

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “B”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.792/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Naresh T Wadhvani, Office No.9, Umed Bhavan, Canara Bank, Pimpri, Pune – 411018. PAN: AABPW 7203 Q	Vs	The Income Tax Officer, Ward-8(4), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri V.L.Jain – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	08/07/2022
Date of pronouncement	26/07/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee’s appeal for Assessment Year 2014-15 is directed against the Commissioner of Income Tax(Appeals)-6, Pune’s order dated 27.03.2018 passed in case no.PN/CIT(A)-6/ITO WD.8(4)/10658/2016-17, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short “the Act”].

Heard both the parties. Case file perused.

2. Coming to the assessee’s sole substantive grievance that both the lower authorities have erred in law and in facts in treating unsecured loans in issue of Rs.4 crores as unexplained cash credits, Mr.Jain has filed the following detailed submissions:

"1. The only ground of appeal is as under:

"The learned CIT(A) erred in law and on facts in confirming the addition of Rs.4,00,00,000/- as unexplained cash credits".

2. The case of the AO is found in Para 7.2 to Para 9.1 of the assessment order. In sum, according to the AO -

- a) There is no business carried out by the lenders at the addresses given (Para 7.2)*
- b) The lenders were not found at the given address (Para 8.1)*
- c) The appellant did not produce the lenders (Para 7.3)*
- d) The lenders are not genuine.*

3. The CIT(A) has confirmed the additions. The case of the CIT (A) is found at Para 5.3 to 5.3.5 of the appellate order. According to the CIT(A) -

- a) The lenders were not produced and their financial statements were not provided (Para 5.3)*
- b) As the lenders are not available at the given address, the presumption is that they are shell companies. (Para 5.3.21)*
- c) The bank statements of lenders indicate the source of lending to be transfers from some other entity (Para 5.3.4)*
- d) The appellant has not established credit worthiness by providing the balance sheets of the lenders to show capital base (Para 5.3.4)*

4. The contentions before Your Honours are as under:

a) Attention is invited to the submissions before CIT(A) (Pages 1 to 99 of Paper Book) and especially Page 7 which tabulates the data /documents provided by the appellant.

b) The appellant has provided the ledger extracts, the loan confirmations, the bank statements, the TDS details, the PAN details and the ITR copies of all the lenders.

c) Having so done, the appellant has discharged the initial burden cast on him to prove the cash credits. When appellant has

provided confirmation letters with PAN, the initial burden stands discharged and insisting on physical presence is unjustified. Reliance is placed on the following decisions for the above proposition
Veer Metals V ACIT 51 TTJ 132 (Delhi).

d) *AO has not controverted the aforesaid data with anything tangible and merely concluded in the negative by observing that the lenders were not available at the given address.*

e) *Once the initial burden is discharged by submissions of all relevant data, the burden thereafter to falsify the data is on the Revenue, which it has not done. Reliance is placed on the following decisions for the above proposition:*
ACIT v Kumar Ice 64 ITD 93 (Patna).

f) *It is noteworthy that the AO/CIT(A) has done nothing to verify the tax records of the lenders but merely harped on the lenders being not available at the given addresses or not being produced before either of them. When lenders are tax assesseees and their PAN has been provided, it is for the Revenue to examine the source of income of the lenders to find out whether they are creditworthy. The same has not been done. Reliance is placed on the following decisions for the above proposition:*

CIT v Orissa Corpn (P) Ltd. 159 ITR 78 (SC).

g) *Mere return of summons issued to the lenders or their non-appearance before the AO/CIT(A) cannot lead to an adverse inference against the appellant. Reliance is placed on the following decisions for the above proposition.*

Anis Ahmad & Sons V CIT (SC) C.A. No. 582 of 2008 dt. 22.01.2008.

h) *The CIT(A) has also confirmed the addition merely based on speculation, guesswork, conjectures and surmises in the face of the fact that lenders are corporates having PAN and have provided confirmations and all the transactions are through banking channels.*

i) *The interest paid and TDS done thereon has also not been*

disputed.

j) It is not the case of the AO/(CIT(A) that the appellant is operating the bank accounts of the lenders or that it is a case of cash receipts and payments from/to the lenders.

k) In the face of the fact that the lenders are operating their bank accounts and are regular tax assesseees, the inference of sham entities does not hold water.

*l) The appellant is not required to prove source of the cash credits. Reliance is placed on the following decisions.
CIT V Tania Investments Pvt. Ltd. (Bom) 322 ITR 394*

m) Where lenders are tax assesseees and had provided confirmations of cash credit, addition is not justified. Reliance is placed on the following decisions for the above proposition.

CIT v Sahibganj Elec Cables (P)Ltd 115 ITR 408 (Cal)

Kamal Engg Works v ITo 52 TTJ 75 (Delhi)

CIT v Ramneet Singhf 306 ITR 267 (P&H)

n) Inability to produce lenders is not fatal. Reliance is placed on the following decisions for the above proposition

ACIT v India Tyre House 72 TTJ 316 (Gauh)

G.G Films v Ito 45 TTJ 644 (Cochin)”

3. The Revenue had placed strong reliance on the Id.CIT(A)

detailed discussion in issue as follows:

“5.2 During the course of appeal proceedings, the appellant submitted that the main reason for the AO to treat the loans as unexplained credit is only on the strength of the enquiry report in which the loan creditors were not available at the respective addresses. The appellant also questions the AO's adverse view on two of the parties namely M/s Samyak Diam P Ltd and M/s Artview Gems

Pvt Ltd despite their response to the notices issued. The appellant also challenges the AO's observation that the parties have miniscule sources of income without verifying the audited accounts of those parties which can be accessed by the AO from the departmental sources and claims that low income in one year cannot determine the capacity of the lender. The appellant relied on the following decisions:

1. *CIT Vs. Dwarkadish Investment Pvt Ltd [2010] 330 ITR 298 (Del)*

"Though in sec. 68 proceedings, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN or income Tax assessment number and show the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue-just because the creditors/share applicants could not be found at the address given, it would not give the revenue the right to invoke Sec.68-Revenue has all the power and wherewithal to trace any person-Moreover, it is settled law that the assessee need not to prove the 'source of source'".

2. *Nemi Chand Kothari Vs. CIT ANR 136 Taxman 213 (Gau)*

" Burden of the assessee to prove the genuineness of the transactions as well as creditworthiness of the creditor is confined to the transactions which have taken place between the assessee and the creditors, and it is not the burden of the assessee to show the source(s) of his creditor or to prove the creditworthiness of the source(s) of the sub-creditors".

3. *Labh Chand Bohra vs. ITO 8 DTR 44 (Raj)*

"identity of the creditors having been established who have confirmed the credits by making statements on oath and the amounts having been advanced by account payee cheques, impugned addition in respect of the entries in the names of the said creditors cannot be sustained; assessee is not required to establish the capacity of the

lender to advance money".

4. *M/s Pentagon Developers Vs. DCIT ITA No.2394/PN/2011*

" We have heard the rival submissions and perused the material on record. The issue in the present case is with regard to addition u/s 68 of the Act of the amounts of loans received by the assessee. It is an undisputed fact that to prove the identity and source of the deposits from the 4 parties, assessee has furnished the copy of PAN cards, copy of bank account, copy of IT returns before the AO. In case of Diip M. Giramkar, Madhura Keskar and Deepa K. Advani in response to the summons issued by the AO, the tenders had confirmed of having advanced loan to the assessee. In case of K.Sadhu Thorat in response to the summons issued u/s 133, there was not compliance by Shri Sadhu Thorat. Considering the fact that assessee has furnished the PAN copy, copy of bank account, IT statements, we are of the view that the assessee has discharged the initial onus cast upon the assessee to prove the cash credit. Once the assessee has discharged the initial onus, the burden shifts on the revenue to show as to why the assessee's submission could not be accepted any why it must be held that the entry appearing in the name of third party still represented the income of the assessee from suppressed sources. U/s 68 of the Act assessee has to prove three conditions i.e. 1) identity of the creditor. 2) the capacity to such creditor to advance money and 3) genuineness of the transactions. As all the aforesaid conditions are proved, the burden shifts on the revenue to prove that the amount belongs to assessee. Further various High Courts have held that assessee cannot be asked to prove the 'source of source' or the origin of origin' and for this proposition, we draw support from the decision in the case of Sargoi Credit Corporation Vs. CiT 103 ITR 344 (Patna) and CIT Vs. Dwarkadish Invesment P Ltd [2010] 330 ITR 298 (Delhi). Considering the totality of the aforesaid facts, we are of the view that the present case the assessee had fully discharged its initial onus on proving the cash credits and in such a situation, the addition u/s 68 of the Act in the present case was un called for. We

there fore, direct the deletion of addition made by the ao. Thus, the ground of the assessee is allowed".

5.3 *The various submissions have been considered. During the course of the appeal proceedings, the appellant's AR was specifically asked to produce the parties and the financial statements of the lenders for three years and for which he expressed his inability. The AR also admitted that there was no loan agreement entered with any of the loan creditors and no collaterals were offered for availing the loans. The stand of the AR appears to be strange as the appellant had availed loans from parties known to it and further, these loans were availed without any securities and thus the guarantee of repayment is apparently based on the excellent relations with the lenders. The appellant had not raised the money from the general public through a public notice or from a money-lender for it to feign any ignorance about their whereabouts and their operations. In this context, it is important to highlight that the Gujarat Money-lenders bill 2011 requires the registration of the money-lender with the registrar of money-lenders and no money-lender shall carry on the business of money-lending without such registration and such person is liable to imprisonment for a term extending upto 2 years. So apparently, the loan creditors are not money-lenders, as they are not registered with the registrar of money-lenders of Gujarat State. They are also apparently not registered with Bombay Money-lenders Act. Thus, the loans are not from money-lenders and they are also not from the general public as no specific notice has been issued in the public domain calling for such deposits. Under the given circumstances, the loans have to be treated as availed from persons with whom the appellant had apparently good relations. The ARs reluctance to produce the parties and to file their required financial statements does raise serious doubts about the operations of such parties and the genuineness of the transactions with the appellant and the real source*

of the funds.

5.3.1 The names of the loan creditors indicate them to be in the business of diamond and jewellery. If such activities are being carried out, they would be traceable at the given address. As no activities are carried out at the given address, the only presumption that arises is that they are shell companies/firms which are in existence for routing unaccounted moneys giving a colour of genuineness and they are existing for the purpose of layering the funds and for hiding the real source of the amounts transacted. This presumption is based on the amounts of taxable incomes declared by such entities and the nature of transactions reflected in the bank accounts.

5.3.2 A perusal of the appellant's bank account with Axis bank, shows that the loans to the tune of Rs.1,00,00,000/- were received on 30 & 31/7/2013 from four different parties by RTGS. Similarly, Rs.1,00,00,000/- was received on 6/8/2013 from four different parties by RTGS. Another sum of Rs.1,00,00,000/- was received on 7/8/2013 from five different parties by RTGS. Another sum of Rs.50,00,000/- was received on 19/8/2013 from one single party and another Rs.50,00,000/- on 19/8/2013 from two different parties by RTGS. The above pattern of receipt of money from such different parties does indicate some syndication and coordination and accommodation.

5.3.3 The return acknowledgements filed for the A.Y. 14-15 by the loan creditors and their bank accounts are examined. The summary of the same is captured in the form of table below.

Name of the party	Income shown for A.Y. 14-15	Tax payable/ref und claimed	Bank account Date and amount transacted particulars, ! on the	Date and amount transacted on the day of loan

<i>Artview Gems Pvt Ltd</i>	42,570	Rs.13,154 / Rs.3,84,250	<i>Indusind Bank Opera House Branch,</i>	7/8/2013-Rs.9,95,000 Opera deposited on transfer On the same day transferred to appellant Rs.10,00,000/-
<i>Jay V.B.R Tradelink P Ltd</i>	3,45,600	Rs. 1,06,791 / Rs. 6,90,250	<i>Indusind Bank Mumbai</i>	19/8/2013-Rs.56,00,000/- deposited by transfer On the same day Rs.42,00,000/- and Rs.8,00,000/- transferred to the appellant.
<i>Mukut Gems Prop; Mahavir Jain</i>	5,09,649	Rs.32,851 / Rs.5,99,570	<i>INGVYSYA Bank, Bombay</i>	19/8/2013-Rs.24,00,000/- and Rs.6,00,000/- deposited by transfer On the same day j Rs.30,00,000/- transferred to the appellant.
<i>Navyug Impex P Ltd</i>	1,08,300	Rs.33,465 / Rs.1,41,960	<i>Name of the Bank not filed.</i>	Only partial transactions in j the account are furnished. 7/8/2013- s.30,00,000/- j transfer to the appellant.
<i>Pulkit Diamond P Ltd</i>	39,230	Rs.12,122 / R.37,280	<i>INGVYSYA Bank, Opera house branch, Bombay</i>	6/8/2013-Rs.24,60,000/- deposited by transfer On the same day Rs 25,00,000/- transferred to the appellant.
<i>Samata Exports P Ltd</i>	2,49,650	Rs.77,145 / Rs.3,11,050	<i>Kotak Mahindra Bank, Opera house branch, Bombay</i>	30/7/2013-Rs. 10,00,000/- and Rs.7,85,000/- deposited by transfer the same day Rs.15,00,000/- transferred to the appellant 2013 -Rs.24,15,000/- deposit by transfer On the same day
			<i>Indusind Bank Opera house branch, Bombay</i>	7/8/2013 -Rs.10,00,000/- j deposit by transfer On the same day Rs.10,00,000/- transferred to the appellant.
<i>Samyak Diam P Ltd</i>	94,363	Rs.29,157 / Rs.1,47,210	<i>Kotak Mahindra Bank, Opera house</i>	6/8/2013 -Rs.40,00,000,- deposit by transfer On the same day Rs.35,00,000/- transferred to the appellant.

				19/8/2013 -Rs.12 00,000/- and Rs.8,00,000/- deposit by transfer the same day ¹ Rs.20,00,000/- transferred to the appellant.
Samayak Jewels P Ltd	4,83,400	Rs.1,49,371 / Rs.8,68,070	INGVYSYA Bank, Opera house branch,	30/7/2013 -Rs. 10,69,500/- deposit by transfer On the same day Rs.10,00,000/- transferred to the appellant.
				6/8/2013 -Rs.10,00,000/- deposit by transfer On the same day Rs.15,00,000/- transferred to ¹ the appellant. 2013 -Rs.30,00,000/- ' deposit by transfer On the same day Rs.30,00,000/- transferred to ¹ the appellant.
Siddharth Corporation Prop; Ashok Kumar Jain (HUF)	3,40,490	Rs.14,470 / Rs.5,20,140	Indusind Bank Surat branch.	
Suyash Diamonds P Ltd	108970	Rs.33,672 / Rs.1,72,020	INGVYSYA Bank, Opera house branch, Bombay	7/2013 -Rs.20,00,000/- deposit by transfer On the same day Rs.11,00,000/- transferred to the appellant.
Veena Gems Prop: Abhijit ar	14,84,930	Rs.2,83,744 / Rs.15,34,110	INGVYSYA Bank, Opera house	2013 -Rs.20,00,000/- deposit by transfer On the same day Rs.20,00,000/- transferred to the appellant.

5.3.4 From the transactions in the bank accounts of the lenders, it is seen that the immediate source of the moneys advanced to the appellant are sourced from transfer-in from some other entity. The other transactions in these accounts are also of similar nature. They don't appear to have any regular business transactions except

for this movement of funds through their accounts. The incomes reflected are so meager that it would not be possible to lend moneys to the appellant and others. It is already held that they cannot be treated as money lenders in view of their non registration under the Money Lenders Act. It is also strange that most of these loan creditors bank accounts are based in Mumbai while their alleged offices and operations are at Surat. This is again a deliberate ploy adopted to mislead the enforcement agencies. The appellant did not file the balance sheets showing the capital base of those loan creditors for establishing its creditworthiness. In the present case, the appellant had failed to establish the presence of those entities at the given addresses, though a record of such entities is created by way of registration under Companies Act and by way of operation of bank account and by filing income tax returns and all these are only for the purpose of creating a facade. As the entities are not traceable at the given addresses, they have to be treated as sham entities created for the purpose of laundering money. The transactions reflected in the bank accounts also do not indicate any business activity except for routing moneys. The income tax returns clearly indicate that they do not have sources for lending such amounts to the appellant. Taking into consideration all the above facts and circumstances, the action of the AO in treating the unsecured loan as unexplained credits is upheld.

5.3.5 The only evidence filed is of a bank account through which the transactions have been carried out. The appellant has not filed the immediate source for lending such money. As the lenders are not traceable at the given addresses, it was not possible for the AO to examine the books of accounts of those parties and examine them. The appellant did not discharge its burden of producing the parties or their accounts when the same was brought to his notice. Under the given circumstances, it has to be treated that the

appellant had failed to discharge his onus of burden. The appellant cannot rely on such documents which do not prove the existence and the creditworthiness of the lenders though the transaction has been established by way of filing the statement of the bank account. In result, it has to be held that the credits are unproved and therefore are assessable as deemed income of the appellant.”

4. We have given our thoughtful consideration to vehement rival contentions and find no merit in assessee's arguments. We make it clear that apart from filing the corresponding documentary evidence of all the eleven(11) parties with their Returns, Ledger Extracts, confirmations, Bank Statements, PAN's and TDS details, the assessee has miserably failed to prove genuineness thereof before both the lower authorities. We make it clear that the assessee's sole arguments all along is that he has discharged his onus of proving identity, genuineness and credit worthiness by placing on record all the documentary evidence pertaining to eleven parties. Mr.Jain could hardly throw any light on the clinching aspect as to how the assessee could obtain unsecured loans of such huge amounts without even executing the corresponding agreement(s) or interest liability, as the case may be. Hon'ble apex court recent landmark decision in PCIT Vs. NRA Iron and Steel Ltd. [2019] 412 ITR 161 (SC) has settled the law that mere filing of documents does not amount to proving genuineness of the sums credited in issue. Their lordships

further hold in Sumati Dayal Vs. CIT [1995] 214 ITR 801 (SC) and CIT Vs. Durga Prasad More [1972] 82 ITR 540 (SC) that any evidence submitted in income tax proceedings has to be examined in the light of human probabilities by removing all blinkers. We conclude in this legal and factual backdrop both the lower authorities have rightly treated the assessee's unsecured loans in issue of Rs.4crores as unexplained. The same stands upheld.

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

Order pronounced in the open Court on 26th July, 2022.

Sd/-
(DR. DIPAK P. RIPOTE
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 26th July, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.