

**IN THE INCOME TAX APPELLATE TRIBUNAL,
SURAT BENCH, SURAT
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER
I.T.A. No.724/AHD/2017: Assessment Year: 2013-14**

Shri Gagan Bulganiin Sadh, 103_B, Niraman Apartment, Faram Mohallo Rustampura, Surat PAN:AGFPG 5033 L	Vs.	Income Tax Officer, Ward- 1(2)(2) Surat
Appellant		Respondent

Assessee by	Shri Rasesh Shah, CA
Revenue by	Ms. Anupama Singla, Sr. D.R.
Date of hearing	01.05.2019
Date of pronouncement	02. 05.2019

ORDER

PER O. P. MEENA, AM

- 1.** This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-2, Surat (in short "the CIT (A)") dated 20.1.2017 pertaining to Assessment Year 2013-14, which in turn has arisen from the assessment order passed under section 143 (3) dtd. 19.02.2016 of Income Tax Act, 1961 (in short 'the Act') by the Income Tax Officer, Ward-1(2)(2), Surat (in short "the AO").
- 2.** **Ground no. 1 states that On the facts and circumstances of the case as well as law on the subject, learned Commissioner of Income-tax(Appeals) has erred in confirming the action of the AO in making addition of Rs. 28,73,600 being loans /deposits as unexplained cash credit under section 68 of the Act.**
- 3.** The AO noticed that the assessee has obtained loans and advances of Rs. 6,83,500 from M/s. V. G Enterprise and Rs. 21,90,100 from M/s. Essbee Synthetics aggregating to Rs. 28,73,600. Since the notice under section 133(6) sent to these concerns were returned with remark left.

Therefore, the assessee was asked to prove current address and produce these persons. However, the assessee has only filed copy of bank statement and confirmation but failed to produce on the ground that that lady is very old and busy with social work. In view of these facts and circumstances, the AO treated as dismissed the same as unexplained cash credit under section 68 of the Act.

4. In appeal before CIT (A), the appellant was directed to file details of return of income filed by the persons. However, it was submitted that both the lenders are related to the appellant and having turnover below Rs. 1 crores hence, they have not maintained books of accounts nor have filed any return of income. It was contended that transactions were routed through booking channel and therefore, verifiable. In view of this, the CIT (A) observed that the appellant is not able to prove the genuineness of cash credit and also not maintaining any books of accounts. Therefore, the alternative claim of peak credit could not be accepted. Accordingly, the addition so made was confirmed.

5. Being aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the loan was taken from loan is taken from Smt. Varsha Kumari Sadh, wife of the assessee, proprietor Esseebe Synthetics and Smt. Rajesh Kumari, being grandmother of the assessee, proprietor V. G Enterprise. Both parties are having turnover below Rs. 1 crore hence, fall under section 44AD. As their net profit is 8% they are not maintaining any books of accounts nor filed any return of income being below taxable income. They have filed PAN, Bank statement showing source of fund and there is no cash deposits in their bank account. The nature of temporary loan and nature of bank account is current account running in regular course of business. The AO same have accepted these loan as genuine as no addition on this

account has been made in the case of the assessee, in subsequent assessment year 2014-15, made under scrutiny under section 143 (3) of the Act on 13.12.2016.(PB-2526). These person have filed return of income in the assessment year 2014-15 , copy of acknowledgement of return of income filed on 30.03 2016(PB-27) in case of Smt. Rajesh Kumari, and copy of acknowledgement in the case of Smt. Varsha Sadh (PB-28) is filed in Paper Book. During the course of assessment proceedings before the AO the assessee has filed copy of income-tax Acknowledgement and ledger account as a bank account of these parties/ person in which loan amount is duly reflected. Therefore, it was submitted that cash credit are genuine and family members of the assessee hence, their identity, creditworthiness and source of loan given is duly established. Therefore, addition sustained by the CIT (A) may please be deleted.

6. On the other hand, the Id. Sr. D.R. vehemently supported the orders of lower authorities.

7. We have heard the rival submissions and perused the relevant material on record. We find that the AO same have accepted these loan as genuine in the society assessment for the assessment year 2014-15 in respect of these two cash creditors in which loan were carry forward and new loans were taken /accepted by the assessee as no addition on this account has been made in the case of the assessee. Therefore, genuine of cash credit has been established. We also find that the assessee has filed copies of scrutiny assessment order made under section 143 (3) of the Act on 13.12.2016.(PB-2526). These person have filed return of income in the assessment year 2014-15 , copy of acknowledgement of return of income filed on 30.03 2016(PB-27) in case of Smt. Rajesh Kumari, and copy of acknowledgement in the case of Smt. Varsha Sadh (PB-28) is filed in Paper Book. During the course of assessment proceedings before the AO the assessee has filed copy of income-tax Acknowledgement and ledger account as a bank account

of these parties/ person in which loan amount is duly reflected. Considering these facts, we are of the considered opinion the assessee has identity, credit-worthiness and genuineness of transaction of the creditors and loan has been taken through booking channel and there is no cash deposits in the bank account of cash credit. In view of these facts, the addition of Rs. 28,73,600 is therefore, deleted. This ground of appeal is therefore, allowed.

8. In the result, the appeal of the assessee stands allowed.
9. The order pronounced in the open Court on 02.05.2019.

Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 2nd May,2019/opm
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

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Assistant Registrar, Surat