

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.4491/Del/2017
Assessment Year: 2012-13

Sandeep Garg,
C/o Sanjay Kumar & Co.,CA,
318, Sadar Bundela,
Dlamandi,
Meerut Cantt.,
Meerut.

Vs. DCIT,
Circle-2,
Meerut.

PAN: AFMPG5548Q

(Appellant)

(Respondent)

Assessee by	:	Shri C.S. Anand, Advocate
Revenue by	:	Shri Abhishek Kumar, Sr. DR
Date of Hearing	:	06.07.2022
Date of Pronouncement	:	29.07.2022

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 04.05.2017 of the CIT(A), Meerut, relating to Assessment Year 2012-13.

2. The sole ground of the assessee reads as follows:-

“2. That on the facts of the case CIT(Appeal) has erred in confirming addition of Rs.14,25,000/- in unsecured loan u/s 68 of the IT Act, 1961 for unexplained cash credits. The assessee has proved identity, creditworthiness and genuineness of these loans as per law. CIT (Appeals) is not justified in confirming this addition and addition is against law and natural justice.”

3. The Id. Counsel for the assessee submitted that the AO has framed his mind that addition u/s 68 will be made in unsecured loan and without logically examining the nature and amount of his transaction, the AO has made the impugned addition. The Id. AR submitted that the AO has pressurized the depositors for not recording the statements and warned of dire consequences if done so in their personal income-tax returns. But, all depositors, in their statements, accepted to have given loans to the assessee. He vehemently pointed out that the addition u/s 68 cannot be made if the assessee has successfully satisfied the AO about the identity of the lender, creditworthiness of the lender and genuineness of the transaction. The Id. AR submitted that during the course of assessment proceedings as well as first appellate proceedings, the assessee furnished addresses of all individual creditors and if these particulars are analysed and evaluated independently, then, it would be crystal clear that the identity of the lenders, credit worthiness of the lenders and the genuineness of the transaction have been established as per the requirement of section 68 of the Act. The Id. AR submitted that before the authorities below, the assessee submitted confirmed copies of creditors' accounts, bank accounts, acknowledgement of returns and affidavits of individual creditors for AY 2012-13. He further submitted photocopies of statements of creditors, copy of audited balance sheet of M/s Vidyt Sales and copy of case law referred to in the written submissions of the assessee. The Id. AR submitted that in the light of the various judgments

including the judgment of the Hon'ble jurisdictional High Court of Allahabad in the case of CIT vs. Anurag Agarwal, reported in 229 taxman 532 and second judgment in the case of CIT vs. Vijay Kumar Jain (2014) 221 taxman 180 (All) where in respect of credit entries the assessee established identity of creditors by bringing on record their PANs and complete addresses and transaction was made through proper banking channel and the addition made u/s 68 of the Act was set aside being not sustainable. The Id. Counsel also placed reliance on various judgments including that of the Hon'ble Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls & Investment Ltd., 237 Taxman 104 and submitted that the assessee must establish the genuineness and the transaction as well as the credit worthiness of the creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor and not beyond doubt. The Id. Counsel submitted that for AY 2012-13 it was not the requirement from the assessee to establish source of the source, therefore, the addition made by the AO and partly confirmed by the Id.CIT(A) may kindly be deleted.

4. Replying to the above, the Id. Sr. DR strongly supported the assessment and first appellate orders and submitted that it was the duty of the assessee to prove the identity of the creditor, credit worthiness of the creditors and genuineness of the transaction and the assessee failed to discharge the onus lay on

the shoulders, therefore, the authorities below were right in making the addition in the hands of the assessee.

5. First of all, we may point out that the Id.CIT(A) has, in para 3.2, has noted the submissions of the assessee. For the sake of completeness of our findings, we find it appropriate to reproduce the same as follows:-

a) In respect of addition of Rs 100000/- from Shubham Agarwal

- 1) That the assessee has received Rs.1,00,000/- from Shubham Agarwal (SISTER'SON) through Cheque No. 382969 of PNB. The Cheque is duly encashed on 27.03.2012 from his saving bank account with PNB.
 - 2) That we have already submitted the following documents in course of proceedings before Ld. AO :
 - Confirmed Copy of Account
 - Copy of Bank Account
 - 3) That PAN of Shubham Agarwal is BDHPA3158A. He did not file return of income for AY 2012-13 as income was below taxable limit.
 - 4) That he is having income from tuition which he has duly accepted in his statement before Ld. AO.
 - 5) That deposit of Rs 100000/- in his saving bank account is a very small amount which can be saved by any person having income without filing return of income.
 - 6) That he was around 20 years old during the year and advanced loan to M/S Vidhut Sales as per instructions of his father.
 - 7) That source of deposit of cash is accepted by the lender to be out of his tuition income cannot be challenged as the Ld. AO has verified this fact in course of his Statement.
 - 8) That deposit of small amount of cash can not be treated as funds belonged to assessee as the Ld. AO has not substantiated this fact. In view of finding in the case : CIT, Central Kanpur Vs Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.
- In view of the above submission, Identity of lender, creditworthiness of lender and genuiness of transaction is proved as per law.

b) In respect of deposit of Rs 200000/- from Somya Agarwal

- 1) That the assessee has received Rs.2,00,000/- from Somya Agarwal (sister daughter) through Cheque No.765101 of PNB. The Cheque is duly encashed on 27.03.2012 from her saving bank account with PNB.
- 2) That we have already submitted the following documents in course of proceedings before Ld. A.O. :
 - Confirmed Copy of Account
 - Copy of Bank Account
- 3) That PAN of Somya Agarwal is ATEPA5794J. She did not file return of income for AY 2012-13 as income was below taxable limit.
- 4) That she is having income from tuition/book writing which she has duly accepted in her statement before Ld. A.O.

5) That deposits of Rs.2,00,000/- in her saving bank account is a very small amount which is saved by her out of her current income and past savings.

6) That she was around 22 years old during the year and advanced loan to M/S Vidhut Sales out of her savings. Advancing loan to relative is not a sin.

7) That source of deposit of cash is accepted by the lender to be out of her tuition income/book writing cannot be challenged as the Ld. A.O. has verified this fact in course of his Statement.

8) That deposit of small amount of cash can not be treated as funds belonged to assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: **CIT, Central Kanpur Vs Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed)**, addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuiness of transaction is proved as per law.

c) In respect of deposit of Rs 320000/- from SmtSaroiGarg

1) That SmtSarojgarg is mother of Shri Sandeep Garg, proprietor of M/S Vidhyut Sales.

2) That the assessee has received Rs 320000/- from her as per following details :

- Rs 200000/- through Ch No 235771 of ZilaSahakari Bank encashed on 14/03/2012.

- Rs 120000/- transfer from Rent received from M/S Vidhyut Sales

3) That She is an old lady and regularly assesseed to Income Tax. Her PAN is AGHPG3254H.

4) That We have already filed the following documents in course of proceedings before Ld A.O. :

- Confirmed Copy of Account

- Copy of bank Account

- Copy of ITR

5) That She has deposited Rs 160000/- in cash out of her current income and past family savings. She is having regular bank balance. Her deposits of small amounts in cash in her bank account is quite justified in view of her age and income.

6) That She has accepted in her Statement that she has given loan of Rs 200000/- to her son, Shri Sandeep Garg and Rs 120000/- transfer from rent of office given to Sandeep garg.

7) That Ld. A.O. was not ready to accept any explanation/document but pre- determined to make addition. Ld. A.O. made addition of even Rs.120000/-, amount of rent u/s 68 without any base/logic.

8) That deposit of small amount of cash can not be treated as funds belonged to the assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: **CIT, Central Kanpur Vs Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed)**, addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuiness of transaction is proved as per law.

d) In respect of deposit of Rs 65,000/- from Shri Lalit Kumar Goyal (HUF)

1) That the assessee has received Rs.65,000/- from Shri Lalit Kumar Goyal (HUF) through Cheque No.0000076 of Oriental Bank of Commerce. The Cheque is duly encashed on 08.02.2012 from his saving bank account with OBC.

2) That we have already submitted the following documents in course of proceedings before Ld. A.O. :

- Confirmed Copy of Account
- Copy of Bank Account
- Copy of ITR

3) That PAN of Shri lalit Kumar Goyal (HUF) is AAAHL5531K.

4) That he is having income from rent which he has duly accepted in his statement before Ld. A.O.

5) That deposits of Rs.65,000/- in his saving bank account is a very small amount which is saved by him out of his current income and past savings.

6) That source of deposit of cash is accepted by the lender to be out of his rent income cannot be challenged as the Ld. A.O. has verified this fact in course of his Statement

7) That deposit of small amount of cash can not be treated as funds belonged to the assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: CIT, Central Kanpur Vs Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuiness of transaction is proved as per law.

e) In respect of deposit of Rs 210000/- from SmtRekha Rani

1) That the assessee has received Rs.2,10,000/- from SmtRekha Rani on different dates as Rs.40,000/- on 05/12/2011 through Cheque No 058208, Rs.45,000/- on 16/12/2011 through cheque no. 058209, Rs.85,000/- on 16/02/2012 through Cheque No 058210 and Rs.40,000/- on 21/03/2012 through Cheque no. 058211 of Punjab National Bank.

2) That we have already submitted the following documents in course of proceedings before Ld. A.O. :

- Confirmed Copy of Account
- Copy of Bank Account
- Copy of ITR

3) That PAN of SmtRekha Rani is ACGPR0772A.

4) That she is having income from business and interest which she has duly accepted in her statement before Ld. A.O.

5) That deposits of Rs.2,10,000/- in her saving bank account is a very small amount which is saved by her out of her current income and past savings.

6) That source of deposit of cash is accepted by the lender to be out of her income cannot be challenged as the Ld. A.O. has verified this fact in course of his Statement

7) That deposit of small amount of cash can not be treated as funds belonged to the assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case : CIT, Central Kanpur Vs Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuiness of transaction is proved as per law.

f) In respect of deposit of Rs 150000/- from SmtMansiGoel

- 1) That the assessee has received Rs.1,50,000/- from SmtMansiGoel on different dates as Rs.50,000/- on 02/07/2011 through Cheque No. 518289, Rs.60,000/- on 11/11/2011 through cheque no. 516290, Rs.25,000/- on 16/12/2011 through Cheque No 516292 and Rs.15,000/- on 21/03/2012 through Ch no 516294 of Punjab National Bank.
- 2) That we have already submitted the following documents in course of proceedings before Ld. A.O. :
 - Confirmed Copy of Account
 - Copy of Bank Account
 - Copy of ITR
- 3) That PAN of SmtMansiGoel is AFQPJ0444Q.
- 4) That she is having income from tuition which she has duly accepted in her statement before Ld. A.O.
- 5) That deposits of Rs.1,50,000/- in her saving bank account is a very small amount which is saved by her out of her current income and past savings.
- 6) That source of deposit of cash is accepted by the lender to be out of her income cannot be challenged as the Ld. A.O. has verified this fact in course of his Statement.
- 7) That deposit of small amount of cash can not be treated as funds belonged to the assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: CIT, Central Kanpur Vs Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuineness of transaction is proved as per law.

g) In respect of deposit of Rs 200000/- from SmtNidhiGarg

- 1) That the assessee has received Rs.2,00,000/- from SmtNidhiGarg (Wife of the assessee) through Cheque No. 056987 dated 21/03/2012 of Central Bank of India.
- 2) That we have already submitted the following documents in course of proceedings before Ld. A.O.:
 - Confirmed Copy of Account
 - Copy of Bank Account
 - Copy of ITR
- 3) That PAN of SmtNidhiGarg is AFZPG1715Q.
- 4) That she is having business income besides other income which she has duly accepted in her statement before Ld. A.O. Her total income is Rs.4,46,229/- during the year.
- 5) That deposit of Rs.2,00,000/- in her saving bank account is a very small amount which is saved by her out of her current income and past savings.
- 6) That source of deposit of cash of Rs.1,60,000/- is accepted by the lender to be out of her income cannot be challenged as the Ld. A.O. has verified this fact in course of her Statement.
- 7) That deposit of small amount of cash can not be treated as funds belonged to assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: CIT, Central Kanpur Vs Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuineness of transaction is proved as per law.

h) In respect of deposit of Rs 200000/- from SmtSeema Rani

- 1) That the assessee has received Rs.2,00,000/- from SmtSeema Rani (Sister of the assessee) through Cheque No 813087 dated 15/12/2011 of Syndicate bank.
 - 2) That we have already submitted the following documents in course of proceedings before Ld AO :
 - Confirmed Copy of Account
 - Copy of Bank Account
 - Copy of ITR
 - Affidavit
 - 3) That PAN of SmtSeema Rani is AFVPR8513D.
 - 4) That she is having business income besides other income which she has duly accepted by way of Affidavit filed before Ld. A.O. Her total income is Rs.2,23,142/- during the year. Summon u/s 131 could not be served to SmtSeema Rani inspite of her correct address. Ld. A.O. has not endeavored to resend the summon for proper verification.
 - 5) That She is having regular transaction in her bank account during the year. Therefore deposit of Rs.2,00,000/- in her bank account considering previous withdrawals are quite justified.
 - 6) That source of deposit of cash of Rs.1,60,000/- is accepted by the lender to be out of her income. That Ld. A.O. has not lawfully examined her bank account and make addition with a pre-determined mode.
 - 7) That deposit of small amount of cash can not be treated as funds belonged to assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: CIT Central Kanpur Vs Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.
- In view of the above submission, Identity of lender, creditworthiness of lender and genuineness of transaction is proved as per law.

7) In respect of deposit of Rs 200000/- from Smt Anita Garg

- 1) That the assessee has received Rs.2,00,000/- from Smt Anita Garg (assessee brothers' Wife) through Cheque No 21051843 dated 19/03/2012 of Rs.1,00,000/- of Union Bank of India and through Cheque No 162757 dated 21/03/2012 of Rs.1,00,000/- of Canara Bank.
- 2) That we have already submitted the following documents in course of proceedings before Ld. A.O. :
 - Confirmed Copy of Account
 - Copy of Bank Account-2 No
 - Copy of ITR
 - Affidavit
 - Medical certificate
- 3) That PAN of Smt Anita Garg is ACHPG6025E.
- 4) That she is having salary income as Vice- Principal of Central School which she has duly accepted by way of Affidavit filed before Ld. A.O. Her total income is Rs.5,27,328/- during the year. She could not appear for Statement in compliance to summon u/s 131 due to her ill health. We have already submitted medical certificate before Ld. A.O. for her non-appearance.
- 5) That She is having regular transaction in her bank account during the year. Therefore deposit of cash in her bank account considering previous withdrawals and deposit of monthly salary in bank account of Rs.36,000/- app. are quite justified.
- 6) That source of deposit of cash of Rs.1,60,000/- is accepted by the lender to be out of her income. That Ld. A.O. has not lawfully examined her bank account and make addition with a pre-determined mode.

7) That deposit of small amount of cash can not be treated as funds belonged to assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: CIT, Central Kanpur V/s Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuineness of transaction is proved as per law.

J) In respect of deposit of Rs 200000/- from Miss KhyatiGarg

1) That the assessee has received Rs.2,00,000/- from Miss KhyatiGarg through Cheque No 851294 dated 24/03/2012 of Canara bank.

2) That we have already submitted the following documents in course of proceedings before Ld. A.O. :

- Confirmed Copy of Account
- Copy of Bank Account
- Copy of ITR

3) That PAN of Miss KhyatiGarg is BDBPG3390J.

4) That she is having income from tuition which she has duly accepted in her statement before Ld. A.O.

5) That deposits of Rs.2,00,000/- in her saving bank account is a very small amount which is saved by her out of her current income and past savings.

6) That source of deposit of cash is accepted by the lender to be out of her income cannot be challenged as the Ld. A.O. has verified this fact in course of her Statement

7) That deposit of small amount of cash can not be treated as funds belonged to assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: CIT, Central Kanpur V/s Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuineness of transaction is proved as per law.

K) In respect of deposit of Rs 200000/- from SmtNeelam Agarwal

1) That the assessee has received Rs.2,00,000/- from SmtNeelam Agarwal through Cheque No 038965 dated 26/03/2012 of Allahabad bank.

2) That we have already submitted the following documents in course of proceedings before Ld. A.O. :

- Confirmed Copy of Account
- Copy of Bank Account
- Copy of ITR

3) That PAN of SmtNeelam Agarwal is AHVPA8347A.

4) That she is having income from business besides other income which she is duly confirmed from her ITR.

5) That she is having regular transaction in her bank and cash deposits of Rs.1,20,000/- in her saving bank account is a very small amount which is saved by her out of her current income and past savings.

6) That deposit of small amount of cash can not be treated as funds belonged to assessee as the Ld. A.O. has not substantiated this fact. In view of finding in the case: CIT, Central Kanpur V/s Anurag Agarwal (2015) 229 TAXMAN 532/54 DECIDED BY HON'BLE HIGH

COURT OF ALLAHABAD (Copy Enclosed) , addition u/s 68 due to deposit of cash prior to advancing loan is not justified.

In view of the above submission, Identity of lender, creditworthiness of lender and genuinness of transaction is proved as per law.

1) In respect of addition of Rs 490000/- from LalitGoel

1) That the assessee has received Rs.9,90,000/- during FY 2011-12 on various dates as per copy of account filed. All deposits are through cheques of Oriental bank of Commerce. The assessee has refunded Rs 500000/- on 23/04/2011 through Cheque no 702276 of Syndicate bank. In this way net addition during the year is Rs 490000/-.

2) That we have already submitted the following documents in course of proceedings before Ld. A.O. :

- Confirmed Copy of Account
- Copy of Bank Account
- Copy of Computation of Income

3) That PAN of Sh lalit Goel is AAQPG7900F.

4) That Sh Lalit Goel has died on 05/05/2012.

5) That Shlalit Goel was partner in M/S Goel Traders and having business income besides other income.

6) That all deposits in his bank account are through cheques and no cash was deposited before advancing loan to M/S Vidhyut sales. All deposits are from his genuine sources and duly accounted for in his books. He is regularly assesseed to income tax. All deposits are from his declared sources. He was also a worthful man and belong to a reputed family. He was an old man of 62 years during the year.

7) That Ld. A.O. has not given any waitage to the transactions in his bank account and made addition with a predetermined mind set.

8) That ShLalitGoel was seriously ill during the year, therefore income for the year was low in his hand. However he was earning since last more than 40 years and all transaction in his bank account are from his legitimate sources and through bank transfers.

In view of the above submission, Identity of lender, creditworthiness of lender and genuinness of transaction is proved as per law.

We have furnished particulars of loans received by the assessee. Our arguments, against this addition by Ld A.O., are summarized as under:

1) That Ld. A.O. has framed his mind that addition u/s 68 will be made in unsecured loan any how without legitimately examining nature and amount of each transaction.

2) That Ld. A.O. has pressurised the depositors in course of beyans for dire consequences in their personal income tax returns. All depositors gave beyans and accept loans given to the assessee. Notice u/s 131 are served as per law. Pressurised tactics adopted by Ld. A.O. are against law, justice and bad in law.

3) That additions u/s 68 of IT Act can be made if three basic criteria are not satisfied

- a) Identity of lender
- b) Creditworthiness of lenders
- c) Genuinness of transaction

4) That we have already furnished particulars in case of individual depositors. If we go through the same, it will be crystal clear that identity of lender, creditworthiness of lenders and genuinness of transaction is proved as per law.

5) That Ld. A.O. is not justified in making addition u/s 68 in a pre-determined mind set and pressuring the lender in an unjustified fashion for dire consequences in his own personal returns. Such pre-determined additions, without judiciously considering facts, are against the law and natural justice.

We are referring text of some case laws on the relevant issue for your perusal:

1. CIT V/s Shiv Dhooti Pearls & Investment Ltd (2016)237 TAXMAN 104(2016)
DECIDED BY HON'BLE HIGH COURT OF DELHI (Copy Enclosed)

What, thus, transpires from the above discussion is that while Section 106 of the Evidence Act limits the onus of the Assessee to the extent of his proving the source from which he has received the cash credit, Section 68 gives ample freedom to the Assessing Officer to make inquiry not only into the source(s) of the creditor, but also of his (creditor's) sub-creditors and prove, as a result, of such inquiry, that the money received by the Assessee, in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of, the Assessee himself. In other words, while Section 68 gives the liberty to the Assessing Officer to enquire into the source/sources from where the creditor has received the money, Section 106 makes the Assessee liable to disclose only the source(s) from where he has himself received the credit and it is not the burden of the Assessee to show the source(s)

of his creditor nor is it the burden of the Assessee to prove the creditworthiness of the source(s) of the sub-creditors. If Section 106 and Section 68 are to stand together, which they must, then, the interpretation of Section 68 has to be in such a way that it does not make Section 106 redundant. ITA No. 429/2003 Page 7 of 9

Hence, the harmonious construction of Section 106 of the Evidence Act and Section 68 of the Income Tax Act will be that though apart from establishing the identity of the creditor, the Assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the Assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the Assessee and the creditor. What follows, as a corollary, is that it is not the burden of the Assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the Assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the Assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be judged vis-a-vis the transactions, which have taken place between the Assessee and the creditor, and it is not the business of the Assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the Assessee." (emphasis supplied).

2. CIT V/s Real Time Marketing (P) Ltd (2008) 173 TAXMAN 41
DECIDED BY HON'BLE HIGH COURT OF DELHI (Copy Enclosed)

The confirmation of M/s. ACL has been filed by the assessee. The said company was assessee to tax. The source of ACL had been explained as out of transfer of funds from the accounts of M/s. BTL. Thus, the assessee discharged its burden of proving identity, capacity and genuineness of the transaction. The Assessing Officer has not brought any material to show that the funds to ACL were provided by the assessee. Under the circumstances, it cannot be said that the cash credit in question has remained unexplained. There is absolutely no material to link the assessee with the sum of Rs. 22,97,000/- deposited in cash in the bank account of M/s. FBSL.

CIT-1 V. Apex Therm Packaging (P) Ltd (2014) 222 TAXMAN 125

DECIDED BY HON'BLE HIGH COURT OF GUJRAT (Copy Enclosed)

Section 68 of the Income-Tax,1961-Cash Credit [Unsecured Loan]-Assessment year 2007-08 – Whether when full particulars, inclusive of confirmation with name, address and PAN Number, copy of income tax returns, balance sheet, profit and loss account and computation of total income in respect of all creditors/lenders were furnished and when it had been found that loans were furnished through cheques and loan account were duly reflected in Balance Sheet, Assessing Officer was not justified in making addition- Held, yes.

4. CIT, Central Kanpur V/s Anurag Agarwal (2015) 229 TAXMAN 532/54**DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed)**

Section 68 of the Income-Tax,1961-Cash Credit (Onus of proof) –Assessment year 2002-03 – whether where in respect of credit entries, assessee established identity of creditors by bringing on record their PAN and complete addresses and, moreover, transaction was made through proper banking channel, impugned addition made under section 68 was to be set aside- Held, yes.

5. CIT V. Vilav Kumar Jain (2014) 221 TAXMAN 180**DECIDED BY HON'BLE HIGH COURT OF ALLAHABAD (Copy Enclosed)**

Section 68 of the Income-Tax Act, 1961 – Cash credit[Loan] – Assessment Year 2002-03 – Assessee had taken a loan from company 'B' – Assessing Officer noticed that a raid was conducted in case of 'B'wherein it was found that said company was engaged in providing accommodation entries – Assessing Officer thus added amount of loan taken from said company in assessee's taxable income under section 68- Commissioner (Appeals) found that lenders were regular income-tax assesseees and their PAN's were on record- Further, amount had been advanced through account payee cheques and before issuing cheques, lenders had got balance in their accounts- Amount of loan had also been repaid through Account payee Cheques – In aforesaid circumstances, Commissioner (Appeals) opined that identity and creditworthiness of lenders had duly been proved – Accordingly, addition made by Assessing Officer was deleted- Tribunal confirmed order of Commissioner (Appeals) – Whether on facts, impugned order passed by appellate authorities did not suffer from any infirmity and, thus, revenue's appeal was to be dismissed- Held, yes.

6. CIT V Mark Hospitals (P) Ltd. (2015) 232 TAXMAN 197/58**DECIDED BY HON'BLE HIGH COURT OF MADRAS (Copy Enclosed)**

Section 68 of the Income Tax Act, 1961- Cash credit (Burden of Proof) – Assessment year 2006-07 – Assessee had obtained unsecured loans from agriculturists and submitted their names and addresses, but did not provide their PAN cards- Assessing officer made addition under section 68- It was found that loans were given to assessee through cheques and all creditors had confirmed that they had advanced loans mentioned against their names to assessee and, thus, identity of creditors could not be disputed- Further, all creditors were agriculturists and therefore, they did not have PAN card- Whether, on facts, no addition could be made- Held, yes.

We are enclosing herewith the following documents for your kind perusal :

- a) Confirmed copy of account, bank account, Acknowledgement of Return and affidavit of individual depositors for F.Y. 2011-12.
- b) Copy of Statements/ statements obtained from Ld A.O...
- c) Copy of audited balance sheet of M/S Vidhyut Sales for FY 2011-12.
- d) Copy of case Laws as referred above in sequence.

In the light of quoted judgments of different High Courts and considering our submission, It is evident that the assessee has prima-facie proved identity, creditworthiness and genuineness of the transactions. Your Honour is humbly prayed to treat the credits as explained and delete addition u/s 68.

6. From the relevant operative portion of the first appellate order, we find that the Id.CIT(A) has allowed part claim of the assessee pertaining to four creditors, i.e., Smt. Saroj Garg, Smt. Nidhi Garg, Smt. Anita Garg and Shri Lalit Goel and granted relief to the assessee amounting to Rs.11,10,000/-. However, regarding other eight credits, totaling to Rs.14,25,000/-, the Id.CIT(A), on the similar facts and circumstances, confirmed the part addition by observing that the onus has been cast upon the assessee to establish the identity, capacity and creditworthiness of the creditors as well as the genuineness of the transaction and as the assessee failed to discharge the onus regarding the eight creditors, he took an adverse view and confirmed the part addition of Rs.14,25,000/-. From the written submissions of the assessee, we clearly observe that the assessee before the Id.CIT(A) categorically repeated the submissions and submitted confirmations, copy of bank accounts and PANs of almost all creditors, but, the Id.CIT(A) accepted the same material with regard to the four creditors granting part relief to the assessee and denied to accept the identity and credit worthiness of the creditors and genuineness of the transaction in the case of other eight creditors without showing any distinct and dissimilar position. Since as per the judgment of the Hon'ble jurisdictional High Court of Allahabd in the case of CIT, Central vs. Anurag Agarwal (supra) and CIT vs. Vijay Kumar Jain (supra) where in respect of credit entries found in the books of account of the assessee, the assessee established identity of the creditors by bringing on record their PANs and complete addresses and the transactions were made through banking channel,

the impugned addition was to be set aside. In the present case, the authorities below have disputed credit entries of Rs.14,25,000/- from eight creditors with amounts between Rs.65,000/- to Rs.2,10,000/- and all creditors are relatives/friends of the assessee. Therefore, without bringing out any adverse or cogent material to dispute the credit worthiness of the creditors and genuineness of the transactions, no addition could have been made in the hands of the assessee treating the same as unexplained cash credit u/s 68 of the Act. We, therefore, decline to accept the reasoning recorded by the Id.CIT(A) while confirming the part addition in the hands of the assessee with regard to eight creditors totaling to Rs.14,25,000/-. We, therefore, allow the sole ground of the assessee and direct the AO to delete the entire addition confirmed by the Id.CIT(A).

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

Order pronounced in the open court on 29.07.2022.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 29th July, 2022.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi