

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“ A ” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER And  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 936/Ahd/2014

(निर्धारण वर्ष/Assessment Year : 2010-11 )

Shri Sunil M. Shah A-1, Krishna Darshan Duplex Manjalpur, Baroda	<b>बनाम/ Vs.</b>	The ACIT Circle-7 Baroda
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AJMPS 8864 R</b>		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Shri Anil R. Shah and Ms. Kinjal Shah, ARs
प्रत्यर्थी की ओर से/Respondent by:	Shri S.K. Dev, Sr.DR

सुनवाई की तारीख/ Date of Hearing	21/01/2019
घोषणा की तारीख/Date of Pronouncement	01/02/2019

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)–VI, Baroda [CIT(A) in short] vide appeal no.CAB/VI-251/2012-13 dated 03/02/2014 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 15/02/2013 relevant to Assessment Year (AY) 2010-11.

2. The assessee has raised following grounds of appeal:-

1. *The CIT(A) has erred both in Law and in fact in confirming the applicability of Sec.68 of the Act thereby confirming addition of Rs.8,20,000/- made by the Assessing Officer.*

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*It is submitted that your Appellant had received amount by Cheque from following persons.*

- (a) Mrs. Laxmi R. Rs.8,00,000/- (out of Rs.17,00,000/-)*
- (b) Alok Chaudhry Rs. 20,000/-*

*Your Appellant submits that the above Depositors are known persons, their identity has been established and their creditworthiness is proved beyond doubt and it being a genuine transaction the amount is not liable to be treated as Cash Credit u/s.68 of the Act.*

*2. Your Appellant submits that source of Credit have been proved in above cases and it was not liability of the Appellant to prove “source of source” as held by various Appellate Authorities.*

*Your Appellant have proved source of amounts received from creditors and therefore the said amount of Rs.8,20,000/- is not liable to be added to the total Income.*

3. At the outset, the Id. Counsel for the assessee submitted that he had been instructed not to press the addition made u/s 68 of the Act for the loan of Rs. 20,000/- received from Shri Alok Chaudhary. Therefore, we dismiss the Ground of appeal of the assessee relating to the addition for Rs. 20,000/- u/s 68 of the Act on account of loan received from Shri Alok Chaudhary.

4. The solitary issue raised by the assessee is that the Ld.CIT(A) erred in confirming the order of the Assessing Officer by sustaining the addition of Rs. 8 lakhs u/s 68 of the Act on account of loan received from Mrs. Laxmi R.

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5. Briefly stated facts are that the assessee is an individual and deriving his income under the head “salary and house property.” The assessee during the year among other parties has received a loan of Rs.17 lakhs from Smt. Laxmi R. The assessee out of such loan of Rs. 17 lakhs claimed to have received Rs. 9 lakhs from Smt. Laxmi R. and the balance amount of Rs.8 lakhs from her husband namely Shri Venketaraman. The assessee in support of his claim for the loan received from Shri Venketaraman has filed the copy of the bank statement, wherein two cheques of Rs.4 lakhs each dated 22.05.2009 was reflected, i.e., the payment to the assessee.

5.1. However, the Assessing Officer found that the assessee has not furnished the details of source and nature of receipts from Shri Venketaraman. Therefore, the Assessing Officer treated the same as unexplained cash credit u/s 68 of the Act and added the sum of Rs. 8 lakhs to the total income of the assessee.

6. The aggrieved assessee preferred an appeal to the Ld.CIT(A). The assessee before the Ld.CIT(A) submitted that he had filed the copy of confirmation, bank statement and Form 26AS of Shri Veketaraman. Therefore, the assessee claimed that the identity and genuineness of the transactions could not be doubted.

6.1. The assessee also submitted that the ledger account of Smt. Laxmi R. was wrongly credited in place of Shri Venketaramn in his books of

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accounts intentionally. As such, the loan was provided by Shri Venketaraman on behalf of his wife, Smt.Laxmi R.

6.2. However, the Ld.CIT(A) observed certain facts as detailed under:

- (1) Shri Venketaraman has not furnished the copy of bank statement since the beginning of the financial year. Therefore, it is difficult to ascertain whether Shri Venketaraman provided such loan out of his opening balance. Accordingly, the Ld.CIT(A) doubted the creditworthiness of Shri Venketaraman.
- (2) There was no balance-sheet, capital account of Shri Venketaraman filed by the assessee. Therefore, as per the Ld.CIT(A) the creditworthiness of the loan creditor was in doubt.
- (3) The loan was received from Shri Venketaraman, but it was shown in the books of accounts of the assessee as the loan received from Smt.Laxmi R.

6.3. In view of the above, the Ld. CIT(A) disregarded the contention of the assessee and confirmed the order of the Assessing Officer.

7. Being aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

8. The Ld. AR before us filed a paper-book running from page Nos.1 to 37. The Ld. AR before us reiterated the submissions as made before the lower authorities. The Ld. AR also drew our attention on various details, such as a copy of account confirmation, form 26AS, bank

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statement and income-tax return which are placed on pages 25 to 37 of the paper-book.

8.1. The Ld.AR in support of assessee's claim also filed the Affidavit to justify that he has received the loan of Rs.8 lakhs from Shri Venketaraman. The copy of the Affidavit is also placed on record.

9. On the other hand, the Ld.DR vehemently supported the orders of the authorities below.

10. We have heard the Ld. Representatives appearing for the respective parties. We have perused the relevant materials available on record. From the preceding discussion, we note that the addition of Rs. 8 lakhs were made to the total income of the assessee by the authorities below by observing that the conditions stipulated u/s 68 of the Act were not complied.

10.1. On perusal of the orders of the authorities below, we note that the assessee has furnished the bank statement, Form 26 AS and confirmation, the copy of income-tax return but the authorities below have not pointed out any defect in such detail filed by the assessee.

10.2. In case, the details as discussed above were not believable, then the authorities below were empowered to verify the same to the concerned party, but none of the authority below has exercised power given under section 131/133(6) of the Act. Once the assessee has

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submitted basic details of the party from whom he has taken a secured loan, then the onus imposed on the assessee under section 68 of the Act was discharged. Therefore, without verifying the necessary details filed by the assessee, there cannot be any addition u/s 68 of the Act. In this regard, we find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of Murlidhar Lahorimal vs. CIT reported in 280 ITR 512 (Guj.) wherein it was held as under:

*“11. As section 68 of the Act denotes, once there is a credit in the books maintained by the assessee, the primary onus is on the assessee, namely, to offer an explanation as to the nature and source of the credit. What would be the degree of the onus and what should be the extent of explanation in such circumstances, is succinctly laid down by this Court in the decision in case of CIT v. Pragati Co-operative Bank Ltd. [2005] 278 ITR 170<sup>1</sup>. Suffice it to state that an assessee can be asked to prove the source of credit in books, but cannot be asked to prove the source of the source.”*

10.3. Similarly, we also find support and guidance from the judgment of Hon'ble Jurisdictional High Court in the case of Rohini Builders 127 Taxman 523, where the head note reads as under:

*“Section 68 of the Income-tax Act, 1961 - Cash credits - Assessing Officer made addition of Rs. 12,85,000 as unexplained cash credits in respect of loans taken by assessee from 21 parties - Assessee had discharged initial onus by providing identity of all creditors by giving their complete addresses, GIR numbers/permanent account numbers and copies of assessment orders wherever readily available - Assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques drawn from bank accounts of creditors - Repayment of loans and interest thereon was also made by account payee cheques by assessee and tax also had been deducted at source on interest payments and remitted - Whether assessee was not expected to prove genuineness of cash deposited in bank accounts of creditors, because under law, assessee can be asked to prove source of credits in its books of account but not source of source - Held, yes - Whether merely because summons issued to some of creditors could not be served or they failed to appear before Assessing Officer, could not be ground to treat those credits as non-genuine - Held, yes - Whether*

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*considering totality of facts and circumstances of case, especially fact that Assessing Officer had not disallowed interest claimed/paid in relation to those credits in assessment year under consideration or even in subsequent assessment years, and tax at source had been deducted out of interest paid/credited to creditors, Tribunal was justified in deleting addition made - Held, yes - Whether as there was no substance in appeal and no substantial question of law arose, appeal was liable to be dismissed - Held, yes*

11. After having considered the facts in totality, we are of the view that no addition can be made in the hands of the assessee u/s 68 of the Act. Hence, we set aside the order of the Ld. CIT(A) and direct the Assessing Officer to delete the addition made by him. Thus, the ground of appeal of the assessee is allowed.

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

<b>This Order pronounced in Open Court on</b>	<b>01 /02/2019</b>
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Sd/-  
(MS.MADHUMITA ROY)  
JUDICIAL MEMBER

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

Ahmedabad; Dated 01/02/2019

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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-VI, Baroda
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad