

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH "B" BENCH, AHMEDABAD

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER And
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.3136/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2010-11)

Smt. Shital R Shah B/508, Krishna Tower, Opp. Priya Cinema, Saijpur Bogha, Krishnangar, Ahmedabad- 382345	बनाम/ Vs.	ITO Ward- 7(2)(5), Nature View Building, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BEK PS2 377 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Tushar Hemani, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Mudit Nagpal, Sr. DR

सुनवाई की तारीख / Date of Hearing :24/04/2019
घोषणा की तारीख /Date of Pronouncement :25/04/2019

आदेश / ORDER

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax(Appeals)-7, Ahmedabad ('CIT(A)' for short) dated 29.09.2016 pertaining to the Assessment Year (AY) 2010-11. The assessee has raised the following grounds of appeal:-

"1. Ld. CIT(A) has erred in law and on facts in not properly appreciating and considering various submissions, evidences and supporting placed on record during the course of the assessment proceedings, and not properly appreciating various facts and law in their proper perspective.

2. *Ld. CIT(A) has erred in law and on fact in upholding the audition to the income of Rs. 5,81,000/- and rejection of books of accounts for the cash received as unsecured loan from various family members.*

3. *Ld. CIT(A) has erred in law and on facts in not directing the Ld. AO not to charging interest under section 234C and 234D of the Act.”*

2. The only effective ground of this appeal is against confirming the addition of Rs. 5,81,000/- in respect of unsecured loans. The Ld. Counsel for the assessee reiterated the submissions as made in the chart submitted during the course of hearing.

- *“AO made addition of Rs.5,81,000/- u/s 68 of the Act in respect of unsecured loans received from various friends and family members. The said addition came to be confirmed by CIT(A) as well.*
- *Both the lower authorities failed to appreciate facts in its entirety.*
- *At the outset, assessee has furnished list of persons from whom the concerned unsecured loans have been obtained and the said list contains Name, Address and PAN of all those 30 persons (Pgs.31-33 of P/B).*
- *Further, assessee has furnished confirmations of all the persons as well as acknowledgment of ITR and STI of many persons so as to discharge the initial onus cast on the assessee under the scheme of the Act. Please refer Annexure "A".*
- *AO had issued summons to two parties namely Shri Dasak K. Shah and Smt. Bharti U. Shah u/s 131. Though those persons could not appear before AO, they had filed letters to AO confirming the lactum of having advanced unsecured loans to the assessee (Pgs.85-86 of P/B).*
- *Perusal of above referred evidences would reveal that the concerned persons have confirmed the factum of having advanced such sum to the assessee.*
- *It is further revealed that such sum has also been repaid by the assessee.*

- Thus, all three ingredients as prescribed u/s 68 are proved by the assessee.
- AO was provided with the confirmations along with PAN and address of the concerned persons from whom assessee had received money. In case AO wanted to verify such transactions from the depositors, AO could have called for information from such persons by issuing notices u/s 133(6).
- Nothing prevented AO to carry out further inquiry on the basis of information furnished by the assessee. However, AO chose not to do anything of such sort. Rather, AO simply stated that assessee did not furnish requisite details and hence, he made the impugned addition.
- In fact, AO merely sat tight over such information and did not put in any efforts to verify the contents of the information and documentary evidences furnished by the assessee.
- S. 68 cast an initial burden on assessee to prove identity, genuineness and creditworthiness of lenders which has been discharged by placing on record documentary evidences as specified in Annexure "A". Having discharged the initial onus with satisfactory explanation, onus shifts on the revenue.
- It transpires that the objection of AO and CIT(A) is that assessee has not proved source of such persons to provide loans to the assessee.
- S. 68 does not require an assessee to prove source of the source of deposits. Hence, no addition is called for u/s. 68. Reliance is placed on:
 - DCIT vs. Rohini Builders 256 ITR 360 (Guj.)
 - Murlidhar Lahorimal vs. CIT 280 ITR 512 (Guj.)
 - CIT vs. Pragati Co. Op. Bank Ltd. 278 ITR 170 (Guj.)
 - CIT vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC)
- Having furnished the aforesaid details, the concerned credits, by no stretch of imagination, remain unexplained any further in the assessee's hands.
- AO and CIT(A) have, rather than commenting on the documentary evidences furnished by the assessee, commented on peripheral issues such as such person were not produced before AO, assessee could not have generated cash in his line of business, there was no need to accept such unsecured loans there was difference in entries in books,

etc. AO and CIT(A) failed to appreciate that while dealing with a case of addition u/s. 68, it needs to be checked whether the relevant three criteria have been fulfilled or not. Neither AO nor CIT(A) has acted in that direction. Rather, they perused the case from an altogether different and irrelevant angle. Such an approach is not tenable in the eye of law at all.

- *In the facts and circumstances of the case and in light of evidences placed on record, CIT(A) ought to have deleted the impugned addition.”*

3. Ld. Counsel for the assessee submitted that the authorities below have erred by not providing sufficient opportunity to the assessee. The AO failed to summon the persons who had given unsecured loans. He submitted that all confirmation, income tax return etc. was filed before the AO, merely that amount is less than 20,000/- should not be the basis for suspicion. He submitted that the amount was returned to the creditors. Thus, the addition so made should not have been sustained.

4. Per contra the Ld. DR oppose the submission and order of the authorities below. Ld. DR submitted that it was incumbent upon the assessee to prove the source of credit. He submitted that the assessee in order to avoid scrutiny kept the loan amount less or than Rs. 20,000/-. Thus, the authorities below are justified for making addition.

5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The Ld. CIT(A) sustained the addition by observing as under:-

“5.2 I have considered the assessment order and the submissions made by the appellant. The AO made the impugned addition holding that the explanations and cash book maintained by the appellant were full of discrepancies and it was clear

that the cash book was bogus and cooked up to put a veil on the unaccounted cash deposits in her bank account. The appellant, on the other hand, has contended that she had received unsecured loans in cash from various persons who were her friends and relatives and has submitted their confirmations. The submissions of the appellant have been considered and it is seen that during the assessment proceedings u/s. 143(3) of the Act, justification given for the cash deposits was completely different than that which was given during the proceedings u/s. 263. Initially, it had been claimed that the cash deposits had been made from cash available on hand with the appellant or by rotation of money withdrawn from her bank account, and then re-deposited. Subsequently, however, she changed her stand and claimed that the cash deposits were on account of loans taken from 30 persons who were close friends and relatives. Moreover, the only documents that have been submitted to prove the identity and creditworthiness of these deposits and genuineness of the transaction are copies of some ITRs and PAN cards. Some confirmations have also been filed which are self-created and do not have any evidentiary value.

Moreover, it is also seen that the cash book produced by the appellant has several discrepancies and as is seen from the submission made, the appellant states that she had lost all the data for the year under consideration and has re-written all the accounts on the basis of vouchers, etc. available. Thus, I am in agreement with the AO that these accounts produced by the appellant now cannot be relied upon and have been prepared subsequently to try to camouflage the nature of the deposits in the bank account. In view of the above discussion, the addition of Rs. 5,81,000/- is confirmed. Ground of appeal No. 2 is dismissed.”

6. We find merit in contention of the assessee that merely suspicion should not be the basis of addition. There should be some material when the assessee has proved credit by furnishing material in the form of confirmation etc. to discard such evidence. After considering the totality of the facts and the material placed before us we are of the view that the AO should ascertain the veracity of claim of the assessee by summoning the persons who have advanced unsecured loans to the assessee. We therefore set aside the orders of the authorities below and restore this issue to the file of the AO for decision afresh. The AO is hereby directed to verify the claim of the assessee by making necessary enquiries and by giving reasonable opportunity to the assessee. This ground of the assessee's appeal is allowed for statistical purposes.

7. Ground No.3 is in respect of charging of interest u/s. 234C and 234D of the Act being consequential nature also restore to the file of the AO.

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

Order pronounced in Court on the date mentioned hereinabove at caption page

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

TRUE COPY

Ahmedabad; Dated 25/ 04 /2019

TANMAY

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)-III, Baroda
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad