

**IN THE INCOME TAX APPELLATE TRIBUNAL "C"**  
**(Virtual Court Hearing) BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.183/Kol/2020**  
Assessment Year: 2015-16

**Swapan Kumar Ghosh.....Appellant**  
**EksosraKuler Match,**  
**Chamrail,**  
**Howrah- 711114.**  
**[PAN: ADVPG3073B]**

**vs.**

**ITO, Ward-47(1), Kolkata.....Respondent**

**Appearances by:**

Shri S. K. Tulsian, Advocate & Mrs. Puja Somani, CA, appeared on behalf of the appellant.  
Shri Sallong Yaden, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 09, 2022

Date of pronouncing the order : March 16, 2022

**Hearing through Video Conferencing**

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 02.12.2019 of the Commissioner of Income Tax (Appeals)-14, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

*"1. That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A) erred in upholding the addition of Rs.1,05,53,505/- u/s. 68 of the Act made in the guise of bogus loan creditors on the alleged ground that the identity and creditworthiness of the loan creditors and genuineness of the transactions could not be proved by the appellant in spite of the fact that party-wise details of loan refunded, description of transactions through bank and confirmations from the respective parties were filed.*

*2. That, the Ld. C.I.T.(A) further erred in upholding the addition of Rs.9,32,000/- u/s.68 of the Act in the guise of unexplained cash deposits in the bank account in spite of the fact that by submitting the cash book and bank details it was explained that out of the cash withdrawals from bank during the year the said cash of Rs.9,32,000/- was deposited in the bank account of the appellant.*

3. That, the Ld. C.I.T.(A) while upholding the aforesaid two additions of Rs.1,05,53,505/- and Rs.9,32,000/- u/s. 68 of the Act erred in not considering that the A.O. without providing copy of the report of the Investigation Wing for rebuttal and opportunity to cross-examine the persons whose statements were used against the appellant had acted against the principles of natural justice and that being so additions made are bad in law.

4. That, the Ld. A.O. and the Ld. C.I.T.(A) both have erred in having disallowed the interest expenses of Rs.1,43,190/- claimed u/s.57 of the Act only on irrelevant consideration and without considering the loan confirmations and computation of income filed before them.

5. That, as the order of Ld. C.I.T.(A) on the above issues suffer from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

6. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

2. The assessee has revised the Ground No.3 as under:

“That on the facts of the case and in law the lower authorities erred in relying on the Inspector's Report and the enquiry conducted by the learned AO during assessment without affording an opportunity to the assessee to examine the Inspector's Report and the material gathered by the AO in the course of his enquiry u/s 142(2) of the Act, thus skipping the mandatory intermediary step prescribed u/s 142(3) of the Act and that being so additions made are bad in law and against the principles of natural justice.”

**Grounds No. 1 to 3 :**

3. The brief facts, relevant to the issue, are that during the course of assessment proceedings, the Assessing officer (AO) noted from the Bank Statement of the assessee, that a sum of Rs. 1,05,53,505/- was credited in the Bank A/c of the assessee from 15 different parties and further a cash sum of Rs.9,32,000/- was also deposited. The assessee was asked to prove the identity and creditworthiness of these parties and also the genuineness of the transactions as required u/s 68 of the Act. He was also asked to produce the parties with the relevant documents.

3.1 The assessee explained that the assessee was primarily engaged in the business of advancing and taking loans/advances. The main income of the assessee was interest income from loans and advances given. Interest was also paid by the assessee on loans taken. It was also explained that the entire receipt of funds from the above mentioned 15

parties was made through normal banking channels. That, even, this was not the first year in which the assessee had given and taken loans. That the assessee had taken/given loans in the preceding years also and earned interest income and claimed interest expense on such loans taken. It was, therefore, submitted that the assessee has been regularly engaged in this business of taking and advancing loans. A copy of the Profit and Loss A/c, ITR Acknowledgment and computation of income of the assessee for the immediately preceding year i.e FY 2013-14 was also furnished. The assessee also furnished his bank account statements, loan confirmation from all the parties and the relevant Bank Statement of all the parties.

3.2 However, the ld. Assessing Officer held that from the enquiry conducted at his end, it was found that circuitous transactions had been entered into, through several bank accounts, where the assessee was positioned at one of the layers, in the entire chain of conduits. The AO further observed that the key person standing at the helm of the events was Shriram Tibrewala, who had used the bank accounts of several individuals and entities for bogus routing the money for the purpose of earning commission. The Assessing Officer gave example of such circuitous transaction, one such was the credit of Rs.3,85,000/- in the OBC bank account of the assessee on 11/09/2014. This credit of funds was from the OBC Brabourne Road Kol-1, Bank Account No. 00032010039670, being maintained by one Sanju Shukla. On the same date, Rs. 3,85,000/- was found to have been credited into the bank a/c of Sanju Shukla from the OBC Brabourne Road bank account A/c No.00032010006790 of Shriram Tibrewal. Only after the credit into this account of Sanju Shukla, did the funds get credited, immediately into the accounts of the assessee. The AO therefore held that the fund movement from Shriram Tibrewal to Sanju Shukla and then to the assessee on the same date, cannot be considered as a loan transaction as claimed by the assessee. The Assessing Officer, therefore, observed that the transactions established that the assessee was a front of investment and routing of funds for Shriram Tibrewal and in reality was a Benamidar of Shriram Tibrewal. The, AO, further observed that each such credit into the account of the assessee necessitated categorical explanation and clarification and therefore examination under oath of the

creditors was necessary to extract the truth of the alleged loan transactions. The AO did not appreciate the loan confirmation and the Bank Statements of all the parties on the ground that the assessee did not produce the parties before him. The learned AO also issued summon u/s 131 of the Act for personal attendance to the creditors namely Tulsi Devi Agarwal, Kamal Kishore Tibrewala, Sharda Agarwal, Bikash Mondal and Shriram Tibrewal. However, only Shriram Tibrewal appeared before the learned AO. The Assessing Officer, therefore, held that the assessee failed to give satisfactory explanation regarding the amounts credited in his bank account. He, therefore, added the said amount of Rs.1,14,85,505/- constituting of Rs.1,05,53,505/- as bogus loan credits of Rs.9,32,000/- as unexplained cash deposits. The Assessing Officer also disallowed the claim of the interest of Rs.1,43,190/- in respect of the loan transactions claimed by the assessee.

4. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A) and reiterated its submissions. However, the learned CIT(A) did not appreciate the submissions filed by the assessee and affirmed the findings of the learned AO. Being aggrieved by the said order of the Ld. CIT(A), the assessee has come in appeal before us.

5. We have heard the rival contentions of both the parties and gone through the records. We find that the Id. CIT(A) in the impugned order has just reiterated the findings of the Assessing Officer without giving any of his opinion/findings in respect of details and explanations given by the assessee including party-wise details regarding transaction of each of the parties.

So far as the findings arrived at by the Id. Assessing Officer are concerned, we notice that it is not the case of the Assessing Officer that own money of the assessee has been routed through different channels into the bank account of the assessee, rather, the case of the Assessing Officer is that the assessee is one of the layer/intermediary, whose accounts have been used by one Shri Shriram Tibrewala to route the money to some other person. The Assessing Officer has specifically held that the money has come ultimately from

Shri Shriram Tibrewala and has further been routed to the accounts of some other persons. It is an admitted case of the Assessing Officer that all the transactions/credits have been made into the account of the assessee through banking channel, the Assessing Officer has not only traced the source of the credits but also source of the source also and ultimately held that the money belonged to one Shri Shriram Tibrewala. At this stage, it is pertinent to note that there are three requirements to prove the loan transactions :

- (i) identity of the creditors (ii) creditworthiness of the creditors (iii) genuineness of the transactions.

In this case, the Assessing Officer himself has traced the identity of the creditors. He has further also traced the source of the money credited into the account of the assessee. The only allegation now remains about the genuineness of the transactions. The allegation of the Assessing Officer is that the assessee is an intermediary to route unaccounted money from ShriShriramTibrewala to some other persons. Under such circumstances, when it is not the case of the Assessing Officer that the loan credits is the unaccounted income of the assessee, then the same cannot be added into the income of the assessee u/s 68 of the Act.

On the other hand, the case of the assessee is thatthe assessee is primarily engaged in the business of advancing andtaking loans/advances. The main income of the assessee is interest income from loans and advancesgiven. Interest has also been paid by the assessee on loans taken. The assessee in this respect has also referred to the Profit andLoss A/c and computation of income of the assessee for the current year. It has also been explained that this was not the first year in which the assessee has given and taken loans, rather the assesseehas taken /given loans in the preceding years also. The interest income earned has been offered for taxation, whereas interest given has been claimed as expense. It has been explained that the assessee is regularly engaged in thisbusiness of taking and advancing loans. The assessee have not only filed a details relating to identity such as their PAN numbers, Income Tax Return and confirmation etc. but has also given party-wise details of the transactions. The lower authorities did not point out any defect

or error in the details and evidences given by the assessee. The Assessing Officer has relied upon the investigation carried out by him/through his Inspectors, whereas, the contention of the Id. AR has been that the said investigation report/enquiry report of Inspector cannot be relied upon without confronting the same to the assessee and without giving an opportunity to the assessee to cross-examine the concerned officer and rebut the said enquiry report. The assessee has also given explanation regarding the source of cash credit stating that the cash deposits of Rs.9,32,000/- was made from available cash in hand. The assessee used to first withdraw cash from Bank and then the excess cash withdrawal was deposited in the Bank A/c of the assessee. Thus, the source of the cash deposits was out of the amount withdrawn from the Bank as and when needed and the excess cash withdrawal was re-deposited in the Bank A/c.

6. Neither Assessing Officer nor CIT(A) has given any findings relating to any defect or discrepancy in respect of the above explanation and evidences furnished by the assessee. The entire order of the Assessing Officer is based on certain enquiries conducted by Investigation Wing. When in his opinion the said money did not belong to the assessee then addition cannot be made in the hands of the assessee as his unexplained income. In view of this, we do not find justification on the part of the lower authorities in making the additions and confirmation made by the Assessing Officer.

#### **Ground No.4**

7. In respect of the disallowance of interest expenditure, the contention of the Id. counsel for the assessee has been that it is the case of the assessee that the assessee is engaged in the business of taking and giving loan on interest and earned interest income. The Assessing Officer has taken into consideration the interest income shown by the assessee, however, has failed to give credit/interest expenditure, which in our view is not justified. In view of this, the additions made by the Assessing Officer in respect of disallowance of interest expenditure is not sustainable in the eyes of law and the same is ordered to be deleted.

8. Grounds No. 5 & 6 are general in nature and do not require any specific adjudication.

9. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 16<sup>th</sup> March, 2022.***

Sd/-  
**[Girish Agrawal]**  
**Accountant Member**

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Dated: 16.03.2022.

RS

*Copy of the order forwarded to:*

1. Swapn Kumar Ghosh
2. ITO, Ward-47(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches