

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM**

I.T.A. No. 2977/Mum/2016  
(Assessment Year: 2010-11)

M/s. Execute Mercantile Pvt. Ltd. Room No. 4, Ground Floor, Ruby Mahal, 30D, Cowasji Patel Street, Fort, Mumbai-400 001	Vs.	Dy. Commissioner of Income Tax (OSD), Range -1 (2), Mumbai
PAN/GIR No. AACCE 1710 A		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	None
<b>Respondent by</b>	:	Shri V. Justin

<b>Date of Hearing</b>	:	26.04.2018
<b>Date of Pronouncement</b>	:	14.06.2018

**ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) -2, Mumbai dated 01.02.2016 and pertains to assessment year 2010-11.

2. The grounds of appeal read as under:

1. The Order of the Learned CIT ( Appeal) is bad in law and on facts.
2. On the facts and circumstances of the case and in law, the learned CIT (A) erred in invoking section 68 and holding the shares capital introduced during the year of Rs.3.01 crores as unexplained Cash credit.
3. On the facts and circumstances of the case and in law, the learned CIT (A) erred in invoking section 68 and holding that unsecured loans taken from Shareholders Rs.2.00 crores as unexplained Cash credit.
4. On the facts and circumstances of the case and in law, the learned CIT (A) erred in resorting to Section 68 with out giving due consideration to the facts and

circumstances and proper opportunity of being heard and thus the order passed is in miscarriage of justice.

3. Brief facts of the case are that in this case the Assessing Officer has added a sum of Rs.5 crore under the head 'cash credit' u/s.68 of the Income-tax Act, 1961, found to be received from Mr. Mehul H. Shah and Mr. Rajesh K. Shah for the reason that Mr. Mehul H. Shah denied of having paid the sum to the assessee company of Rs.2.49 crore. In the case of Shri Rajesh K. Shah of Rs.2.51 crore, summon was issued on 15-02-2013 for which no one has appeared.

4. Upon assessee's appeal, the Id. Commissioner of Income Tax (Appeals) confirmed the addition by observing as under:

2.3 After considering the above submission of the appellant; company, with regard to Mr. Mehul Shah the AO noted that the concerned person himself has denied of giving the said amount to the appellant; company and not knowing the appellant company and also not knowing to any directors of the appellant company. He further stated that he is a salaried employee in China and earning only Rs.25,000/- per month. Accordingly, the AO come to the conclusion that this is not the genuine loan / share application money received from Mr. Mehul Shah.

2.4 With regard to Mr. Rajesh Shah, it is seen that neither he attended personally nor filed any explanation for summons issued to him. Further, the appellant company argued that the company has filed confirmation letters, ROC documents, PAN, etc., so that these loans and share application money received from the above two persons as explained as genuine loans.

2.5 On careful reading of the assessment order and the submission given by the appellant company and the statement recorded, from Mr. Mehul H. Shah and no appearance of the other person Mr. Rajesh Shah it can be easily inferred that the confirmation originally given by them is totally irrelevant and last its sanctity. Mere filling of PAN and address is not sufficient. The AO has given enough opportunities to the creditors for which Mr. Mehul H. Shah has given the denial statement and the other person Mr. Rajesh Shah has never appeared. However, the j appellant company has not rebutted with any proper evidences for tne above finding observed by the AO. Accordingly, I am of the considered opinion that the addition made by the AO is found to be in order. Therefore the addition made by

- the AO of Rs.5 crone is confirmed and accordingly, this^ ground of appeal is dismissed.
5. Against the above order, the assessee is in appeal before us.
6. We have heard the learned departmental representative. None appeared on behalf of the assessee. The notice sent has returned unserved. Accordingly, we proceed to adjudicate the issue by hearing the learned departmental representative and perusing the records.
7. Upon careful consideration, we find that the assessee company in this case has claimed to have received unsecured loan and share capital from two persons namely Shri Mehul H. Shah and Shri Rajesh Shah as under:

	(Rs. in crores)	
	Share capital	Unsecured loan
Shri Mehul H. Shah	1.50	0.99
Shri Rajesh Shah	1.51	1.00

8. Upon the assessing officer's enquiry in this regard Shri Mehul H. Shah clearly denied having made any payment to the company. The Assessing officer's observation in this regard read as under:

In response to the summons Shri Mehul Harshadlal Shah attended on 20.03.2013 and his statement is recorded u/s. 131 on oath. In his statement he has stated that he is 39 years old and staying at Flat No. 22, 2<sup>nd</sup> floor, 109, Khadilkar Road, Girgaon, Mumbai-400 004 with his family but he is working in Yiwu City in China and earning approximate Rs.25,000/- per month in Indian rupees. He further stated that he had filed his return of income up to A.Y. 2006-07 only and the income returned was not taxable (below taxable limit). However, he has not produced any evidence for filing his return of income. He further stated that he neither knowing the assessee company nor to any directors of the company. As he is a salaried employee in China and having earning only of Rs. 25,000/- per month how can he give such amount of Rs.99,00,000/- for investment in shares &

- unsecured loans of Rs.1,50,00,000/-. He further stated that some might be misused his name to show that the capital introduced by the assessee company genuine. From the statement of Shri Mehul Shah it is established that the company introduced capital from undisclosed sources and not from the shareholders.
9. With regard to the other person namely Shri Rajesh Shah, the Assessing Officer tried to locate him. Summonses were issued and income tax inspector was deputed to serve the summons on the family members of the said person. However, there was no response. In this regard, it is noted that no detail and evidence regarding the creditworthiness of the said person has been submitted. His income tax returns, bank statements, capital account has not been furnished. Despite the assessing officer's efforts, the said person has not been located.
10. In these circumstances, in our considered opinion, the addition by the assessing officer in this case for the impugned amount as unexplained cash credit is quite correct. As such we hold that there is no infirmity in the order of the Id. Commissioner of Income Tax (Appeals) in confirming the same. Accordingly, we uphold the order of the Id. Commissioner of Income Tax (Appeals).
11. In the result, this appeal by the assessee stands dismissed.

*Order pronounced in the open court on 14.06.2018*

Sd/-

(Ram Lal Negi)  
Judicial Member

Mumbai; Dated : 14.06.2018  
Roshani, Sr. PS

Sd/-

(Shamim Yahya)  
Accountant Member

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai