

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**  
**&**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6064/Mum/2018**  
**(Assessment Year: 2013-14)**

ITO-25(3)(1) Room No.603 C-10, 6 <sup>th</sup> Floor Pratyakshkar Bhawan BKC Complex, Bandra(E) Mumbai-400 051	Vs.	M/s Mechan Resorts LLP B/301, Vastu Apartments, Military Road Juhu Mumbai-400 049
		<b>PAN/GIR No.AASF3421D</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Mrs. Jyotilakshmi Nayak, Addl.CIT, (DR)
Assessee by	Shri. Vijay Mehta, AR
<b>Date of Hearing</b>	<b>03/12/2019</b>
<b>Date of Pronouncement</b>	<b>10/01/2020</b>

**आदेश / ORDER**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the revenue is directed against, the order of the Commissioner of Income Tax (Appeals)-37, Mumbai, dated 14/08/2018 and it pertains to Assessment Year 2013-14.

2. The revenue has raised the following grounds of appeal:-

01. "On the facts arid circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition on account of unexplained cash credit U/s 68 of the I.T, Act, 1961 to the tune of Rs.1,75,00,000/- ,Unexplained expenditure u/s 69C of the LT. Act, 1961 lo the tune of Rs.12,85,151/-, Cash deposits reflected in A1R/26AS to the tune of Rs.56,535/- and Contract Income reflected in A1R/26AS of Rs.98,250/- as unexplained cash credit u/s 68 of the I/T. Act, 1961."

02. "On the facts and circumstances of the case and in law, the Id, CIT(A) erred in deleting the addition made u/s 68 of the Act even though

*in the assessment order as well as in remand report major discrepancies on the issue of identity and credit worthiness of the lender, have brought in"*

*03. "On the facts and circumstances of the case and in law, the Id. CIT(A) failed to appreciate the fact that in the assessment order as well as in remand report the AO has clearly established the unexplained cash credit and accordingly, the interest expenditure,"*

*04. "The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

*05. "The appellant craves leave to amend or to alter any ground or add new grounds, which may be necessary."*

3. The brief facts of the case are that the assessee is engaged in the business of running resorts, filed its return of income for AY 2013-14 on 30/09/2013, declaring total income at Rs. Nil. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has taken unsecured loan to the tune of Rs.1,75,00,000/- from Mr. Ajeet N. Barshikar. Therefore, he called upon the assessee to file necessary evidences, including confirmation letter, copies of ITR etc., of the lender to prove identity, genuineness and creditworthiness of the loan creditor. Further, in order to verify the claim of the assessee a notice u/s 133(6) was issued to the lender. In response, the assessee has filed necessary evidences, including details of loans taken from the loan creditor. The Ld. AO after considering relevant submissions of the assessee and also taken note of details furnished during the course of assessment proceedings, came to the conclusion that the assessee has failed to prove identity of the persons, genuineness of transactions and creditworthiness of the parties and accordingly, made additions of Rs. 1.75 crores as unexplained cash credits u/s 68 of the Act, 1961. The relevant findings of the Ld. AO are as under:-

*“Therefore, in the light of the various judicial pronouncements and the facts of the case, it is clear that the creditworthiness and genuineness of the said lender is not established. The assessee has not been able to prove the creditor was capable of giving loans. Enquiries conducted revealed that the lender has not filed even ITR even when received taxable income from assessee which is surprising, and it implies that the transaction is not genuine. Bank statement furnished by lender is also not showing receipt of foreign remittances. Therefore, it is held that the assessee could not prove the genuineness of transaction and creditworthiness Of the lender to the satisfaction of the Assessing Officer within the meaning of section 68 of the Income Tax Act. An amount of Rs. 1,75,00,000/- lacs received from Shri Ajit Bharshikar as Loan is added back to the income of the assessee as unexplained cash credit u/s 68 of the Act. Penalty proceedings u/s.271(1)(c) r.w. Explanation-I are initiated separately for furnishing inaccurate particulars of income leading to concealment of income chargeable to tax.”.*

4. Similarly, the Ld. AO has made additions towards unexplained expenditure being interest paid on unsecured loans to Mr. Ajeet N. Barshikar at Rs. 12,85,151/-, on the ground that since, the assessee has failed to prove genuineness of transactions, consequent interest paid on said loan cannot be allowed as deduction. Likewise, the Ld. AO had made additions towards, cash deposits found in ICICI Bank account amounting to Rs. 56,535/-, on the basis of AIR/26AS information and also, an amount of Rs. 98,250/-, towards unexplained cash credit u/s 68, in respect of amount received from M/s. Gartner India research

5. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions along with certain additional evidences, which has been reproduced at para 4 of the Id. CIT(A) order. The Ld.CIT(A), during the appellate proceedings has forwarded additional evidences filed by the assessee to the Ld.AO

for examination and verification. The Ld. AO vide his remand report dated 29/06/2018 commented upon additional evidences filed by the assessee and their admissibility. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of remand report of the Ld. AO, admitted additional evidences filed by the assessee under Rule 46A(1), on the ground that the additional evidences submitted by the assessee are crucial to the ground raised in appeal. Further, the impugned order and remand reports do not contains any details to controvert the assertion of the assessee, nor do they bring on record anything to establish that the assessee willfully abstained from attending during the scrutiny proceedings. Therefore, he opined that it is necessary to admit additional evidences filed by the assessee and accordingly, taken on record additional evidences filed during the course of appellate proceedings.

6. Insofar as, the issue involved on merits regarding additions made by the Ld. AO towards unsecured loans taken from Mr. Ajeet N. Barshikar and consequent interest paid thereon, the Ld.CIT(A) has recorded categorical findings that the assessee has submitted complete details and evidences with regard to loan transactions of Rs. 1.75 crores, taken from Mr. Ajeet N. Barshikar. The assessee has also explained source of funds of Mr. Ajeet N. Barshikar. Further, although the Ld. AO has pointed out certain errors, mismatches and other details, in respect of evidences filed by the assessee, but such errors are relates to loan creditors, but not to the assessee. He, further, observed that the loan transactions have been routed through banking channels. Although, the Ld. AO in his remand report commented upon mismatch in confirmation letter and ledger extract,

but such mismatch has been reconciled during the appellate proceedings. He further observed that out of a sum of Rs. 1.75 crores, a sum of Rs. Rs. 50 Lacs was received during the assessment year 2012-13 and accordingly, the same cannot be added u/s 68 of the I.T.Act, 1961, for the year under consideration. In respect of balance amount, the assessee has filed complete details of loan creditors, including his source of source. Therefore, he opined that the Ld. AO was erred in making additions towards unexplained loans and consequent interest without bringing on record, how details filed by the assessee was not sufficient to establish the identity, genuineness of transactions and creditworthiness of the parties. The relevant findings of the Ld.CIT(A) are as under:-

*9.10 The section 68 can be invoked when there is credit of amounts in the books mainlined by the assessee (b) such credit has to be a sum of money during the previous year (c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The expression the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record. The opinion of the AO is required to be formed objectively with reference to the material on record file. While considering the explanation of the assessee, the AO has to act reasonably-application of mind is the sine qua non for forming the opinion. Phrase appearing in the section - nature and sources of such credits - should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. The evidence produced by the assessee cannot be brushed aside in a causal manner. In the matters related to section 68 burden of proof cannot be discharged to the hilt. Such matters are decided on the particular facts of the case as well as on the basis of .preponderance of probabilities. Credibility of the explanation, not the materiality of evidences, is the basis for deciding the cases falling under Section 68 of the IT Act 1961.*

9.11 The Hon'ble ITAT Mumbai in the case of ITO vs Anand Shelters Pvt Ltd, (2012) 20 Taxmann.com 153 has enumerated certain principles which would be extremely useful in understanding the issue in hand. It has been stated in the said judgment that over the years, law regarding cash credits have evolved and has taken a definite shape. A few aspects of law u/s.68 can be enumerated.

1. Sec. 68 can be invoked when there is a credit of amounts in the books maintained by the assessee, such credit is a sum of money during the previous year and either the assessee offers no explanation about the nature and source of such credits or the explanation by the assessee in the opinion of the AO is not satisfactory.
2. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be formed objectively with reference to the material on record.
3. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner,
4. The onus of proof is not static. The initial burden lies on the assessee to establish the identity and the credit worthiness of the creditor as well as the genuineness of transaction.
5. The identity of creditors and be established by either furnishing their PANs or assessment orders. The genuineness of the transaction can be proved if it was shown that the money was received by A/c payee cheque. Creditworthiness of the lender can be established by attending circumstances.

9.12 During the assessment proceedings, the appellant furnished all the relevant details during the course of the assessment proceedings and establish identity, and credit worthiness of the creditors. Accordingly, the appellant had duly discharged its onus by furnishing the identity and address of the parties. Further, the source of receipt through banking channels to substantiate the genuineness of the credit reflected in its books of Account, After considering the totality of facts, rival submissions, the applicable law and on the basis of discussion mentioned above, I find force in the argument of the appellant and draw strength from the judicial decision, I have come to the conclusion that nature and source of loan transactions of Rs.1,75,98,753/- stands explained. Consequently, addition made by A.O. cannot be sustained. Therefore, A.O. is directed to delete the addition of Rs,1,75,98,753/-, This ground is allowed.

7. Insofar as, additions made by the Ld. AO towards unexplained expenditure being interest paid on loan taken from Mr. Ajeet N. Barshikar, the Ld.CIT(A) held that since, the loan transaction has been considered as genuine, consequent interest paid thereon

cannot be disallowed as unexplained expenditure. Accordingly, directed the AO to delete additions. Insofar as, additions made by the Ld. AO towards cash deposits found in ICICI bank account, the Ld.CIT(A) held that although, the assessee has filed necessary details during the remand proceedings, but the Ld. AO did not find any discrepancy in the documents. Therefore, directed the Ld. AO to delete additions of Rs. 56,535/-. Similarly, the Ld.CIT(A) has deleted additions made by the Ld. AO towards amount received from Gartner India Research for Rs. 98,250/-, on the ground that the assessee has explained the transactions with evidences. Aggrieved by the Ld.CIT(A) order, the revenue is in appeal before us.

8. The Ld. DR submitted that the Ld.CIT(A) was erred in deleting the addition on account of unexplained cash credit u/s 68 of the I.T.Act, 1961 to the tune of Rs. 1.75 crores, without appreciating the fact that the Ld. AO has brought out major discrepancies in the issue of identity and creditworthiness of the lender. The Ld. DR further submitted that the Ld.CIT(A) has failed to appreciate the fact that in the assessment order, as well as in remand report, the Ld. AO has clearly established the unexplained cash credit and accordingly, interest expenditure has been disallowed. The Ld.CIT(A) without considering the facts brought out by the Ld. AO, simply deleted additions only on the basis of additional evidences filed by the assessee, even though the Ld. AO has rejected additional evidences filed during the course of remand proceedings. Insofar as, disallowances of interest expenditure and other additions regarding cash deposits found in AIR information, the Ld. DR submitted that the Ld.CIT(A) without assigning any reasons simply deleted additions on one line finding that the assessee has reconciled difference. But, fact

remains that no evidence has been placed on record before the Ld. AO to establish the transactions. The Ld. CIT(A) without appreciating those facts has deleted additions made by the Ld. AO and hence, his order should be reversed.

9. The Ld. AR, for the assessee, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that the assessee has filed complete details, in respect of unsecured loan taken from Mr. Ajeet N. Barshikar along with confirmation letters, bank statement and income tax returns filed for AY 2012-13 & 2013-14 to establish the identity, genuineness of transactions and creditworthiness of the parties. The Ld. AR, further submitted that the assessee has also filed a comparative chart explaining source for amount given to the assessee. The Ld.CIT(A) after considering relevant facts has rightly deleted additions made by the Ld. AO towards unsecured loans and consequent interest u/s 68 of the I.T.Act, 1961. Insofar as, other additions regarding cash deposits found in ICICI bank account and amount received from Gartner India Research, the assessee has reconciled information available in AIR data base to return of income filed for the year and on the basis of explanations furnished by the assessee, the Ld.CIT(A) has deleted additions. Therefore, there is no reason to interfere in the findings of the Ld.CIT(A).

10. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Ld.CIT(A) had recorded categorical findings, in light of various evidences filed by the assessee, including confirmation letters and corresponding bank statement of Mr. Ajeet N. Barshikar to come to the conclusion that loan transactions between the

assessee and the loan creditor is genuine transaction, which is supported by necessary evidences. The Ld.CIT(A) has also negated observations made by the Ld. AO with regard to discrepancy in certain documents filed by the assessee with regard to loan creditor and noted that said discrepancy in the documents is nothing to do with the transactions with the assessee. We further noted that the assessee has filed a paper book explaining the transactions between the assessee and the loan creditor. We find that the assessee has filed complete set of documents with regard to each and every amount of loan given to assessee right from 03/01/2012 to 02/11/2012 and also explained corresponding source of income for amount transferred to the assessee. We further noted that the loan creditor has explained the source of income out of encashment of mutual funds investments, sale of listed equity shares for which necessary contract notes from brokers and bank statement has been filed. Similarly, in respect of an amount of Rs. 20 Lacs transferred on 16/04/2012, the source has been explained from amount received from Saritha Barshikar wife of lender, for which necessary bank statement has been enclosed. The assessee has also filed income tax copy of loan creditors for the relevant financial year. From the above, it is very clear that the identity, genuineness of transactions and creditworthiness of the loan creditor has been explained with necessary evidences. The Ld.CIT(A) after considering relevant facts has rightly come to the conclusion that the assessee has discharged onus cast upon u/s 68 of the I.T.Act, 1961, in respect of unsecured loans taken from Mr. Ajeet N. Barshikar. No contrary evidence has been brought on record to prove findings of facts recorded by the Ld. CIT(A) are incorrect. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the revenue.

11. Insofar as, additions towards interest paid on unsecured loans as unexplained expenditure, once loan transactions between the assessee and the creditor has been found to be genuine transactions, which satisfies the conditions prescribed u/s 68, then interest paid thereon cannot be considered as unexplained expenditure. Accordingly, we do not find any error the findings of the Ld.CIT(A). Insofar as, additions made towards cash deposits in ICICI banks and amount received from Gartner India Research, we find that the Ld.CIT(A) has recorded categorical findings, in light of evidences filed by the assessee that said information has been reconciled with reference to return of income filed for the year. Hence, we are inclined to uphold the findings of the Ld. AO and reject ground taken by the revenue.

12. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 10 /01/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 10 /01/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**