

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'SMC-1', NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3759/Del./2019  
Assessment Year: 2015-16

Shri Atul Mittal, D-16, Udyog Nagar, Rohtak Road, New Delhi	<b>Vs.</b>	ITO, Ward-14(3), New Delhi
<b>PAN :AJHPM4655M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Ms. Rano Jain, Adv., Shri Pranshu Singhal, CA Ms. Mansi Jain, CA
Respondent by	Shri. R.K. Gupta, Sr. DR

Date of hearing	06.08.2020
Date of pronouncement	11.08.2020

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee is directed against order dated 27/02/2019 passed by the learned CIT(Appeals)-5, New Delhi [in short 'the Learned CIT(A)'] for assessment year 2015-16 raising following grounds:

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition amounting to Rs. 43,46,970/- on account of unsecured loans, made by A.O. under section 68 of the Act.*
3. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the action of the AO in making addition of Rs. 3,26,715/- despite the fact that the*

*credits having appeared in earlier years no addition u/s 68 is called for.*

4. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the action of the AO rejecting the explanation and evidences filed by the assessee to prove the genuineness of the transaction and creditworthiness as well as the identities of the lenders.*
5. *The appellant craves leave to add, amend or alter any of the grounds of appeal.*

**2.** Briefly stated facts of the case are that the assessee was engaged in running business of footwear manufacturing in the name of a proprietary concern, M/s Sun Infotech Asia. The assessee filed return of income for the year under consideration on 30/09/2015 declaring total income of ₹ 6,11,180/-. The return of income filed was selected for scrutiny assessment and assessment proceedings were commenced by way of issue of statutory notices under Income Tax Act, 1961 ( in short 'the Act'). The initial notices were complied, however, the Assessing Officer has mentioned that during the period of the assessment proceeding, the assessee had sought many adjournments. The Assessing Officer called for details in respect of the unsecured loan received during the year under consideration but the assessee failed to furnish Income-tax particulars of the unsecured loan parties and stated that those parties did not file their income-tax return. In response to the show cause notice issued, the assessee vide letter dated 20/12/2017 (i.e. on the date of the order) filed reply, which has been reproduced by the Assessing Officer in the assessment order. According to the reply of the assessee, unsecured loans were received from following persons and they did not file their return of Income being income below the exemption limit:

1. Mrs. Sunita Mittal, wife of the assessee- source of money in her hand was explained as return of loans given earlier to Mr Hari Kishan Agarwal and M/s Arjun Gupta (HUF).
2. M/s Atul Mittal (HUF), Karta of which is the assessee himself.
3. Ms. Samya Mittal and Mr. Aryan Mittal-source of money in their hands was explained as fixed deposits made through gift from relatives

**2.1** In absence of copy of return of income filed by the alleged unsecured loan creditors, the Assessing Officer was of the view that identity and creditworthiness of those parties was not proved and therefore the assessee failed to explain satisfactorily the nature and source of the cash credit. According to him, the assessee failed to discharge its onus in terms of section 68 of the Act and therefore, he made addition of ₹ 43,46,970/-. In support of the addition made, he relied on the various decisions of the Hon'ble High Courts.

**2.2** On further appeal before the Ld. CIT(A), the assessee submitted that mere non-filing of the Income-tax return cannot be conclusive to establish the creditworthiness of the creditors. According to the assessee, source of loan advanced by Mrs. Sunita Mittal was actually loan received back from various parties and thus her creditworthiness was duly established.

**2.3** The learned CIT(A), however, rejected the contentions of the assessee and sustained the addition made by the Assessing Officer. Regarding the loan of ₹ 2,25,000/- from M/s Atul Mittal (HUF), he sustained the addition observing as under:

*“6.1 It is observed from the balance sheet of appellant that Rs. 2,25,000/- has been shown as unsecured loan from Atul Mittal (HUF) as on 31.03.2015. During appellate proceedings a confirmation was submitted from Atul Mittal (HUF) for confirming such balance. Alongwith this, a photo copy of bank statement has been provided, wherein certain cash deposits are reflected and also shown the money paid to the appellant. It is interesting to note that this is the HUF of appellant himself and no source of income has been provided for such HUF to generate and justify these cash deposit. Further, the confirmation is not duly signed by the appellant in his capacity as individual and the address in the bank account is mentioned as B-2/7, Main Wali Nagar, Delhi-87, which is not the address mentioned by the appellant in this appeal.”*

**2.4** Regarding, credit shown from Mrs Sunita Mittal, he sustained the addition, observing as under:

*“6.4 I have gone through the submissions/documents provided by the AR of appellant. It is observed from the confirmation given by Mrs. Sunita Mittal to support the said deposit in the hands of appellant that it is only a confirmation of outstanding balance. It is stated that Smt. Sunita Mittal has received these funds from Mr. Flarikrishan Agarwal and Arjun Gupta (HUF). On going through the confirmation of account of Arjun Gupta (HUF), given to Mrs. Sunita Mittal, it is observed that Rs. 6,70,000/- is the outstanding balance as on 31.03.2015, which was received by her on 25.02.2015. it is not clear that how this money has been received by Mrs. Sunita Mittal and the purpose for this loan is also not justified . Further, this loan was given to the appellant without any interest therefore it is not duly correlated that how this amount is source fund for Mrs. Sunita Mittal to give to Mr. Atul Mittal. It is also not elaborated that why this fund has been routed through Mrs. Sunita Mittal, when it could have been directly given to appellant by Arjun Gupta (HUF). Therefore, this arrangement does not justify the contention of appellant.*

*6.5 Further, with reference to the amount received from Mr. Flarikrishan Agarwal, it is seen that Rs. 25,00,000/- has been shown as opening balance on 01.04.2014, which is repaid on 19.02.2015. it is also seen from the said conformation that Mrs. Sunita Mittal have been provided interest of Rs. 2,02,500/- during the year under consideration, which is not shown as income by Mrs. Sunita Mittal as per her statement of income. If this amount is considered, the income of Mrs. Sunita Mittal will be above taxable limits. This action of not showing interest income appears to be an attempt to show that Mrs. Sunita Mittal is not suppose to submit return of income, which is against the facts.*

*6.6 Further, the total loan amount received by Mrs. Sunita Mittal does not match with the loans given to the appellant which is much lower than the loans given and no statement of affairs of Mrs. Sunita*

*Mittal has been provided to justify the amount of full loans given to Atul Mittal nor proves the source of the same to the full extent.*

*6.7 Therefore looking to the facts of this case and the submissions/ documents as well as discussions in the forgoing paragraphs, it is seen that the appellant could not justify the creditworthiness and genuineness of the unsecured loans in his hands and I do not find any reason to differ with the findings by the Assessing Officer.”*

**3.** Before us, the learned counsel of the assessee appeared through videoconferencing facility and filed a paper-book electronically. This paper-book has been found to be not certified as per the requirement of the ITAT Rules i.e. no certificate of documents, which were filed before the lower authorities. The learned DR also appeared through videoconferencing and relied on the order of the learned CIT(A).

**4.** We have heard rival submissions of the parties and perused the relevant material on record. First of all, before us, the learned counsel submitted that unsecured loan of ₹ 43,46,970/- was outstanding in the books of the assessee as on 31/03/2015 from following three parties:

- (a) Atul Mittal HUF : Rs. 2,25,000/-
- (b) MD Shaukat Ali: Rs. 1,01,715/-.
- (c) Sunita Mittal: Rs. 40,20,255/-.

**4.1** The learned counsel submitted that out of the above unsecured loans from Atul Mittal and MD Shaukat Ali were not received during the year. According to her, as there was no transaction with above two parties during the year under consideration and the balance as on 31/03/2015 stood the same as of the opening balance, because of that reason, the addition of these amounts under section 68 of the Act was not justified. The

learned counsel refer to the confirmation ledger of the parties filed at page No. 41 and 42 of the paper-book.

**4.2** On perusal of the order of the lower authorities, we find that the plea of unsecured loan received from Atul Mittal (HUF) in earlier year, has been made for the first time and therefore, the claim of the assessee along with documentary evidences, to substantiate that said loan was not received in the year under consideration, could not be examined by the lower authorities.

**4.3** Regarding the claim of loan from MD Shaukat Ali, we find that no such name of the creditor was submitted before the lower authorities. The claim of the loan from this party has been made for the first time before the Tribunal. The assessee has filed an audited balance sheet as on 31/03/2015, which is available on page No.3 (three) of the paper-book. We do not understand, how the assessee failed to explain name of this unsecured loan party, if it was appearing in the audited balance-sheet. Further, the claim has been made before us for the first time that this loan was not obtained in the year under consideration.

**4.4** In our opinion, it was the duty and responsibility of the assessee to file the claim correctly before the lower authorities along with supporting documents, however, in the interest of the substantial justice, we feel it appropriate to restore the issue of loan from M/s Atul Mittal (HUF) and MD Shaukat Ali back to the file of the Assessing Officer for deciding the year in which loan was received, on the basis of the documentary evidences, which will be filed by the assessee. If the loans are not received in the year under consideration, then no addition u/s 68 of the Act can be made in the year under consideration.

**4.5** Regarding credit appearing in the name of Mrs. Sunita Mittal, the learned counsel referred to ledger account of Sunita Mittal, appearing in the books of proprietary concern M/s Sun Info Tech Asia, which is available on page 27 of the paper book. She submitted that total Rs.57,71,100/- was received from Sunita Mittal during the year under consideration but out of which Rs.17,50,845/- was returned back and net balance of Rs.40,20,255/- was outstanding as unsecured loan as on 31/03/2015. The said ledger account is reproduced as under:

<b>SUN INFO TECH ASIA</b> D-16, UDYOG NAGAR, MAIN ROHTAK ROAD, DELHI -110041, TEL- 011-45513800 <b>LEDGER</b> ( From 1-4-2014 to 31-3-2015 ) <b>Account : SUNITA MITTAL</b>							
Date	Type	Vch No.	Particulars	Narration	Debit(Rs.)	Credit(Rs.)	Balance(Rs.)
01-04-2014			Opening Balance		12,20,845.00		12,20,845.00 Dr
02-04-2014	Rcpt		Dr PUNJAB NATIONAL BANK-275			15,00,000.00	2,79,155.00 Cr
11-05-2014	Rcpt		Dr BANK OF INDIA ( 604920110000581)			52,500.00	3,31,655.00 Cr
26-05-2014	Rcpt		Dr PUNJAB NATIONAL BANK-275			4,000.00	3,35,655.00 Cr
27-06-2014	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			60,000.00	3,95,655.00 Cr
25-09-2014	Pymt		Cr KOTAK MAHINDRA BANK A/C 54111111		15,000.00		3,80,655.00 Cr
29-09-2014	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			11,200.00	3,91,855.00 Cr
25-10-2014	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			70,000.00	4,61,855.00 Cr
04-11-2014	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			15,000.00	4,76,855.00 Cr
17-11-2014	Pymt		Cr KOTAK MAHINDRA BANK A/C 54111111		15,000.00		4,61,855.00 Cr
03-12-2014	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			3,900.00	4,65,755.00 Cr
09-01-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			5,000.00	4,70,755.00 Cr
12-01-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			70,000.00	5,40,755.00 Cr
02-02-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			13,500.00	5,54,255.00 Cr
19-02-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			5,00,000.00	10,54,255.00 Cr
19-02-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			19,85,000.00	30,39,255.00 Cr
25-02-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			5,00,000.00	35,39,255.00 Cr
04-03-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			1,74,000.00	37,13,255.00 Cr
30-03-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			3,07,000.00	40,20,255.00 Cr
30-03-2015	Pymt		Cr KOTAK MAHINDRA BANK A/C 54111111		5,00,000.00		35,20,255.00 Cr
31-03-2015	Rcpt		Dr KOTAK MAHINDRA BANK A/C 54111111			5,00,000.00	40,20,255.00 Cr
Total					17,50,845.00	57,71,100.00	
Credit Balance					<b>40,20,255.00</b>		
Grand Total					57,71,100.00	57,71,100.00	

For SUN INFO TECH ASIA

  
 Authorised Signatory

**4.6** It has been claimed that Mrs. Sunita Mittal did not file Income-tax return for the assessment year concerned being income below exemption limit, but money was given out of the money received from Mr. H.K. Agrawal, M/s. Arjun Gupta (HUF) and salary received. The learned counsel in synopsis has filed source of each amount of the credit along with confirmation from M/s HK Agrwal, ITR return of HK Agrwal, Confirmation from M/s Arjun Gupta (HUF), ITR Return of Arjun Gupta (HUF) and Kotak Mahindra Bank statement of Mrs Sunita Mittal. Major source on unsecured loan advanced has been explained as return of loan given earlier from Mr. HK Agrwal along with interest, Loan received from Arjun Gupta(HUF) and salary received from M/s ICA International Private Limited. The same explanation was submitted before the learned CIT(A). The learned CIT(A) found discrepancy in the confirmation of Atul Mittal (HUF). He found that the loan re-payment was made to Mrs. Sunita Mittal on 25/02/2015, still the outstanding balance of ₹ 6,70,000/- was shown on 31/03/2015. He also noted that the interest income of ₹ 2,02,500/- to Mrs. Sunita Mittal was shown in the confirmation filed by Mr. HK Agrwal, but the same was not included by Mrs. Sunita Mittal in the computation of her income, a copy of which has been filed on page 25 of the of the paper book. He also observed that no statement of the affairs of Mrs Sunita Mittal had been provided to justify the amount of loans given to the assessee.

**4.7** We find that before us the learned counsel provided detail of each entry of the credit received from Mrs Sunita Mittal and also informed source of the each credit therefore, in the interest of the

substantial justice, we feel it appropriate to restore this issue back to the file of the Assessing Officer for examining the nature and source of the credit in terms of section 68 of the Act. The assessee may file all the documentary evidences in support of the credits appearing in ledger account of Sunita Mittal in the books of the assessee.

**4.8** In view of the above discussion, the grounds of the appeal are allowed for statistical purposes.

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

***Order pronounced in the open court on 11<sup>th</sup> August, 2020.***

***Sd/-***  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> August, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi