

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL*  
*KOLKATA BENCH “B” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.2484/Kol/2017**  
Assessment Year:2014-15

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|---|---------------|---|
| Shri Kamal Kumar Bansal,<br>C/o Salarpuria Jajodia &<br>Co., 7, C.R. Avenue,<br>Kolkata-72<br>[PAN No.AECPB 6322 E] | बनाम/<br>V/s. | Income Tax Officer,<br>Ward-35(3), Aayakr<br>Bhawan, Poorva, 110,<br>Shantipally, E.M. By-<br>pass, Kolkata-107 |
| अपीलार्थी /Appellant  | ..            | प्रत्यर्थी /Respondent  |

|                                      |  |
|--------------------------------------|--|
| अपीलार्थी की ओर से/By Appellant      | Shri S. Jhajharia, FCA &<br>Shri Sujoy Sen, Advocate |
| प्रत्यर्थी की ओर से/By Respondent    | Shri S. Dasgupta, Addl. CIT-DR                       |
| सुनवाई की तारीख/Date of Hearing      | 14-06-2018   |
| घोषणा की तारीख/Date of Pronouncement | 20-07-2018   |

**आदेश /O R D E R**

PER J. Sudhakar Reddy, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-10, Kolkata passed u/s 250 of the Income Tax Act, 1961 ('the Act') on 16.10.2017 for the assessment year 2014-15.

2. Facts in brief are that assessee is an individual and is in the business of share trading, film right, commission, interest on loan and rental income. Assessee filed return of income on 26.11.2014 disclosing total income of ₹13,55,100/-. The Assessing Officer passed order u/s. 143(3) of the Act determining the total income of the assessee at ₹3,31,84,733/- inter alia disallowing the claim of business loss of

₹91,08,192/- and making an addition of bogus sundry creditors of ₹31,13,200/- and an addition u/s 68 of ₹1,64,81,148/.

3. Aggrieved, assessee carried the matter in appeal. The Ld First Appellate Authority granted part relief. Further, aggrieved assessee is before us

4. We have heard Shri S. Jhajoria along with Shri Sujoy Sen, the ld. counsels for the assessee and Shri S. Dasgupta, the Ld Addl. CIT-DR on behalf of the Revenue. On careful consideration of all the facts and circumstances of the case, on perusal of papers on record and case law cited, we hold as follows:-

5. Ground No.1 is general in nature.

6. Ground No.2 is against disallowance of business loss of ₹91,08,921/- which consists of trading loss of ₹66,99,200/- and business expense of ₹30,09,721/-. The Assessing Officer discussed this issue at pages 2 to 3 in para-5 of his order. The AO disbelieved the contention of the assessee that it had sold 3,20,000 unquoted shares of RDB Two thousand Plus Ltd (i.e. name of the company) @ 29.25 per share for the total consideration of ₹93.60 lakh. These shares were purchased at a total cost of ₹1,54,59,200/- @ 48.31 per share. The shares in question were purchased from RDB Two thousand Plus Ltd. on 17.08.2011. These shares were sold on 10.10.2013 to two parties namely M/s Kripa Agents Pvt Ltd. and M/s Skups Films Pvt. Ltd. A total No. of 1,60,000 shares each were sold to both these companies for the sale consideration of ₹46.80 lakh each. The address of RDB Two thousand Plus Ltd., M/s Kripa Agents Pvt. Ltd and M/s Skups Films Pvt Ltd. was the same i.e. 45, Lenin Sarani, Kolkata-13. As these shares were unquoted shares, the assessee was asked by the AO to produce evidence. The AO held that assessee failed to produce evidence. At page 4 of his order, the AO states that, from the document submitted by assessee it is seen that Kamal Kumar Bansal, the assessee, is a director of M/s RDB Two thousand Plus Ltd. from whom the shares were purchased and also in the two companies to whom the shares were sold. He concluded that it is evident that the assessee is involved in all cases as purchaser and seller and thus there is a possibility of manipulation of the loss. He further stated that in the computation of income, the assessee claimed that he had

incurred expenditure of ₹30,90,721/- in the business of shares. He held that assessee has failed to satisfy the genuineness of these expenses and hence the same is not allowable. Thus, he disallowed the claim of assessee that it had incurred business loss of ₹60,99,200/- and also that it had incurred expenditure relating to share trading business to ₹30,09,721/-.

7. On appeal, Ld. CIT(A) accepted the documentation produced by the assessee in support of these transactions. The contentions of the assessee are at page 9 para 4 of the order of CIT(A), They are extracted for ready reference :-

*“4. On the contrary, in appeal, the appellant / Ld AR for the appellant has inter-alia made out the following claims:*

- a. The Ld AO has dealt with the matter on probability rather than actual facts. All necessary papers has been submitted to the Ld. AO.*
- b. The Company’s Act permits the sale of such unquoted shares, and there was no illegality in the matter.*
- c. The Ld AO appears to be more concerned on the issue of office address, location of the buyers, instead of other factual evidences.*
- d. The sale of shares was on account of the outstanding loans in the books of the appellant-assessee, which were required to be squared off.*
- e. There is no bar on selling shares on loss anywhere in the Income Tax Act, 1961.*
- f. The purchasers of the said shares (M/s Kripa gents P Ltd & M/s SKUPS Films P Ltd) had already advanced substantial amount towards purchase of shares and since 2012 they have no charged any interest on this advance.*
- g. Since the assessee has enjoyed the interest free advance for near about 3 years, it comes to a business sense that the shares for which advances were received should be dealt in price bracket and Income tax department has never interfered when a buyer and seller both confirmed the transactions independently to the Ld AO as replied u/s. 133(6).*
- h. There was no reason to disallow the expenditure as claimed by the appellant either, by the Ld AO.”*

8. The Ld CIT(A) at page 10 para-7 held as under:-

*“7. I also find that all the submissions made by the appellant during the course of the appeal point towards the elaborate documentation, meaning thereby that the appellant has produced papers relating to application for the shares, the allotment of the shares, the share certificates, payments by cheque and the necessary papers filed before the Registrar of companies, where the name of the assessee has been reflected as a shareholder. The appellant has also filed proof of amalgamation of the companies wherein the shareholding has changed hands. It is also the contention of the appellant that it has provided copies of the bank statement, bank contract notes and delivery instructions to*

*the broker by way of proof that all these transactions were genuine. However, in my considered view of the matter, it is precisely this elaborate paper work that strengthens the matter relating to the bogus benefit of the LTCG, which clearly has been schemed, preplanned and executed with malafide intelligence and precision. Therefore all these papers are mere documents and not any evidence. The whole gamut of transactions are unnatural and highly suspicious, and therefore the rules of **SUSPICIOUS TRANSACTIONS** ought to apply in the instant case. There are grave doubts in the story propounded by the assessee before the authorities below. None of the material produced before the Ld. AO by the assessee-appellant are enough to justify the humongous gains accruing to the assessee by way of Capital Gains. In my considered view the banking documents are **mere self serving recitals**. The law in the matter of **self-serving recitals** has been long established by the hon'ble apex court. In the case of **CIT vs P. Mohankala 291 ITR 297**, the Hon'ble Supreme Court held that “**the money came by way of bank cheque and was paid through the process of banking transactions was not by itself of any consequences.**” The burden of proof is on the assessee in the matter of justification of receipts which are of suspicious and dubious nature. In the case of **CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)**, their Lordships laying down the significance of human probabilities held as under:-*

*“In a case where a party relied on self-serving recitals in documents, it was for that party to establish the truth of these recitals: the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals.*

*Similarly in the case of **Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)**, their Lordships held as under:*

*“In view of section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such a case, there is prima facie, evidence against the assessee viz. the receipt of money, and if he fails – to rebut, the said evidence being un-rebutted, can be used against him by holding that it was a receipt of an income nature.”*

*In the case of **Sajjan Das & Sons vs. CIT (2003) 264 ITR 435 (Delhi)**, their Lordships of the High Court of Delhi, while considering a case in which gifts were received by the assessee through banking channels laid importance on the capacity of the donor for making the gift and his identity as well as importance of relationship between the donor and donee in determination of genuineness of gift held as under:-*

*That a mere identification of the donor and showing the movement of the gift amount through banking channels was not sufficient to prove the genuineness of the gift. Since the claim of the gift was made by the assessee, the onus lay on him not only to establish the identity of the*

*person making the gift but also his capacity to make a gift and that it had actually been received as a gift from the donor.”*

*In my considered view wherever documents are relied upon they should pass the test of normal behavior of the assessee in the course of business viz., human conduct, preponderance of probability and surrounding circumstances. In my considered view, even if documentary evidence is produced, the same must pass the test of human probabilities and surrounding circumstances if they do not, then addition justified. Reliance on such matters is placed on the case of Smt. Phoolwati Devi 314 ITR (AT) 1 (Del.)*

*12. I am in agreement with the Ld. AO that the transactions relating to the claim of LTCG as made by the Ld AO come within the ambit of “suspicious transactions: and therefore the **rules of suspicious transactions** would apply to the case. Payment through Banks, performance through stock exchange and other such features are only apparent features. The real features are the manipulated and abnormal price of off load and the sudden dip thereafter. Therefore, I have to reach the inevitable conclusion that the transactions as discussed by the Ld. AO fall in the realm of “**suspicious**” and “**dubious**” transactions. The Ld. AO has therefore necessarily to consider the surrounding circumstances, which he indeed has done in a very meticulous and careful manner. In the case of **Win Cadha vs. CIT (International Taxation)** in **ITA No.3088 & 3017/Del/2005**, the hon'ble Delhi ITAT “B” Bench has observed, on 31.12.2010 as under:-*

**“SUSPICIOUS AND DIBIOUS TRANSACTION HOW TO BE DEALT WITH:**

*6.11. The tax liability in the case of suspicious transactions, is to be assessed on the basis of the material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating information/evidence available with AO.*

*6.12 In the case of Sumati Dayala v. CIT (1995) 80 Taxman 89 (SC), the Hon'ble Supreme Court has dealt with the relevance of human conduct, preponderance of probabilities and surrounding circumstance burden of proof and it shifting on the Department in the case of suspicious circumstances, by following observations:*

*“... It is no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima*

facie evidence against the assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being un-rebut, can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably.

... .. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence."

#### *CIRCUMSTANTIAL EVIDENCE HOW TO BE USED*

*6.13 It would, at this stage, be relevant to consider the admissibility and use of circumstantial evidence in income tax proceedings. Circumstantial evidence is evidence of the circumstances, as opposed to direct evidence. It may consist of evidence afforded by the bearing on the fact to be proved, of other and subsidiary facts which are relied on as inconsistent with any result other than the truth of the principal fact. It is evidence of various facts, other than the fact in issue which are so associated with the fact in issue, that taken together, they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. In the appreciation of circumstantial evidence, the relevant aspects, as laid down from time to time are –*

- (1) the circumstances alleged must be established by such evidence, as in the case of other evidence.*
- (2) the circumstances proved must be of a conclusive nature and not totally inconsistent with the circumstances or contradictory to other evidence.*
- (3) although there should be no missing links in the case of , yet it is not essential that every one of the links must appear on the surface of the evidence adduced; some of these links may have to be inferred from the proved facts;\*
- (4) in drawing those inferences or presumptions, the Authorities must have regard to the common course of natural events, to human conduct and their relation to the facts of the particular case.*
- (5) The circumstantial evidence can with equal facility,, be resorted to in proof of a fact in issue which arises in proceedings for the assessment of taxes both direct and indirect, circumstantial evidence can be made use of in order to prove or disprove a fact alleged or in issue. In fact, inn whatever proceedings or context inferences are required to be drawn*

*from the evidence or materials available or lacking, circumstantial evidence has its place to assist the process of arriving at the truth.”*

*6.14. It will also be worthwhile to consider the nature of burden of proof on the AO for proving a fact or circumstances in the income tax proceedings. The questions raised about the tax liability by the AO are to be answered by the assessee by furnishing reasonable and plausible explanations. If assessee is not forthcoming with proper or complete facts or his statement or explanation is contradictory, drawing of suitable inferences and estimation of facts is inevitable. Courts generally will not interfere with such estimate of facts, unless the inferences or estimates are perverse or capricious.*

*6.15 The assessee's technical contentions about admissibility and reliance on material available on the AO's record are in the nature of contentions challenging criminal or civil liabilities in a court of law. We are dealing with a process of adjudication of assessee tax liability i.e. assessment under Income Tax Act rather than conducting criminal or civil court proceedings. As held by the Hon'ble Supreme Court in the case of SS Gadgil (supra) no 'lis' is involved in adjudication of tax liability. The assessee's contention that there was no new material before the AO after the CIT(A)'s setting aside order cannot be accepted. New information and material did indeed come on record. In our view, in a sensitive matter like this, even a single clue or revelation can be of great importance. To reverse the order of the AO on this technical plea will amount to taking a lopsided view of the proceedings. Besides, the JPC has underlined the importance of Reports of investigation agencies like CBI, DRI, ED whose were in the offing, as the relevant investigations were in process. In view of these observations, we do not accede to the assessee's pleas in this behalf. The assessee's contention and objections in this behalf that the material available on record was not admissible as evidence and that it cannot be relied on by the AO, are devoid of any merit and are rejected outright....”*

*In view of the above discussion, I find no infirmity in the orders of the Ld.AO, and I confirm the same. **Ground No. 1** is accordingly **dismissed.**”*

Thus he confirmed the addition by applying the theory of preponderance of probability, human conduct and surrounding circumstances. Aggrieved, the assessee is before us.

8. On considering rival contentions, we find that there is no dispute that assessee is engaged in the business of share trading for a number of years, both prior to this impugned assessment year, as well as in the succeeding assessment years. The two companies which have purchased the shares i.e. M/s Kripa Agents Pvt. Ltd., and

Skups Films Pvt. Ltd., had advanced a sum of ₹1,42,46,700/- to the assessee during the financial year 2012-13 relevant to AY 2013-14. These two concerns have not charged any interest on this advance from the assessee. This fact is reflected in the balance-sheet of the two companies. The assessee in this case had entered an agreement of sale of these shares during the financial year 2012-13, relevant to AY 2013-14, by an agreement dated 12.08.2012. The book value of these shares as on the date of agreement was around 29/- per share. Hence in accordance with book value, the transactions of sale shares was done. The valuation report of the book value is filed before us. It was submitted that the sale proceeds of these shares were adjusted against the loan advanced to the assessee by these two purchasing companies. The Ld. CIT(A) records that the entire transaction is properly documented. Neither the AO nor the Ld. CIT(A) have disputed the claim of the assessee that the price at which the assessee sold the share is commensurate with the book value of the shares. The documentation produced proves that the transaction of sale has taken place during the year. Ld. DR before us could not controvert the submission made by assessee on the book value arrived at for the purpose of the sale. The shares in question were part of the stock-in-trade of the assessee. This closing stock disclosed by the assessee has not been disturbed. The books of account maintained by the assessee have not been rejected. The buyers of the shares have recorded the purchase of the shares and have responded to direct enquiry made by the AO u/s 133(6) of the Act and confirmed the transactions. The shares are reflected in their balance-sheet. The factum of transfer of shares cannot be disputed, in view of evidence filed by the assessee. All the companies are legal entities and transactions with these companies cannot be held as non-genuine, simply because they are group companies or as certain directors are common. Documentary evidence and facts cannot be ignored and the theory of human conduct, preponderance of probability etc. cannot be relied upon, to reject the claim of the assessee on the ground of that these are "*suspicious circumstances*". The purchase of the share has been accepted by the Revenue. The fact that both the companies have earlier advanced amount to the assessee is accepted by the Revenue. While so, there is no reason as to why sale transaction is to be disbelieved admittedly on the ground of suspicious circumstances . The conclusions of the AO and the Ld. CIT(A) are based

on, conjecture and surmises. It is well settled that no addition can be made of suspicion however as strong held by the Hon'ble Supreme Court in the case of *Umarcharan Shah & Bros vs. CIT* 37 ITR 271 (SC). In view of the above discussion, the loss on sale of shares in question as claimed by the assessee has to be allowed. We direct the Assessing Officer accordingly.

9. In the result, we decide this issue in favour of the assessee.

10. We now consider the disallowance of expense. As already stated, the accepted fact is that the assessee is engaged in share trading business. The disallowance in this case has been made in an arbitrary manner. No proper reason is assigned. When the assessee is in the business of share trading, the expenditure relatable to such business is allowable under the Act. Even if there is no business activity during the year, the expenditure is still allowable as held by the Hon'ble Calcutta High Court in the case of *Ganga Properties Ltd* 199 ITR 94 (Cal) and the hon'ble Delhi High Court in the case of *Kesha Appliances Pvt Ltd vs. ITO* (2018) 63 ITR (trib) 294 (Del). Hence, we direct the Assessing Officer to allow the expense of ₹31,09,721/-. In the result, ground No.2 of the assessee is allowed.

11. Ground No 3 is directed against disallowance of cost price of ₹26,77,500/-. The Assessing Officer dealt this issue at page 4 para-9 of his order. The assessee had declared short term capital gains of ₹20,57,500/- on sale of unquoted shares of the company M/s Turtle in motion. The assessee has purchased 7,650 number of these shares on 02.04.2013 for an amount of ₹26,77,500/-. The share was purchased from Mr. S.R. Bansal, who is the wife of the assessee. Further 9000 of these unquoted shares of M/s Turtle in motion were purchased by the assessee from M/s Kay Enterprises, HUF for ₹36.40 lakh. The total share purchased in this case was for an amount of ₹63,17,500/-. These shares were sold to M/s RDB Two thousand plus Ltd. on 02.07.2013 for ₹83,77,500/-. The assessee filed the ledger copy, bank statements and copies of share certificate as evidence of sale and the purchase of shares evidence the transfer of the shares in the records of company M/s Turtle in motion were filed. To a query the assessee explained that he had sold immovable property to his wife and

the purchase cost of share had been adjusted against the sale proceed of the property. The Assessing Officer doubted the genuineness of the transactions. He accepted the sale value of the unquoted share as ₹83,77,500/-. He came to the conclusion that the source of purchase of share from S.R Bansal was not explained. Hence the expense of ₹26,77,200/- was disallowed and added back. On appeal the Ld. CIT(A) did not pass a speaking order. We find that the assessee has submitted copies of the bills evidencing the fact that the shares were sold by Shri S.R. Bansal. Copies of share certificate evidencing transfer of share from Shri S.R. Bansal to the assessee were filed. Both the parties are income tax assesseees and have reported these transactions. If the purchases of the shares are not to be believed, then the income arising out of the sale of such shares cannot be taxed in the hands of assessee. It may have to be taxed in the hands of Smt. Saroj Rani Bansal. The assumption that Mrs. Saroj Rani Bansal could have gifted these shares to Mr. K.K. Bansal i.e. transferred without consideration, cannot be upheld. Thus, if the sale is believed, the purchase is also to be believed. Hence, the disallowance of the purchases cost of shares are wrong. In any event, of the sale consideration received by the assessee, the source of funds are not in doubt. Hence, we delete the addition on the source of fund is proved and as the assumption made by the AO is wrong and allow ground No.3 of the assessee.

12. Ground No.4 is on the issue of computation of capital gains on sale of share of Turtle in motion. The assessee claimed that these shares were received from his father Shri R.D. Bansal by way of gift. Shri R.D. Bansal held the share in question and were acquired by the assessee by way of gift. Reliance was placed on the provision of Section 49(1) of the Act and it was claimed that indexation of cost has to be given with reference to AY 1991-92 i.e. from the period for which the shares were held by the father of assessee. When an amount is received by way of gift/inheritance the cost of previous owner is the cost of acquisition by the assessee and the indexation is also to be given from the date on which the previous owner acquired the capital assets.

13. We find this issue is covered in favour of assessee and against the Revenue by the following:-

- a) DCIT v. Manjuta J. Shah (2009) 318 ITR 417 (AT) 417 (Mum) (SB)
- b) Smt. Mina Deogum v. ITO (2008) 117 TTJ 121 (Kol)

Respectfully following the proposition of law laid down in these cases we direct the AO to grant indexation of cost from the AY 1991-92. Hence, ground No.4 is allowed.

14. Ground No.5 is directed against the addition of ₹1,64,84,148/- made by the AO u/s 68 of the Act.

15. The assessee sold one residential flat to his daughter Smt. Vaishali Bansal Prasad and wife Smt. Saroj Rani Bansal, jointly for a consideration of ₹2,25,21,193/- .The Assessing Officer records that the assessee has not proved that the transaction is *bona fide*. He held that it is important to ascertain with reasonable certainty, that all the terms of the contract between the parties, was fulfilled, since the transfer was to close relatives. He held that *bona fide* evidence, to the effect that the transferee had taken possession of the property, in part performance of the contract, is not filed by the assessee. He held that the sale of property to his daughter and wife is definitely a suspicious transaction of dubious nature. He added the sale consideration u/s.68 of the Act.

16. The Assessing Officer acknowledges that the sale consideration was made by cross account payee cheque from to the bank account of the daughter of the assessee. He was of the view that payment by cheques do not prove the genuineness of the transactions. He also held that notice issued u/s 133(6) of the Act to the daughter was returned back. Learned CIT(A) agrees with the findings of AO and upheld the addition made u/s. 68 of the Act.

17. Aggrieved, assessee is before us. The Ld. counsel for the assessee submits that there is no bar under the Income Tax Act to transfer property to close relatives. The transfer has taken place at the market value and the consideration was paid by way of cross account payee cheque. Tax was deducted at source on this sale consideration as

required by law. The source of the money is not doubted. The identity of the person and the creditworthiness of the buyer were not doubted.

18. Both the buyers and Shri S.R. Bansal, in response to specific notice issued to them u/s 133(6) of the Act, have confirmed the transactions. Copies of the letter filed by them before the AO are placed at page 144 to page 148 of the paper book. The assessee has discharged his burden of proof, by filing the following documents:-

- (i) Details of payments / adjustments on account of loan / advance of pg 146)
- (ii) copy of agreement (pg 132-138)
- (iii) copy of Balance sheet and profit & loss account (pg 146-148)
- (iv) copy of Income Tax acknowledgements. (evidencing IT jurisdiction) (pg 145)
- (v) Copy of bank statement evidencing payments made. (pg 139-142)

It was argued that the conclusion of Ld. CIT(A) that the transaction was a tool for claiming deduction u/s 54 of the Act was, putting the cart before the horse.

19. Ld. DR relied on the order of AO as well as CIT(A) and prayed that the same be upheld.

20. After hearing rival contentions we are unable to uphold the action of the AO, wherein an addition has been made u/s. 68 of the Act. Neither the AO nor the CIT(A) doubted the source of funds, the capacity and the creditworthiness of the persons who have given the amount to the assessee. The identity of the persons is proved. When the identity, creditworthiness and genuineness of the transaction is not doubted, no addition can be made u/s. 68 of the Act. If the AO is of the opinion that there was no sale of property, it does not lead to a conclusion that credit is an unexplained credit. In such an event, the transaction would be either a loan or gift. In either case it is not taxable as income.

21. Be that as it may, there is no bar on an individual in making a sale of any property to his close relatives. There is no allegation that the transfer has not taken place at market rates. The document filed by the assessee, i.e. copy of the agreements, details of payments, adjustments of loan, balance-sheet and profit and loss account, income tax details of all the parties, have not been rebutted by the revenue authorities. The entire addition was made on mere surmise and conjecture. The purchaser's of the property have confirmed the transactions, in reply to notice issued u/s. 133(6) of the Act. The Revenue Authorities have not brought out any contrary evidence on record to rebut the evidence filed by the assessee. When the parties to the contract have confirmed that the possession of the property has been handed over, a contrary view cannot be taken on this fact without evidence. The Hon'ble Supreme Court in the case of *Lalchand Bhgat Ambica Ram vs. CIT* (1999) 37 ITR 288 (SC) had referred to another judgment of the Hon'ble Supreme Court in the case of *M/s Oman Sahow Mohamed Sait* (1959) 37 ITR 151 (SC) and held that no addition can be made on the basis of surmises, suspicion and conjectures. In the case of *Umacharan Shah & Bros vs. CIT* 37 ITR 271 (SC) it was held that suspicion however strong cannot take the place of proof. Thus, we delete the entire addition made u/s 68 of the Act as unwarranted. In the result, Ground No.5 is allowed.

22. Next ground in respect of addition of ₹31,13,200/- made by the AO on the ground that same is bogus liability.

23. After hearing rival contentions, we find that the liability in question pertains to the mother of assessee, Smt. Saran Kumai Bansal. Subsequent to her demise, the liability devolved on her husband, Shri R.D. Bansal. On the death of Shri R.D. Bansal, the liabilities along with assets devolved upon to assessee by way of inheritance. The issue is whether such liability could be added u/s. 41(1) of the Act, on the ground that there is remission or cessation of the same. The undisputed fact is that all liabilities continue to be reflected in the books of account of assessee. It is not the case of the Revenue that assessee had claimed a deduction in its books of account in the earlier assessment year of these amounts. Under the circumstances Sec. 41(1) of the Act

cannot be invoked by the AO as held in the case of *CIT vs. Sugauli Sugar Works (P) Ltd* (1991) 236 ITR 518 (SC). It was held by the Hon'ble Supreme Court that in absence of declaration by the assessee that it does not intend to honour its liabilities, provision of Sec. 41() cannot be invoked.

24. In the result, this addition u/s 41(1) of the Act is hereby deleted. Ground No.6 is allowed.

25. Ground No. 7 and 8 are not pressed by the assessee due to smallness of amount. Hence, these grounds are dismissed with an observation that this would not be taken as a precedent. These issues may be contested by the assessee in penalty proceedings.

22. **In the result, assessee's appeal is partly allowed.**

Order pronounced in open court on 20/07/2018

Sd/-

(न्यायिक सदस्य)  
(S.S.Viswanethra Ravi)  
Judicial Member  
\*Dkp-Sr.PS

Sd/-

(लेखा सदस्य)  
(J.Sudhakar Reddy)  
Accountant Member

दिनांक:- 20/07/2018 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Shri Kamal Kr. Bansal, C/o Salarpuria Jajodia & Co. 7, C.R. Avenue, Kolkata-72
2. प्रत्यर्थी/Respondent-ITO Ward-35(3) Aayakar Bhawan, poorva,110, Shantipally E.M. By-pass, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,  
Head of Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता