

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.644/Bang/2021
Assessment Year: 2013-14

Mr. M.N. Rajendra Kumar 1-276, PO 721, Pulkeri Karkala 574 104 Udupi District PAN NO :AFOPK5638K	Vs.	ITO Ward-2(3) Manguluru
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheethal Borkar, A.R.
Respondent by	:	Shri Sankar Ganesh K., D.R.

Date of Hearing	:	24.03.2022
Date of Pronouncement	:	28.03.2022

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 28.9.2021 passed by Ld. CIT(A)-2, Panaji and it relates to the assessment year 2013-14. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the addition of Rs.4.70 crores made by the A.O. u/s 41(1)/68 of the Income-tax Act,1961 [‘the Act’ for short].

2. The facts relating to the case are stated in brief. The assessee is a builder and runs the business under the name and style M/s S S Developers. He is also engaged in processing and sale of

purified packaged water. The assessee filed his return of income for the year under consideration declaring loss of Rs.20,62,008/-. The A.O. noticed that the assessee has shown unsecured loans to the tune of Rs.8.79 crores in his proprietary concern M/s S S Developers. The A.O. asked the assessee to furnish confirmation letters from the creditors and the assessee accordingly furnished confirmation letters obtained from all the creditors. In order to verify the details, the A.O. issued notices u/s 133 (6) of the Act to all the creditors calling for certain information. However, the letters issued by A.O. were returned back in the following cases:-

S.No.	Name of the parties	Amount outstanding as on 31.3.2013 (Rs.)	Remarks
1	Printage Offset Pvt. Ltd.	50,00,000	Returned back from postal authorities as addressee
2	Soundarya Dyes & Chemicals Pvt. Ltd.	10,00,000	-do-
3	Priority Traders Pvt. Ltd.	5,00,000	-do-
4	Alken Mang & Fin. Services Pvt. Ltd.	2,10,00,000	-do-
5	Hindustan Continental Limited	50,00,000	-do-
6	Signora Finance Pvt. Ltd.	30,00,000	-do-
7	Amazing Agencies Pvt. Ltd.	15,00,000	-do-
8	M/s. Rambhakth Suppliers	20,00,000	-do-
9	Abhilash Money Operation Pvt. Ltd.	35,00,000	-do-
10	Monocity Vincom Pvt. Ltd.	30,00,000	-do-
11	Shruthika Securities	15,00,000	-do-
	Total	4,70,00,000	

3. Accordingly, the A.O. proposed to assess the unconfirmed creditors' balances aggregating to Rs.4.70 crores mentioned above either u/s 41(1) of the Act as ceased liability or u/s 68 of the Act as unexplained creditors. In response to the same, the assessee submitted that these loan creditors will not fall under the ambit of

section 41(1) of the Act, since they are not trading liabilities. With regard to the proposal to make addition u/s 68 of the Act, the assessee submitted that all the amounts were received through banking channels and further name, address, PAN numbers and confirmation of all creditors have been filed. The A.O. however, did not agree with the explanations given by the assessee. Accordingly, he assessed the unconfirmed creditors balance aggregating to Rs.4.70 crores as not genuine, bogus and not explained.

4. Before Ld. CIT(A), the assessee made detailed submissions and hence the Ld. CIT(A) called for a remand report from the A.O. During the course of remand proceedings, the A.O. again issued letters u/s 133(6) of the Act to the address given in PAN data. But all the letters were returned by the postal department with the comments such as "Insufficient address/left/refused". Hence, the A.O. expressed the view that these creditors do not exist. The A.O. also brought to the notice of the Ld. CIT(A) that the assessee was subject to search u/s 132 of the Act on 1.12.2017. In the statement recorded from the assessee on 16.12.2017 during the course of search proceedings, the assessee has accepted the fact that the genuineness of the creditors could not be proved by him. During post search proceedings also, the assessee could not furnish full details relating to the creditors. Accordingly, the A.O. submitted in the remand report that the addition of Rs.4.70 crores made by him should be sustained.

5. In the rejoinder to the remand report, the assessee submitted that the very same addition made in the assessment completed u/s 153A of the Act have been challenged by the assessee by filing appeal before Ld. CIT(A) and the same is pending.

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6. The Ld. CIT(A) accordingly entertained the view that the assessee has submitted forged confirmation letters from the creditors. He also took the view that the assessee had already repaid the loans to these creditors. The Ld CIT(A) also took support of the search proceedings, wherein the assessee appears to have admitted that the genuineness of creditors could not be proved by him. Accordingly, he confirmed the addition made by the A.O. The Ld. CIT(A) also observed that the A.O. has not invoked the provisions of section 41(1) of the Act because the A.O. has made the addition by treating the loan creditors outstanding as on 31.3.2013 as bogus. Aggrieved by the order so passed by Ld CIT(A), the assessee has filed this appeal before us.

7. We heard the parties and perused the record. There is no dispute with regard to the fact that all the impugned creditors are loan creditors. The Ld. CIT(A) has expressed the view that the addition was not made by the A.O u/s 41(1) of the Act. Hence, there is no necessity to go into the question of applicability of provisions of section 41(1) of the Act in the present case.

8. The Ld. CIT(A) has also noted that the creditors have been held to be bogus by the A.O and accordingly confirmed the addition, meaning thereby, the addition has been made by the A.O. u/s 68 of the Act as unexplained cash credit. The Ld. A.R. submitted that all these loans have been taken by the assessee in the earlier years and not during the year under consideration. The assessee has furnished ledger account copies of loan creditors at pages 34 to 57 of the paper book. These pages contained the ledger account copies of the year in which these loans were taken; Ledger account copy of the current year and also confirmation obtained from them. A perusal of these details would show that none of these loans have been received by the assessee during the year under consideration.

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We notice that these loans have been taken in the earlier years and it is the submission of the assessee that they were accepted as genuine in those years.

9. There should not be any doubt that the provisions of section 68 of the Act can be invoked for examining the loan received during the year under consideration. Accordingly, the A.O. should have examined the above said loans in the year in which they were received and not during the year under consideration. Hence there is no scope for making any addition u/s 68 of the Act during the current year in respect of loans received in earlier years.

10. Further, we noticed that the Ld CIT(A) has entertained presumption that the assessee would have repaid the loan outside the books of account. We notice that the tax authorities have entertained the view on the basis of information collected by the AO from a creditor named M/s. Shruthika Securities, who appears to have replied that it has received back the loan amount of Rs.15 lakhs from the assessee prior to 31.3.2012. It was the contention of the assessee before the Ld. CIT(A) that the A.O. did not confront the reply so given by Shruthika Securities and hence, the A.O. could not have relied on the same. We find merit in the said contention of the assessee. It is well settled proposition that the tax authorities are not entitled to rely upon evidences collected behind the back of the assessee without confronting the same with the assessee. Even, according to AO, M/s Shruthika Securities has claimed to have received back the loan prior to 31.3.2012, in which case, the cause of action, if any, shall arise in the year in which the repayment, if any, was made by the assessee and not during the year under consideration.

11. Thus, we notice that there is no material available with the tax authorities in support of their inference that these loans have been paid back by the assessee outside the books of account. Hence the said inference of tax authorities is liable to be rejected. Accordingly, we are of the view that the A.O. was not justified in making the addition of Rs.4.70 crores for the reasons stated above and accordingly, the Ld. CIT(A) was not justified in confirming the addition. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the above said addition of Rs.4.70 crores.

12. The Ld. D.R. submitted that the similar addition has been made in the assessment completed u/s 143(3) r.w.s. 153A of the Act and hence, the Tribunal should protect the interest of the revenue while adjudicating the present appeal. It may be noticed that we have deleted the addition on the legal ground that the loans taken in the earlier years cannot be subject to examination u/s 68 of the Act during the year under consideration and there is no material to infer that the loans had been repaid by the assessee in the earlier years. Further, we have also confirmed the view of Ld. CIT(A) that these loans were not added u/s 41(1) of the Act. Thus, we have deleted the addition on legal principles only in the present appeal. Hence, this decision shall not have any impact on the order passed by the A.O. u/s 143(3) r.w.s. 153A of the Act, which will be governed by relevant provisions relating to that assessment.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 28th Mar, 2022.

Sd/-

(N.V. Vasudevan)
Vice President

Sd/-

(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 28th Mar, 2022.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.