

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**  
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM**  
**आयकर अपील सं./ITA No.136/RPR/2019**  
(निर्धारण वर्ष / Assessment Year :2015-2016)

Prakash Godhwani, Prop. M/s Prakash Agency, Near Girls High School, Neora(CG)	Vs	ITO-1(2), Raipur
PAN No. : <b>AGLPG 2669 J</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri R.B.Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri G.N.Singh, Sr. DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	25/07/2022
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	21/09/2022

**आदेश / O R D E R**

**Per Arun Khodpia, AM :**

This appeal is filed by the assessee against the order passed by the CIT(A)-I, Raipur, dated 07.02.2019 for the assessment year 2015-2016, on the following ground:-

- In the facts and circumstances of the case, Ld. CIT(A) erred in confirming addition of Rs.28,04,000/- made by the AO u/s.68, on account of unsecured loan obtained by assessee from four lenders. The addition of Rs.28,04,000/- made by AO & sustained by Ld. CIT(A) is arbitrary, baseless & is not justified.*
- Brief facts of the case are that the assessee is engaged in the business of wholesale trading of FMCG and filed his return of income electronically on 16.09.2015 declaring total income of Rs.4,08,400/-. The case of the assessee was selected for limited scrutiny through CASS for the following reasons :-

- Unsecured loan from persons who have not filed their return of income.*
- Large increase in unsecured loan during the year,*
- Large squared up loans during the year &*
- Mismatch in turnover reported in Audit report and ITR.*

3. Accordingly the AO issued statutory notices and in compliance to the same, the assessee filed supporting evidence and books of accounts, which were examined with reference to the limited purposes, by way of test check. During the course of assessment proceedings, the AO found that the assessee had taken unsecured loan during the year from six persons, details of which have been mentioned in para III of the assessment order. However, the AO found that the creditworthiness as well as capacity of the four lenders has not been proved by the assessee. It was also noted by the AO that as and when the assessee requires funds, the amount so required is deposited in the accounts of the lenders and the same is routed through cheques to the assessee. Therefore, the AO added Rs. 28,04,000/- u/s.68 of the Act to the total income of the assessee on account of cash deposited in bank accounts of the lenders just before the issue of cheques in form of loan to the assessee.

4. Against the above assessment order, the assessee preferred appeal before the CIT(A) and the CIT(A) confirmed the addition made by the AO and dismissed the appeal of the assessee. Now, the assessee is in further appeal before the Tribunal.

5. Ld. AR before us filed his written submission, which reads as under:-

Submission of the assessee

1. Documents of lenders filed before AO: -

<b>Name of lender</b>	<b>Computation &amp; acknowledgement</b>	<b>Capital account/ balance sheet</b>	<b>Bank statement</b>
<i>Arjundas Godhwani</i>	9 to 22	23 to 29	30 to 33
<i>Bharat Kumar Godhwani</i>	34 to 45	46 to 51	52 & 53
<i>Smt. Anju Godhwani</i>	54 to 61	62 to 64	65 to 67
<i>Smt. Sulochana Godhwani</i>	68 to 80	81 to 86	87 & 88

2.

<b>Lender</b>	<b>Capital vis a vis loan</b>	<b>Reflected in lender's balance sheet</b>	<b>Reflected in bank statement</b>
Arjundas Godhwani	PN 29 of PB, Capital Rs. 18.48 lakh, loan of Rs. 14.02 lakh	Yes, PN 29 of PB.	Yes, PN 32 of PB.
Bharat Kumar Godhwani	PN 51 of PB, Capital Rs. 16.22 lakh, loan Rs. 12 lakh.	Yes, PN 51 of PB.	Yes, PN 53 of PB.
Anju Godhwani	PN 64 of PB, Capital Rs. 9.43 lakh, loan Rs. 6 lakh	Yes, PN 64 of PB.	Yes, PN 66 of PB.
Sulochana Godhwani	PN 86, Capital Rs. 17.68 lakh, loan Rs. 15 lakh.	Yes, PN 86.	Yes.

3. All the four lenders appeared before AO and statements recorded: -

<b>Name of lender</b>	<b>Reference of statement reproduced in assessment order</b>	<b>Remarks</b>
Smt. Sulochana Godhwani	Page no. 6, question no. 9, stated transaction would be known to her husband. Same on page no. 7 of order.	No enquiry from her husband who appeared before AO and whose statement was recorded.
Smt. Anju Godhwani	Page no. 10, answer to Q. no. 6 to 9, she stated transaction would be known to her husband.	No enquiry from her husband who appeared before AO and whose statement was recorded.
Arjundas Godhwani	Confirmed having given loan, question no. 10 & 11 of statement, page no. 15 of order.	Source of loan also explained in these two answers.
Bharat Kumar Godhwani	Confirmed having given loan, question no. 6 of statement, page no. 18 & 19 of order.	

4. Burden cast u/s 68 discharged by assessee. Burden shifted to the AO. Thereafter AO did not bring any of the other facts to the knowledge of assessee. **Burden never shifted back to assessee.** None of the legal & cogent evidences disproved.

CIT vs Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC)

**CIT vs Jai Kumar Bakliwal (2014) 366 ITR 217, 223 & 224 (Raj.)**

When the assessee discharges initial burden u/s 68, the onus shifts to the AO. If AO assesses the said loan as income of the assessee from undisclosed source, he has to prove either by direct or indirect/circumstantial evidence that the money which the assessee

received from creditor actually belong to and was owned by assessee himself (page no. 223 & 234 of Reports).

5. AO examined affairs of lenders and made addition :

Adversity drawn on the basis of **affairs of creditors**. No fact or evidence claimed by the assessee is disproved. Reliance on:

Reliance on *DCIT vs Rohini Builders (2002) 256 ITR 360 (Guj.)*, SLP dismissed vide (2002) 254 ITR (St.) 275, page no. 369 of Reports, para no. 7.

6. Addition made on the sole ground that cash deposited in the bank account of lender

i) Event of cash deposit by itself could not result into addition. It could have at the most, triggered an enquiry.

ii) Assessee not burdened to explain how cash was deposited by the lenders. Reliance on: -

- *DCIT vs Rohini Builders (2002) 256 ITR 360 (Guj.)* PN 89 to 91 of PB, relevant finding in para no. 7.

*Amit Kumar Bansal vs ITO (2017) 50 CCH 3 (Raipur)*, PN 92 to 97 of PB, relevant finding on PN 94, para no. 10.

*ITO vs Gauram Prasad Nishad in ITA no. 101/BLPR/2012 dt. 05.10.2015.*

Transactions in bank account of lender can be subject matter of verification in the hands of the lender.

7. When the lender admitted having given loan, responsibility of the assessee is over. Reliance on *CIT vs Metachem Industries (2000) 245 ITR 160 (MP)*.

8. No lender stated that cash was given by assessee. Nothing on record to show that assessee's own money brought back.

9. A person could still be held to be owner of sum of money even though explanation furnished by him regarding source of that money was found to be not correct - observed by Hon'ble Supreme Court in *87 ITR 349 (SC)*.

10. No responsibility to establish source of source. Reliance on: *Jaikishan Dadlani vs ITO (2005) 24 CCH 0330 Mum.Trib.*, (2005) 4 SOT 0138 Mum. Trib., *Daulat Ram Rawatmull 87 ITR 349 (SC)*.

11. Reliance on: -

*CIT vs Abdul Aziz (2012) 251 CTR 58 (Chhattisgarh) PN 98 to 108 of PB, relevant finding on PN 101 of PB, para no. 19.*

*ITO vs Shri Koushal Agarwal in ITA no. 220/BLPR/2010 dt. 18.07.2013*

If the AO was not convinced with the reply of lenders, he should have made some further enquiry and the onus upon the assessee is only to establish prima facie capacity of the lenders.

*Aravali Trading Company vs ITO (2008) 220 CTR 622 (Raj.)*

Merely because the explanation of creditor about the source of money was not acceptable, it cannot be presumed that the deposit made by the creditor is assessee's money.

12. Majority of the loans repaid: -

Mrs. Anju Godhwani - In FY 2018/19

Mrs. Sulochana Godhwani - In FY 2020/21

Shri Bharat Kumar Godhwani - In FY 2018/19

6. Further Ld AR of the assessee submitted that Ld AO was not justified in finding that the 4 lenders out of 6 lenders were not creditworthy and their bank account were used only for the purpose of giving loan to the appellant. During the assessment proceedings Ld AO had conducted detailed enquiry, also called all these loan creditors and their statements were recorded. Observations of the AO with respect to each of the loan creditor and submission of the Ld AR of the assessee before the Ld CIT(A) were as under:-

a) **Smt. Sulochana Godhwani:**

*The Id. A.O. opined that she had given loan of Rs 15,00,000/- and out of this, Rs 7,50,000/- was given after depositing of cash in her bank account. In response to summons issued u/s 131(1) the lender appeared and her statement was recorded on oath. As per Id. A.O. the creditworthiness as well as capacity of the lender was not proved only on the say that she has no information with her and her husband can answer this. According to Id. A.O. it indicates that her accounts were used by her husband to deposits cash of the appellant and to give it to through cheques as loan, therefore, the cash deposit of Rs.7,50,000/- was added back to total income of the appellant u/s 68 of the Act.*

*a.i) The observations of the Id. A.O. is not based on any material. Smt.Sulochana Godhwani is regular income tax assessee from since longtime. She had appeared before Id. A.O and affirmed and confirmed the fact of giving the said loan to the assessee. Her statement is extracted in assessment order. Copies of her Income Tax returns for the preceding three years are enclosed as **ANNEXURE-1**. Similarly copies of computation of income, capital account and balance sheet are also enclosed as **ANNEXURE-2**. It is apparent from the details furnished that the creditor is competent enough to advance such loan **and** as such it cannot be said with that Smt.Sulochana Godhwani is not able to make the deposit. All these things prove that the action of the Ld. AO is not correct. As regards deposit and withdrawal of money on the same day and the inference that it was nothing but assessee's own money, which was credited by way of cash in the books, it is submitted that the inference is not based on any material except suspicion. Therefore, action of Id. Assessing Officer is uncalled for specifically in view of the fact that the concerned persons have confirmed making of the loan and they are also regularly assessed to Income Tax with AOs at the same station. The Ld. AO should have comfortably called for and verified the facts before deciding the issue against the assessee. The*

creditor's husband also appeared before Id. Assessing Officer in connection with loan given by him but id. Assessing Officer deliberately avoided to ask anything about this transaction, which establishes that the Id. Assessing Officer had no effective or genuine objections regarding these transactions. It is, therefore, prayed that the addition made may most kindly be deleted.

b) **Smt. Anju Godhwani:**

The Id. A.O. has held that she has given loan of Rs.6,00,000/- to the appellant after depositing cash in her bank account. The Id. A.O. issued summons to the lender u/s 131(1) of the Act and her statement was recorded on oath and on the basis of statement the Id. A.O. observed that the creditworthiness as well as capacity of the lender was not proved only on the say that the information was not with her and her husband can answer this. As per Id Assessing Officer it indicates that her accounts were used by her husband to deposit her cash and to give it to through cheques as loan, therefore, the cash deposit made by the lender in her bank account at Rs.6,00,000/- was added back to total income of the appellant u/s 68 of the Act.

b.i) The observations of the Id. A.O. are not based on any material. Smt. Anju Godhwani is a regular income tax assessee from since long time. The Id. A.O recorded her statement in which she affirmed and confirmed the fact of giving said loan to the assessee. Copy of her statement is extracted in impugned order. Copies of her Income Tax Returns for the preceding three years are enclosed as **ANNEXURE-3**. Similarly, copies of computation of income, capital account and balance sheet are also enclosed as **ANNEXURE-4**. It is apparent from the details furnished that the creditor is competent enough to **advance** such loan and as such it cannot be said with that Smt. Anju Godhwani is not able to make the deposit. All these things prove that the action of the Ld. AO is not correct. As regards deposit of cash and issuance of cheque thereafter the inference that it was nothing but assessee's own money, which was credited by way of cash in the books, it is submitted that the inference is based suspicion and not on any substantive material. His action is uncalled for specifically in view of the fact that the concerned persons have confirmed making of the loan and they are also regularly assessed to Income Tax with AOs at the same station. The Ld. AO should have comfortably called for and verified the facts before deciding the issue against the assessee. The action of the Ld. AO is not justified. The creditor's husband also appeared before Id. Assessing Officer in connection with loan given by him but Id. Assessing Officer deliberately avoided to ask anything about this transaction which establishes that the Id. Assessing Officer had no effective or genuine objections regarding these transactions. It is, therefore, prayed that the addition made may most kindly be deleted

c) **Shri Arjun Das Godhwani:**

The Id. A.O. has held that he had given above loan of Rs 14,02,000/- to appellant after depositing of cash of Rs 8,02,000/- in the bank account. The Id. A.O. has issued summons to the lender u/s 131(1) of the Act and his statement was recorded on oath and on the basis of said statement the Id. A.O. inferred that creditworthiness as well as capacity of the lender were proved only as the lender is having nominal taxable income. It clearly indicates that the account was used to deposit cash and to give it through cheques to the appellant in form of loan, therefore, the cash deposit made by the lender in his bank account at Rs 8,02,000/- was added back to total income of the appellant u/s 68 of the Act.

c.i) The observation of the Id. A.O. is not based on any material. Shri Arjun Das Godhwani is regular income tax assessee from since long time. The Id. A.O recorded statement of Shri Arjun Das Godhwani. In his statement Shri Arjun Das Godhwani, has affirmed and confirmed the fact of giving the said loan to the assessee. Copy of his statement is extracted in assessment order. Copies of his Income Tax Returns for the preceding three years are enclosed as **ANNEXURE-5**. Similarly copies of computation of income, capital account and balance sheet of Shri Anju Das Godhwani are also enclosed as **ANNEXURE-6**. It is apparent from the details furnished that the creditor is competent enough to advance such loan and as such it cannot be said with that Shri Arjun Das Godhwani is not able to make the deposit. All these things prove that the action of the Ld. AO is not correct. As regards deposit of cash on various dates and issuance of cheque thereafter, the inference that it was nothing but appellant's own money, which was credited by way of cash in the books, it is submitted that the inference is not based on any material. The Ld. AO's averment is not supported by any material. His action is uncalled for specifically in view of the fact that the concerned persons have confirmed making of the loan and they are also regularly assessed to Income Tax with AOs at the same station. The Ld. AO should have comfortably called for and verified the facts before deciding the issue against the assessee. The action of the Ld. AO is not justified. It is, therefore, prayed that the addition made may most kindly be deleted.

d) **Shri Bharat Kumar Godhwani:**

The Id. A.O. held that above persons has given loan to the tune of Rs12,00,000/- to the appellant after depositing cash of Rs 6,52,000/- in the bank account of the lender. The Id. A.O. has issued summons to the lender u/s 131(1) of the Act and his statement was recorded on oath and on the basis of statement the Id. A.O. observed that the creditworthiness as well as capacity of the lender were not proved on the ground that the lender is having nominal taxable income. It clearly indicates that his accounts were used to deposit cash and to give it to through cheques to the appellant in form of loan, therefore, the cash deposit made by the lender in his bank account at

*Rs.6,52,000/- was added back to total income of the appellant u/s 68 of the Act. d.i) The observation of the Id. A.O. is not based on any material. Shri Bharat Kumar Godhwani is regular income tax assessee since long time. The Id. A.O recorded statement of Shri Bharat Kumar Godhwani. In his statement Shri 3harat Kumar Godhwani has affirmed and confirmed the fact of giving the said loan to the assessee. Copy of his statement is extracted in the impugned order. Copies of his Income Tax Returns for the preceding three years are enclosed as **ANNEXURE-7**. Similarly copies of computation of income, capital account and balance sheet of Shri Bharat Kumar Godhwani are also enclosed as **ANNEXURE-8**. It is apparent from the details furnished that the creditor is competent enough to advance such loan and as such it cannot be said with that Shri Bharat Kumar Godhwani is not able to make the deposit. All these things prove that the action of the Ld. AO is not correct. As regards deposit of cash on various dates and issuance of cheque thereafter, the inference that it was nothing but appellant's own money, which was credited by way of cash in the books, it is submitted that the inference is solely based on suspicion without any material. Action of Id. A.O. is uncalled for specifically in view of the fact that the concerned persons have confirmed making of the loan and they are also regularly assessed to Income Tax with AOs at the same station. The Ld. AO should have comfortably called for and verified the facts before deciding the issue against the assessee. The action of the Ld. AO is not justified. It is, therefore, prayed that the addition made may most kindly be deleted.*

7. Ld AR further submitted that the burden cast on the assessee u/s. 68 of the Act has duly been discharged while all four loan creditors appeared before the AO and has given their consent with respect to the loan given by them to the assessee. It is submitted that identity, creditworthiness of the lenders and genuineness of the transaction stands established and no addition u/s 68 is called for. Evidences with respect to the lenders like their Computation of Taxable income for AY 2010-11 to 2015-16, Capital Account for AY 2010-11 to 2015-16 showing bank and cash balance and also showing the assessee as borrower in te capital account and Bank Accounts for the relevant period. It is mentioned that the Ld AO has not disapproved any of this documents but have invoked the provisions of section 68 of the Act based on his observations that

Lender Mrs Sulochana Godhwani and Anju Godhwani has no idea whether they have filing the ITR or not, they have no idea about the cash deposit in their account and used for loan given to the assessee, They have indicated that their bank accounts and financial affairs are taken care by their husband and the husband can explain the same, their returned income was also considered meagre to support the contentions of the assessee. In case of other two lenders the response recorded in statements u/s 131(1) of the Income Tax Act 1961 by the Ld AO during assessment proceedings were not considered satisfactory. Ld AR further submitted that since all the loan creditors have accepted the fact that they have extended the loan to the assessee, Pan number of all the lenders along with return of income, bank statement and their own presence before the AO justify that the Identity, creditworthiness of lenders, genuineness of transaction is not doubtful. Application of section 68 only on the ground that lenders were unaware about their financials or cash deposited in their account is bad in law. The assessee has discharged its initial burden u/s 68 and the onus shifts to AO to prove that the loan is a income of the assessee from undisclosed sources. It is therefore prayed that the order of Ld AO and order of CIT(A) confirming the addition both needs to be annulled.

8. On the other hand, Id. Sr. DR vehemently supported the orders of authorities below. Also, it is requested that in case the assessee is not satisfied with the assessment proceedings that enquiry done by AO should be a step forward, when 2 of the lenders have given the statement

that they do not have any knowledge of their financial affairs and the explanation can be given by their husbands, in such a situation the matter shall be restored to the files of AO for readjudication.

9. Ld AR in rebuttal have submitted that the matter is old of assessment year 2015-16 and already 7 years have elapsed, hence there is no point sending it back to the AO. It is further submitted that majority of loans under reference are already paid back to the lenders in FY 2018/19 and 2020/21. Thus, the orders of the authorities below needs to be quashed for the sake of substantial justice.

10. We have heard rival submissions and perused the material available on records. Undisputedly, the lenders were appeared before the AO and statement u/s 131(1) were also recorded, their ITRs, PAN, Capital Account showing loan transactions were produced. The addition u/s 68 of Act was triggered on the basis of doubt that the 2 of the lenders were unaware about the loan transaction since such financial affairs were taken care by their husbands, they are squarely unaware of the transactions and their bank account were used by their husbands to deposit cash and extend loan to the assessee. In case of other lenders, they were not able to give proper answer to the question regarding basic figures shown by them under section 44AD, no proof of turnover, sales tax return etc could be made available by them. It is observed that cash was deposited in accounts before extending the loan to the assessee. Identity and Genuineness of the transactions were not doubted by the AO, only credit worthiness of the lenders was questioned and addition was made.

11. In this context we would like to take guidance from various judgments relied upon by the assessee as under:

CIT Vs Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC)

*Held : In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.*

*The High Court was, therefore, right in refusing to refer the questions sought for.*

*Decision of the High Court affirmed.*

CIT Vs. Jai Kumar Bakliwal (2014) 366 ITR 217, 223 & 224 (Raj,)

*Held : 9. In our view as well, three things are required to be proved by recipient of money i.e. (1) identity of the creditor (2) capacity of the creditor to advance money and (3) genuineness of the transaction. From the facts emerging on the face of record, we notice that it is an admitted fact that all the above cash creditors (12 in number) are assessed to income tax and they provided a confirmation as well as their permanent account number. They have their own respective bank accounts which they have been operating and it is not the claim of the AO that the respondent-assessee was operating their bank accounts rather they have categorically stated that they issued cheque to the respondent-assessee. It is also an admitted fact that most of the cash creditors appeared before the AO and their statements u/s 131 were also recorded on oath. The cash creditors appeared to be from small place and it is quite possible that they may not be in a position to pin pointedly or specifically say about everything but by and large stood to the testimony and were able to explain various issues as per the question and answer reproduced by the AO himself in the assessment order. It may be that most of the cash creditors are relatives of the respondent-assessee and heavy burden lay on the respondent-assessee to prove about the cash credit but once all the cash creditors appeared before the AO, their statements having*

been recorded u/s 131, then in so far as the respondent-assessee is concerned, the onus, which lay upon him (assessee), in our view, stood discharged as he was able to prove identity of the creditors. Once the amount was advanced by account payee cheque from their respective own bank accounts and were being assessed to income tax, then in our view, capacity of the creditor and genuineness of the transaction stood proved. In so far as the respondent-assessee is concerned, it is correct that he is not required to prove source of the source and if the AO had any doubt, then the AO, assessing the respondent-assessee, could have sent the information to the AO, assessing the cash creditors for appropriate action in their cases but in so far as the respondent-assessee is concerned, in our view, the respondent-assessee has been able to discharge the burden which lay upon him.

10. Certainly, deposit of cash and immediate transfer of cheque or clearance of the cheque within a day or two casts a doubt as the transaction appears to be some what doubtful but suspicion howsoever strong it may be is not sufficient itself. On perusal of the facts in the present case, we observe is that the amounts advanced are not substantial and in most of the cases, the amounts are ranging from 25,000/- to 90,000/- and in some cases, it is exceeding Rs1,50,000/-. On perusal of the facts, it is also apparent that in some of the cases (Uttan Chand Jain, HUF) even the Karta of the HUF had produced the cash book and their ledger account before the AO. Smt. Anju Gangwal had also produced her cash book so also Mr. Vinay Kumar Gangwal as well as Mr. Akhilesh Kumar Ankur Jain (HUF) and the AO has drawn adverse inference finding some discrepancies in their respective cash books but as observed herein above, the doubt, if any, may be true but in so far as the respondent-assessee is concerned, that issue cannot be converted into an addition of income u/s 68 of the Act in the hands of the assessee and appropriate course, as observed herein above, was that the AO could have informed the AO, assessing the respective cash creditors for appropriate action in their case.

DCIT vs. Rohini Builders (2002) 256 ITR 360 (Guj.)

Section [68](#) of the Income-tax Act, 1961 - Cash Credits - Assessing Officer made addition of Rs. 12,85,000 as unexplained cash credits in respect of loans taken by assessee from 21 parties - Assessee had discharged initial onus by providing identity of all creditors by giving their complete addresses, GIR numbers/permanent account numbers and copies of assessment orders wherever readily available - Assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques drawn from bank accounts of creditors - Repayment of loans and interest thereon was also made by account payee cheques by assessee and tax also had been deducted at source on interest payments and remitted - Whether assessee was not expected to prove genuineness of cash deposited in bank accounts of creditors, because under law,

*assessee can be asked to prove source of credits in its books of account but not source of source - Held, yes - Whether merely because summons issued to some of creditors could not be served or they failed to appear before Assessing Officer, could not be ground to treat those credits as non-genuine - Held, yes - Whether considering totality of facts and circumstances of case, especially fact that Assessing Officer had not disallowed interest claimed/paid in relation to those credits in assessment year under consideration or even in subsequent assessment years, and tax at source had been deducted out of interest paid/credited to creditors, Tribunal was justified in deleting addition made - Held, yes - Whether as there was no substance in appeal and no substantial question of law arose, appeal was liable to be dismissed - Held, yes*

### **Daulatram Rawatmull 87 ITR 349 (SC)**

*Finding on questions of pure fact arrived at by the Tribunal are not to be disturbed by the High Court on a reference unless it appears that there was no evidence before the Tribunal upon which they, as a reasonable men, could come to the conclusion to which they have come; and this is so, even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. In other words, such a finding can be reviewed only on the ground that there is no evidence to support it or that it is perverse. Further, when a conclusion has been reached on an appreciation of a number of facts, whether that is sound or not must be determined, not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting as a whole.*

*When a court of fact acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such, a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises. Likewise, if the court of fact bases its decision partly on conjectures, surmises and suspicions and partly on evidence, in such a situation an issue of law arises.*

*The Tribunal in arriving at the conclusion that the amount of Rs. 5,00,000 in fixed deposit in the name of 'B' was the concealed income of the respondent-firm based its decision on the following circumstances :*

- (1) *Explanation furnished by B with regard to the source of Rs. 5,00,000 in proceedings relating to his personal assessment was found to be incorrect.*
- (2) *The transfer of the two amounts of Rs. 5,00,000 each from Calcutta to Bombay and thereafter to Jamnagar and the issue of fixed deposit receipts by the bank in the names of the sons of the partners of the respondent firm.*

- (3) *The use of the above-mentioned two receipts as collateral security for the overdraft facility of Rs. 10,00,000 afforded to the respondent-firm.*

*The High Court took the view that the above material was not sufficient for holding that the sum of Rs. 5,00,000 belonged to the respondent-firm and that the Tribunal had taken into consideration material which was not relevant to the issue.*

*The explanation furnished about the source of Rs. 5,00,000 in fixed deposit in the name of 'B' was that he had kept an amount of Rs. 4,50,000 with 'S' and Rs. 50,000 in deposit with Comilla Bank. The amount of Rs. 4,50,000 was stated to have been withdrawn by 'B' from 'S' in January, 1941, while the other amount of Rs. 50,000 was withdrawn from Comilla Bank in March, 1942. The amount of Rs. 5,00,000 was then transferred by B to his native place, due to bombing panic in Calcutta. When war situation improved, the money was taken from Desh to Jamnagar for deposit. This explanation was found to be false in view of the admitted position that the amount of Rs. 5,00,000 in fixed deposit in the name of B in Jamnagar bank had been tendered at B Calcutta branch of the Central Bank, and thereafter was transferred through Bombay head office of the bank to Jamnagar. There were also other circumstances which pointed to the falsity of the above explanation. The falsity of the above explanation of B, in the opinion of the High Court, did not warrant the conclusion that the amount of Rs. 5,00,000 belonged to the assessee. There was no flaw or infirmity in the above reasoning of the High Court. The question which arose for determination in this case was not whether the amount of Rs. 5,00,000 belonged to 'B', but whether it belonged to the respondent-firm. The fact that 'B' had not been able to give a satisfactory explanation regarding the source of Rs. 5,00,000 would not be decisive even of the matter as to whether 'B' was or was not the owner of that amount. A person can still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money is found to be not correct. From the simple fact that the explanation regarding the source of money furnished by A, in whose name the money is lying in deposit, has been found to be false, it would be remote and far-fetched conclusion to hold that the money belongs to B. There would be in such a case no direct nexus between the facts found and the conclusion drawn therefrom.*

*There was no cogent ground to take a view different from that of the High Court that the other circumstances, namely, the transfer of the amount of Rs. 5,00,000 from Calcutta to Jamnagar for fixed deposit in the name of B and the use soon thereafter to the said fixed deposit receipt as security for the overdraft facility to the respondent-firm did not justify the inference that the amount belonged to the respondent. The material on record indicated that the facility of overdraft on the security of the fixed deposit receipt in the name of B was enjoyed by the assessee firm for a little over a year. The Tribunal in this context observed that "it was difficult to*

*see how the firm could obtain an overdraft upon a fixed deposit by B. The approach of the Tribunal in this respect, was manifestly erroneous because it is a common feature of commercial and other transactions that securities are offered by other persons to guarantee the payment of the amount which may be found due from the principal debtor. The concept of security and ownership are different and it would be a wholly erroneous approach to hold that a thing offered in security by a third person to guarantee the payment of debt due from the principal debtor belongs not to the surety but to the principal debtor. The Tribunal has also referred to the fact that no consideration passed to B for offering the fixed deposit receipt as security for the overdraft facility to the respondent-firm. This circumstance, was of a neutral character and has no material bearing for determining the ownership of the amount in fixed deposit. Sureties quite often offer security without receipt of consideration from the principal debtor. So far as the instant case is concerned, one could not be obvious of the fact that B offered security for the overdraft facility to a firm of which his father was a partner. In the circumstances, the fact that B received no consideration for offering the fixed deposit receipt as security for the overdraft facility would not result in any inference against the respondent.*

*Although the proceedings under section 34 in the instant case were started in 1955, after the lapse of about nine years since the time B had offered the fixed deposit receipt as security for the overdraft facility to the respondent-firm, no material was brought on the record to show that the aforesaid sum of Rs. 5,00,000 in the name of B went to the coffers of the respondent-firm or was adjusted towards its liability as was done in respect of the amount of Rs. 5,00,000 which had been deposited in the name of R. Had the sum of Rs. 5,00,000 deposited in the name of B been ultimately utilized by the respondent-firm, the income-tax authorities must have brought material on record about that.*

*The onus to prove that the apparent is not the real is on the party who claims it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even though thereceipt had been issued in the name of B, the burden laid on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of B. A simple way of discharging the onus and resolving the controversy was to trace the source and origin of the amount and find out its ultimate destination. So far as the source was concerned, there was no material on the record to show that the amount came from the coffers of the respondent-firm or that it was tendered in B Calcutta branch of the Central Bank, on behalf of the respondent. As regards the destination of the amount, there was nothing to show that it went to the coffers of the respondent. On the contrary, there was positive evidence that the amount was received by B. It would thus follow that both as regards the source as well as*

*the destination of the amount, the material on the record gave no support to the claim of the department.*

*The decision of the High Court was therefore affirmed.*

*The case was decided against the department.*

**CIT Vs. Abdul Aziz (2012) 251 CTR 58 (Chhatisgarh)**

*The Commissioner (Appeals) has examined all the statements and depositions made by the creditors including their source of income and it was found that the Assessing Officer without having any material on record, contrary to the statements and affidavits filed by the creditors, has taken a stand that the creditors have failed to prove their creditworthiness and, as such, the transaction was not genuine. The Assessing Officer has not made any other independent enquiry to disprove the creditworthiness of the creditors, as established by the affidavits, statements of the creditors disclosing source of income. Thus, the finding of the Commissioner (Appeals) that the observation of the Assessing Officer with regard to dissatisfaction was on the basis of surmises and conjectures, is just and proper. The Tribunal has affirmed the finding recorded by the Commissioner (Appeals) and, as such, there is no occasion for the High Court to interfere with the finding of facts, which is based on proper appraisal of evidence and on the basis of sufficient records. [Para 19]*

*In view of the foregoing, that the findings recorded by the Commissioner (Appeals) and affirmed by the Tribunal are based on proper appreciation of facts and are not perverse being correlated with each and every transaction. Thus, the issue is purely question of facts. No question of law, more so substantial question of law, arises in the facts of the case. [Para 20]*

12. Considering the facts and circumstances of the instant case and on perusal of the above case laws, we are of the view that addition made u/s 68 by the Ld AO was based on presumption that the cash deposit in the account of the lenders belongs to the assessee, in this regard legal principal led down by the Apex court in the case of Daulatram Rawatmull 87 ITR 349 (SC) is relevant that *“the explanation regarding the source of money furnished by A, in- whose name the money is lying in deposit, has been found to be false, it 'would be a remote and far fetched conclusion to hold that the money belongs to B”*, thus in the present case even if it could

have proved, which rather could not be established by the AO, that the cash deposit does not belongs to the lenders, the same cannot be held as money having any nexus with the Assessee without any cogent evidence, therefore on this observation itself the order of AO finds not legality to stand and deserves to be cancelled.

13. Regarding credit worthiness of the lenders the AO was having the option to conduct independent inquiry to disprove credit worthiness of the lenders, who are all Income Tax Assesseees and their income tax credentials are very much in the possession of the AO. This was duly fortified by the Hon'ble Jurisdiction high court of Chhattisgarh in the case of CIT Vs. Abdul Aziz (referred to supra). Therefore following the jurisprudence articulated by various Hon'ble forums, we are of the considered view that the addition made by AO without any evidence was irrational and needs to be quashed.

14. In view of our observations above, we find merit in the submissions of the Ld AR and in absence of any contrary decision or facts brought to our notice by the revenue, we decide this sole ground of the appeal in favour of the assessee.

15. In the result, the appeal of assessee is allowed.

Order pronounced as per Rule 34(4) of ITAT Rules, 1963 on 21/09/2022.

**Sd/-**  
**(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 21/09/2022

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,  
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur