

IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCHES, SURAT

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 407/Ahd/2016  
Assessment Year 2011-12**

Ashfaq Haji Yunus Noorani, (Prop. May Corporation), Plot No. 1, Abdullah Park Soc., B/h Zainab Hospital, Besides: Maskan Row House, Gorat-RGorat- Raner Road, Surat-395009 PAN: AAOPN6148A (Appellant)	Vs	The ACIT, Circle-5, Surat (Respondent)
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**Assessee by: Shri Hiren R. Vepari, A.R.  
Revenue by : Smt. Smitha V. Nair, Sr. D.R.**

Date of hearing : 16-11-2018  
Date of pronouncement : 18-01-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2011-12, arises from order of the CIT(A)-1, Surat dated 22-01-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short of the Act.

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

“(I) Addition u/s.68 Rs. 19,78,376:

(1) *On the facts and circumstances of the case and as per law, the learned Commissioner of Income-tax (Appeals) erred in confirming addition u/s.68 in respect of deposits made as under:*

*Gulambhai Prop. A.G. Fashion Rs. 1,50,000 Pari Fashion  
Rs.18,28,376*

(2) *The appellant submits that since the appellant has furnished necessary evidence regarding identity, genuineness and creditworthiness of the above deposits, there was no justification for the learned Commissioner of Income-tax (Appeals) to confirm.*

(3) *The learned Commissioner of Income-tax (Appeals), though pointed out to him the judgement of Gujarat High Court in case of Ranchhodbhai Jivabhai Nakhava (208-Taxman-35) requiring the Assessing Officer first to verify the facts from the Income-tax return of the creditors and then summon the lenders did not accept it.*

(II) Disallowance out of mobile expenses:

*On the facts and circumstances of the case and as per law and on the basis of the quantum of business, the learned Commissioner of Income-tax (Appeals) ought to have deleted disallowance of Rs. 12,805/- being 20% of mobile expenses of Rs. 64,025/-”*

3. The facts in brief is that the assessee has filed return of income declaring loss of Rs. 2,34,48,812/- on 28<sup>th</sup> Sep, 2011. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 19<sup>th</sup> Sep, 2012. During the course of assessment, the assessing officer noticed that assessee has claimed unsecured loan from 42 persons during the year under consideration. The assessing officer stated that assessee has furnished details of lenders in respect of 40 persons. However, the assessee has failed to file details in respect of three lenders i.e. in the case of Shri Gulabbhai, proprietor of A.G. Fashion the assessee has shown loan of Rs. 1,50,000/- and from M/s. Fashion Pari, the assessee has shown unsecured loan of Rs. 1828376/- and in respect of Bhakti Traders, the assessee has shown loan of Rs. 2 lacs during the year under consideration. The assessing officer stated that assessee has failed to submit any detail in respect of loan obtained from M/s. Bhakti Traders. He has further stated that in respect of loan obtained from other two lenders Shri Gulambhai and M/s. Pari Fashion, the assessee has failed to furnish information of bank statement, balance sheet return of income etc. to prove the creditworthiness and genuineness of

the lenders. Consequently, the assessing officer has made addition u/s. 68 of the act.

4. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has sustained the addition from these two lenders to the extent of Rs. 21,78,376/- as unexplained cash credit. The assessee preferred appeal before ITAT against the decision of Ld.CIT(A) in respect unsecured loan obtained from Shi Gulambhai Proprietary of A.G. Fashion to the amount of Rs. 1,50,000/- and another unsecured loan of Rs. 18,28,376/- obtained from M/s. Pari Fashion.

5. During the appellate proceedings before us, the ld. counsel has furnished paper book containing detail of information furnished before the assessing officer and ld. CIT(A) during the course of assessment and appellate proceedings including the text of judicial decision. He has contended that ld. CIT(A) has erred in sustaining the addition made by the assessing officer by not considering the information as confirmation, copy of return of income PAN etc. submitted during the course of assessment and appellate proceedings before ld. CIT(A) . On the other hand, the ld. departmental representative has supported the order of ld. CIT(A).

6. We have heard the rival contentions and perused the material on record carefully. The assessee has filed two grounds of appeal against the order of ld. CIT(A) dated 22/01/2016. The assessee has not pressed the ground of appeal relating to disallowance of Rs. 12,805/- being 20% of the Mobile expenses. Therefore, the same is dismissed as withdrawn. The

remaining ground of appeal is relating to the solitary issue of addition made u/s. 68 of the act in respect of deposit received from the following two depositors:-

- (i) Gulambhai Prop. A.G. Fashiion Rs. 1,50,000/-
- (ii) Pari Fashion Rs. 18,28,376/-

At the assessment, the assessing officer noticed that the assessee had obtained unsecured loan from 42 persons during the year under consideration. During the course of assessment proceedings, the assessee has submitted the required detail in respect of 40 persons out of the 42 persons from whom the unsecured loans were accepted. However in respect of the two persons as cited above in this order, the assessee has failed to furnish the details regarding bank statement, balance sheet, return of income etc. to prove the creditworthiness and genuineness of the transactions before the assessing officer. In this connection, it is noticed that vide letter dated 27<sup>th</sup> May, 2014, the assessee has pleaded before the Id. CIT(A) that the these two lenders were asking some time to furnish the required information therefore he had furnished the information along with confirmation during the course of appellate proceedings before the Id. CIT(A) and made request to admit the same as additional evidences under rule 46A of the IT Rule, 1962. The Id. CIT(A) has called remand report from the assessing officer on the additional information obtained from the assessee in respect of unsecured loan obtained from the aforesaid two parties. The assessing officer reported that the summons were issued to both the parties and neither of them have attended his office on the appointed date and nor filed any letter seeking adjournment . Hee concluded that both the depositors have failed to comply and in the absence of relevant details the

creditworthiness and genuineness of the lenders could not be established. We have gone through the information available on the record and noticed that the aforesaid summons were issued on 12<sup>th</sup> Jan, 2016 and served upon the two lenders on 13<sup>th</sup> Jan, 2016 requiring to furnish the various details of earlier period by 18<sup>th</sup> Jan, 2016 by the assessing officer. The assessee has brought to the notice to the Id. CIT(A) that 14<sup>th</sup> and 15<sup>th</sup> Jan, 2016 were holidays and on 16<sup>th</sup> & 17<sup>th</sup> Jan, 2016 the office of the consultants were closed, therefore, within short period of time the details required by the assessing officer could not be furnished. The assessee has pleaded that giving a short time amounts to denial of natural justice and has requested to provide one more opportunity to make the necessary compliance. After considering the above material facts, we observe that there appeared to be a reasonable cause as the assessee could not get adequate time to make compliance because of holidays the office of the consultant remained closed. In the light of the above facts in the interest of justice, we are of the view that it will be appropriate to restore this issue to the file of the assessing officer for deciding afresh after affording adequate opportunity to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18-01-2019

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 18/01/2019**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

आदेश कललम आषत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलअ अधकरण,  
सूरत