

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3093/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2011-12

Mr.Mukesh Agarwal,  
No.127A, Brickline Road, Flat 3181,  
TVH Kumbini Square, 18<sup>th</sup> Floor,  
3<sup>rd</sup> Block, Purasawalkam,  
Chennai-600 010.  
[PAN: AAFPK 6968 E]  
(अपीलार्थी/Appellant)

v. The Dy. Commissioner-  
of Income Tax,  
Central Circle-3(2),  
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Adv.  
प्रत्यर्थी की ओर से /Respondent by : Mr.Guru Bashyam, CIT  
सुनवाई की तारीख/Date of Hearing : 28.07.2022  
घोषणा की तारीख /Date of Pronouncement : 07.09.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-19, Chennai, dated 20.09.2019 and pertains to assessment year 2011-12.

**2. The assessee has raised the following grounds of appeal:**

*1. The order of the Commissioner of Income Tax (Appeals) -19, Chennai dated 20.09.2019 in I.T.A. No. 118/2015-16 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in sustaining the addition of Rs.3,05,00,000/-being the unsecured loans by invoking the provisions of Section 68 of the Act while computing taxable total income without assigning proper reasons and justification.*

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*3. The CIT (Appeals) failed to appreciate that the provisions of Section 68 of the Act had no application to the facts of the present case and further ought to have appreciated that the action of the Assessing Officer in bringing to tax the unsecured loans despite establishing the identity of the contributor/creditor as well as the genuineness of the transactions was wholly unjustified and unsustainable in law.*

*4. The CIT (Appeals) failed to appreciate that the materials/statements relied upon by the Assessing Officer was never furnished to the Appellant and ought to have appreciated any addition made in violation to the principles of natural justice should be reckoned as bad in law.*

*5. The CIT (Appeals) went wrong in rejecting the plea of the Appellant for cross-examination of Jagdish Prasad Roy and Prasad Lahoti and concluding that the right of cross examination was not absolute and further ought to have appreciated that the judgments relied upon by the Appellant would vitiate the findings recorded at Para6.34 (7).*

*6. The CIT (Appeals) erred in rejecting the plea of the Appellant in challenging the validity of the search assessment in the absence of any incriminating seized material(s) and ought to have appreciated the judicial trend in this regard would vitiate the findings recorded at Para 6.1 to 6.27.*

*7. The CIT(Appeals) failed to appreciate that the search assessment order completed u/s 153A of the Act was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.*

*8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

*9. The Appellant craves leave to file additional grounds/arguments at the time of hearing.*

**3.** The brief facts of the case are that the assessee is an individual and Managing Director of M/s.Suryadev Allosy Pvt. Ltd., filed his return of income for the AY 2011-12 on 31.07.2011 declaring total income of Rs.42,48,660/-. A search and seizure operation u/s.132 of the Act, was conducted on 18.12.2012 in the residential premise of the assessee and during the course of search, certain documents belonging to the assessee were found and seized. Consequent to search, assessment has been completed u/s.143(3) r.w.s.153A of the Act, on 31.03.2015 and determined total income at Rs.3,47,48,660/- by making additions towards

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unsecured loans received from M/s.Echolac Vinimay Pvt. Ltd., amounting to Rs.3.05 Crs. u/s.68 of the Act, as unexplained cash credit. The relevant findings of the AO are as under:

*4. On the above submission of the assessee, the following findings based on the facts are places as under:*

*Scanned copy of bank account -*

*From the above table, it can be seen that M/s.Echolac VinimayPvt. Ltd. had minimum balance on various dates before issuing the cheque to any loan debtor, namely the assessee. It received amount equal to cheques to be issued, i.e. Rs.3,05,00,000 and it was deposited into the bank only for the purpose of issuing cheques to the extent of loan to be given, even though these are through Bank entries. Moreover, the time lag between such deposits and issue of cheques is generally a day or two, which proves that the lender did not have the sufficient wherewithal for giving loans. This type of transactions are typically followed by the Jamakharchi/Shell/Paper Companies,*

*(ii) As per the Balance Sheet of M/s. Echolac Vinimay Pvt Ltd., though the total assets of the company during the assessment year is Rs.100.33 crores, the net profit declared by it is only Rs.18,487/-. This shows the low profit viability of such Jama Kharachi/Shell/Paper Companies and is clearly evident that these are only created for providing accommodation entries and not for pursuing any business.*

*5. . The assessee was provided with a copy of statement of Shri. Beni Prasad Lahoti, accommodation entry operator, from whom statement was recorded by the Investigation Wing, Kolkata, which has proved beyond doubt that:*

*a. he has few of his employees namely,*

- 1. Shri. Navnit kumar Singhania,*
- 2. Shri. Jaiprakash roy, ;*
- 3. Shri. Uma Prasad Lahoti,*
- 4. Shri. Hari Prasad Lathi,*
- 5. Shri. Kamaljit Singh,*
- 6. Shri. Jogender Pradhan,*

*who are name lenders and act as dummy directors of companies floated by him. The statements are also recorded from the above persons.*

*b. Shri. Beni Prasad Lahoti also seemed to have control over 87 companies. Similarly Shri. Jaiprakash Roy seemed to be director of 21 companies. In the statement the assessee also provided statement recorded from Beni Prasad Lahoti, who had categorically mentioned that he was operating M/s.Echolac Vinimay Pvt.*

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*Ltd. and one of his employees Shri. Jaiprakash Roy was director in M/s. Echolac vinimay Pvt. Ltd. and was acting as a dummy director.*

*The assessee's contention that Shri Beni Prasad Lahoti is unconnected does not hold good because the assessee's money has been routed through many layers and channels provided by this entry operator and has been found to be credited in the books of accounts of assessee, as unsecured loans. Mentioning that Shri. Jaiprakash Roy's statement is out of context (as per the version of the assessee is not true and has been clearly illustrated. Further statement recorded from Shri Navnit Singhania also explains the nature of these. transactions. The assessee's reply that only the Directors are responsible and the accommodation entry operators are no\ known to them at all do not have any relevance due to lack of realism, as based on the facts of the case, the roles of the dummy directors .and the accommodation entry operators are interspersed and cannot be looked in isolation.*

*6. After analyzing the submissions made by the assessee, bank account statements and other relevant evidences, it is seen that the above sum of Rs.1,10,00,000/- represents sum credited in the books of the assessee as explained in previous paragraphs and is assessee's unaccounted money routed through channels provided by the accommodation entry operator by way of various Jama Kharachi/Shell/Paper Companies utilizing regular banking modes. The assessee's contention that these are genuine transactions received from the lender whose identity is genuine and that it is creditworthy does not hold good as this company's operations have already been investigated by the Investigation Directorate, Kolkata and have been proven well beyond doubt and in the words of the connected persons, is only controlled and managed by the above-referred individual (accommodation entry operator); with a set of employees (name lenders) acting as dummy directors, who sign on the dotted lines for a meagre remuneration and are in no way connected] to the control and management of the affairs of the company. Hence, to sum up, the following are the facts which emerge from the aforesaid.*

*a. During relevant assessment year the assessee received Rs.3,05,000 as loan from various Jama Kharachi/Shell/Paper Companies*

*b. On basis of information received from Investigation wing that assessee was Involved in taking accommodation entries, the assessee was asked to produce the lenders. Even after sufficient time was. accorded, the assessee: failed to do so.*

*c. The assessed has failed to prove the identity, creditworthiness and genuineness of the transactions. As these criteria are to be proven collectively, failure of even one of the criterion, renders the transaction as not genuine. The onus to prove the three factum is on the assessee as the facts are within the personal knowledge of the assessee.*

*d. Mere: production -of Incorporation details, PAN Numbers or income tax returns may not be sufficient when surrounding and attending facts predicate a cover up. The production of incorporation details, PAN numbers or income tax details may mostly indicate towards completion of paper work or documentation but genuineness, creditworthiness and identity of investment and the investors are deeper and obtrusive than mere completion of paper work or documentation.*

*e. The fact that assessee failed to produce the Directors of Jama Kharchi / Shell /paper Companies who had advanced loan even after ample time was given shows*

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that these were people who were completely unrelated to the assessee and as such, all the entries were merely accommodation entries.

**7. "Cash credits.**

**68.**

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year..."

Hence, it is concluded that Rs.3,05,00,000/- is the unexplained credit recorded in the books of assessee, and is deemed to be not explained satisfactorily and is brought to tax u/s 68 of the Income Tax Act, which reads as under:

8. Penalty proceedings u/s.271(1)(c) are initiated for furnishing of inaccurate particulars.

9. On the facts and circumstances presented, considering the details furnished on behalf of the assessee and taking into account the observations of the Authorized Officer who conducted the search u/s,132 of the I. T. Act, the assessment is completed determining the income as under:

*Computation of Total Income*

		Rs.
Income returned		42,48,660/-
<b>Add: Unexplained cash credit u/s.68</b>		<b>3,05,00,000/-</b>
<b>Total assessed income</b>		<b>3,47,48,660/-</b>
Income tax payable		1,73,30,574/-
Advance tax	0	
TDS	11,21,230/-	
140 A	41,226/-	
<b>Total taxes paid</b>		<b>11,62,456/-</b>
<b>Balance tax payable</b>		<b>1,61,68,118/-</b>

This order has been passed with the necessary approval of the Joint Commissioner of Income Tax, Central Range-3 vide C.No.CR-3/Approval/153D/2014-15 dated 30.03.2015.

Demand Notice enclosed. Penalty proceedings U/s. 271(I)(c) are initiated separate.

**4.** Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed Written Submissions on the issue which has been reproduced at Para No.5 on pages 4-9 of the Ld.CIT(A)'s order. The sum and substance

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of the arguments of the assessee before the Ld.CIT(A) are that additions made by the AO towards unexplained cash credit u/s.68 of the Act, in respect of unsecured loan taken from M/s.Echolac Vinimay Pvt. Ltd., cannot be sustained, because additions made by the AO is not supported by any evidences found as a result of search. The Ld.CIT(A) after considering the relevant submissions of the assessee and also taken note of various facts and by following the decision of the Hon'ble Kerala High Court in the case of E.N.Gopakumar v. CIT reported in [2016] 390 ITR 131 (Ker.), held that there is no merit in the arguments of the assessee that no additions can be made in the absence of incriminating material, because, as per the provisions of Sec.153A of the Act, the moment search took place, the AO shall have power to assess or re-assess total income including undisclosed income, if any, found as a result of search and thus, rejected arguments of the assessee and sustained additions made by the AO. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**5.** The Ld.AR for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT Chennai Bench in the case of Smt.Rita Agarwal &Others v. DCIT in ITA No.3263/Chny/2019, where an identical issue has been considered by the Tribunal and also by following the decision of the Hon'ble Supreme Court in the case of PCIT vs. Meeta Gutgutia [2018] 96 Taxmann.com 468 (SC) held that no addition can be made in the assessments framed u/s.153A of the Act, in the absence of any incriminating material found as a result of search.

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**6.** The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that there is no merit in the arguments of the Id. Counsel for the assessee that no addition can be made in the absence of incriminating material found during the course of search. It was further submitted that once the search took place, the Assessing Officer is bound to assess or reassess the total income with respect to each assessment year falling within the six assessment years in which search took place on the basis of regular books of account and other materials found during the course of search. In this regard, he relied upon the decision of the Hon'ble Kerala High Court in the case of E.N. Gopakumar v. CIT [2016] 390 ITR 131 (Ker.).

**7.** We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The facts born out from the record indicate that in this case, search operation under section 132 of the Act was conducted on 18.12.2012. It is an admitted fact on record that the assessment for the impugned assessment year in question in this appeal is unabated/concluded as on the date of search, because, the time limit for issue of notice under section 143(2) expires on 30.09.2012 i.e., before the date of search on 18.12.2012. Thus, from the above facts, it is very clear that the assessment for the assessment year under consideration is unabated/concluded as on the date of search. Further, it is well settled principles of law by the decision of various High Courts, including the decision of the Hon'ble Bombay High Court in the case of CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra),

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wherein, it has been held that no addition can be made in the assessment framed under section 143(3) r.w.s. 153A of the Act unless, the addition is supported by incriminating material found during the course of search, if such assessment is unabated/concluded as on the date of search. In the case of CIT v. Kabul Chawala reported in 380 ITR 573, the Hon'ble Delhi High Court has held that although section 153A does not say that addition should be strictly made on the basis of evidence found in the course of the search or other post search material or information available with the Assessing Officer which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with seized material. The Hon'ble Gujarat High Court in the case of M/s. Saumya Constructions P. Ltd. reported in 387 ITR 529 has reiterated similar legal position and held that no addition can be made in the absence of incriminating material in unabated/concluded assessment. In yet another case, in the case of PCIT v. Meeta Gutgutia reported in 395 ITR 526, the Hon'ble Delhi High Court has held that there should be incriminating material qua each of the assessment years in which additions were sought to be made pursuant to the search and seizure operations and such observations were affirmed by the Hon'ble Supreme Court by way of dismissing the SLP filed by the Department in the case reported in 257 Taxman 441.

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**8.** The sum and substance of ratio laid down by various Courts, including the Hon'ble Supreme Court in the case of Meeta Gutgutia (supra) is that in the absence of incriminating material found as a result of search, no addition can be made in the assessment completed under section 143(3) r.w.s. 153A/153C of the Act, if such assessments are unabated on the date of search. Although, the Id. DR has vehemently supported his arguments in the light of decision of the Hon'ble Kerala High Court in the case of E.N. Gopakumar (supra) and in the decision of Hon'ble Karnataka High Court in the case of Canara Housing Development Co. v. CIT [2014] 49 taxmann.com 98 (Kar) and argued that there is no requirement of incriminating material to make addition in search assessment, because, the provisions of section 143A/153C of the Act does not require any incriminating material to make assessment consequent to search proceedings, we find that although, the Hon'ble Kerala High Court and the Hon'ble Karnataka High Court have taken a contrary view, but, the Hon'ble Supreme Court has affirmed the decision of the Hon'ble Delhi High court in the case of PCIT v. Meeta Gutgutia (supra) and thus, we prefer to follow the decision of the Hon'ble Delhi High Court, which decided the issue in favour of the assessee.

**9.** In this case, there is no dispute with regard to the fact that the search was conducted on 18.12.2012 and as on date of search assessment for the assessment year 2011-12 is unabated and thus in the absence of any incriminating material, no addition can be made including the addition of

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share capital under section 68 of the Act. In this case, if we go through the addition made under section 68 of the Act, we find that there is no reference to any incriminating material and thus, we are of the considered opinion that the addition made under section 68 of the Act cannot be sustained and thus, we direct the Assessing Officer to delete the addition made in respect of unsecured loan under section 68 of the Act.

**10.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 07<sup>th</sup> day of September, 2022, in Chennai.

**Sd/-**  
**(महावीर सिंह)**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष /VICE PRESIDENT**

**Sd/-**  
**(जी. मंजूनाथा)**  
**(G. MANJUNATHA)**  
**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 07<sup>th</sup> September, 2022.  
**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF