

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 2356/Ahd/2018  
Assessment Year 2012-13**

Adeshwar Flexipack Pvt. Ltd. C/o. Shri Ganpatraj C. Salecha, 15-A, Nalanda Society, Near Naranpura Railway Crossing, Ahmedabad-380013  PAN: AAICA 2590C (Appellant)	Vs	The I.T.O., Ward- 1(1)(1), Ahmedabad (Respondent)
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**Appellant by : None**  
**Respondent by : Shri V.K. Singh, Sr.D.R.**

Date of hearing : 25-07-2022  
Date of pronouncement : 19-10-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This is an appeal filed by the Assessee against the order dated 28.09.2018 passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. The brief facts of the case is that the assessee is a Private Limited Company engaged in the manufacturing of packing materials and trading in cloths/cotton fabrics. The assessee filed its Return of Income for the Assessment Year 2012-13 admitting Nil income. The case was selected for scrutiny assessment.

2.1. After verification of account, the Assessing Officer found the assessee obtained unsecured loan of Rs. 5,49,28,568/- as against the previous year's loan of Rs. 2,83,28,244/-from various persons who are happened to be the Managing Director's, Family Members and Relatives. The assessee was requested to file the copy of the confirmation, bank account details, Return of Income, mode of payment, etc. However the assessee filed copy of the Return of Income only and other details not filed, thereby the Assessing Officer cannot verify the genuineness of the unsecured loan from these parties and therefore made addition u/s. 68 of the Act as follows:

Sl. No.	Name of the party	Amount of unsecured loan	Interest paid	Total
1	Ganpatraj C. Salecha, Indl	1,43,12,027	-	1,43,12,027
2.	Ganpatraj C. Salecha, HUF	1,00,000	24,463	1,24,463
3	Deepak G. Salecha	57,37,057	-	57,37,057
4	Smt. Neelam D. Salecha	6,50,000	48,047	6,98,047
5	Leeladevi G. Salecha	38,79,530	85,672	39,65,202
6	Plasto Processors	15,00,000	-	15,00,000
7	Mamta R. Bafna	1,19,060	72,843	1,91,903
8	Rajesh DG. Bafna	8,00,000	-	8,00,000
	Total	2,70,97,674	2,31,023	2,73,28,657

2.2. The assessing officer also disallowed the interest on the above loans paid to the various persons and determined the total income of Rs. 1,98,22,710/- and demanded taxes thereon.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax-1, Ahmedabad. During the appellate proceedings, the assessee filed additional documents. The Ld. CIT(A) called for a Remand Report from the Assessing Officer as well as Rejoinder from the assessee. After considering the same, the Ld. CIT(A) held as follows:

*2.10. I have gone through the above facts of the case carefully. In order to discharge the burden cast upon the appellant u/s. 68 of the IT Act, the appellant is required to prove three things (i) the identity of the shareholders, (ii) the genuineness of the transaction, and (iii) the creditworthiness of the shareholders. The assessing officer stated that in some of the cases, the assessee has filed the copy of return of income only but not filed other details to verify the genuineness of unsecured loans from these parties.*

*In view of the above discussion and Remand Report, it is observed that huge amount of loans were given by Director Shri Ganpatraj Salecha of Rs. 1,42,58,027/- and Deepak Ganpatraj Salecha of Rs.57,37,057/- where Liladevi Salecha wife of Ganpatraj Salecha given loan of Rs.38,97,539/-, Neelam D. Salecha wife of Deepak Salecha given loan of Rs.5,50,000/-, Mamta Bafna daughter of Ganpatraj Salecha given loan of Rs. 1,18,060/- and Shri Rajesh M Bafna son in law of Ganpatraj Salecha given loan of Rs.8,00,000/-. Therefore, in the case of company where the funds are stated to be received from the directors and their relatives, the sources need to be adequately explained considering the close nexus. However, the assessee has failed despite adequate opportunity being granted. Further, in the remand report, AO has found that the loan amount of Rs.65,94,000/- is genuine in the case of Ganpatraj Salecha, and loan amount of Rs. 11,20,000/- is also genuine in the case of Deepak Salceha, as source of the said loan has been explained with supporting documentary evidences but for the balance amount of Rs. 1,93,83,674/- assessee has not able to prove the genuineness of the transactions as discussed above. The appellant has failed to discharge this onus.*

*2.15. It is observed that in present case appellant has taken loans from directors of the company or relatives thereof and discrepancies pointed out*

by AO in remand report clearly prove that appellant has failed to prove genuineness of transactions and creditworthiness of depositors. Reliance is also placed on decision of Hon'ble Gujarat High court in the case of Sitaram Ramchanddas Pate! Vs ITO 95 Taxman.com 290 wherein it is held as under:

"Section 68 of the Income-tax Act, 1961 - Cash credits (Gifts) - Assessment year 2006-07 - In course of assessment, Assessing Officer found that assessee had deposited certain amount in bank which Remained unexplained - Assessee's case was that said amount represented gifts received from various parties - Assessing Officer having rejected assessee's explanation, made addition of said amount under section 68 -Commissioner (Appeals) as well as Tribunal doubted capacity of concerned persons, who were alleged to have given gift - Accordingly, addition made by Assessing Officer confirmed - Whether when assessee failed to prove capacity of concerned persons who alleged to have given unsecured loan and/or gifts, it could not be concluded that Tribunal had committed any error in confirming additions made by Assessing Officer -Held, yes [Para 6] [In favour of revenue]"

The Hon'ble Gujarat High court in the case of Om Land Realty (P) Ltd. Vs DCIT[2017] 86 taxmann.com 226 has held that where assessee claimed to have received advances towards booking of plots but could not produce details of all applicants who paid said sum, Tribunal was justified in making additions under section 68 to the extent where details of applicants were not produced.

The Hon'ble Madras High court in the case of B.R. Petrochem (P) Ltd Vs ITO [2017] 81 taxmann.com 424 has held that "where assessee received share capital from various contributors, in view of fact that those contributors were persons of insignificant means and their creditworthiness to have made contributions had not been established, impugned addition made by authorities below in respect of amount in question under section 68 was to be confirmed."

The Hon'ble Delhi High court in the case of PC/7 Vs Bikram Singh[2017] 85 taxmann.com 104 has held as under :

"Section 68 of the Income-tax Act, 1961 - Cash credits (Loan transactions) - Assessment year 2011-12 - During assessment proceedings, Assessing Officer made addition to assessee's income under section 68 in respect of loans /advances received from eight persons, on ground that assessee was unable to establish identity, creditworthiness and genuineness of said persons and transactions - Tribunal set aside additions in respect of four creditors - It was noted that none of those four individuals had financial strength to lend such huge sums of money to assessee, that too without any collateral security, without interest and without a loan agreement - Whether in aforesaid circumstances, mere establishing of their

identity and fact that amounts had been transferred through cheque payments, did not by itself mean that transactions were genuine - Held, yes - Whether, therefore, impugned addition made by Assessing Officer was to be restored -Held, yes [Para 41] [In favour of revenue]"

2.16. In view of the above-mentioned facts discussed in detail and legal position, I hold that the assessing officer is justified coming to the conclusion in the remand report that directors and their relatives are liable to explain source of amount credited in their bank accounts, out of which loan given by them to the company, however, they have failed to explain source of credits in their bank accounts except the loan amount of Rs.65,94,000/- in the case of Ganpatraj Salecha, and loan amount of Rs. 11,20,000/- in the case of Deepak Salceha, which were found genuine by the AO, as source of the said loan has been explained with supporting documentary evidences. For the balance amount of Rs.1,93,83,674/-, AO has observed in the remand report that assesses was not able to prove the genuineness of the transactions of the said loan amount. The appellant has failed to discharge this onus. The assessing officer has given detailed reasons in the assessment order as well as in remand report for coming to this conclusion (as discussed supra) which is not repeated here. In view of various discrepancies pointed out by the assessing officer in remand report, the appellant was not able to prove the genuineness of the transactions as discussed above. The appellant has failed to discharge this onus. The addition up to Rs.1,93,83,674/- made u/s.68 of the I.T. Act by the assessing officer is confirmed. The related grounds of the appellant are partly allowed.

Further, The AO has made disallowance of Rs.2,31,023/- being interest payment credited to the respect of accounts of the 8 entries (unsecured loan) from the total interest payment of Rs. 1,49,38,104/-. On the other hand, the appellant has submitted that the unsecured loans are genuine, the disallowance of interest paid to them for the year under consideration including on opening balance is unjustified and should be deleted. It has been elaborately discussed in paras 2.5 to 2.15 of this order that the unsecured loans are also an accommodative entry. Appellant has failed to explain source of credits in their bank accounts except the loan amount of Rs.65,94,000/- in the case of Ganpatraj Salecha, and loan amount of Rs.11,20,000/- in the case of Deepak Salceha, which were found genuine by the AO. Therefore, the AO is directed to recompute the addition of interest. The related grounds of the appellant are partly allowed.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. *The Ld CIT(Appeals) erred both in law and on facts in confirming the addition of Rs. 1,93,83,674/- made by the AO u/s 68 of the Income tax Act by not appreciating that the appellant had discharged the primary onus u/s 68 and established nature and source of unsecured loans from directors and relatives. The addition made by AO without discharging onus that shifted on him and without application of mind ought to be deleted in toto. It be deleted now.*

2. *The Ld CIT(Appeals) erred both in law and on facts in not appreciating that majority of unsecured loans were from persons who also lent in earlier years and when repeatedly the appellant attended the office of the AO even during remand proceedings as averred in Affidavit, the Id AO miserably failed to verify the evidences and sources. The addition made without verification and perusing the materials deserved to be deleted. It be deleted now.*

3. *The Ld CIT(Appeals) also erred in law and on facts in observing that source of depositors was not explained when appellant explained even the source of source which was verifiable from the records of the lenders who are all income tax assesseees whose, confirmation, PAN and I.T. Returns and bank details were filed. The addition confirmed by relying on judgments which are irrelevant and ignoring the relevant case laws is unjustified. It be so held now.*

4. *The order passed by Ld CIT( Appeals) suffers from the lack of application of mind since even the credit of salary , rent and remuneration to the account of creditors and transactions of journal entries added are confirmed by him. It be so held now and additions be deleted.*

5. *On the facts and in the circumstances of the case, the addition of Rs. 1,93,83,674/-retained by the CIT(Appeals) deserves to be deleted. The same be deleted.*

6. *The Ld CIT(Appeals) also erred both in law and on facts in confirming disallowance of interest expenses in respect of disallowance relating to addition confirmed including payment of interest on earlier deposit. The disallowance being wholly unjustified be deleted and interest expenses be allowed in full.*

7. *The Ld CIT(A) erred in not allowing the appeal in full.*

5. Today is the 13<sup>th</sup> time of hearing of this appeal. From 20<sup>th</sup> December, 2021, none appeared on behalf of the assessee. Today also none appeared on behalf of the assessee in spite of service of notice to the assessee. In initial days of hearing, Mr. D.K. Parikh, Chartered Accountant represented on behalf of the assessee however we do not find any Authorization by the assessee in favour of Mr. D.K. Parikh. In fact on 05.01.2021, Mr. D.K. Parikh by his letter stated that he has instruction to appear on behalf of the

assessee and gathering relevant materials and Paper Book is being filed shortly. Thereafter repeated adjournment letter filed by Mr. D.K. Parikh and thereafter no representation on behalf of the assessee. This clearly shows that the assessee is not interested in conducting this appeal. In the above circumstances, with the available material on record and with the assistance of the Ld. D.R. we proceed with this appeal.

6. The Ld. D.R. appearing for the Revenue submitted that ld. CIT(A) after calling for the Remand Report given appropriate relief to the assessee and also deleted interest portion on the part of unsecured loans proved to be genuine by the assessee. Thus the Ld. CIT(A)'s order is a justifiable which does not require any interference and requested to dismiss the assessee appeal.

7. We have gone through the materials on record and no Paper Book is being filed in the above case. It is seen from record that the unsecured loans to the tune of Rs. 2.83 Crores which were already existing from the previous assessment year from the same parties. However the assessee is silent about the confirmations, bank details, Return of Income and mode of payment of the loan transactions. During the appellate proceedings before Ld. CIT(A), the Ld. CIT(A) called for a Remand Report and given a relief of Rs. 65,94,000/- in the case of Ganpatraj C. Salecha and Rs. 11,20,000/- in the case of Deepak G. Salecha which were found to be genuine by the Assessing Officer. The remaining balance of Rs. 1,93,83,674/-, the assessee failed to discharge the primary onus by

providing the loan details, confirmation letters, Income Tax Return etc. to the satisfaction of the Assessing Officer. Thus the assessee failed to discharge its initial onus cast upon it. In the absence of any further details either before the Id. CIT(A) or before us, we are not in a position to adjudicate the grounds raised by the assessee. Thus the grounds raised by the assessee are devoid of merits without supporting evidences.

7.1. In the above circumstances, repeated opportunities having been given to the assessee and the assessee failed to response to the hearings, therefore we have no hesitation in dismissing the appeal filed by the assessee.

8. In the result, the appeal is hereby dismissed.

Order pronounced in the open court on 19-10-2022

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 19/10/2022**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद