

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “C” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.5910/DEL/2018  
Assessment Year 2014-15

M/s. Kapis Impex LLP, 301, Roots Tower, Community Centre Distt. Centre, Laxmi Nagar, New Delhi.	v.	Asst. CIT, Central Circle-19, New Delhi.
TAN/PAN: AARFK7460P		
(Appellant)		(Respondent)

Appellant by:	Shri Gautam Jain, Adv.		
Respondent by:	Shri J.S. Minhas, CIT-DR		
Date of hearing:	21	04	2022
Date of pronouncement:	13	07	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-XXVII, New Delhi ('CIT(A)' in short) dated 25.07.2018 arising from the assessment order dated 27.12.2017 passed by the Assessing Officer (AO) under Section 153A r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. The assessee has raised multiple grounds but essentially seeks to challenge addition of Rs.1 crore made under Section 68 of the Act being sum raised from M/s. Rathore Promoters and Developers Pvt. Ltd. as unsecured loan. The amount so received

was treated as unexplained cash credit by the Assessing Officer under Section 68 of the Act.

3. Briefly stated, in the course of search assessment proceedings under Section 153A, the Assessing Officer observed that the assessee has shown unsecured loan of Rs.1 crore from entity M/s. Rathore Promoters and Developers Pvt. Ltd. received during the year under consideration. An inquiry was carried out by the Assessing Officer by issuing summons under Section 131 of the Act. However, summons issued were not complied with by the lender. The Assessing Officer thus made an addition of Rs.1 crore under Section 68 of the Act alleging the explanation offered by the assessee to be unsatisfactory on the contours of Section 68 of the Act. The CIT(A) in first appeal also did not find any merit in the contentions of the assessee on *bona fides* of the impugned credit.

4. Further aggrieved, the assessee preferred appeal before the Tribunal.

5. We have heard the rival submissions. The assessee contends that the copy of income tax return and computation of lender M/s. Rathore Promoters and Developers Pvt. Ltd. together with the financial statement of the lender from Assessment Years 2012-13 to 2016-17 was placed before the Assessing Officer. The confirmation of the lender was also placed. On being inquired, the ld. counsel submitted that the loan was received through banking channel also stood repaid partly in Assessment Year 2015-16 and remaining amount in Assessment Year 2019-20. In elaboration, the assessee submits

that it has repaid Rs.50 lakhs in two installments in Assessment Year 2015-16 and remaining 50 lakhs have been repaid by 5 RTGS transfers in Assessment Year 2019-20 and thus such repayment shows the *bona fide* of the credit assailed.

6. In this factual backdrop, we are of the view that where the loans received are backed by tangible documentary evidence and receipt through banking channel combined with repayment thereof in subsequent assessment years, the onus establishing *bona fide* appears discharged. The non compliance of summons issued under Section 131 in such circumstances ought not to become determinative factor. The factum of repayment also underscores the *bona fide* in the light of the decision of Hon'ble Gujarat High Court in the case of *CIT vs. Ayachi Chandrashekar Narsangji*, (2014) 42 *taxmann.com* 251 (Guj.); *CIT vs. Karaj Singh* (2011) 15 *taxmann.com* 70 (P&H) & *Panna Devi Chowdry vs. CIT*, 208 *ITR* 849 (Bom.). However, in the same vein, we notice that correctness of assertions towards repayment of loan in the subsequent assessment year has not been ascertained by the Assessing Officer.

7. We accordingly restore the matter back to the file of the Assessing Officer. The Assessing Officer shall be at liberty to verify/inquire into the case made out on behalf of the assessee towards repayment of loan. The Assessing Officer shall accept the *bona fides* of the loan in question where he is satisfied about the discharge of loan in the subsequent assessment year by way of repayment. The assessee shall adduce necessary evidence as may be considered expedient in this regard.

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

**Order pronounced in the open Court on 13/07/2022.**

Sd/-  
**[CHANDRA MOHAN GARG]**  
**JUDICIAL MEMBER**

DATED: **13/07/2022**

*Prabhat*

Copy forwarded to:

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

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**

Assistant Registrar