

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH, RAIPUR  
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.27/RPR/2018  
Assessment Year : 2014-15**

M/s Anjani Associates, Opp. Jain Plaza, Link Road, Bilaspur (CG).	<b>Vs.</b>	ITO, Ward 1(2), Bilaspur (CG).
<b>PAN : AATFA1835E</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri R.B. Doshi, CA  
Department by : Shri R. K. Singh, CIT-DR

Date of hearing : 06-08-2018  
Date of pronouncement : 10-08-2018

**ORDER**

**PER R. K. PANDA, AM :**

This appeal filed by the assessee is directed against the order dated 08.02.2018 of the Id. CIT(A)- 1, Jabalpur relating to assessment year 2014-15.

2. Facts of the case, in brief, are that the assessee is a partnership firm and filed its return of income on 20.03.2015 declaring total income of Rs.71,330/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee has received unsecured loans from 25 different persons totaling to Rs.3,85,50,000/- which include an amount of Rs.3,48,50,000 from 20 private limited companies and the balance from five individuals. He, therefore, asked the assessee to produce the details of the lender companies viz. name, address

and amount received as loan etc. The assessee vide letter dated 07.06.2016 filed the requisite details. In order to prove the identity, creditworthiness and genuineness of the transactions, the commission u/s 131(1)(d) of the I.T. Act, 1961 was issued to the concerned Assessing Officer in Kolkata for making enquiries regarding the identity of the investor companies while examining/verifying from the books of account and furnish report. The Assessing Officers to whom commission u/s 131(1)(d) were issued have issued summons u/s 131(1) to the directors of the respective companies and in response to the summons, the directors of the respective companies appeared and their statements were recorded by the respective Assessing Officers. The Assessing Officer observed that in most of the cases, the concerned Assessing Officers have not asked any question regarding the activity of the lending companies. Documents regarding the transactions made during the financial year 2013-14 with the assessee firm were furnished. Copies of statement of the directors of these companies were also enclosed with the report. The Assessing Officer observed that in certain cases, the Assessing Officers furnished reports on the basis of Inspector's report and obtained documents from the lending companies and forwarded the same. He, therefore, inferred from the reports of all concerned Assessing Officers of the investor companies that despite the fact that investor companies have submitted documents i.e. audited profit and loss account, bank statement etc. but failed to provide complete details of source of

investment and in the statement, the directors have given only the names of the investor companies and amount invested by them in the source company from which the loan has been advanced to the assessee company, which creates serious doubts on the genuineness and clearly indicates that these are nothing but paper/ briefcase/ shell companies which have acted as a part of an artifice to facilitate the introduction of funds into the company under scrutiny. He, therefore, issued a show cause notice dated 22.12.2016 asking the assessee to explain as to why addition should not be made u/s 68 related to unsecured loan received during the year from the 20 companies since creditworthiness and genuineness of the investor companies are not established satisfactorily.

3. The assessee explained that in response to the letters received u/s 131(1)(d), the companies have confirmed to have given the loan to the assessee company. The documents in respect to those companies have already been received by the Assessing Officer and also all the companies are assessed regularly u/s 143(1)/ 143(3) at their respective jurisdiction. Copy of bank account of all the companies indicating that the payments have been received by account payee cheques from the bank account of the creditors was submitted. So far as creditworthiness of the loan creditors is concerned, it was submitted that the details such as Net Worth, Share Capital, Reserves & Surplus Investment, NAV, Bank Balance etc. should also be considered and creditworthiness is ascertained from so many aspects, one of which is through

ascertainment of net worth of the company. The assessee submitted that it has proved the net worth of all such companies representing strong creditworthiness.

4. However, the Assessing Officer was not satisfied with the explanation given by the assessee. He observed from these documents, specifically the investment schedule account of the investor companies, that most of the investments that are enquired are from Kolkata based shell companies and on perusing the bank statement, it is crystal clear that the funds are being rotated through these companies to give it a colour of genuine transaction which is not the factual position. He noted that only existence and banking transaction does not make the whole transaction of accommodation entries as genuine. From the financial statement of each lending company and computation of income and return of income, the Assessing Officer inferred that there is no genuineness in transaction since they have not done any real business. He, therefore, came to the conclusion that the names of these companies have been utilized by the assessee firm in routing its own money through banking channels. Rejecting the various explanations given by the assessee and relying on certain decisions, the Assessing Officer made addition of Rs.3,48,50,000/- to the total income of the assessee being the amount received by the assessee from the 20 companies u/s 68 of the I.T. Act. The Assessing Officer similarly disallowed the interest of Rs.37,94,738/- paid to these companies on account of such loan.

5. Before the Id. CIT(A), the assessee reiterated the same arguments as advanced before the Assessing Officer. It was submitted that the assessee has furnished the requisite details by furnishing the identity and creditworthiness of the loans creditors and genuineness of the transaction. The Assessing Officer had issued commission u/s 131(1)(d) to the Assessing Officers of the respective companies who have examined the directors of those companies and had submitted the report. The lender companies have accepted to have given the loan. Therefore, by merely alleging that the lender companies are shell companies and do not have the creditworthiness is not sufficient to make the addition especially when the Assessing Officer himself has held that the assessee proved the identity of the loan creditors and genuineness of the transactions. It was further submitted that the assessee has paid interest at the rate of 12% per annum on the unsecured loan and tax has been deducted at source on the interest payment and has been duly deposited to the credit of the Central Government. Relying on various decisions assessee submitted that the addition made by the Assessing Officer should be deleted.

6. However, the Id. CIT(A) was also not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer in making the addition on account of unsecured loan and interest thereon. While doing so, he observed that the transferring of fund through banking channel alone cannot justify the transaction as genuine. The Assessing Officer has

treated the transactions as not genuine since the business activities of the lender companies were not examined by the Assessing Officers and hence the creditworthiness and genuineness was not established. He observed that the transactions in the instant case are another example of the constant use of deception of loan entries to bring unaccounted money into banking channels and this device of loan entries continues to plague the legitimate economy of our country. According to him, the assessee has arranged the unsecured loans from Kolkata based shell companies by adopting all technic through banking channels and, therefore, mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction into a genuine one. Relying on various decisions, he held that the transaction of unsecured loan as claimed by the assessee are not genuine.

7. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :-

*“1. In the facts and circumstances of the case and in law, Ld. CIT(A) was not justified in confirming the addition of Rs.3,48,50,000/- made by the AO u/s 68, on account of unsecured loan received by the assessee. The addition made by AO and sustained by CIT(A) is arbitrary, baseless and not justified.*

*2. Ld. CIT(A) erred in confirming disallowance of Rs.37,23,402/- out of the disallowance of Rs.37,94,738/- made by the AO out of the interest account. The disallowance made by AO and sustained by CIT(A) is not justified.*

*3. The appellant reserves the right to add, amend or alter any of the ground/s of appeal.”*

8. The Id. Counsel for the assessee strongly challenged the order of the Id. CIT(A) sustaining the addition made by the Assessing Officer. He submitted

that during the course of assessment proceedings the assessee had submitted the names and addresses of the lender companies along with their PAN numbers, copy of bank account, balance sheet, profit and loss account etc. The Assessing Officer had issued commission u/s 131(1)(d) to the Assessing Officers of the lender companies who have conducted enquiries from the directors of the lender companies by issue of summons u/s 131 and submitted report to the Assessing Officer of the assessee. During the course of proceedings u/s 131(1)(d), the lender companies have filed various documents before their respective Assessing Officers such as loan confirmations, acknowledgement of IT returns, complete balance sheet, copy of bank statement depicting the entries of loan given to the assessee etc. Further, the statements of the directors of the lender companies were recorded by the respective Assessing Officers in which they have categorically confirmed to have given loan to the assessee. He submitted that in the report of the respective Assessing Officer, there is no reservation expressed by any of the Assessing Officer about the identity, genuineness and creditworthiness of the lender companies and the transaction with the assessee. He submitted that the assessee has discharged the burden cast upon it by providing the identity and creditworthiness of the loan creditor and the genuineness of the transaction. The burden has shifted to the Assessing Officer. Although there was a long gap between the reports of the concerned Assessing Officers of the lender companies and the assessment order passed, however,

there was no further enquiry by the Assessing Officer to disprove the various documents furnished by the assessee substantiating their creditworthiness and the reports of the respective Assessing Officers of the lender companies.

9. Referring to the letter of the Assessing Officer dated 22.12.2016 a copy of which is placed at page 32 and 33 of the Paper Book, Volume- II, he submitted that the Assessing Officer at page 2 of the said letter has categorically mentioned that the identity and genuineness of the transactions from the above parties is proved but the creditworthiness of the said companies is not proved. He accordingly submitted that the Assessing Officer in the letter addressed to the assessee has accepted the identity and genuineness of the loan creditors but is doubting only about the capacity/creditworthiness of the loan creditors. He submitted that once the assessee has submitted the requisite details and the Assessing Officers of the lender companies have given the report without any adverse finding and the net worth of the investor companies are sound, therefore, merely because they have declared low income the same cannot be a ground to disbelieve the creditworthiness of the lender companies. The assessee is not required to prove the source of the source.

10. Referring to the decision of the Hon'ble Calcutta High Court in the case of CIT vs. M/s Dataware Private Limited vide ITA No.263 of 2011 order dated 21.09.2011, he submitted that the Hon'ble High Court in the said decision has held that the Assessing Officer of the assessee cannot take the burden of

assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. It was held that after getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing Officer shall enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing Officer of the creditor. Instead of adopting such course, the Assessing Officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.

11. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Kinetic Capital Finance Ltd. Vide ITA No.87/2007 order dated 02.09.2011, he submitted that the Hon'ble High Court while upholding the order of the Tribunal held that the Tribunal has correctly appreciated the position in law which is that when an unexplained credit is found in the books of account of an assessee the initial onus is placed on the assessee. The assessee is required to discharge this initial onus. Once that onus is discharged, it is for the revenue to prove that the credit found in the books of account of the assessee is the undisclosed income of the assessee. Once the assessee has discharged

that initial onus, the assessee is not required to prove the genuineness of the transaction as between its creditor and that of the creditors' source of income i.e. the sub-creditors. He also relied on the following decisions :-

- (i) CIT vs. Metachem Industries, (2000) 245 ITR 160 (MP).
- (ii) CIT vs. Abdul Aziz, (2012) 251 CTR 58 (C.G.).
- (iii) DCIT vs. Rohini Builders, (2002) 256 ITR 360 (Guj.).
- (iv) CIT vs. Jai Kumar Bakliwal, (2014) 366 ITR 217 (Raj.).
- (v) Aravali Trading Co. vs. ITO, (2008) 220 CTR 622 (Raj.).
- (vi) ITO vs. Shri Koushal Agarwal, ITA No.220/BLPR/2010 (ITAT Raipur).
- (vi) ITO vs. Gauram Prasad Nishad, ITA No.101/BLPR/2012 (ITAT Raipur).
- (viii) CIT vs. Ranchhod Jivabhai Nakhava, 208 taxmann.com 35.

12. He accordingly submitted that the addition made by the Assessing Officer which has been upheld by the Id. CIT(A) should be deleted.

13. The Id. DR on the other hand heavily relied on the order of the Id. CIT(A). Referring to the reports submitted by the Assessing Officers of the lender companies, he submitted that the Assessing Officers have not given any information about the creditworthiness of the loan creditors. They have simply made certain enquiries and enclosed the audited balance sheet, profit and loss account and confirmations, etc. along with statements recorded of the directors. He submitted that unless and until the assessee proves the creditworthiness of the loan creditors, the assessee has not discharged the burden cast on it in terms of section 68 of the I.T. Act. Since in the instant case the Assessing Officer has conclusively proved that these companies are shell companies without doing any genuine business therefore, merely because money has been routed through

banking channel, the same cannot be a ground to accept the contention of the assessee. He submitted that the various decisions relied on by the Id. Counsel for the assessee are not applicable to the facts of the present case and are distinguishable. He accordingly submitted that the order of the Id. CIT(A) be upheld and the grounds raised by the assessee should be dismissed.

14. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Id. CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find during the course of assessment proceedings, the assessee company furnished the name, address, PAN numbers, bank statement, copies of audited profit and loss account etc. of the lender companies to the Assessing Officer on the basis of which the Assessing Officer issued commission u/s 131(1)(d) to the Assessing Officers of the respective lender companies. We find although the concerned Assessing Officers have submitted their reports, however, the Assessing Officer held that the concerned Assessing Officers have not enquired about the creditworthiness of the lender companies and have merely submitted a report along with the copies of their confirmations, bank statement, audited profit and loss account and the statements of the concerned directors which were recorded u/s 131(1) of the I.T. Act. Since the assessee could not prove the creditworthiness of the loan creditors, the Assessing Officer, invoking the provisions of section 68, made the addition of Rs.3,48,50,000/- and

the interest thereon at Rs.37,94,738/- which has been upheld by the Id. CIT(A). It is the submission of the Id. counsel for the assessee that the assessee has proved the initial burden cast on it by providing the requisite details and the Assessing Officer has accepted the identity and genuineness of the transactions but is only doubting the creditworthiness of the loan creditors. It is also his submission that when the assessee has submitted the requisite details proving the creditworthiness of the loan creditors and those loan creditors have appeared before their respective Assessing Officer and have confirmed to have given the loan and their statements were recorded by their respective Assessing Officers, therefore, merely because they do not have shown sufficient income in their return of income or have not done enough business cannot be a ground to disbelieve their creditworthiness especially when they have sound net worth. It is his submission that the assessee is not required to prove the source of the source.

15. We find some force in the above arguments of the Id. counsel for the assessee. We find from the letter addressed by the Assessing Officer to the assessee vide letter dated 22.12.2016, copy of which is placed at page 32 and 33 of the Paper Book, Volume-II, wherein the Assessing Officer himself has stated as under :-

*“It is noticed that though the identity and genuineness of the transaction from the above parties is proved but the creditworthiness of the said company is not proved. As per the chart above, it is noted that the total turnover of the said company is very*

*meager during the Assessment Year 2014-15 and the returned income of the said company was also found to be meager. As the creditworthiness of the above companies are not proved/doubted, please show cause as to why the unsecured loan totaling Rs.3,48,50,000/- received from the above companies be not added back to your total income u/s 68 of the Income Tax Act, 1961 and be taxed u/s 115BBE of the Income Tax Act, 1961. For this purpose, your case is fixed for hearing in my office at Mahima Complex, Vyapar Vihar, Bilaspur on 26/12/2016 at 11.00 AM.”*

16. This shows that the Assessing Officer in the letter addressed to the assessee has accepted the identity of the creditors and genuineness of the transaction, however, in the assessment order he doubts about the genuineness and creditworthiness of the loan creditors. Since the identity of the loan creditors is not in dispute, therefore, the two conditions in terms of section 68 namely identity and genuineness of the transaction in our opinion has been proved. So far as creditworthiness of the loan creditors are concerned, it is an admitted fact that on the basis of various documents submitted by the assessee, the Assessing Officer has issued commission u/s 131(1)(d) to the concerned Assessing Officers of the loan creditors. The concerned Assessing Officers of the loan creditors have conducted enquiries by issuing summons u/s 131 to the directors of the lender companies and their statements were recorded. The directors in their statements recorded u/s 131 have confirmed to have given loans to the assessee company and their bank statements, PAN numbers, audited accounts were also forwarded by the Assessing Officers of the lender companies to the Assessing Officer of the assessee. There is no adverse finding given by the concerned Assessing Officers of the lender companies. We further find that

from the date of receipt of the report from the concerned Assessing Officers till the date of finalizing of the assessment order, the Assessing Officer has not made any further efforts to find out that the balance sheets showing creditworthiness of the lender companies and the transactions made through banking channel are false or untrue. The assessee in the instant case, in our opinion, has discharged the onus cast on it and nothing has been brought on record by the Assessing Officer to disprove the same. Merely because these lender companies have done meager business or have declared meager income, the same cannot be a ground to disbelieve their creditworthiness especially when their respective balance sheets show sufficient capital and reserves to advance such loans to the assessee company. The assessee in the instant case, in our opinion, has proved the identity and creditworthiness of the loan creditors and genuine of the transaction.

17. We find the Hon'ble Kolkata High Court in the case of M/s Dataware Pvt. Ltd. (supra) has observed as under :-

*“In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.*

*So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to*

*accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.”*

18. We find the Hon’ble Delhi High Court in the case of Kinetic Capital Finance Ltd. (supra) has observed as under :-

*“7. The Tribunal, in our view, has correctly appreciated the position in law which is that when an unexplained credit is found in the books of account of an assessee the initial onus is placed on the assessee. The assessee is required to discharge this initial onus. Once that onus is discharged, it is for the revenue to prove that the credit found in the books of accounts of the assessee is the undisclosed income of the assessee. In the circumstances obtaining in the present case, in our view, the assessee has discharged that initial onus. The assessee is not required thereafter to prove the genuineness of the transactions as between its creditors and that of the creditors' source of income, i.e., the sub-creditors [See Nemi Chand Kothari vs CIT & Anr. (2003) 264 ITR 254 and judgment of this court in ITA No. 1158/2007 Mod Creations Pvt. Ltd. vs Income Tax Officer decided on 29.08.2007].*

*8. The Tribunal is the final fact finding authority. The Tribunal appears to have been satisfied with the quality of the evidence placed before it. We find no perversity in the findings, notwithstanding the stray sentence in its order pertaining to service of depositors. In these circumstances, we are not persuaded to upset the findings returned by the Tribunal. In our view no substantial question of law arises for our consideration. The appeal is, accordingly, dismissed.”*

19. We find the Hon’ble Chhattisgarh High Court in the case of Abdul Aziz (supra) has held that where the Id. CIT(A) and the Tribunal has rendered a finding of fact that assessee has proved creditworthiness of creditors, no addition can be made u/s 68, such findings are not liable to be interfered in appeal. The relevant observation of the Hon’ble High Court reads as under :-

*“19. In the case on hand, the CIT (A) has examined all the statements and depositions made by the creditors including their source of income and it was found that the A.O. without having any material on record, contrary to the statements and*

*affidavits filed by the creditors taken a stand that the creditors have failed to prove their creditworthiness and, as such, the transaction was not genuine. The A.O. has not made any other independent enquiry to disprove the creditworthiness of the creditors, as established by affidavits, statements of the creditors disclosing source of income. Thus, the finding of the CIT (A) that the observation of the A.O. with regard to dissatisfaction was on the basis of surmises and conjectures, is just and proper. The I.T.A.T. has affirmed the finding recorded by the CIT (A) and, as such, there is no occasion for this Court to interfere with the finding of facts, which is based on proper appraisal of evidence and on the basis of sufficient records.*

*20. In view of foregoing, we are of the considered opinion that the findings recorded by the CIT (A) and affirmed by the I.T.A.T. are based on proper appreciation of facts and are not perverse, being correlated with each and every transaction. Thus, the issue is purely question of facts. No question of law, more so substantial questions of law, as aforestated, arise in the facts of the case.”*

20. The various other decisions relied on by the ld. counsel for the assessee in the case law compilation supports the case of the assessee. Since the Assessing Officer in the instant case has accepted the identity of the loan creditors and genuineness of the transaction in the letter addressed to the assessee and the concerned Assessing Officers of the loan creditors while giving the report along with their profit and loss account and balance sheet have not given any adverse finding about the creditworthiness of the loan creditors, therefore, considering the totality of the facts of the case, we are of the considered opinion that the assessee in the instant case has discharged the burden cast on it by proving all the three ingredients of provisions of section 68 of the I.T. Act. Therefore, the addition made by the Assessing Officer and sustained by the ld. CIT(A) is uncalled for under the facts and circumstances of the instant case. We,

therefore, set-aside the order of the ld. CIT(A) and the grounds raised by the assessee are allowed.

21. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 10<sup>th</sup> August, 2018.

**Sd/-**  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

**Sd/-**  
(R. K. PANDA)  
ACCOUNTANT MEMBER

Dated: 10-08-2018.

*Sujeet*

*Copy of order to: -*

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., Raipur.

By Order

//True Copy//

Sr. Private Secretary  
ITAT, Raipur