

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Hon. Accountant Member & Sri S.S. Godara, Hon. Judicial Member)**

**ITA No. 780/Kol/2018**  
Assessment Year: 2014-15

**Asstt. Commissioner of Income Tax, Circle-34, Kolkata.....Appellant**

**Vs.**

**Shri Amarjit Banthia.....Respondent**  
**23A, N.S. Road**  
**2<sup>nd</sup> Floor**  
**Room No.-8**  
**Kolkata - 700 001**  
**[PAN : ADKPB 5333 L]**

**C.O. No. 59/Kol/2018**  
Assessment Year: 2014-15

**Shri Amarjit Banthia.....Appellant**  
**23A, N.S. Road**  
**2<sup>nd</sup> Floor**  
**Room No.-8**  
**Kolkata - 700 001**  
**[PAN : ADKPB 5333 L]**

**Vs.**

**Asstt. Commissioner of Income Tax, Circle-34, Kolkata.....Respondent**

**Appearances by:**

*Shri Dhrubajyoti Ray, JCIT D/R, appearing on behalf of the Revenue.*  
*Shri S.M. Surana, Advocate, appeared on behalf of the assessee.*

Date of concluding the hearing : December 4<sup>th</sup>, 2019

Date of pronouncing the order : January 15<sup>th</sup>, 2020

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the revenue and the cross-objection filed by the assessee are directed against the order of the Learned Commissioner of Income Tax (Appeals) - 10, Kolkata, (hereinafter the "Id.CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 24/01/2018, for the Assessment Year 2014-15.

2. At the outset we find that there is a delay of 6 (six) days in filing of this appeal by the assessee. After perusing the petition for condonation, we are convinced that the assessee was prevented by sufficient cause from filing the appeal on time. Hence the delay is condoned and the appeal is admitted.

3. Heard rival contentions. The sole ground raised by the revenue in this appeal is as under:-

*"1. That on the facts and circumstances of the case, the Ld. CIT(A)-10, Kolkata has erred deleting the disallowance of sundry unsecured loans to the tune of Rs.3,59,01,331/- (including interest of Rs.8,01,331/-) made by the assessing officer since the three golden rules of identity, creditworthiness of creditors and genuineness of transactions have all failed during the assessment stage."*

4. We find that the ld. CIT(A) has at para 10 to 13 of his order, held as follows:-

*"10. I have carefully gone through the Ld. A.O.'s order and submission of the appellant during the course of Assessment Proceedings as well during Appellate proceedings. It is seen that all the lenders are Registered NBFC companies permitted by the Reserve Bank of India to continue the business of Lending and Investment. All these companies have been regular in filing their returns with Income Tax as well as ROC authorities and the same have been accepted by their respective A.O. Nowhere did I find any reference that their returns have been rejected or challenged by the department. Also, I find that the Ld AO has not made any reference to the Assessing Authorities of these 5 companies from whom the appellant has taken loans, and ascertained the status from those assessing Officers. In the factual matrix which emerges, it is seen that the assessee has discharged its primary onus by filing the details relating to the Loan Creditors, and thereafter the onus has shifted to the Ld. AO. It is also seen that some of the representatives of the Loan Creditor Companies have appeared before the Ld AO and have admitted to having given the loans. The Ld. AO has ignored these evidences which favour the appellant. In fact it is observed that the Ld AO has relied upon certain statements of Shri Jivendra Mishra and Gopal Maity before Officers of the Investigation Wing, and has not confronted the assessee with such adverse material, and this alone renders the order of the Ld AO weak in law. Reliance is placed on Hon'ble Supreme Court's judgment in the case of CIT Vs. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (Se) for the proposition that if the Assessing Officer has issued summons u/s 133(6) it is his duty to bring the process to a logical conclusion and non-response by such person cannot be held against the assessee. The judgment is squarely applicable to the case of the assessee.*

11. *The additions in cases of Swito Finance and Estates Pvt Ltd., Castle commodities Pvt. Ltd. and Mahavir Finance Pvt. Ltd. has been made relying on the statement of the person Mr. Jivendra Mishra who is neither the director or employee in the company. As such there is no evidentiary value of such statement. It is also seen that the appellant adduced ample evidences in support of the identity and creditworthiness of the lenders and genuineness of transactions and no discrepancy whatsoever has been found. Besides, in cases where the directors of the lenders appeared have admitted to have given loans to the appellant. The nature of receipt in earlier year or explanation regarding number of staff is irrelevant as the same is the internal matter of the lender company with which assessee is not concerned. In any case, the appellant has*

*satisfactorily explained the source of receipts. It is also pertinent that the appellant has filed returned incomes of Rs.45,21,990/- for the A.Y 2013-14, Rs.71,05,970/- for this subject A.Y 2014-15, Rs.83,70,930/- for the A.Y 2015-16 and Rs.5,57,90,660/- for the A.Y 2016-17. These do not have, in my considered opinion any direct link with the matters at hand, but they do suggest that the assessee is a compliance taxpayer in a larger picture.*

*12. Under the facts and circumstances, I am of the considered view that the addition is merely based on surmises and conjectures and on material not relevant for the case of the appellant-taxpayer. Therefore I find that the additions made by the Ld AO are not sustainable on the facts of the case, and the law applicable. The same are therefore deleted, and the ground allowed in favour of the assessee.*

*13. Regarding disallowance of interest on loan, the same being consequential in nature to the loan, also remain unsustainable, and as a corollary are deleted. As a result grounds No. 2-5 stand allowed."*

5. The credits in question are loans obtained by the assessee from NBFCs which are registered with Reserve Bank of India. On a query from the Bench, the ld. Counsel for the assessee, submitted that, the loans have been repaid to these NBFCs in the subsequent years. Under these circumstances, we find no infirmity in the order of the ld. CIT(A) and uphold the same and dismiss this appeal of the revenue.

6. The cross-objection is only in support of the order of the ld. CIT(A). Hence the same is allowed.

7. In the result, both the appeal of the revenue and the cross-objection filed by the assessee are dismissed.

***Kolkata, the 15<sup>th</sup> day of January, 2020.***

***Sd/-***  
**[S.S. Godara]**  
 Judicial Member

Dated : 15.01.2020  
 {SC SPS}

***Sd/-***  
**[J. Sudhakar Reddy]**  
 Accountant Member

*Copy of the order forwarded to:*

1. **Shri Amarjit Banthia**  
**23A, N.S. Road**  
**2<sup>nd</sup> Floor**  
**Room No.-8**  
**Kolkata – 700 001**
2. **Asstt. Commissioner of Income Tax, Circle-34, Kolkata**
3. **CIT(A)-**
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches