



“1) The Learned Commissioner of Income Tax Appeal-44, Mumbai erred in not accepting the Arguments of Your Appellant that the Impugned Assessment Order for the Assessment Year 2012-13 Passed by the Learned Income Tax officer Ward-32(1)(1) was barred by Limitation of Law & accordingly was bad in law.

2) The Learned Commissioner of Income Tax Appeal-44, Mumbai erred in not appreciating the fact that Your Appellant has submitted various documents during the course of Assessment Proceedings, which were sufficient enough to prove the Identity of Creditors, their Creditworthiness & Genuineness of the Loans & discharged the primary onus that lay upon him u/s 68 of the Income Tax Act. 1961. CIT(Appeals) further erred in not appreciating the fact that the Assessing Officer has not discharged his onus while making the additions u/s 68 of the Income Tax Act. 1961.

3) The Learned Commissioner of Income Tax Appeals-44, Mumbai erred in confirming the addition of Rs. 1,76,92,144/- made by the Assessing Officer u/s.68 of the Income Tax Act. 1961 on the ground that Your Appellant has not proved the Genuineness & Creditworthiness of the following lenders who had granted Unsecured Loans to Your Appellant.

Sr. No.	Name	Amount
1	Daksha M. Shah	15,80,000
2	D.H. Thakkar	3,50,000
3	Fenil Kusumgar	11,50,000
4	Krishna P Ksumgar	4,00,000
5	Krishnakant Choksi	30,00,000
6	Mukesh N. Haria	1,67,000
7	Naskeens D Souza	38,00,000
8	Pulin Kusumgar	11,00,000
9	Pulin Kusumgar (HUF)	11,00,000
10	Rupal Tark Shal	3,50,000
11	Surmangal Holdi.	42,20,144
12	Varsha Mukesh Haria	1,15,000
13	Vishal Yogesh Mithani	3,60,000
	Total	1,76,92,144

4) *The Learned Commissioner of Income Tax Appeals-44, Mumbai erred in confirming the addition as regards disallowance of Interest Rs.17,44,694/- paid on the above loans on the ground that that they were not genuine."*

3. Insofar as Ground of appeal no. 1 is concerned, the same has not been pressed at the time of hearing and is accordingly dismissed as not pressed.

4. So far as the remaining Grounds of appeal are concerned, a perusal thereof would show that the solitary issue is with regard to the action of CIT(A) in confirming the action of Assessing Officer in treating unsecured loans received from 13 parties as 'unexplained' within the meaning of Sec. 68 of the Act to the extent of Rs.1,76,92,144/- and the consequent disallowance of interest paid to such parties amounting to Rs.17,44,694/-.

5. Briefly put, the relevant facts are that the appellant is a partnership-firm which, *inter-alia*, is engaged in the business of real estate builders and it is involved in undertaking one project named 'Chandanvan Housing Complex' at Virar. In the course of assessment proceedings, the Assessing Officer required the assessee to furnish details of the unsecured loans appearing in the Balance-sheet, and in relation to following 13 parties, the credits appearing in the account books have been treated as 'unexplained' within the meaning of Sec. 68 of the Act :-

<i>Sr. No.</i>	<i>Name</i>
<i>1</i>	<i>Daksha M. Shah</i>
<i>2</i>	<i>D.H. Thakkar</i>
<i>3</i>	<i>Fenil Kusumgar</i>
<i>4</i>	<i>Krishna P Ksumgar</i>
<i>5</i>	<i>Krishnakant Choksi</i>

6	<i>Mukesh N. Haria</i>
7	<i>Naskeens D Souza</i>
8	<i>Pulin Kusumgar</i>
9	<i>Pulin Kusumgar (HUF)</i>
10	<i>Rupal Tarak Shah</i>
11	<i>Surmangal Holdings Pvt. Ltd.</i>
12	<i>Varsha Mukesh Haria</i>
13	<i>Vishal Yogesh Mithani</i>

The relevant discussion in the order of the Assessing Officer reveals that the Assessing Officer was not satisfied with the creditworthiness as well as the genuineness of the transaction and, therefore, he invoked Sec. 68 of the Act. In fact, the CIT(A) has also upheld the addition primarily on the same ground as taken by the Assessing Officer.

6. Notably, Sec. 68 of the Act prescribes that where any sum is found credited in the account books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by him is not found satisfactory by the Assessing Officer, the amount so credited may be charged to income-tax as income of the said previous year. It is judicially well-settled that Sec. 68 of the Act casts a burden on the assessee to explain the nature and source of the credits appearing in the account books. It also is a trite position in law that the burden cast on the assessee to explain the nature and source of the credits would be held to be sufficiently discharged if assessee is able to satisfactorily explain the identity and creditworthiness of the creditor as well as the genuineness of the transaction. In the present case, the case sought to be made out by the appellant is that the 13 creditors in question are all independent concerns, except one Mr. Krishnakant Choksi, who happens to

be a partner of the assessee-firm and, that there is no adverse material to doubt the creditworthiness of the creditors or the genuineness of the transactions. It has been emphasised that before the Assessing Officer as well as before the CIT(A), assessee had furnished the names and addresses of the parties, confirmations giving their income-tax particulars, viz. PAN as well as copies of bank accounts and copies of returns of income in most of the cases. Before us, the learned representative for the assessee made elaborate arguments not only referring to the various evidences filed before the lower authorities which according to him prove the identity and creditworthiness of the creditors as well as the genuineness of the transactions, but it has been specifically asserted that there is no adverse material with the Assessing Officer.

7. In this background, we may now touch upon the discussion made by the lower authorities *qua* each of the creditors in question and examine whether the burden cast on the assessee u/s 68 of the Act has been duly discharged.

8. So far as first creditor, i.e. Daksha M. Shah is concerned, the amount in dispute is Rs.15,80,000/-. In this context, the relevant discussion in the assessment order reveals that assessee had filed a confirmation from the said creditor, but the Assessing Officer treated the credit as 'unexplained' on the ground that the creditor's return of income and bank statement was not filed. The stand of the assessee was that the money has been received from the said person against booking of a flat and it had been wrongly characterised as a loan and, in any case, subsequently the amount has been adjusted against the flat sold to him. Under these circumstances, the

assessee explained that it was not feasible to have obtained the bank statement and return of income from the said party.

9. In our considered opinion, the explanation given by the assessee is not found to be untrue by either of the lower authorities. Further, the confirmation by the said party itself demonstrates that it is not a case where the creditor is non-existent. At pages 172 to 206 of the Paper Book is placed a copy of the confirmation as well as the particulars of PAN of the said party. A copy of the agreement dated 10.01.2014 for flat booking by the said party is also on record. In our view, the lower authorities have merely disbelieved the version of the assessee without subjecting it to any independent verification and, therefore, the explanation furnished by the assessee deserves to be accepted. Accordingly, we direct the Assessing Officer to delete the said addition.

10. The second dispute is with regard to one Mr. Fenil Kusumgar and the amount is Rs.11,50,000/-. As per the relevant discussion in the assessment order, it transpires that assessee furnished the loan confirmation from the said party as well as the bank statement of the creditor. The Assessing Officer noted that the copy of return of income of the creditor was not furnished and that a perusal of the bank statement of the lender showed that he had received cheque from some party and thereafter advanced money to the assessee and after that a nominal balance was left in the bank account.

11. On this aspect, the explanation furnished by the assessee, and which has been reiterated before us, is that the said creditor is a non-resident and

as he has no taxable income in India, copy of return of income could not be submitted but, in any case, the PAN particulars of the creditor was very much available before the lower authorities. With regard to the analysis of the bank statement of the creditor, the learned representative pointed out to pages 62 & 63 of the Paper Book to say that the factum of a nominal balance remaining in the account after advancing the money to the assessee is factually wrong. It is pointed out that after each entry, the closing balance in the account ranges from Rs.11.96 lacs to Rs.2.46 lacs, which cannot be stated to be nominal. In this context, we have perused the relevant evidences placed at pages 50 to 66 of the Paper Book in the shape of loan confirmation, copy of PAN, copies of passport and bank statement of the creditor, etc. Though the Id. DR has reiterated the stand of the Assessing Officer, but all the material on record clearly establishes that the primary burden cast on the assessee to prove the identity and creditworthiness of the creditor and the genuineness of the transaction with the creditor stands established. Therefore, on this aspect also, we find no reason to uphold the addition of Rs.11,50,000/- made u/s 68 of the Act. Accordingly, the Assessing Officer is directed to delete the addition.

12. The third creditor is Krishnakant Choksi and the amount in dispute is Rs.30,00,000/-. As per the discussion in the assessment order, assessee is stated to have filed the loan confirmation, copy of return of income as well as bank statement of the creditor. The Assessing Officer observed that the bank statement reveals that the lender has advanced the money to the assessee and some other concerns only after receiving certain cheques from the other parties and thereafter only a nominal balance is left in the bank account.

13. In this context, we find that the said creditor is not a stranger to the assessee inasmuch as he is a partner of the assessee-firm. The evidences before the lower authorities comprised of loan confirmation, copies of PAN, ledger account of the said creditor in the account books of the assessee, bank statement of the creditor as well as the copy of income-tax return of the creditor. So far as the analysis of the bank account brought out by the Assessing Officer is concerned, the learned representative pointed out by referring to pages 45 to 47 of the Paper Book that after each disbursal, the balance remaining in the account is almost Rs.5 lacs, which cannot be stated to be nominal considering the amount advanced to the assessee. The learned representative also pointed out that the Assessing Officer did not incorporate the entire bank statement of the lender and has looked at few of the transactions while bringing-out the analysis in the assessment order.

14. We have perused the relevant bank statement and find that the assertions made out by the learned representative are borne out of record. The learned representative had also pointed to pages 41 to 43 of the Paper Book, wherein is placed copy of the income-tax return filed by the said creditor. On the basis of material on record, it is difficult to infer that there was any lack of creditworthiness of the creditor. Be that as it may, it is abundantly clear that the Assessing Officer has merely disbelieved the material and evidences sought to be relied upon by the assessee which, in the absence of any adverse material, clearly establishes the identity and creditworthiness of the creditor and the genuineness of the transaction. Thus, on this aspect, assessee succeeds and the Assessing Officer is directed to delete the addition.

15. The next creditor is Mukesh N. Haria and the amount in dispute is Rs.1,67,000/-. In this connection also, we find that the assessee had duly furnished the confirmation which showed the income-tax particulars as well as the bank statement of the creditor. The analysis of the Assessing Officer of the bank statement is also similar to what he made of the other creditors, which we have discussed in the earlier paras. Herein also, the learned representative explained that the entire bank statement has not been incorporated by the Assessing Officer, which is otherwise placed at pages 148 and 149 of the Paper Book. It has also been explained referring to page 165 of the Paper Book that the said creditor has also filed his return of income. All these material, in our view, *prima facie* discharge the burden cast on the assessee and, in the absence of any adverse material, the credit deserves to be accepted as 'explained' within the meaning of Sec. 68 of the Act. Thus, on this aspect also, the Assessing Officer is directed to delete the addition.

16. The next creditor is Naskeens D Souza and the amount in dispute is Rs.38,00,000/-. In this context, we find that the assessee had furnished the loan confirmation, copy of bank account as well as income-tax particulars of the said creditor. In this case, we find that in the assessment order, the Assessing Officer refers to the bank statement of an account maintained with Dena Bank out of which only loan of Rs.27,00,000/- was given and the balance of Rs.11,00,000/- has been given from the account maintained with HDFC Bank, a copy of which has been placed at pages 104 to 108 of the Paper Book. The learned representative pointed out that though both the bank statements were furnished to the lower authorities, but the Assessing

Officer has inadvertently referred to only one of the bank statements. Secondly, it is pointed out that the analysis of the bank statement made by the Assessing Officer is not borne out of record and rather, after every entry there is substantial amount of balance remaining and it is not a case where any unexplained cash has been deposited prior to advancing of money to the assessee. We have examined the material and find that there is nothing to doubt the genuineness of the claim made by the assessee as the creditor being an income-tax payee. In any case, the bank statement of the creditor clearly brings out adequacy of funds and, therefore, we find no reasons to uphold the addition u/s 68 of the Act. The approach of the Assessing Officer in this case also is similar to that adopted by him in the case of other creditors whereby without carrying out any independent verification or investigation, the material furnished by the assessee has been sought to be disbelieved. Therefore, we are unable to accept the stand of the Assessing Officer on this aspect also.

17. The next creditor is Pulin Kusumgar from whom assessee is stated to have raised Rs.11,00,000/-. In this case too, assessee filed the confirmation from the creditor, bank statement and copy of return of income of the creditor. Herein also, the Assessing Officer perused the bank account and noted that prior to issuance of cheque to the assessee, the lender had received amount through cheque from some other parties. In this context, the learned representative referred to copy of the bank statement placed at pages 77 to 81 of the Paper Book and pointed out that it was a running account inasmuch as after each entry there is a healthy balance and there is no justification to doubt the veracity of the information. We have perused the relevant material and find that it is a case where the Assessing Officer

has merely disbelieved the version of the assessee without bringing out any cogent material. Thus, the said addition is hereby directed to be deleted.

18. The next creditor is Pulin Kusumgar (HUF) from whom a sum of Rs.11,00,000/- has been raised by assessee. Herein also, the stand of the Assessing Officer is identical to other cases. In this case too, the assessee had supported the credit on the basis of confirmation of the creditor, bank statement of the creditor as also copy of return of income of the creditor. In the absence of any material with the Revenue to doubt the veracity of the material relied upon by the assessee, we find no reasons to uphold the said addition. The Assessing Officer is hereby directed to delete the said addition.

19. The next creditor is Surmangal Holdings Pvt. Ltd. from whom loan of Rs.42,20,144/- has been raised by the assessee. In this case, assessee has supported the credit on the basis of loan confirmation, bank statement of the creditor as well as copy of return of income. The only point raised by the Assessing Officer was that the said concern had raised share application money and thereafter advanced loan to various parties. For this reason, the Assessing Officer has doubted the credit in question and added the same as 'unexplained credit' u/s 68 of the Act.

20. On this aspect, the learned representative vehemently pointed out that the Assessing Officer has totally misdirected himself in not appreciating that the said concern was a Non-Banking Financial Company engaged in the business of borrowing and lending. The learned representative pointed out that the Assessing Officer has merely referred to only a portion of the bank

statement for the period 03.01.2012 to 28.01.2012 and not the complete statement of the lending concern, copy of which has been placed at pages 122 to 127 of the Paper Book. It is pointed out that even the observation of the Assessing Officer that the said concern had raised money by way of share application money from other concerns to make the impugned advance is also not correct. It is pointed out that the said concern received amounts from other concerns on account of repayment of outstanding loans which have been utilised to give loan to the assessee-company. In any case, it is sought to be pointed out that the stand of the Assessing Officer is not based on any material or evidence.

21. On this aspect, the Id. DR has merely reiterated the stand of the Assessing Officer, which we have already narrated in the earlier part.

22. Having considered the rival stands, we find that the case made out by the Assessing Officer is merely on conjectures and surmises. Even if one is to go by the observation of the Assessing Officer that the said creditor raised share application money and thereafter advanced the loan to the assessee, it does not tell much on the genuineness of the transaction so long as the Assessing Officer is not able to demonstrate any ingenuineness on the basis of any direct or corroborative evidence. In fact, the Assessing Officer has not based his action on any evidence or material, but merely on his own understanding, which is devoid of any factual support. Therefore, on this aspect also, we find no reasons to uphold the addition. The Assessing Officer is hereby directed to delete the said addition.

23. The next three creditors are Varsha Mukesh Haria – Rs.1,15,000/-, Vishal Yogesh Mithani – Rs.3,60,000/- and Rupal T. Shah – Rs.3,50,000/-. In all these cases, we find that the assessee furnished the loan confirmations as well as the bank statement of the creditors. From the discussion made by the Assessing Officer, the only point brought out is that after giving the advance to the assessee, a nominal balance remained in the bank account of the creditors. Though this aspect has been factually sought to be negated by the assessee before us on the basis of copies of respective bank statements, but in our view, the point raised by the Assessing Officer is no ground to doubt the genuineness of the transactions. If the Assessing Officer was in doubt, it was open for him to make necessary inquiries, but we find that in none of the cases, he has adopted such an approach. Instead, he has sought to merely disbelieve the evidence and material furnished by the assessee, which is impermissible in law. Thus, we direct the Assessing Officer to delete the said additions.

24. The last creditor is Krishna P. Kusumgar from whom assessee has raised a sum of Rs.4,00,000/-. In this case also, we find that the confirmation, bank statement and the copy of the return of income of the creditor filed by the assessee have been given a go-bye by the Assessing Officer by merely observing that the lender had received cheques from other parties before advancing the money to the assessee. In our view, the same is not sufficient to doubt the genuineness of the transaction in the absence of any corroborative material available with the Assessing Officer, which is adverse to the material on record. Thus, on this aspect also, we uphold the plea of the assessee and direct the Assessing Officer to delete the addition.

25. In view of our aforesaid discussion whereby we have considered each of the creditors, we find that the common refrain of the Assessing Officer has been to go by his own perception of the bank statement of the creditors. The discussion in the assessment order does not reveal that the Assessing Officer made any attempt to cross-verify his perception about the creditworthiness either with the assessee or with the respective creditors. In fact, in almost all the cases, the learned representative had referred to the respective bank statements to point out that the observation of the Assessing Officer was factually incorrect. Notably, the Assessing Officer had observed that after giving money to the assessee, there remained a nominal balance in the respective bank accounts. The learned representative had referred to the bank statements to show that the balance remaining was not nominal and, in any case, the entries in the bank accounts reflected a normal running account. Considering the entirety of circumstances and the fact that no verification exercise was carried out by the Assessing Officer, the Assessing Officer has erroneously disbelieved the material and evidence lead by the assessee before him in order to invoke the provisions of Sec. 68 of the Act. Accordingly, in view of our aforesaid discussion, we hereby set-aside the addition and allow the Ground of appeal of the assessee.

26. The only other Ground of appeal is with regard to the disallowance of interest expenditure on the loans which were considered as 'unexplained' by the Assessing Officer u/s 68 of the Act. Once we have held that the loans were 'explained' within the meaning of Sec. 68 of the Act, consequently the disallowance of interest expenditure made by the Assessing Officer is also liable to be deleted. We hold so.

27. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 8<sup>th</sup> June, 2018.

Sd/-  
**(RAVISH SOOD)**  
**JUDICIAL MEMBER**

Sd/-  
**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 8<sup>th</sup> June, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai