

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकरअपीलसं. / ITA No.95/RPR/2017
निर्धारणवर्ष / Assessment Year : 2010-11

M/s. Krishna Hospital,
Kosabadi Chowk,
Korba (C.G.)
PAN : AAIFK6814C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1, Korba (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Y.K Mishra, Advocate.
Revenue by : Shri G.N Singh, Sr. DR

सुनवाईकीतारीख / Date of Hearing : 26.07.2022

घोषणाकीतारीख / Date of Pronouncement : 29.08.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals), Bilaspur, dated 30.03.2016, which in turn arises from the order passed by the A.O under Sec 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 26.03.2013 for assessment year 2010-11. Before us the assessee has assailed the impugned order on the following grounds of appeal:

"1. That Ld. CIT(A) erred in law as well as facts while confirming addition of Rs.1200000/- u/s.68 without considering the facts and legal issue involved in the case.

2. That the assessee craves leave to add, alter and amend modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before the final hearing."

2. Succinctly stated, the assessee firm which is running a hospital had filed its return of income for AY 2010-11 on 06.10.2010, declaring an income of Rs.4,19,610/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. Assessment was thereafter framed by the A.O vide his order passed u/s.143(3), dated 26.03.2013, wherein, after inter-alia treating the unsecured loans of Rs.12 lacs claimed by the assessee to have been received from 5 parties as unexplained cash credits u/s.68 of the Act the income of the assessee was determined at Rs.19,45,060/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) who upheld the addition made by the A.O u/s.68 of the Act, observing as under:

"Ground No.2- that Ld. AO erred in making addition u/s.68 of Rs.1200000/- on suspicious basis and without any concrete evidence.

The learned AO had discussed the issue in his assessment order from page 4 of his assessment order. The assessee had received unsecured loan from various persons. As per table below:

S. No.	Name (Shri/Smt.)	Unsecured loan
1.	Anil Gidwani	1,00,000/-
2.	Shaiyad Abdul Mazid	2,00,000/-
3.	Rajkumari Gidwani	3,00,000/-
4.	Shashikala Duvey	2,00,000/-
5.	Shudhakar Wankhede	4,00,000/-
6.	Shweta Mishra	1,00,000/-
7.	Vishal Bhagmare	1,00,000/-
8.	Yugawari Marketing Pvt. Ltd.	10,00,000/-

In case of Anil Gidwani the learned AO has stated that the lender is an employee earning salary income but does not file return of income. He had deposited cash in his account of Rs. 1,00,000/- and issued the cheque in favour of the assessee. After considering various expenses by the lender from the salary income the AO found that living in a town the personal saving with the lender can not remain to extent of cash at home. In the written submission the AR had submitted that the

lender had accepted to have advanced the loan from his past saving and the AO was not justified in making addition u/s 68.

In case of Shri ShaiyadAbdul Mazid the AO has recorded the finding that he is a petty contractor and did not file any return during the year but in the statement the lender had stated that he filed the return in 2006-07. The lender has deposited Rs. 2,00,000/- cash in his account on 20.03.2010 and advanced the loan on 23.03.2010. The lender in 2006-07 filed return but the income was computed u/s 44AD. The lender had stated that his wife also files return of income but no books of account is maintain. For A.Yr. 2009-10 total gross receipt of the lender had been 1066670/- only and had shown income of Rs. 1,60,000/-. Similarly for A.Yr. 2008-09 the gross receipt was 786670/- and income was computed at Rs. 1,18,000/-. During the year of advancing loan to the assessee no return had been filed by the lender. After analyzing the savings which the lender could have with him the AO found the Rs. 2,00,000/- cash is not possible for the lender so as to deposit in his account. The learned AR had reiterated the same argument as he advance for Anil Gidwani.

In case of Smt. Rajkumari Gidwani the AO has mentioned that she is government employee and she has deposited cash on 24.02.2010 Rs. 2,22,086/- and on 16.03.2010 she had advanced loan to the assessee. She had availed KCC facility and Rs. 57757/-, Rs. 72530/- and Rs. 91999/- were credited in her account. After analyzing the facts the AO concluded that she is not able to advance the money to the assessee because she could not state as to why KCC facility had to be availed by her. The learned AR had reiterated the arguments as in earlier two cases.

In case of Smt. ShashikalDubey the statement was recorded by the AO and lender agreed to have advanced the loan to the assessee. The AO had observed that the bank statement shown that Rs. 2,00,000/- cash had been deposited on 22.03.2010 and on the very next day the loan had been advanced. She had been showing income u/s 44AE without mentioning the turn over, however per vehicle the earning had been stated to be between 100,000/- to 1,10,000/- The AO analyzing the facts and concluded that the depositor can not be stated to be able to deposit Rs. 2,00,000/- cash on one day and on one e and he did not find it as a natural phenomenon. The learned AR had reiterated in his written submission the arguments as he did in case of Anil Gidwani.

In case of Shri Sudhakar Bankhede the AO had mentioned that he deposited cash on 20.03.2010 of Rs. 2,00,000/- and on 23.03.2010 he issued the cheque in favour of the assessee. He had further deposited cash Rs. 2,00,000/- on 31.03.2010 and on the same day he had issued the cheque. The lender is a petty contractor had shown gross receipt of 15,00,000/- and had shown income u/s 44AD of Rs. 159780/- . After analyzing the savings of the lender the AO concluded that in absence of books of account the lender could not give satisfactory explanation regarding cash deposited in the bank. The learned AR reiterated the argument as he did in case of Anil Gidwani.

Decision — I have considered the rival submission and find that the case law relied upon by the learned AR can help the assessee only in the facts and circumstance of particular loan/ advance. Shri Anil Gidwani is a government employee and he is bound to intimate the transaction to the government. Similarly Smt Ralumari Gidwani has to intimate the employer regarding her transaction and availing o KCC facility by

her is not convincing the undersigned as the circumstances for the advancing the loan are absent her case. In case of Smt. ShashikalDubey the cash deposited on 22.03.2010 by her and advancing loan on 23.03.2010 on very next day appears to be covered by an after thought. So is the case with Shri ShudhakarBankhede. The persons are assessed u/s 44AE and u/s 44AD so for as Smt. Shashikala dubey and Shri Bankhede are concerned. He had been very reasonable in his anal which it self speaks in his assesment order. For example, in case of Smt. she is house wife and her husband is employee in HDFC bank. He transferred Rs. 1,00,000/- in the account of his wife which was given to the assessee as a loan on 18.03.2010. She agreed to have advanced the loan to the assessee. The AO has found that the depositor have to take the loan from her husband to give the loan to the assessee which is not supported by any exigency. However he did not make any addition, looking to the facts and circumstances of the case and so is the case with the M/s Yugawari Marketing Pvt. Ltd and Shri Vishal Bhagmare.

In the facts and circumstances of the case and material available on the record I am satisfied that the above depositors are not having capacity and genuineness for advancing of money to the assessee. wo depositors are government employee and they have to intimate to government for the transaction and two are having income u/s 44AD and 44AE respectively. In case of Shri Shaiyad Abdul Mazid his total turnover is only Rs. 1066670/-and Rs. 786670/- for A.Yr. 2009-10 and 2008-09. He also filed return of income u/s 44AD and did not file return for A.Yr. 2006-07 which shows that he is not regularly been earning income and suddenly on 20.03.2010 he deposited Rs. 2,00,000/- in his account and advanced the loan to the assessee and this is not comprehensible. The person of means can make such advance and person not bound with office procedures can also do the same. Thus I do not find any infirmity in the conclusion made by the AO. The addition made by the AO amounting Rs. 12,00,000/- in total is hereby confirmed and the ground of appeal is dismissed."

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. On a perusal of the orders of the lower authorities, it transpires that the assessee had claimed to have received unsecured loans aggregating to Rs.12 lacs from the following 5 parties :

S. No.	Name	Unsecured loan amount
1.	Shri Anil Gidwani	1,00,000/-
2.	Shri Shaiyad Abdul Mazid	2,00,000/-
3.	Smt. Rajkumari Gidwani	3,00,000/-
4.	Smt. Shashikala Dubey	2,00,000/-
5.	Shri Sudhakar Wankhede	4,00,000/-

However, as the A.O not finding favor with the claim of the assessee of having raised genuineloans from the aforementioned parties re-characterized the same as unexplained cash credits u/s.68 of the Act.

7. Controversy involved in the present appeal lies in a narrow compass i.e. sustainability of the view taken by the lower authorities who holding the loan transactions in question as bogus had made an addition of the same u/s.68 of the Act. As the assessee has assailed the orders of the lower authorities w.r.t the aforesaid five lenders in question, therefore, we shall deal with the same in a chronological manner, as under:

(A). Shri Anil Gidwani : Rs. 1 lac

8. As is discernible from the orders of the lower authorities the aforesaid person, viz. Shri Anil Gidwani since 1992 had been working in the administrative office of a government school, korba. The assessee had claimed to have received a loan of Rs.1 lac vide A/c. payee cheque from the aforementioned person. Statement of Shri Anil Gidwani was recorded on oath by the A.O in the course of the assessment proceedings. In his statement, Shri Anil Gidwani on being queried had stated that he was an income-tax assessee holding PAN AIUPG9948H and had been filing his returns of income since A.Y2011-12. On being specifically queried about the persons to whom he had during the year under consideration advanced loans, it was stated by him that he had advanced a loan of Rs.1 lac vide cheque No.391016 dated 02.12.2009 drawn on his bank account with SBI Bank, Indore to M/s. Krishna Hospital. On being queried by the A.O about his source from where the aforesaid loan of Rs.1 lac was advanced to the assessee, it was categorically stated by him that

he as a government employee was drawing salary and had advanced the loan out of the accumulated funds which he had garnered over the years from his said source of income. It was, however, admitted by him that he was not in a position to furnish complete details of the accumulated funds out of which the aforesaid loan was advanced.

9. Observing that the aforesaid person had made cash deposit of Rs.1 lac in his bank account prior to advancing of the loan on 09.04.2010, the A.O carried doubts in his mind as regards the authenticity of the impugned loan transaction. It was further observed by the A.O that as the salary of the lender was not substantial to source the impugned loan, therefore, his claim of having advanced the same to the assessee did not merit acceptance. It was observed by the A.O that considering the household expenses, travelling expenses and other ancillary expenses which the aforesaid person would have incurred in normal course he would not have been left with sufficient funds to advance the impugned loan to the assessee. Also, the A.O

was of the view that considering the availability of bank facilities/ATM in the urban area where the assessee was residing it was beyond comprehension that he would have kept the impugned funds with him in his house. On the basis of his aforesaid observations the A.O held the loan transaction in question as bogus and added the amount of Rs.1 lac as an unexplained cash credit u/s 68 in the hands of the assessee firm.

10. We have given a thoughtful consideration to the observations of the A.O in the backdrop of the contentions advanced by the Ld. Authorized Representatives of both the parties. Admittedly, it is a matter of fact borne from record that Shri Anil Gidwani, a government employee who is being assessed to income-tax since F.Y.2011-12, had in his statement that was recorded on oath by the AO in the course of the assessment proceedings categorically admitted of having advanced a loan of Rs.1 lac vide cheque No.391016 dated 02.12.2009 drawn on his bank account with SBI Bank, Indore. In fact, a perusal of his statement reveals that not only he had admitted the factum of

having advanced the aforesaid loan to the assessee firm, but had also explained as to where the same was sourced from i.e. his accumulated savings which were generated over the years. On a perusal of the categorical admission of the said lender in his statement recorded by the A.O in the course of the assessment proceedings, we are of the considered view that the primary onus that was cast upon the assessee i.e to substantiate the authenticity of the loan transaction stood clearly discharged. On a careful scrutiny of the observations of the A.O in the backdrop of the statement of the aforementioned person, it transpires that there was no justification on the part of the AO to have held the loan in question as bogus. Also, a careful perusal of the observations of the A.O reveals that he had taken recourse to mere assumptions, presumptions, surmises and conjectures for dislodging the assessee's claim of having raised genuine loan from the aforementioned person and had failed to place on record any such concrete material which would prove to the contrary. Our aforesaid view that now when the lender had duly admitted on oath before the A.O of having advanced the loan in question

to the assessee, then, no adverse inferences as regards authenticity of the loan transaction could have validly been drawn is fortified by the judgment of the Hon'ble High Court of Chhattisgarh in the case of CIT Vs. Shri Abdul Aziz (2012) 251 CTR 58 (C.G.). It was observed by the Hon'ble High Court that now when the loan creditors had in their statements and depositions admitted the loan transactions, then, the A.O without placing on record any such material which would disprove the creditworthiness of the said creditors could not have dubbed the loans so received as unexplained cash credits u/s.68 of the Act. Also, a similar view had been taken by this Tribunal in the case of Amit Kumar Bansal Vs. ITO, Ward-1 in ITA No. 130/RPR/2013, dated 20.05.2017, wherein, the adverse inferences as regards the authenticity of the loan transactions that were drawn by the A.O on the ground that the lenders had deposited cash prior to issuance of the cheques to the assessee was set-aside by the Tribunal, for the reason that the onus that was cast upon the assessee was limited to proving the identity of the loan creditors, genuineness of the loan transaction and

creditworthiness of the loan creditors and the same could not be stretched to proving of the source of the source i.e. source of the credits in the accounts of the creditors. Also, our aforesaid view is supported by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Orissa Corporation Ltd. (1986) 159 ITR 78 (SC) and that of the Hon'ble High Court of Gujarat in the case of Dy. CIT Vs. Rohini Builders (2002) 256 ITR 360 (Guj.), wherein it was observed that the assessee cannot be expected to prove the genuineness of the cash deposits in the bank accounts of the creditors because under law it was only required to prove the source of the credits in his books of account.

11. Considering the aforesaid facts involved in the case before us, wherein the lender had categorically admitted of having advanced a loan of Rs.1 lac to the assessee a/w. brief description as to from where it was sourced i.e. accumulated savings, we are of the considered view that there was no justification on the part of the A.O in holding the loan transaction in question as a bogus transaction.

(B). Shri Shaiyad Abdul Mazid : Rs. 2 lac

12. Statement of the aforementioned person was recorded on oath by the A.O in the course of the assessment proceedings. On being queried, it was categorically stated by him that he was engaged in the business of a petty contractor and was regularly being assessed to income-tax with PAN AOUPM1947E. Elaborating on his income-tax credentials, it was submitted by him that though he had not filed his return of income for the year under consideration i.e. A.Y.2010-11, but had thereafter in the succeeding years onwards consistently been filing the same. Copy of the return of income for the A.Y.2012-13 was filed by him. On being queried that as to which all persons he had advanced loans during the year under consideration, it was submitted by him that he had vide A/c payee cheque No.32792, dated 23.03.2010 advanced an amount of Rs.2 lac to M/s. Krishna Hospital. On being queried about the cash deposit of Rs. 2 lacs on 20.03.2010 i.e. 3 days prior to advancing of the aforesaid loan to the assessee firm, it was submitted by him that

he had deposited the said amount out of his accumulated savings which were lying with him in his house. On being queried about the scale of his business, it was submitted by him that he had in the preceding year executed contract work of Rs. 10 lac (approx.). On being queried as to how the savings of Rs.2 lac considering the status of his business and the size of his family was justified, it was submitted by him that his wife Smt. Sabana Begum (PAN ASDPB9584H) was also since AY 2006-07 a regular income-tax assessee and the accumulated savings of Rs.2 lac belonged to both of them. On being queried that as to why they had kept the aforesaid amount of cash in their house, it was submitted by him that as cash in the normal course of his business would be required by him, therefore, for the said reason he had kept the said amount in his house. On being queried as to how he was acquainted with the assessee firm i.e. M/s. Krishna Hospital, it was stated by him that Shri Vishal Upadhaya, partner of M/s. Krishna Hospital was known to him for the past 23-24 years. On being queried as to how he was able to run his business after

advancing a loan of Rs.2 lac to the assessee, it was stated by him that the same was managed by him out of his other sources.

13. However, the A.O rejected the claim of the assessee of having received a genuine loan of Rs. 2 lac from the aforementioned person i.e. Shri Shaiyad Abdul Mazid. Observing that the aforesaid alleged lender had made a cash deposit of Rs.2 lac on 20.03.2010 in his bank account i.e. 3 days prior to advancing of the loan on 23.03.2010, the A.O had serious doubts in his mind as regards the authenticity of the loan transaction in question. Also, it was observed by the A.O that the scale of business of the alleged lender who was a petty contractor did not inspire much of confidence as regards his financial creditworthiness. Considering the fact that the alleged lender was residing in an urban area which was well catered with banking facilities, the AO was of the view that it was beyond comprehension that he would have kept an amount of Rs. 2 lac in his house. Considering the aforesaid facts the A.O held the loan of Rs.2 lac that was claimed by the assessee to have been

received from the aforementioned person as bogus and dubbed the same as an unexplained cash credit u/s.68 in the hands of the assessee firm.

14. After deliberating at length on the aforesaid facts attending to the loan transaction in question, we are unable to persuade ourselves to subscribe to the view taken by the lower authorities. Admittedly, it is a matter of fact borne from record that the aforementioned lender, viz. Shri Shaiyad Abdul Mazid had in his statement that was recorded on oath in the course of the assessment proceedings by the A.O admitted of having advanced a loan of Rs. 2 lac vide A/c payee cheque to the assessee firm. Not only the aforesaid lender had admitted the loan transaction in question, but had also on being specifically queried by the A.O explained as to where the same was sourced from. Although the fact that the cash deposit of Rs.2 lac in the bank account of the aforesaid lender immediately prior to advancing of the loan in question raises doubts as regards the authenticity of the loan transaction, but as held by this Tribunal in the case of Amit

Kumar Bansal Vs. ITO, Ward -1 (supra) the assessee cannot be called upon to explain the source of source i.e. source of the credits appearing in the bank account of the lenders. As the aforesaid lender is admittedly regularly being assessed to income-tax, therefore, as stated by the Ld. AR, and rightly so, in case if the A.O had any doubts as regards the source of the cash deposit in his bank account, then, it was open for him to have taken necessary action in the case of the said lender. Be that as it may, drawing support from the aforesaid judicial pronouncements as have been relied upon by us while adjudicating the case of the aforesaid lender, viz. Shri Anil Gadwani (supra), we are of the considered view that as the assessee before us had duly discharged the onus that was cast upon him as regards proving the authenticity of the loan transaction in question, therefore, the same could not have been added as an unexplained cash credit u/s.68 of the Act in the hands of the assessee.

(C). Smt. Rajkumari Gadwani : Rs. 3 lacs

15. The assessee had claimed to have received an amount of Rs. 3 lac vide A/c payee cheque dated 16.03.2010 from the aforementioned person. As is discernible from the assessment order, the aforementioned person who is a lecturer by profession had advanced the aforesaid loan primarily out of the KCC proceeds of Rs.2,22,086/- that were credited in her bank account on 24.02.2010. However, the AO observing that the aforesaid lender was not having substantial financial means for advancing the aforesaid amount of loan held the same to be bogus. Also, it was observed by the A.O that considering the fact that the assessee was residing in an urban area where banking facilities were available, therefore, it was beyond comprehension that she would have kept the substantial amount of the impugned cash savings in her house. It was observed by the A.O that in the totality of the facts the loan transaction of Rs.3 lac that was claimed by the assessee to have received from the aforementioned person could safely be held to be bogus. Accordingly, the AO dubbed the loan transaction as bogus and added the amount of

Rs.3 lac as an unexplained cash credit u/s.68 in the hands of the assessee firm.

16. Having given a thoughtful consideration to the aforesaid loan transaction in question, we are unable to comprehend the facts as have been narrated by the A.O in the assessment order. On the one hand it is stated by the AO that the loan amount of Rs.3 lac that was advanced by the aforementioned person was sourced out of the KCC proceeds of Rs.2,22,086/- while for, on the other hand contradicting his own observation he had drawn adverse inferences qua the credit worthiness of the lender and, had, inter alia, held that she could not have been in possession of a substantial amount of cash savings. As the facts narrated by the AO leading to the addition of Rs. 3 lac under Sec. 68 in the hands of the assessee are in clear contradiction of his observations recorded in the assessment order, therefore, we are of the considered view that the matter requires to be restored to the file of the A.O with a direction to re-adjudicate the same after making necessary verification qua the correct factual position

and examining the lender in question. Needless to say, the A.O in the course of the set-aside proceedings shall afford a reasonable opportunity of being heard to the assessee who shall be at a liberty to substantiate the authenticity of the aforesaid loan transaction on the basis of fresh documentary evidence/material.

(D). Smt. Sashikala Dubey : Rs. 2 lacs

17. The assessee had claimed to have received an amount of Rs.2 lac from the aforesaid person, an existing income-tax assessee (PAN AIAPD1714G) who was deriving income from hiring of a vehicle (Tata sumo) to NTPC. Statement of the aforesaid person was recorded on oath by the A.O in the course of the assessment proceedings. On being queried as regards the source of her income, it was submitted by her that she was deriving income of Rs.1 lac to Rs. 1.10 lac from hiring of a vehicle (Tata Sumo) to NTPC. On being specifically queried by the A.O as to whether she had entered into any loan transaction with M/s. Krishna Hospital during the year under consideration, she had answered in the affirmative. Elaborating as regards the loan

transaction, it was stated by her that as Smt. Preeti Upadhaya, partner of the assessee firm, a family friend, being in need of money had approached her for financial assistance, therefore, she had advanced to her a loan of Rs. 2 lac out of the funds which were available with her as accumulated savings. On being queried as to whether she was having substantial financial means for advancing a loan of Rs.2 lacs, it was submitted by her that she in the normal course would either deposit her savings in the bank account or keep the same in cash with her. Once again she had in her statement categorically admitted of having advanced a loan of Rs. 2 lac vide cheque No.528769 dated 23.03.2010 to the assessee firm. Considering the fact that the aforesaid person had in her bank account made a cash deposit of Rs. 2 lac on 22.03.2010 and advanced the loan on 23.03.2010, the A.O had doubts in his mind as regards the authenticity of the loan transaction in question. Also, the A.O was not much inspired with the scale of business of the lender i.e. plying of a vehicle on hiring basis. Considering the funds that would be available with the lender after incurring the household expenses etc., the A.O

was of the view that she would not have been left with sufficient funds which would justify the cash deposit of Rs.2 lac in her bank account during the year under consideration. Accordingly, the A.O held the loan transaction in question as bogus and made an addition of Rs.2 lac as an unexplained cash credit u/s. 68 of the Act in the hands of the assessee firm.

18. After having given a thoughtful consideration to the aforesaid loan transaction in question, we are of the considered view that the aforementioned lender, an existing income-tax assessee, had categorically admitted of having advanced a loan of Rs. 2 lac vide A/c payee cheque No.528769 dated 23.03.2010 to the assessee firm. Not only the said lender on being queried by the A.O had stated that the cash deposit in her bank account from where the loan was advanced was out of her accumulated savings, but had also referred to the source from where the cash deposit in her bank account was made. In our considered view, now when the lender had categorically admitted of having advance a loan of Rs. 2 lac a/w the source thereof, then, in case

the A.O had any doubts as regards the source of the aforementioned lender, the remedy was to look into the said issue in the latter's case. Our aforesaid view that no adverse inferences can be drawn in the hands of the assessee for the reason that the lender had prior to advancing of the loan deposited cash in his bank account is fortified by the order of this Tribunal in the case of Amit Kumar Bansal Vs. ITO, Ward-1 (supra). Also, drawing support from the judicial pronouncements as had been referred to by us while dealing with the case of one of the lender, viz. Shri Anil Gadwani (supra), we are of the considered view that now when the assessee had duly discharged the onus that was cast upon her as regards proving the identity and creditworthiness of the lender, and also the genuineness of the transaction in question, therefore, the same could not have been dubbed as a bogus loan and added as an unexplained cash credit under Sec. 68 in the hands of the assessee firm.

(E) Shri Sudhakar Wankhede : Rs. 4 lacs

19. The assessee had claimed to have received a loan of Rs.4 lac from the aforementioned lender. Statement of the aforesaid lender was recorded on oath by the A.O in the course of the assessment proceedings. It was stated by the lender that he was engaged in the business of a petty contractor under the name and style of M/s. Puja Constructions and was regularly being assessed to income-tax (PAN AVPW4702G). Copy of the return of income for the A.Y.2011-12 was filed by him. On being queried as to which all persons he had advanced loans during the year under consideration, it was stated by him that he had in two tranches of Rs. 2 lac each advanced a loan aggregating to Rs.4 lac to M/s. Krishna Hospital, Korba, viz. (i) vide A/C payee cheque No.97215 dated 20.03.2010: Rs.2 lac; and (ii) vide cheque No.97216 dated 31.03.2010: Rs. 2 lac. On being queried as regards the cash deposits of Rs.2 lac each on 20.03.2010 & 31.03.2010 i.e. prior to advancing of the loan to the assessee, it was stated by him that the same was out of the cash that was received by him in the normal course of his business as that of petty contractor. In support of his aforesaid contention he had

referred to his return of income for the year under consideration wherein, he had disclosed his contract receipts at Rs.15,45,120/- . Once again on being queried by the A.O about the cash deposits of Rs.2 lacs each prior to advancing of the loan to the assessee firm, it was stated by him that as Dr. Vishal Upadhaya, partner of M/s. Krishna Hospital who was also his family doctor and an old acquaintance had approached him for financial assistance, therefore, he had advanced an interest free loan of Rs. 4 lac to him. It was stated by him that as he was advised by his tax consultant that a loan transaction is not permissible in cash, therefore, for the said reason he had advanced the loan vide an A/c payee cheque after depositing the cash available with him in his bank account. On being queried as to why the aforesaid amount of cash was kept by him in his house, it was categorically stated by the lender that as cash would be required by him in the normal course of his business as that of petty contractor, therefore, he had kept the same with him. On being queried as to how he was able to carry on his business after parting with an amount of Rs.4 lac to the assessee firm, it was submitted by him

that he had managed to do so out of the balance funds that were available with him a/w the substantial contract receipts of Rs.15 lacs that were garnered by him during the year under consideration itself.

20. Observing that the assessee had immediately prior to advancing of the respective loans of Rs.2 lacs each on 20.03.2010 and 31.03.2010 made cash deposits in his bank account, the A.O doubted the authenticity of the loan transaction in question. Also, considering the scale of business of the lender, the A.O was of the view that availability of funds to the extent of Rs.4 lacs with him did not merit acceptance. Considering the fact that the alleged lender would have incurred substantial amounts towards household expenses, travelling expenses etc., and thus, would not have been left with sufficient funds, the AO was of the view that the claim of the lender of having advanced the loan out of his accumulated savings did not inspire much of confidence. Also, the fact that the lender was residing in an urban area which was well catered by banking facilities, the A.O was of the view

that it was beyond comprehension that the lender would have kept the substantial amount of cash in his house. Considering the aforesaid facts the A.O was of the view that the loan transaction in question was clearly an accommodation entry provided by the lender at the instance of the assessee firm. Accordingly, the A.O dubbed the loan transaction as an unexplained cash credit u/s.68 of the Act and made an addition of Rs. 4 lac in the hands of the assessee firm.

21. After having given a thoughtful consideration, we are unable to persuade ourselves to subscribe to the view taken by the lower authorities. Admittedly, it is a matter of fact borne from the record that the A.O in the course of the assessment proceedings had recorded the statement of the aforesaid lender on oath. In his statement, the aforesaid lender had not only admitted of having advanced a loan of Rs. 4 lacs (in two tranches) to the assessee firm, but had in fact gone a step further and had explained the source out of which the said amount was so advanced. Considering the fact that the lender had in his statement

recorded on oath in the course of assessment proceedings duly admitted the loan transaction a/w. source thereof, we are of the considered view that there was no justification on the part of the A.O in treating the said amount as unexplained cash credit u/s.68 of the Act. As observed by us hereinabove, the fact that the lender had immediately prior to advancing of the loan made cash deposits in his bank account would not justify dubbing the amount received by the assessee as unexplained cash credits is fortified by the order of the Tribunal in the case of Amit Kumar Bansal(supra). The assessee had duly discharged the initial onus that was cast upon him, which we find had not been dislodged by the lower authorities by placing on record any irrefutable material which would prove to the contrary. We, thus, are of the considered view that the addition made by the AO u/s.68 of the Act cannot be sustained and is liable to be vacated.

22. Accordingly, on the basis of our aforesaid observations we vacate the addition of Rs.12 lacs made by the A.O u/s.68 of the Act.

23. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
ARUN KHODPIA
(ACCOUNTANTMEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th August, 2022
**SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The CIT, Bilaspur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	26.07.2022	Sr.PS/PS
2	Draft placed before author	26.07.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		