



**Let us take up ITA No. 1245/Kol/2016 for Asst Year 2002-03**

2. The first issue to be decided in this appeal of the revenue for the Asst Year 2002-03 is as to whether the Id CITA was justified in deleting the addition made towards loan creditors in the facts and circumstances of the case. The interconnected issue involved is as to whether the Id CITA was justified in deleting the addition towards interest portion in the facts and circumstances of the case.

2.1. The brief facts of this issue are that the assessee is an individual. In response to notice u/s 148 of the Act, the assessee filed his return of income on 13.3.2005 declaring loss of Rs 5,50,900/- for the Asst Year 2002-03. The assessee produced the books of accounts, bank statements, confirmation of accounts and filed various details that were called for by the Id AO from time to time and the same were examined . With regard to the loan creditors, the Id AO directed the assessee to file the following :-

- a) The details of unsecured loans with confirmations from the loan creditors
- b) Bank statements, P&L Account and Balance Sheets of the loan creditors
- c) Evidences of filing IT Return by the loan creditors

The assessee filed the details of loans as asked for with some loan confirmations but he could not submit the details called for in b) and c) above. The Id AO observed that in the loan confirmations filed by the assessee, in respect of 19 parties, there was no mention of PAN and address of the loan creditors to the tune of Rs 35,04,353/- for the Asst Year 2002-03 which was treated as unexplained cash credit u/s 68 of the Act by the Id AO while completing the assessment. The details of 19 parties and the balances outstanding to them are as under:-

Sl. No.	Name of the loan creditors	Amount of loan
1.	Smt. Poonam Kapur	Rs.2,96,500/-
2.	Shri P. K. Kapur	Rs.3,20,000/-
3.	Kavita Kapur	Rs.2,40,000/-
4.	M. K. Kishorepuria HUF	Rs.1,74,941/-
5.	Bajram Lal Saraogi	Rs.1,08,712/-
6.	Gopal Prasad Kishorepuria	Rs.71,132/-
7.	Kiron Devi Bhatra	Rs.1,12,739/-
8.	Vayudoot Com. (P) Ltd.	Rs.19,818/-
9.	Hariprasad Kishorepuria (HUF)	Rs.1,79,564/-
10.	Nirmal Kumar Sharma	Rs.1,38,465/-
11.	Arun Kr. Kishorpuria	Rs.1,61,885/-
12.	Krishna Kumar Agarwal HUF	Rs.1,60,899/-
13.	Sunil Kr. Agarwal	Rs.2,68,164/-
14.	Sarvottam Trade Link	Rs.20,509/-
15.	Neelam Kapur	Rs.1,46,060/-
16.	R. K. Kapur	Rs.2,21,204/-
17.	S. K. Kapur	Rs.8,60,625/-
18.	Bianca Kapur	Rs.1,124/-
19.	Shawn Kapur	Rs.2,012/-
	Total .....	Rs.35,04,353/-

The assessee had debited interest on unsecured loans to the tune of Rs 9,08,016/-, but as per loan confirmations filed, interest worked out to only Rs 7,07,566/- and accordingly the Id AO disallowed the balance interest payment of Rs 2,00,450/- for want of loan confirmations.

2.2. The assessee submitted the details of all the aforesaid 19 loan creditors in the following manner:-

Sl. No.	Name of the loan creditors	As on 01-04-2001	Addition / Repayment during the year	Balance as on 31-03-2002
1.	Smt Poonam Kapur	-	296500/-	296500/-
2.	Shri P K Kapur	320000/-	-	320000/-
3.	Kavita Kapur	50000/-	190000/-	240000/-
4.	M K Kishorepuria ( HUF )	-	174941/-	174941/-
5.	Bajrag Lal Saraogi	-	108712/-	108712/-
6.	Gopal Prasad Kishorepuria	45000/-	26132/-	71132/-
7.	Kiron Devi Bhatra	-	112739/-	112739/-
8.	Vayudoot Com ( P ) Ltd	118108/-	(-)98290/-	19818/-
9.	Hariprasad Kishorepuria ( HUF )	25000/-	154564/-	179564/-
10.	Nirmal Kumar Sharma	200000/-	(-)61535/-	138465/-
11.	Arun Kumar Kishorepuria	-	161885/-	161885/-
12.	Krishna Kumar Agarwal ( HUF )	-	160899/-	160899/-
13.	Sunil Kumar Agarwal	-	268164/-	268164/-
14.	Sarvottam Trade Link	115347/-	(-)94838/-	20509/-
15.	Neelam Kapur	146060/-	-	146060/-
16.	R K Kapur	130565/-	90639/-	221204/-
17.	S K Kapur	860625/-	-	860625/-
18.	Bianca Kapur	-	1124/-	1124/-
19.	Shawn Kapur	-	3012/-	3012/-
TOTAL =		2010705/-	1493648/-	3504353/-

The assessee submitted that parties at serial numbers 1,2,3, 15, 16 & 17 are of the family members of the assessee and all of them are assessed to income tax by the same AO. It was therefore not difficult for the Id AO to verify the correctness and genuineness of the credit in these accounts. It was also submitted that the credits during the year were only Rs 14,93,648/- including interest and the balance were in respect of brought forward credit balances. Out of which, credits totaling to Rs 5,77,139/- related to the members of the Kapur family as under:-

- i) Smt Poonam Kapur - Rs 2,96,500/-
- ii) Smt Kavita Kapur - Rs 1,90,000/-



“These are serial numbers at 18 and 19. These are actually not loans but journal entry for credit for TDS. The income of these minor children are clubbed with the appellant.

These are hereby deleted.”

**5.5. Old loans being brought forward balances- the opening and closing balance being the same, there being no addition during the year.**

These are the serial numbers at 2,15 and 17. As they are only brought forward balances, they cannot be taxed in this A.Y they are also hereby deleted.

**5.6. Old loans having repayments made during the year.**

These are the serial numbers at 8,10, and 14. As there is no addition during the year but only repayment made, these too cannot be taxed in this assessment year. They are also hereby deleted.

**5.7. Old loans and having addition during the year.**

These are the following:

Sl. No. in Table	Name	Opening balance as on 01.04.2001	Addition during the year.	Closing balance as on 31.03.2002
3	Kavita Kapur	50,000/-	1,90,000/-	2,40,000/-
6	Gopal Prasad Kishorepuria	45,000/-	26,132/-	71,132/-
9	Hariprasad Kishorepuria (HUF)	25,000/-	1,54,564/-	1,79,564/-
16	R K Kapur	1,30,565/-	90,639/-	2,21,204/-

To be clear, what is to be examined in these cases is- only the further loan received during the relevant previous year for this Assessment year 2002-03.

Kavita Kapur: Further loan during the year is at Rs. 1,90,000/-.

The appellant's explanation is:

**3. Smt. Kavita Kapur- Rs. 2,40,000/-:- A sum of Rs. 50,000/- was brought forward in this a/c from preceding year. Confirmation for this year enclosed. She is my wife. She was assessed by the same Assessing Officer at that time.**

Smt. Kavita Kapur is the spouse of the appellant and was assessed by the same ACIT AO. Her PAN is AFQPK 9776 E. Being assessed by the same ACIT AO, I see no reason for the addition being made. It is hereby deleted.

Gopal Prasad Kishorepuria: Further loan during the year is at Rs. 26,132/-.

ITA Nos.12451246/Kol/2016  
Mitul Krishan Kapur  
A.Yrs.2002-03&2003-04

**6. Gopal Prasad Kishorepuria- Rs. 71,132/-:- A sum of Rs. 45,000/- was brought forward from last year for which confirmation is enclosed. Further sum of Rs. 15,000/- was taken during the year and total interest during the year was Rs. 11,132/- . In assessment year 2004-05 the principal amount of Rs. 60,000/- was repaid through my family concern M/s R.K. Kapur & Bros.- assessed by the same AO at that time- confirmation of R.K. Kapur & Brothers along with Bank statement is enclosed.**

Appel No. 100/2015-10.

RISHAN KAPUR 2001-02		GENERAL LEDGER			1
DATE	BKCD	DESCRIPTION	CHEQUE	DEBIT	CREDIT
<b>V1031 GOPAL PRASAD KISHORPURIA</b>					
01/04/2001		Balance b/f:			45000.00
20/09/2001	BOBB	CHQ DEPOSITED			15000.00
31/03/2002	JOUR	PROVN OF INTEREST IN G P KISHORPURIA			11132.00
31/03/2002		Balance c/f:		71132.00	
				71132.00	71132.00

The actual addition during the year is only at Rs. 15,000/-; the other being interest accrued at Rs. 11,132/0. His PAN is ALWPK 9064 B. The amount is very nominal, and has been advanced by cheque. I see no rationale for disbelieving the amount advanced during the year. It is hereby deleted.

Hari Prasad Kishorepuria (HUF): Further loan during the year is at Rs. 1,54,564/-

The appellant's explanation is:

- 9) Hari Prasad Kishorepuria (HUF) – Rs.1,79,564/- :- A sum of Rs.25,000/- was brought forward in the A/c from last year for which confirmation giving the PAN is enclosed. During the year further sum of Rs.1,30,000/- was taken and total interest during the year was Rs.24,564/-. Confirmation for this year is not traceable. However the confirmation for the Asst. Yr.2003-2004 is enclosed which was filed in the course of assessment proceedings of that year. In Asst. Yr.2004-2005 principal amount of Rs.1,55,000/- was repaid through my family concern M/s R. K. Kapur & Bros. – confirmation for which is enclosed. As stated earlier, M/s. R. K. Kapur & Bros was also assessed by the same A.O. at that time.

RISHAN KAPUR 2001-02		GENERAL LEDGER			1
DATE	BKCD	DESCRIPTION	CHEQUE	DEBIT	CREDIT
<b>V1049 HARI PD KISHORPURIA HUF</b>					
01/04/2001		Balance b/f:			25000.00
20/06/2001	BOBB	CHQ DEPOSITED			80000.00
07/09/2001	BOBB	CHQ DEPOSITED			50000.00
31/03/2002	JOUR	PROVN OF INTEREST IN H P KISHORPURIA HUF			24564.25
31/03/2002		Balance c/f:		179564.25	
				179564.25	179564.25

The actual addition during the year is at Rs. 1,30,000/- advance by cheque; the balance addition being interest accrued at Rs. 24,564/-. His PAN is AABHH 1070 G. I see no plausible rationale for disbelieving the amount advanced during the year. It is hereby deleted.

R K Kapur: Further loan during the year is at Rs. 90,639/-.

The appellant's explanation is:

**16. R.K. Kapur: Rs. 2,21,204/- Confirmation for this year giving PAN is enclosed. A sum of Rs. 1,30,565/- was brought forward from last year. During the year net sum of Rs. 90,639/- was further taken. He is my father. He was also assessed by the same at that time.**

Sh. R K Kapur is the father of the appellant and was assessed by the same ACIT AO. His PAN is AFQPK9777F. Being assessed by the same ACIT AO, I see no reason for the addition being made. It is hereby Deleted.

**5.8 New loans taken during the year.**

These are the following:

SI No. in Table	Name	Amount
1	PoonamKapur	2,96,5000/-
4	M K Kishorepuria (HUF)	1,74,941/-
5	BajrangLalSaraogi	1,08,712/-
7	Kiran Devi Bhatra	1,12,739/-
11	Arun Kumar Kishorepuria	1,61,885/-
12	Krishna Kumar Agarwal (HUF)	1,60,899/-
13	Sunil Kumar Agarwal	2,68,164/-

PoonamKapur: Rs.2,96,500/-

The appellant's explanation is:

**1) Smt. PoonamKapur- Rs.2,96,500/- :- She is wife of Sri P.K. Kapur (Younger brother of father.). Confirmation from her giving her PAN is enclosed. She was assessed by the same Assessing Officer at that time.**

Smt. PoonamKapur is a family member. She was then assessed by the same ACIT AO. Her PAN is AEXPK7145K. The loan was received by cheque on 01.01.2002. Being assessed by the same ACIT AO, I see no reason for the addition having been made just summarily. It is hereby Deleted.

M K Kishorepuria (HUF): Rs.1,74,941/-.

The appellant's explanation is:

4) **M.K. Kishorpuria (HUF) - Rs.1,74,941/-**:- During the year assessee received loan of Rs.1,50,000/- and interest thereon was credit Rs.24,941/-. Closing balance at the close of the year is Rs.1,74,941/-. Confirmation for this year is not available, but confirmation for the succeeding year i.e. Asst. Yr. 2003-04 had been filed in the course of assessment proceedings of the year. Copy of the same is again enclosedherewith. In Asst. Yr. 2004-05 principal amount of Rs.1,50,000/- was repaid through our family concern M/s R.K. Kapur & Bros. – assessed by the same A.O. at that time confirmation of Repayment is enclosed.

I consider the appellant's explanation satisfactory, and PAN of the person is AADHM0494B. The loan amount at Rs.1,50,000/- was received by cheque on 20.06.2001. The impugned addition is hereby Deleted.

The appellant's explanation is:

5) **Bajrang Lal Saraogi – Rs.1,08,712/-** :- During the year assessee received loan of Rs.1,00,000/- by cheque and interest credited thereon is Rs.8,712/-. Principal amount of Rs.1,00,000/- has been repaid on 17.07.2006 by Cheque No.576292. Copy of relevant bank statement of The Karnataka Bank Ltd. is enclosedfor your perusal.

I consider the appellant's explanation satisfactory. The impugned addition is hereby deleted.

Kiran Devi Bhatra: Rs.1,12,739/-.

7) **Kiran Devi Bhatra - Rs.1,12,739/-** :- A sum of Rs.1,00,000/- was received during the year by cheque and interest for the year was credited Rs.12,739/-. Total amount was repaid in Asst. Yr.2004-2005 by cheque.

I consider the appellant's explanation satisfactory. The impugned addition is hereby deleted.

Arun Kumar Kishorepuria: Rs.1,61,885/-.

11) **Arun Kumar Kishopuria - Rs.1,61,885/-** Confirmation for this year is enclosed. Principal amount of Rs.1,50,000/- was repaid in F. Y. 2006-2007 as under.

<u>Date</u>	<u>Cheque No.</u>	<u>Bank Name</u>	<u>Amount</u>
31.07.2006	576298	The Karnataka Bank Ltd.	Rs.1,00,000/-
14.09.2006	576300	The Karnataka Bank Ltd.	Rs. 50,000/-

Photocopy of the bank statement of The Karnataka Bank Ltd. is enclosed for your perusal.

I consider the appellant's explanation satisfactory. The impugned addition is hereby deleted.

Kishna Kumar Agarwal (HUF): Rs.1,60,899/-.

*The appellant's explanation is:*

12) **Krishna Kumar Agarwal (HUF) - Rs.1,60,899/-** - During the year Rs.1,50,000/- was taken and interest for the year was credited Rs.10,899/-. The principal amount of Rs.1,50,000/- was repaid by cheque No.576293 on 15.07.2006. Copy of the relevant bank statement of The Karnataka Bank Ltd. is enclosed.

*I consider the appellant's explanation satisfactory. The impugned addition is hereby deleted.*

*Sunil Kumar Agarwal (HUF): Rs.2,68,164/-.*

*The appellant's explanation is:*

**Sunil Kumar Agarwal (HUF): Rs.2,68,164/-** - During the year a sum of Rs.2,50,000/- was received by cheque and interest for the year was credited Rs.18,164/-.

*I consider the appellant's explanation satisfactory. The loan was received by cheque on 23.08.2001. The impugned addition is hereby deleted.*

5.9 Thus, summary of the appeal decision on the impugned 19 loans is hereunder:

<i>No. Of Loans</i>	<i>Category of loan</i>	<i>Appeal decision</i>
2	<i>Of minor children are not loans, but journal entry for credit of TDS</i>	<i>Not loan, but journal entry, Deleted</i>
3	<i>Old loans having no additions during the year</i>	<i>Do not pertain to this A.Y. Deleted</i>
3	<i>Old loans having repayments made during the year</i>	<i>Not relevant for this A.Y., Deleted</i>
4	<i>Old loans having additions during the year</i>	<i>Deleted</i>
7	<i>New loans taken during the year</i>	<i>Deleted</i>

2.4.1. The Id CITA with regard to disallowance of interest in the sum of Rs 2,00,450/- deleted the same by observing as under:-

*"The ACIT AO had made the disallowance which is merely the difference bew the amount debited to the Profit and loss account and the interest as per the loan confirmations filed. This is but a rudimentary ad hoc approach. It has no rational basis nor accounting recognition. The impugned disallowance is hereby deleted."*

2.5. Aggrieved, the revenue is in appeal before us.

2.6. We have heard the rival submissions. The Id AR stated that the Id CITA had granted relief after obtaining the remand report from the Id AO with regard to various

submissions made in respect of 19 parties. In the remand report, no adverse inference were drawn by the Id AO on the explanations and evidences submitted by the assessee except in respect of one Sunil Kumar Agarwal from whom the assessee had received Rs 2,50,000/- but no loan confirmation or bank statement was furnished before the Id AO in the remand proceedings. The Id CITA had merely accepted this loan as genuine on the fact that the loan was received by cheque on 23.8.2001. In our considered opinion, merely receiving an amount by cheque alone would not make the transaction proved beyond doubt. The primary onus is on the assessee to prove the identity of the party, creditworthiness of the party and genuineness of the transaction so as to fall outside the ambit of application of provisions of section 68 of the Act. In the instant case, the assessee had not satisfied the same and hence we hold that the addition made by the Id AO in respect of Sunil Kumar Agarwal in the sum of Rs 2,50,000/- deserves to be sustained. With regard to other parties, the Id AO as stated earlier, had not given any adverse remark in his remand report and hence we hold that the Id CITA had rightly granted relief to the assessee in respect of other parties, which does not call for any interference. Accordingly, the Ground No. 1 raised by the revenue for the Asst Year 2002-03 is partly allowed.

2.6.1. With regard to addition towards interest portion, since the loan balances outstanding is inclusive of interest portion which is subject matter of discussion above, we hold that there is no need to separately make any addition towards interest portion and hence we hold that the Id CITA had rightly deleted the addition made towards interest. Accordingly, the Ground No. 2 raised by the revenue for the Asst Year 2002-03 is dismissed.

Now let us take up ITA No. 1246/Kol/2016 for the Asst Year 2003-04

3. The first issue to be decided in this appeal of the revenue for the Asst Year 2003-04 is as to whether the Id CITA was justified in deleting the addition made towards loan creditors in the facts and circumstances of the case. The interconnected issue involved is as to whether the Id CITA was justified in deleting the addition towards interest portion in the facts and circumstances of the case.

3.1. The brief facts of this issue are that the assessee is an individual. The assessee filed his return of income for the Asst Year 2003-04 on 31.3.2005 declaring total income of Rs 81,550/-. The assessee produced the books of accounts, bank statements, confirmation of accounts and filed various details that were called for by the Id AO from time to time and the same were examined . The Id AO observed that the assessee failed to furnish the loan confirmations having PAN and address in respect of following parties :-

- |                                     |                              |
|-------------------------------------|------------------------------|
| a) S.K. Goel                        | - Rs 1,09,468/- (fresh loan) |
| b) Green Woods                      | - Rs 3,50,000/- (fresh loan) |
| c) R.K.Kapur (Transfer from S.K.K.) | - Rs 7,30,000/- (fresh loan) |
| d) Kavita Kapur                     | - Rs 2,00,000/- (fresh loan) |

-----  
 Rs 13,89,468/-  
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Accordingly, the Id AO treated the aforesaid sums of Rs 13,89,468/- as unexplained cash credit u/s 68 of the Act.

The assessee had debited interest on unsecured loans to the tune of Rs 9,11,413/-, but as per loan confirmations filed, interest worked out to only Rs 5,10,258/- and accordingly the Id AO disallowed the balance interest payment of Rs 4,01,155/- for want of loan confirmations.

3.2. The Id CITA observed that the assessee has received loans only from his family members and family concern. He observed that the assessee's family has several businesses and so there are transfer of funds / loans from one person to another. He observed that Shri R K Kapur and Smt Kavita Kapur are family members who are assessed by the same AO. M/s Greenwoods (PAN AFQPH9776E) is a family concern which had advanced the amount of Rs 3,50,000/- by cheque on 29.3.2003. Shri S K Goel (outsider) advanced an amount of Rs 1,00,000/- by cheque on 17.6.2002. Accordingly he deleted the addition made in the sum of Rs 13,89,468/- towards cash credit u/s 68 of the Act.

3.2.1. The Id CITA with regard to disallowance of interest in the sum of Rs 4,01,155/- deleted the same by observing as under:-

*“As in the Assessment year 2002-03 the ACIT AO had made the disallowance which is merely the difference between the amount debited to the Profit and loss account and the interest as per the loan confirmations filed. This is but a rudimentary ad hoc approach. It has no rational nor accounting recognition. The impugned disallowance is hereby deleted.*

3.3. Aggrieved, the revenue is in appeal before us.

3.4. We have heard the rival submissions. We find that the Id CITA had observed that the loans were received from family members and family concern of the assessee. In respect of loan received from Shri S K Geol in the sum of Rs 1,00,000/- by cheque on 17.6.2002, the assessee could not furnish any loan confirmation or bank statement before the Id AO or before the Id CITA. The Id CITA had merely accepted this loan as genuine on the fact that the loan was received by cheque on 17.6.2002. In our considered opinion, merely receiving an amount by cheque alone would not make the transaction proved beyond doubt. The primary onus is on the assessee to prove the identity of the party, creditworthiness of the party and genuineness of the transaction so as to fall outside the ambit of application of provisions of section 68 of the Act. In the

instant case, the assessee had not satisfied the same and hence we hold that the addition made by the Id AO in respect of S K Goel in the sum of Rs 1,00,000/- deserves to be sustained. With regard to other parties, since the loans are received from family members who are assessed by the very same AO and from a family concern by cheque which is assessed to tax and supported by proper confirmation, we hold that in these facts and circumstances, there is no infirmity in the order of the Id CITA deleting those additions for 3 parties. Accordingly, the Ground No. 1 raised by the revenue for the Asst Year 2003-04 is partly allowed.

3.4.1. With regard to addition towards interest portion, since the loan balances outstanding is inclusive of interest portion which is subject matter of discussion above, we hold that there is no need to separately make any addition towards interest portion and hence we hold that the Id CITA had rightly deleted the addition made towards interest. Accordingly, the Ground No. 2 raised by the revenue for the Asst Year 2003-04 is dismissed.

4. The last issue to be decided in the appeal for Asst Year 2003-04 is as to whether the Id CITA was justified in deleting the addition of Rs 38,78,446/- in respect of opening balance of liability brought forward from earlier year .

4.1. The brief facts of this issue is that the assessee was asked to file the confirmation , bank statement , balance sheet as at 31.3.2003, profit and loss account and evidence of filing income tax return for Asst Year 2003-04 by Welpak, a partnership firm, to whom the assessee owes sum of Rs 38,78,446/- and was reflected as liability as on 31.3.2003 in his balance sheet. Since assessee did not comply to the requisition of the Id AO, the same was added as income of the assessee for the Asst Year 2003-04.

4.2. The Id CITA observed that since the said liability has been brought forward from earlier year, there is no scope for adding the same as unexplained cash credit u/s 68 of the Act in the year under appeal. Aggrieved, the revenue is in appeal before us.

4.3. We have heard the rival submissions. We find that the revenue was not able to controvert the basic fact that the said liability was brought forward from earlier year and the same has been carried forward to next year except in respect of share of loss of firm added to the extent of Rs 11,909/-. In other words, the opening balance of such liability as per assessee's books was Rs 38,66,537.41/- and share of loss for the year was Rs 11,909/- which lead to the closing balance as on 31.3.2003 to Rs 38,78,446.41. This is evident from page 10 of the paper book. Hence we hold that no addition is warranted in this regard and Id CITA had rightly deleted the same. Accordingly, the Ground No. 3 raised by the revenue is dismissed.

5. In the result, both the appeals of the revenue in ITA No. 1245 & 1246 /Kol/2016 for the Asst Years 2002-03 and 2003-04 are partly allowed.

**Order pronounced in the Court on 30.05.2018**

Sd/-  
[A.T. Varkey]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 30.05.2018

SB, Sr. PS

Copy of the order forwarded to:

1. ITO, Ward-2(1), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.
2. Mitul Krishan Kapur, 11, Ganesh Chandra Avenue, Kolkata-700013.
3. C.I.T(A)- , Kolkata      4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches