

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER**

I.T.A. No.242/HYD/2018

Assessment Year: 2010-11

Mahendra Kumar Agarwal, HYDERABAD [PAN: ABLPA4518K]	Vs	Asst.Commissioner of Income Tax, Circle-2(2), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri Y.Ratnakar, AR
For Revenue : Shri Rajendra Kumar, CIT-DR

Date of Hearing : 17-02-2022

Date of Pronouncement : 23-03-2022

ORDER

PER S.S.GODARA, J.M. :

This assessee appeal for AY.2010-11 arises from the CIT(A)-2, Hyderabad's order dated 01-12-2017 passed in case No. 0082 / CIT(A)-2 / Hyd / 2016-17, involving proceedings u/s.143(3) r.w.s.254 of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The assessee raises the following substantive grounds in the instant appeal:

"1. The order of the learned Commissioner (Appeals) in ITA No.0082/CIT(A)-2/Hyd/2016-17, dated 1st December, 2017 is

contrary to law and facts and learned Commissioner (Appeals) erred in dismissing the said appeal.

2. That the learned Commissioner (Appeals) erred in upholding the addition of Rs.17,61,86,737 u/s. 68 of the Act. He has not appreciated the submissions of the appellant and the relevant documentary evidence produced before him that the loans received during the year from different persons are genuine. The appellant has fully discharged the onus cast upon him in explaining the loan amounts received by him and has adequately proved the identity of loan creditors, genuineness of transactions and the credit worthiness of the creditors.

3. The findings / observations of the learned Commissioner (Appeals) with regard to the addition of Rs.17,61,86,737 under section 68 of the Act are against the facts and evidence on record.

4. For these and other grounds that will be submitted at the time of hearing of the appeal, the appellant prays that the addition of Rs. 17,61,86,737 be deleted.

5. The Appellant craves leave to add to, alter or amend all or any of the above grounds of appeal at or before the hearing”.

3. We next note that the Ld.CIT(A) has affirmed the Assessing Officer's action adding Section 68 un-explained cash credits vide following detailed discussion:

4.1 The appellant received unsecured loans of Rs.47,05,04,082/- from various persons and Rs.24,51,59,299/- was brought to tax u/s.68 of the Act. In terms of directions of the Hon'ble ITAT, the AO gave adequate opportunities to prove the credit worthiness of loan creditors and the additional submissions made by the appellant and the information furnished by the loan creditors in person and by post were considered by the AO.

4.2 After perusing the paper books (which were filed before the ITAT) the AO vide letter dated 15.02.2016 asked the assessee to produce the loan creditors along with supporting evidences, in response to which the appellant submitted that the loan creditors are not willing to come to Hyderabad at short notice. Accordingly, another opportunity was given to the assessee vide order sheet entry on 26.2.2016, in response to which the AR appeared on 08.03.2016 but did not produce the loan creditors and in the order sheet entry submitted that few loan creditors are willing to

come but he could not tell the exact date on which they are likely to come. The AO accordingly granted another opportunity to produce the loan creditors on or before 18.03.2016 and in case of failure to produce the loan creditors, the assessment will be completed based on the material available on record. However, the assessee did not produce loan creditors but the ARs of six loan creditors which are companies appeared before the AO and furnished information. With regard to other loan creditors, the assessee neither produced the creditors nor furnished any additional information in spite of repeated opportunities granted by the AO. A few loan creditors sent information by post which was noted to be the same as that filed earlier during the original assessment proceedings.

4.3 As per the directions of Hon'ble Tribunal, the AO examined the confirmations and supporting evidences filed in respect of each loan amount available on record and assessment was completed examining each of the loan creditors as evidenced in respect of 52 unsecured creditors contained in Page 3 to 26 of the assessment order.

4.4 After thoroughly examining the loan transactions and confirmations given, bank statements and financial statements of the loan creditors, the AO made addition of Rs.17,61,86,737/- u/s.68 on the following grounds (Para 5&6 of the Assessment Order):-

5. *The above mentioned facts are summarized as follows for the sake of convenience.*

- i) *From the above, it is clear that none of the above mentioned loan creditors have extended loans to the assessee from their taxed income. In fact, as emanating from the supporting documents furnished by the loan creditors, none of them is having any creditworthiness.*
- ii) *The source is usually either from loan received from others or repayment of loan extended by them. In case of loan received, the lender too does not have creditworthiness. In case of claims of repayment of loan extended in earlier years, it is improbable that the loan creditors could have extended loans in earlier years considering their meager income profile.*
- iii) *The third source of for the loan creditors is sale of shares. It must be noted that none of these shares belong to listed or prominent companies. The companies whose shares are*

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sold are also dubious in nature whose activities are not known. No prudent person would invest in such companies. The said share transactions are not even reflecting either in the loan creditors' balance sheet or in their profit and loss account. Share certificates were not furnished. The return of income filed by the above parties does not reflect any capital gain/loss on the alleged share transaction. There is circular purchase and sale of shares amount a few closed group of companies (eg. Ritesh Group). The plea of sale of shares is only a cover for transfer of unaccounted money.

iv) The most important common factor is that none of the above loan creditors have advanced loans to the assessee from their taxed income. It is surprising the assessee has approached persons of no means for loan. Further, during his deposition before the then Assessing officer, the assessee submitted that he does not know any of the loan creditors nor ever met them. While he claimed that the loans were arranged by Managers of M/s Gati Ltd, he could neither produce the persons who arranged the loans nor produced them before the undersigned.

v) It is pertinent to mention that the loan creditors of Shri Mahendra Kumar Agarwal do not have adequate sources to advance loans to him. In this regard the income returned details of the loan creditors is enclosed as annexure "A" from which it is clearly evident that the loan creditors have no creditworthiness to advance to Shri Mahendra Kumar Agarwal. A perusal of the list could reveal that none of the loan creditors annual returned Income is more than the loan extended to the assessee.

vi) It is very surprising to note that all the loan creditors have similar explanation about the source of the loan that allegedly they gave to the assessee. The similarity is summarized as follows,

- a) Many of the loan creditors stated that they gave loan to the assessee out of the repayment of loan by Sri DevekiNandanGoyal (D.N. Goyal) who is none other than a relative of the assessee.
- b) Many of the loan creditors stated that they borrowed from some companies/persons and passed on the same to the assessee as loan. A surprising aspect to be noted here is that none of the above mentioned persons paid interest to the companies/persons from whom they alleged received the said loans that was passed on to the assessee. It should be noted here that while the loan creditors receives from interest from the assessee, they do not pay any interest to their respective loan creditors.
- c) Many of the loan creditors stated that the loan was extended out of proceeds of sale of shares. It is surprising that person who does not have any creditworthiness, indulges in share trading and keeps selling the share without any gain /loss.

It is difficult to believe that the similarity in the sources and explanation is mere coincidence. From this it is evident that loan transaction are colored ones to accommodate the unaccounted money of the assessee and the alleged loan creditors are merely name lenders for the assessee's money. It should be noted that the assessee did not bring on record as to what is the rate of interest paid and how the interest was calculated w.r.t. each loan. Further, as already mentioned many of the loan creditors have stated that they extended loan to the assessee out of the repayment of loan by Sri D.N. Goyal. In this connection, it should be noted that there is a possibility that interest paid by the assessee to the loan creditors are extended as loan to Sri D.N. Goyal and the same is routed back to the assessee in the pretext of repayment of loan by Sri D.N. Goyal to the loan creditors. The



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assessee has made such complicated web of transactions by layering them to colour his unaccounted money and in light of the so many layers involved it may not be possible for any authority to prove that it is the assessee's money which has been routed back to him. Hence, the circumstantial evidences and human probabilities should not be ignored for deciding the source and nature of the money credited in assessee's books of accounts. In this connection, reliance is placed on the decision of Hon'ble ITAT, Pune in the case of Dy. CIT v. Sanjay Wamans&Co wherein it was held as follows,

"Section 68 does not contemplate an enquiry as to who, in the light of the evidence and the explanations submitted, is the right person to be assessed in respect of the credit. All that it says is that if the explanation regarding the nature and source of the credit is not satisfactory the amount may be assessed as income of the assessee. To hold that the explanation and the evidence must be so examined as to find out the real owner of the monies is to put upon the assessing officer a burden which cannot possibly be discharged. It must be remembered that the section is anti-tax evasion provision. The legislature, fully aware that undisclosed income is being brought in under the guise of credits, has introduced the section. The object is to assess such income when it surfaces and assess it in the hands of the person in whose books it surfaces. Having regard to the object, it cannot be said that the Assessing officer, even where explanation has been found to be non-genuine, exercised his discretion arbitrarily by taxing the credit in the hands of the person in whose books it appeared. It cannot be expected of the Assessing Officer to let go the person who is before him and whose assessment is being made and to go on a wild goose chase in a bid to tax the 'right person'. That course is not envisaged by the section. It would result in a waste of all the effort that had been made by the assessing officer. It may possibly open the flood-gates if it is to be held that the assessing officer exercised his discretion arbitrarily in taxing the credit in the hands of the assessee before him even through the enquiry revealed that the explanation offered by the assessee is not genuine.

6.0. Reliance is also placed on Commissioner of Income-tax Vs. P. Mohanakala [2007] 161 TAXMAN 169 (SC), wherein it was held that it was for the assessee to prove to the satisfaction of the assessing officer regarding cash credits in its books. Even if the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence. Further, in the case of Commissioner of Income Tax Vs Nipun Builders and Developers Pvt Ltd [2013-TIOL-32-HC-DEL IT], the Hon'ble Delhi High Court held that the burden of proof to establish genuineness of the transaction is on the assessee and submission of copies of bank accounts of its subscriber companies is not a sufficient compliance. Further, in the said judgment the court held that "even assuming that the bank statements were filed before the AO, that by itself may not be sufficient to prove the creditworthiness without any explanation for the deposits in the accounts and their source. The usual argument in all such cases, including the present case, is that it is not for the assessee to prove the source of source and origin of origin of the receipts. We are of the opinion that mere furnishing of the copies of the bank accounts of the subscribers is not sufficient to prove their creditworthiness. There must be, in our opinion, some positive evidence to show the nature and source of the resources of the share subscriber himself and therefore it is necessary for him to come before the AO and confirm his sources from which he subscribed to the capital"

The decision of High Court of Delhi in the case of M/s. Frostair Pvt. Ltd. [2012TTOL-694-HC-DEL-IT] is applicable to the facts of the case. In this case the High court has held that the addition u/s 68 can be made even if the assessee proves identity but fails to prove the genuineness and creditworthiness of the share applicants, In the instant case the

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assessee has failed to prove the genuineness of the transaction and also the creditworthiness of the loan creditors."

5. The above action of the AO was contested in the following grounds of appeal:-

(1) The order of the learned Assistant Commissioner of Income-tax, Circle 2(2), Hyderabad is contrary to law and facts.

(2) The learned Assistant Commissioner of Income-tax, Circle 2(2), Hyderabad failed to make a true and proper appreciation of the relevant facts and circumstances relating to the loans raised by appellant during the year.

(3) The appellant contends that the additions of Rs. 17,61,86,737 in respect of loans borrowed from 53 loan creditors the, details of which are mentioned in the annexure - I & II to the statement of facts on the facts on record is erroneous, untenable and uncalled for.

(4) The appellant contends that the appellant discharged his burden of proof in proving the identity of creditors, the creditworthiness of the creditors and the genuineness of the transactions and as such the addition of the borrowings of Rs.17,61,86,737 as undisclosed income is erroneous.

(5) The findings / observations of the assessing officer with regard to the addition of Rs. 17,61,86,737 under section 68 of the Act are against the facts and evidence on record, illegal, invalid and unreasonable.

(6) That the appellant has done all that it could possibly do in the circumstances and the additions under section 68 are without any real basis or materials and are based merely on suspicion, guesswork, surmises and conjectures.

(7) It is contended that all the loans have been received / repaid / interest payment thereon have been made through banking channels and loan confirmations of the loan creditors with their full addresses and PAN numbers, their relevant Balance Sheets, Bank Statements and acknowledgements for filing of returns of income etc., having been furnished to the assessing officer as per details in Annexures I & II the assessing officer has not considered the relevant facts while adding the borrowal as income.

(8) That the assessing officer had been requested more than once in course of assessment proceedings to issue notices to the loan creditors for appearance before her and for obtaining such further information or clarifications as the assessing officer may require directly from the loan creditor. Such requests of the appellant have not been complied with.

(9) It is contended that most of the loan creditors expressed their inability to travel to Hyderabad for appearance before the assessing officer at short notice but expressed their readiness on receipt of a notice to appear before any Income-tax Authority at Kolkata or Mumbai or Jaipur, Delhi or Hyderabad, as the case may be, for the purpose which fact though informed was ignored by the assessing officer.

(10) The appellant contends that the additions made are based on assumptions, surmises and conjectures and therefore, the said addition of the borrowals aggregating to 17,61,86,737 is erroneous and perverse.

(11) Without prejudice to the above the aggregate addition of Rs.17,61,86,737 under section 68 of the Act is excessive.

(12) That the appellant contends that the assessing officer having taken up enquiry towards the fog end has made the additions without proper appreciation of the evidence filed in respect of the loan creditors.

(13) The appellant contends that the learned assessing officer has not fully followed the directions given by the Hon'ble ITAT for the purpose of considering the genuineness of the loan. The learned assessing officer completely ignored the transactions made through banks and the repayment of the loans together with interest thereon through banks.

(14) The appellant contends that the learned assessing officer omitted to consider loan creditorwise submissions filed by the appellant in course of the assessment proceedings. None of the submissions advanced by the appellant are discussed nor do they find any mention in the assessment order.

(15) The appellant craves leave to file afresh loan creditorwise submissions elaborately at the time of hearing in support that the loans raised are genuine.

(16) The appellant craves leave to add, alter or amend all or any of the above grounds of appeal at or before the hearing.

6. Before me, the AR submitted that the Statement of Facts (SOF) filed may be taken as written submissions. The SOF filed by the appellant are reproduced here under for ready reference:-

“

1. Appellant had during the year received income from salaries, interest and dividends etc. The return of income was filed declaring a total income of 1,01,13,840. The original assessment was completed at Rs.25,52,73,139 by the assessing officer u/s 143(3) by his order dated

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31.03.2013 with the addition of 24,51,59,299 by recourse to section 68 of the Income Tax Act. On appeal, the Hon'ble ITAT by its order dated 06.02.2015 set aside the impugned order of CIT(A) and remitted the matter back to the A.O. for deciding afresh. The assessment has now been completed by the A.O. by order dated 31.03.2016 u/s 143(3) read with section 254 of the Act on a total income of 18,63,00,577 and aggregate additions of Rs.17,61,86,737 have been made by recourse to section 68 of the Income Tax Act.

2. The Appellant has raised loans during the year from several creditors at Kolkata, Jaipur, Mumbai, Delhi and Hyderabad. The funds have been used mainly for the purpose of investing in companies controlled by him.
3. In respect of the unsecured loans their letters of confirmation giving their full addresses, Income tax PAN nos. creditors bank statements, acknowledgements for filing returns of income, their respective Balance Sheets and Profit & Loss Accounts etc., were also filed. Some of observations of the assessing officer in the assessment order are contrary to the facts and are denied. All the loans have been received / repaid / interest payment thereon have been made through banking channels. Full details of the RTGS/account payee cheques and bank particulars are given in Annexure - I. A summary of the necessary and relevant information filed is given in Annexure -II both Annexures may be treated as part of the statement of facts.
4. Appellant has given FAN nos. and addresses of all the loan creditors and has requested the assessing officer to kindly verify the income tax records of the loan creditors to confirm the transactions with the appellant.
5. In course of the assessment proceedings, the assessing officer requested the appellant by her letter dated 15.02.2016 (read on 22.02.2016) to produce the 72 loan creditors from Kolkata personally to enable her to verify the genuineness of the loans received. The appellant by his letter dated 26.2.2016 informed the assessing officer that while he will continue to make all possible efforts to persuade the loan creditors to travel to Hyderabad and to appear before her, he earnestly requested the assessing officer to kindly issue necessary notices to the concerned loan creditors to appear before her. It was pointed out that the loan creditors are not under his control and he cannot compel them to travel to Hyderabad and appear before her at short notice. This is particularly so as loans from several loan creditors have already been repaid. It is for this reason that he has also earlier requested the assessing officer in course of the assessment proceedings and repeated again to exercise her authority and issue necessary notices to the loan creditors to collect the required information directly from the loan creditors as well as their personal appearance.
6. It may be pointed out that no issue regarding genuineness was raised by the assessing officer in course of assessment proceedings in respect of the following loan creditors and therefore at least in respect of these creditors there is no reason or justification for making any addition u/s 68 of the Act.

Name of the Loan creditor	Amount
Ashok Kumar Ayan Kumar, Jaipur	Rs.1,75,00,000
Kalawati Builders Pvt. Ltd., Delhi	Rs.2,00,00,000
VarshaGoenka, Mumbai	Rs. 20,00,000
Sanjeev Kumar Goenka, Mumbai	Rs. 26,00,000
RatanlalBeokinandan, Mumbai	Rs. 10,00,000
V. Vasanthalakshmi, Hyderabad	Rs.5,00,00,000

7. Appellant has requested the assessing officer by a letter dated 28th April 2016 to issue necessary notice / request / communication to Smt. V. Vasanthalakshmi at her USA address which address has been furnished to him long ago seeking the required confirmation / information etc.
8. The assessment order now under appeal contains observations which are based either on no materials or irrelevant materials and, therefore, inferences drawn there from are wholly incorrect. For the sake of brevity these are not being specifically dealt in this appeal but appellant emphatically denies all these observations and craves leave to refer to them and make submissions thereon at the time of hearing of this appeal.
9. The main reasons as given in the assessment order for disbelieving the genuineness of loans are briefly as follows :
- None of the loan creditors extended loans from their taxed income.
 - None of the loan creditors have credit worthiness.
 - It is improbable that the loan creditors could have extended loans in earlier years considering their meager income profile.
 - For some of the loan creditors the source of the loan given is sale of shares and the loan creditors did not reflect any capital gain/loss on the sale transactions in their return. No prudent person would invest in companies whose activities are not known.
 - Some of the creditors capital account shows less accumulated profits than the amount of loans advanced.
 - Loan creditors which are private limited companies have inadequate accumulated profits with huge share premium out of which loans have been advanced.
 - Some loan creditors have not extended loans from taxed income but only out of share premium.
 - Income returned by some loan creditors is negligible and are not paying any taxes at all.
 - Some loan creditors stated that they gave loan out of repayment of loan received from a relative Sri Devakinandan Goyal.
10. The above grounds and basis given by the assessing officer to justify additions are general in nature. The Assessing Officer seems to suggest that the loan could be given only out of taxable income and the taxable income of each creditor must be more than the loan given. This assumption on the part of the Assessing Officer is

wholly erroneous. A loan is given out of the available funds of the creditors and it need not necessarily be restricted to the taxable income. A verification of the papers filed by the creditors in most of the cases will reveal that

- (a) The creditors have substantial own funds, many of them running into several crores of rupees;
- (b) They have been giving loans to various other parties too. They have filed confirmations of the same;
- (c) They have bank accounts. The transactions in their bank accounts are numerous and are continuous.
- (d) Many of them produced balance sheets showing huge resources.
- (e) They are income tax assesses and they have P.A.N. numbers.
- (f) All the loans were advanced from their bank accounts. The repayments have also been made to them into their bank accounts;
- (g) They have received interest on the loans advanced;
- (h) They are available at the known addresses;
- (i) Their identity is established. Their capacity to give loan is established and their credit worthiness is established;

The materials and attending circumstances available on record do not justify the loan amounts to be treated of an income nature.

11. It was submitted during the assessment proceedings that in case the assessing officer had any doubts or required any information or particulars or clarifications about the loan transactions she could seek such further information directly from the loan creditors. This „ has not been done by issue of necessary notices in spite of appellants repeated requests.
12. It is submitted that the information/details and documents, filed by the appellant as per Annexures attached clearly establish (a) identity of the loan creditor (b) capacity to give loan (c) credit worthiness and (d) genuineness of the transactions.
13. It appears that the assessing officer was not satisfied about the 'ultimate source' of the loans given. The appellant is not in a position to explain the ultimate source of the creditors as he cannot possibly give any explanation on the subject. It is submitted that under section 68 of the Income Tax Act creditors credit worthiness has to be judged vis-à-vis transactions, which have taken place between assessee and the creditor, and it is not the business of assessee to find out ultimate source of money of his creditors or genuineness of transactions, which took place between creditor and other parties for these aspects are not within knowledge of assessee. This has been so held in *Nemi Chand Kothari Vs Commissioner of Income* 264 ITR 254, *CIT v. Shiv Dhooti Pearls & Investments Ltd* 237 Taxman 104 and *Mod Creations Pvt. Ltd v. ITO* 354 ITR 282(Delhi) and many other cases as well.
14. Appellant has done all that he could possibly do in the circumstances and the

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additions under section 68 are without any real basis or materials and are based merely on suspicion, guesswork, surmises and conjectures.

15. The Supreme Court decisions in *Sumati Dayal vs. CIT*, *CIT v. Durga Prasad More and CIT v. P. Mohanakala* referred to by the assessing officer in the assessment order are not relevant to the facts and circumstances of the appellants' case and are distinguishable.
16. The findings /observations of the assessing officer with regard to the aggregate additions of Rs. 17,61,86,737 as unexplained cash credits under section 68 of the Income Tax Act are against the facts and evidence on record.
17. The appellant has, prima facie, discharged the onus cast on him under section 68 of the Act and no part of the sum of Rs.17,61,86,737 is assessable as income in the appellant's hands. "

6.1 Along with the SOF, the appellant filed three paper books, furnished supporting evidences in respect of loans taken from 53 persons, the assessee's letters to the AO and copies of case laws relied upon. The submissions of the appellant have been forwarded to the AO for remand report. The remand report of the AO and the rejoinder by the appellant have been taken on record.

7. I have carefully considered the issue, directions of the Hon'ble Tribunal while setting aside the matter to the file of the AO, the submissions and the evidences filed by the appellant before the AO in the original and set aside proceedings, the documents filed before me in three paper books along with the submissions of the AR, the remand report of the AO and the rejoinder of the appellant. As per the directions of the Hon'ble ITAT, the AO had given due opportunities to the appellant to discharge the onus cast on him of proving the identity, genuineness and credit worthiness of the creditors. The appellant was given four opportunities by the AO to produce the unsecured creditors along with requisite evidences. However, the appellant instead of producing the loan creditors, produced only Authorized Representatives of six loan creditors, which are companies, namely;

- (i) Garg Brothers Pvt Ltd;
- (ii) Pashupati Dealcom Pvt Ltd
- (iii) Maa Sharda Vincom Pvt Ltd;
- (iv) Dearborn Barter Pvt Ltd
- (v) MAA AmbeyTradelingPvt Ltd; and
- (vi) Sundrm Consultants Pvt Ltd

7.1 The assessee neither produced the creditors nor furnished any additional information or evidences to discharge the onus cast on him in spite of repeated opportunities granted by the AO. Having regard to the facts of the case and the directions of Hon'ble ITAT, the AO had painstakingly analyzed and dealt with the loans from 52 unsecured creditors in the assessment order and concluded that they are liable to be added u/s.68 of the Act. It can be seen that the AO had limited the addition u/s.68 to Rs.17,61,86,737/- vis-à-vis addition of Rs.24,51,59,299/- made in the original assessment order after due analysis of case of each creditor. It is evident from the assessment order that the AO had thoroughly examined each and every creditor and wherever she was not satisfied about the identity, genuineness and credit worthiness of the unsecured creditors, only such cash credits were brought to tax u/s.68 of the Act.

7.2 The main reasons, the pattern of loans given etc. for the conclusion drawn by the AO that the said 52 unsecured loans is liable to be brought to tax u/s.68 of the Act are as under:-

- (i) None of the loan creditors have extended loans from their taxable income.
- (ii) The sources for the loans to the appellant is either loans from others or repayment of loans extended earlier. In the case of loans received, the loaner doesn't have credit worthiness. In case of claim of repayment of loan extended in earlier years, it is highly susceptible considering their meager income previously.
- (iii) Other sources for creditors is sale of shares and none of these shares belong to listed or prominent companies. The companies whose shares are sold are suspicious in nature whose activities are not known. The said share transactions are not reflected either in the loan creditor's balance sheet or in their P&L account and share certificates were not furnished. The return of income does not reflect any capital gains or loss on the alleged share transactions. There is a circular

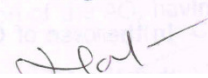


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purchase and sale of shares among a few closed group of companies eg. Ritesh Group undertaking such activities.

- (iv) During the deposition before the AO, the assessee submitted that he does not know any of the loan creditors and didn't ever met them. While he claimed that the loans were arranged by the managers of M/s. Gati Limited, he did not even produce the said employees who were supposed to have arranged the loans.
- (v) The AO had tabulated the income returned details by the loan creditors as Annexure to the assessment order from which it is clearly evident that the loan creditors have no credit worthiness to advance loans to the assessee.
- (vi) All the loan creditors have given similar explanation about the sources of loan given to the assessee. The similarity has been summarized by the AO as under:-
- a) Many of the loan creditors stated that they gave loan to the assessee out of the repayment of loan by Sri DevekiNandanGoyal (D.N. Goyal) who is none other than a relative of the assessee.
 - b) Many of the loan creditors stated that they borrowed from some companies/persons and passed on the same to the assessee as loan. A surprising aspect to be noted here is that none of the above mentioned persons paid interest to the companies/persons from whom they allegedly received the said loans that were given as loans to the assessee. It is worthwhile to note that while the loan creditors receive from interest from the assessee, they do not pay any interest to their respective loan creditors.
 - c) Many of the loan creditors stated that loan was extended out of proceeds of sale of shares. It is surprising that person who does not have any creditworthiness, indulges in share trading and keeps selling the shares without any gain /loss.

The similarity can't be a mere coincidence and it reflects a pattern and scheme to give a colour of genuineness.



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7.3 The enquiries carried out by the AO into the genuineness of the loans in the original assessment order by camping at Kolkatta and also getting enquiries at Delhi, Jaipur, Mumbai and subsequently in the set aside proceedings by analyzing the documents and the explanation of the loan creditors, reveal that the appellant failed to prove the genuineness and credit worthiness of the loan creditors.

7.4 The AR relied upon the following case laws in support of the contentions:

- (a) CIT v. Lovely Exports (P) Ltd reported in 216 CTR 195 (SC)
- (b) CIT v. Steller Investment Ltd reported in 251 ITR 263 (SC)
- (c) CIT v. Shiv Dhooti Pearls & Investments Ltd – 237 taxman 104 (SC)
- (d) CIT v. Orissa Corpn. (P) Ltd 159 ITR 78 (SC)
- (e) CIT v. Divine Leasing & Finance 299 ITR 268 (Delhi)
- (f) CIT v. Sophia Finance Limited reported in 205 ITR 98 (Delhi full bench)
- (g) Giri Roadlines & Commercial Trading Pvt. Ltd – Hon'ble ITAT, Hyderabad in ITA No.893/Hyderabad,2016

The case laws relied upon at Sl.No. (a) to (f) except (c) are distinguishable on facts. Regarding the other case laws, the observations are as under:

- (i) In the case of CIT vs Shiv Dhooti Pearls & Investments Ltd (supra) it was held that the AO has ample freedom to make enquiry in any manner into the sources of the creditor but also his sub-creditors and prove, as a result, of such enquiry, that money received by the assessee in the form of loan from the creditor, though routed through sub-creditors, actually belongs to, or was of, the assessee himself.
- (ii) In the case of Giri Roadlines & Commercial Trading Pvt.Ltd., the facts are that the 10 unsecured companies have substantial funds at their disposal. The AO has not examined the case of each creditor individually before him. A general view has been taken on the unsecured creditors which is



not proper. Each investor has not been examined separately and the AO merely rejected them to be without proper evidences. The present is case clearly distinguishable from the above mentioned case laws relied upon by the AR.

7.5 The action of the AO is supported by the ratio laid down in the following case law:-

In the case of CIT vs Gangeshwari Metal Pvt.Ltd [381 ITR 10 (Del)], the Hon'ble High Court after considering the decision in the case of CIT v. Nova Promoters and Finlease (P) Ltd. (2012) 342 ITR 169 (Del.) and the judgment in the case of CIT vs Lovely Exports [319 ITR (SAT.5)](SC) held as under:-

"As can be seen from the above extract, two types of cases have been indicated. One in which the assessing officer carries out the exercise which is required in law and the other in which the assessing officer sits back with folded hands till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the assessing officer, after noting the facts, merely rejected the same."

In the present case, it is evident from the facts that the AO carried out all the exercises of conducting enquiries and analyzing the explanations or evidences furnished and came to the conclusion that the genuineness and credit worthiness of the loan creditors have not been established and therefore, the ratio of the above mentioned case and that of Nova Promoters and Finlease (P) Ltd (supra) squarely applies.

7.6 The following case laws further support the action of the AO, having regard to the facts and circumstances of the case:-

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- (i) CIT vs P. Mohankala (2007) (161 Taxman 169) (SC)
 - (ii) CIT vs Nipun Builders and Developers Pvt. Ltd [2013-TIOL-32-HC DEL IT]
 - (iii) CIT vs Frostair Pvt.Ltd [2012-TIOL-694-HC DEL IT]
 - (iv) PCIT vs Bikram Singh (2017) 85 Taxmann 104 Delhi.
 - (v) CIT vs Maithan International reported in (2015) 375 ITR 123 (Cal)

7.7 In view of the above, the action of the AO in making the said addition u/s.68 of the Act is upheld and **the grounds of appeal are dismissed.**

4. Learned counsel vehemently contended during the course of hearing that both the lower authorities have erred in law and on facts in making the impugned un-explained cash credits addition involving various un-secured loans. He invited our attention to the assessee's detailed paper book running into 216 pages comprising of summarized list of loan sums borrowed followed by repayments, loan creditors' balance sheets explaining source of funds with copies thereof, bank certificate and confirmation letter(s) involving Smt.V.Vasanthalakshmi and M/s.Kalawati Builders Pvt. Ltd., address proof and confirmation, Assessing Officer's letter dt.15-02-2016 as replied on 26-02-2016 and 19-03-2016, tribunal's remand order dt.06-02-2015 in first round, written submissions in respect of 53 creditors as well as various judicial precedents. Learned counsel sought to buttress the point that the assessee's creditor parties have filed their income tax return acknowledgements, copies of bank

statements reflecting loan transactions, their explanation regarding source of funds as well as confirmations before the lower authorities thereby discharging the three-folded onus of identity, genuineness and creditworthiness u/s.68 of the Act.

5. The Revenue strongly supported the impugned addition made in both the lower proceedings in light of the CIT(A)'s detailed discussion.

6. We have given our thoughtful consideration to the foregoing rival pleadings and find no merit in the assessee's stand. There would be hardly any dispute about the settled proposition of law i.e., Sumati Dayal Vs. CIT (1995) [214 ITR 801] (SC) and CIT Vs. Durga Prasad More (1972) [82 ITR 540] (SC) that any explanation or evidence filed during the course of income tax proceedings ought to be examined in the light of human probabilities by removing all blinkers. Their lordships recent decision in PCIT Vs. NRA Iron and Steel Pvt. Ltd. (2019) 412 ITR 161 (SC) also holds that mere filing of documentary evidence does not itself prove genuineness or creditworthiness in an issue pertaining to un-explained cash credits.

We keep in mind the foregoing legal parameters and deal with the clinching facts in the instant case. It is an admitted factual position that this assessee is assessed and lives in Hyderabad whereas all the corresponding loan creditors parties are from Kolkata only. And that too, there is not even a single loan agreement between the assessee and the said parties, reflecting the terms of repayment or interest, except the former self-styled repayment instances along with interest component at varying rates.

Mr.Ratnakar replied in response to our query that the assessee is the promoter/Managing Director of a very reputed entity and his staff members in Kolkata only had arranged for the impugned un-secured loans. This clinching explanation hardly comes to the assessee's rescue since going against all human probabilities that a person, un-known in Kolkata would be able to receive such huge sums of unsecured loans without any surety. This is in addition to the fact that he has not produced a single employee having arranged all these loans. We therefore conclude in light of the foregoing settle law as well as the relevant facts and circumstances herein that the assessee has failed to prove genuineness and creditworthiness of the impugned un-secured loan sums. We thus find no reason to interfere with the learned lower authorities' action making the impugned addition. The same stands confirmed.

7. This assessee's appeal is dismissed in above terms.

Order pronounced in the open court on 23rd March, 2022

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 23-03-2022

TNMM

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Copy to :

1.Mahendra Kumar Agarwal, Plot No.20, Survey No.12, Kothaguda, Kondapur, Hyderabad.

2.Asst.Commissioner of Income Tax, Circle-2(2), Hyderabad.

3.CIT(Appeals)-2, Hyderabad.

4.Pr.CIT-2, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.