provisions of section 139 of the Act, It is also a fact that the Late wife of the appellant could not/did not file her return of income subsequently. Both have been stated to be Directors of a company and having regular income. Under such circumstances non-filing of return of income on some kind of presumption is not found to be acceptable.

8.1 In the impugned order the AO has made addition under section 68 of the Act. The additions represent an amount of Rs. 18,35,000/- stated to have been received by the appellant from his Late wife and an amount of Rs. 1,79,500/- seen deposited in cash in appellant's bank account. The submission of the appellant is more on the legality of application of section 68 than on the facts of the case. The AO has observed that in the bank account of appellant's Late wife there were deposits through cheque and cash just prior to the advancement of so called loan to the appellant. This fact has not been disputed by the appellant. While it may be the position that in such scenario it is lender whose case should suffer the addition, if any, however in the peculiar facts of this case when the lender is wife of the appellant and who is no more, the onus to explain the credits in her bank account would fall on the appellant. Either during the instant proceedings or during the assessment this onus has not been discharged by the appellant. Simply to argue that since the lender was having a PAN and that she did receive income regularly being a Director in a company, without any proof to support the same would not serve the purpose. While the creditor's identity in the case is away from doubt, what is doubted is creditworthiness and genuineness of transaction. In the absence of reasonable and sufficient proof regarding the deposits made in the appellant's Late wife's bank account, no arguments can be considered to be entertainable, especially when it is her husband who is the recipient and should be/would be in know of things as to the state of affairs of his Late wife's bank account. The facts submitted by the appellant that taxes of Rs.15,564/- and Rs.2,785/- were paid on 31.03.2010 for A.Y.2008-09 and A.Y.2007-08 in the case of Late Bina Khanna is also an indicator as to the extent of her income and therefore her creditworthiness to advance a loan to the extent of Rs.18,35,000/-. Further genuineness of transaction per se cannot be said to be proven only if the transaction has been done through cheque.

8.2 In the case of CIT vs. Durga Prasad More (1971) 82 ITR 540, the Hon'ble Supreme Court have held that *the taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out reality of recitals made in those documents.* They have further observed that *science has not yet invented any instrument to test reliability of the evidence placed before the court or tribunal. Therefore the Courts and Tribunals have to judge the evidence before them by applying the test of human probability.* It is in the test of human probability that the appellant's contentions and case fails, as despite the appellant being in possession of the details regarding the deposits in his wife's account has not been able to reasonably prove the sources, rather despite opportunities given by AO, he has not submitted details so much so that the last opportunity given by the AO was not even availed by him.

8.3 The Hon'ble Supreme Court in case of *C/7~v. P. Mohanakala* [2007] 291 ITR 278 /161 Taxman 169 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. The appellant in this case has not been able to offers any proper, reasonable and acceptable explanation as regards the sum found credited.

8.4 In the case of *A. Govindarajulu Mudaliar v. CIT* [1958] 34 ITR 807 (SC) , the Hon'ble Apex Court has held that "the 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 receipts are of an assessable nature".

8.5 The Hon'ble Punjab & Haryana High Court in the case of *Som Nath Maini Vs. CIT* (2008) 306 ITR 414 have observed that *genuineness of the transaction can be rejected in the case the assessee gives evidence which is not trustworthy*. Mere leading of the evidence that the transaction was genuine, cannot be conclusive. Any such evidence is required to be assessed by the Assessing Officer in a reasonable way. Genuineness of the transaction can be rejected in case the assessee leads evidence which is not trustworthy, and the department does not lead any evidence on such an issue. The assessee's evidence submitted in the shape of incomplete bank account of his Late wife and further no explanation what so ever towards the credits in such bank account immediately before the advance of so called loan to the assessee are clear pointers towards such evidences being not trust worthy.

8.6 In view of such facts and circumstances of the case, discussions here in above, and position of law, it is held that in this case neither the creditworthiness of the lender nor the genuineness of transaction is proved. Accordingly, the addition made by the AO of Rs. 18,35,000/- under section 68 is confirmed and Ground 1 of appeal is dismissed.

8.7 As far as addition of the case deposit of Rs.1,79,5007- is concerned, the appellant has only stated the same to be from accumulated past saving. No details what so ever has been given. Here note is being taken that the appellant did not file its return of income under section 139 and filed only when notice under section 148 was issued. Further the appellant is stated to have only salary income on which there is IDS deducted and would normally be credited in appellant's bank account. Under such circumstances, how and why the appellant accumulated cash amounting to Rs.1,79,500/- is not understood. Under such facts and circumstances, the contentions of the appellant in this regard is not found to be satisfactory and the **Ground No.2** raised by the appellant is accordingly, **dismissed.**"

4. The Ld.AR for the assessee submitted that the Ld.CIT(A) was erred in confirming addition made by the AO towards unsecured loan received from assessee's wife even though the assessee has proved identity, genuineness of transaction and creditworthiness of the loan creditor. The Ld.AR further submitted that the assessee has even filed confirmation letter which has been disowned by the AO merely on the

ground that the loan creditor does not have capacity to explain substantial amount of loan given to the assessee ignoring the fact that the loan creditor has borrowed loans from friends and relatives which is evident from the fact that in her bank account, before loan has been given to the assessee substantial amount has been credited. Therefore, once the assessee has explained the source, there is no need to further explain source of source. The Ld.AR further submitted that the loan creditor is now no more as she is expired due to cancer and whatever detail has to be filed to prove the transaction has already been filed before the AO. Therefore, the AO was incorrect in making addition towards unsecured loan u/s 68 of the Act. The Ld.AR further submitted that the AO further made addition of Rs.1,79,500 u/s 68 of the Act towards cash deposit in bank account even though the assessee has explained source for such cash deposits with necessary evidence and accordingly pleaded for one more opportunity to produce necessary evidence before the AO to explain his case.

5. The Ld.DR submitted that the assessee failed to file necessary evidence before the AO in spite of repeated opportunities which is evident from the fact that the AO has recorded clear facts of various notices issued to the assessee to file details. Hence, there is no need to give further opportunity to the assessee to file evidence. The lower

authorities have brought out clear fact that the assessee has not filed any evidence to justify unsecured loans, therefore, addition made by the AO should be sustained.

5. We have heard both the parties and perused the material available on record. The AO made addition towards unsecured loan received from assessee's wife late Bina Khanna on the ground that the assessee failed to prove creditworthiness of the loan creditor and also genuineness of transaction. According to the AO, the creditor does not have capacity to explain loans given to the assessee as she does not have enough source of income which is evident from the fact that she has filed her income-tax return with a meagre income from salary. The AO further observed that she has received number of creditors from other persons before the date on which she had transferred money to her husband's account. Therefore, he opined that the assessee has not proved creditworthiness of the creditor nor genuineness of transaction. It is the contention of the assessee before the lower authorities that he had filed necessary evidence including confirmation letter from the loan creditor to prove identity, genuineness of transaction and creditworthiness of the parties. The AO has ignored all evidences filed to make addition u/s 68 only on the ground that the loan creditor does not have capacity to explain huge amount of loan given to the assessee

ignoring the fact that the creditor has received huge amount of loans from friends and relatives which is evident from the bank statement of loan creditor where various credits have been given on the date before she has transferred funds to the assessee's account.

6. Having heard both the sides and considered material on record, we find that there is contradiction in facts recorded by the AO in his assessment order to make addition towards unsecured loan u/s 68 of the Act and the claim of the assessee that she has furnished necessary evidences before the AO to prove identity, genuineness of transaction and creditworthiness of the parties. The AO has never disputed the identity of the creditor which is evident from the fact that the assessee has proved with necessary evidence that the loan creditor is wife of the assessee. The only dispute is with regard to the creditworthiness of the loan creditor. According to the assessee, she has filed enormous details to prove creditworthiness including bank statement and copy of income-tax return to prove source of income to explain loans given to assessee. The claim of the assessee is that the loan creditor has received amounts from various parties to explain loans and advances given to the assessee. This fact is not emanating from the records of the lower authorities. Therefore, we are of the considered view that the issue needs to be examined by the AO in the light of evidences filed by the

assessee to prove source for loans given to the assessee. Hence, we set aside the issue to the file of the AO and direct him to redo the assessment after considering evidences filed by the assessee to prove unsecured loan received from assessee's late wife Bina Khanna and also to explain source for cash deposits to bank account. Needless to say, the assessee is directed to furnish necessary evidence before the AO to justify his case.

7. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 15<sup>th</sup> May, 2018.

Sd/-

sd/-

(Joginder Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 15<sup>th</sup> May, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai