

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER,
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 396/Rjt/2016
निर्धारण वर्ष/Asstt. Years: 2013-2014

A.C.I.T., Morbi Circle, Morbi.	Vs.	M/s Vikas Sanitarywares, Ghuntu Road, Morbi. PAN: AABFV5687M
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Revenue by :	Shri B.D. Gupta, Sr. D.R
Assessee by :	Shri Deepak Rindani, A.R

सुनवाई की तारीख / **Date of Hearing** : **01/07/2022**
घोषणा की तारीख / **Date of Pronouncement**: **09/09/2022**

आदेश/ORDER

PER BENCH:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income tax (Appeals)-3, Rajkot, dated 31/08/2016 arising in the matter of assessment order passed under s.143 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-14.

2. The Revenue has raised following grounds of appeal:

1. *On the facts and circumstances of the case arid in law, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,85,47,654/- made u/s.68 of the I.T. ACT, 1961 without appreciating the facts of the case.*
2. *Any other ground that the revenue may raise before or during the proceeding before the Hon'ble I.T.A.T.*
3. *On the facts of the case and in law, the Ld. C.I.T.(A) ought to have upheld the assessment order of the A.O.*
4. *It is, therefore, prayed that the order of the C.I.T.(A) may be set aside and that of the A.O. be restored to the above extent.*

3. The only issue raised by the Revenue is that the learned CIT (A) erred in deleting the addition of Rs. 2,85,47,654/- under the provisions of section 68 of the Act.

4. The assessee is a partnership firm and engaged in the business of manufacturing of ceramic glazed tiles. During the assessment proceedings, it was found that the assessee has received fresh unsecured loan of Rs. 2,85,47,654/- from the following parties:

<i>Sr. No.</i>	<i>Name of the party</i>	<i>Amount of Loans accepted during the year (in Rs.)</i>
1.	AR/Vidja	5,00,000/-
2.	Krishna Sales	10,50,000/-
3.	S.B. Enterprise	2,59,97,654/-
4.	Vrajlal Chaturbhai Amrutiya	10,00,000/-
	Total	2,85,42,654/-

4.1 On question, the assessee furnished copy of ledger confirmation, PAN and Bank Statement in case of only one party namely Shri Vrajlal Chaturbhai Amrutya from whom the loan of Rs. 10 Lakh was received. Therefore, the AO held that the

assessee failed discharge primary obligation cast under section 68 of the Act i.e. identity, genuineness and credit worthiness of the lenders/creditors in case of remaining parties. Moreover, in case of party namely Shri Vrajlal Chaturbhai Amrutya, the creditworthiness has also not been established. As such merely furnishing ledger confirmation and bank statement do not tantamount to establishment of creditworthiness of the lender/creditor. Thus, the AO treated the amount of loan credited in the books of the assessee for Rs. 2,85,47,654/- as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

5. Aggrieved assessee carried the issue before the learned CIT(A) and submitted that all the corroborative evidences were furnished during the assessment proceedings with regard to identity, genuineness and credit worthiness of lenders/creditors vide letter dated 22-01-2016. But the AO has not accepted the same by stating that the assessment order has already been passed. Therefore, the same should be accepted as additional evidences.

6. The learned CIT(A) forwarded the additional evidences to the AO for remand report which was submitted by letter dated 16-08-2016. The sum and substance of the same is as under:

- i. In the case of loan parties namely Shri AR Vidja (for Rs. 5 lakh) and Shri Varajla Chaturbhai Amrutya (for Rs. 10 lakh) copy of PAN, ITR Acknowledgment receipt and confirmation letter were furnished. The creditworthiness both the parties were not established based on cogent material.
- ii. In case of M/s Krishna Sales (for Rs. 10.5 lakh) only contra ledger account was furnished. It was submitted that the party is from Delhi and refused to share other detail. Therefore the identity, genuineness and credit worthiness was not established.
- iii. In case of M/s SB Enterprises (for Rs. 2,59,97,654) PAN, ITR acknowledgment, contra ledger account, confirmation letter and bank

statement showing amount returned were furnished. M/s SB Enterprises is proprietary concern of Shri Rajnikant M Vaghela who is engaged in the business of "Shroff" and earning commission income only. Thus, he is not having financial standing to lend such huge amount. The repayment of loan in later year does not prove of genuineness of transaction.

7. The assessee in rejoinder to the remand report submitted that the AO has not brought any new finding or materials other than what has been given in the body of assessment order. It has duly discharged its primary onus by furnishing the necessary details.

8. The learned CIT(A) after considering the facts in totality deleted the addition made by the AO by observing as under:

Now if we see the instant case there remains no doubt that appellant had discharges the primary onus of establishing the identity of lender (PAN card, confirmation & IT Returns), genuineness of transaction (bank statement & ledger copy of bank a/c showing credit of the said loans & debit of their repayments) as well as credit worthiness (IT returns). In one case M/s. Krishna Sales, the money was received and returned back in the same financial year through banking channel to the lender which PAN number is now available [AGKPK8284E] along with confirmation. The AO had not done any exercise to disprove appellant's version except showing the dissatisfaction with the sufficiency of the evidences. If appellant, for any reason, is not able to submit lenders bank statement then AO instead of instantly ruling the transaction as bogus, should have contacted the lender or lender's bank (which could have been easily ascertained by the appellants bankers) or lender's AO (from the IT returns copy of which was filed). Instead of discharging his burden (which had shifted on him once appellant had submitted primary evidences discharging his burden); the AO had incorrectly branded the entire loan transactions as non-genuine without doing any further investigation. This action is not correct and cannot be sustained. The addition so made had to be deleted. More so ever the AO is not without a remedy as he can pass on the relevant information pertaining to loan advances by the lender to the respective AOs if he thinks that investigation needs to be conducted in the lender's case. As such the addition made by AO is deleted. These grounds are allowed.

9. Being aggrieved by the order of the learned CIT(A), the Revenue is in appeal before us.

10. The learned DR and the learned AR before us vehemently supported the order of the authorities below as favorable to them.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 of the Act by the Hon'ble Calcutta High Court in the case of CIT Vs. Precision finance (p) Ltd reported in 208 ITR 465 wherein it was held as under:

"It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine."

11.1 Now, 1st we proceed to understand the identity of the party. The identity of the party refers to the existence of such party which can be proven based on the evidences. As such the identity of a party can be established by furnishing the name, address and PAN detail, bank details, passport and other details of the Government agencies.

11.2 The next stage comes to verify the genuineness of the transaction. Genuineness of transaction refers what has been asserted is true and authentic. A genuine transaction must be proved to be genuine from all prospective and not merely on paper. The documentary evidences should not provide a mask to cover the actual transaction or designed in way to present the transaction as true but the same is not. Genuineness of transaction can be proved by submitting confirmation of the party along details of mode transaction but merely showing transaction carried out through banking channel is not sufficient enough. As such, the same (genuineness) should also be proved by circumstantial/ surrounding evidences as

held by the Hon'ble Supreme Court in case of Durga Prasad More reported in 82 ITR 540 and in case of Smt. Sumati Dayal reported in 214 ITR 801.

11.3 The last stage comes to verify the creditworthiness of the parties. The term creditworthiness as per Black Law Dictionary refers as:

"creditworthy, adj. (1924) (Of a borrower) financially sound enough that a lender will extend credit in the belief default is unlikely; fiscally healthy-creditworthiness.

11.4 Similarly in The New Lexicon Webster's Dictionary, the word "creditworthy" has been defined as under:-

"creditworthy, adj. of one who is a good risk as a borrower."

11.5 It the duty of the assessee to establish that creditor party has capacity to advance such loan and having requisite fund in its books of account. The capacity to advance loan can be established by the showing sufficient income, capital and reserve or other fund in the hand of creditor. It is required by the AO to find out the financial strength of the creditor to advance loan with judicious approach and in accordance with materials available on record but not in arbitrary and mechanical manner.

11.6 In the light of the above discussion, we proceed to adjudicate the issue in hand. With respect to the identity of the party, we find that the assessee has furnished PAN and ITR acknowledgment, ledger copy with complete address. From the above, there remains no doubt that the identity of the loan parties is in disputed, as the same is proved beyond doubt.

11.7 With respect to the genuineness of transaction, we note that the assessee has submitted that all the transaction were carried out through banking channel and in support, it has furnished the copy confirmation which was also confirmed by the respective parties. Therefore, the genuineness of transaction also got established. It is also pertinent to point out that the AO in remand has also accepted the identity

and genuineness of the transaction. The AO only doubted the creditworthiness of the lender/creditor.

11.8 Be that as it may be, the undisputed fact that the amount of loan received by the assessee was returned back in subsequent years to the loan parties through banking channel. Thus, it implies that the assessee was not the beneficiary of the loan received by it as alleged by the AO. Though the loan has been repaid by the assessee in the subsequent year, but it is difficult to hold that the assessee was the ultimate beneficiary of the impugned amount. Thus, we can assume that the impugned transaction was the business transactions between the assessee and the loan parties. We also feel pertinent to refer the judgment of the Hon'ble Gujarat high court in case CIT vs. Ayachi Chandrashekhar Narsangji reported in 42 taxmann.com 251 where it was held as under:

It is required to note that as such an amount of Rs. 1,00,00,000 vide cheque No. 102110 and an amount of Rs. 60 lakhs vide cheque No. 102111 was given to the assessee and out of the total loan of Rs. 1.60 crores, Rs. 15 lakhs vide cheque no. 196107 was repaid and therefore, an amount of Rs. 1,45,00,000 remained outstanding to be paid to IA. It has also come on record that the said loan amount has been repaid by the assessee to 'IA' in the immediately next year and the Department had accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible, there was no reason to interfere with the impugned order passed by the Tribunal. [Para 6]

11.9 We also find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of the CIT Vs. Rohini builders reported in 256 ITR 360 wherein it was held as under:

"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."

11.10 In view of the above and after considering the facts in totality, we are of the opinion that the order of the learned CIT(A) does not require any interference and

therefore, we direct the AO to delete the addition made by him. Hence the ground of appeal of the Revenue is hereby dismissed.

12. In the result appeal of the Revenue is dismissed.

Order pronounced in the Court on 09/09/2022 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 09/09/2022
Manish

(True Copy)