

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI  
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 6806/Mum/2018  
(A.Y: 2013-14)

ITO – 25(3)(3) Room No. 606, 6 <sup>th</sup> Floor C-10, Pratyaksh Kar Bhavan, BKC Complex Bandra (E), Mumbai – 400 051.	Vs.	Rahul Kantilal Shah 701, Saroj Bldg, Sardar Vallabhbhai Patel Road, Opp Pawan Hans, Vile Parle (W) Mumbai – 400 056.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAIPS0543C		
Appellant	..	Respondent

Appellant by :	Ms. Samruddhi Hande.DR
Respondent by :	Mr. Anuj Kisnadwala.AR

Date of Hearing	23.09.2022
Date of Pronouncement	19.12.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The revenue has filed the appeal against the order passed by the Commissioner of Income Tax (CIT(A)) - 37, Mumbai passed u/s 143(3) and 250 U/sec of the Act. The revenue has raised the following grounds of appeal:

01. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.5,22,41,895/- u/s. 68 of the I.T. Act, 1961

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*even though the assessee failed to verify the genuineness and creditworthiness of the lenders."*

*02. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest expenses of Rs.64,17,250/- u/s. 57 of the I.T. Act, 1961 since the genuineness and creditworthiness of the loan transactions are not proven by the assessee."*

*03. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest expenses relating to business income without prejudice the assessee failed to establish the nexus, since there is probability of invoking of provisions of Section 14A r.w.r. 8D."*

*04. "The appellant prays that the Order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

*05. "The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary."*

2. The brief facts of the case are that the assessee is an individual and is a partner in partnership firms and derives income from business and interest income. The assessee has filed the return of income for the A.Y 2013-14 on 09.12.2013 disclosing a total income of Rs. Nil. Subsequently the case was selected for scrutiny and notice U/Sec 143(2) and 142(1) of the Act along with questionnaire was issued. In

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compliance to the notice, the Ld.AR of the assessee appeared from time to time and submitted the various details and the case was discussed. The assessee was deriving income from profit and gains from partnership firm M/s. G Gala Group – Group Summary, Other Group and Shah Group and the interest income is offered under the income from other sources. The A.O on perusal of the balance sheet as on 31-03-2013 found that the assessee has unsecured loans of Rs. 1,10,45,218/-, 1,11,18,959/- and 3,00,77,718/- respectively. Further the AO has called for the details to substantiate the loan creditors with confirmations and supporting documents. The assessee has filed the information, however the A.O found that they are not properly filed and does not have addresses and PAN of the concerned party. Therefore the loan documents could not prove the genuineness of the transactions. Since the details are not filed with proper information and the A.O. has issued show cause notice.

3. Whereas the A.O. found that the loan confirmations along with the supporting documents were not filed in respect three groups and the assessee has failed to

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prove the identity, genuineness and creditworthiness of the lenders. Further the assessee has not produced the details with the supporting evidences in respect of interest on loan of Rs 64,17,250/- .Similarly the A.O. found that, in the computation of income filed, the assessee has claimed the expenses of Rs.33,57,058/- against the business income and no supporting evidences were filed. Finally the A.O. has made the additions as discussed above and assessed the total income of Rs.5,76,11,140/- and passed the order u/s 143(3) of the Act dated 15.03.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO. The assessee has filed an application for admission of the additional evidences of loan transactions which could not be filed in the assessment proceedings. The CIT(A) has admitted the additional evidence and has called for the remand report from the A.O. and the assessee was provided the remand report copy for filing rebuttal referred at Para 4 and 5 of the order. The CIT(A) considered the facts, circumstances and the

remand report and has observed that the remand report does not specify any contrary facts of the assessee and the assessee has filed the detailed evidences and documents in the course of appellate proceedings and the CIT(A) has deleted the additions made by the A.O and allowed the appeal. Aggrieved by the order the CIT(A), the revenue has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in granting the relief in the unsecured loans, interest on loan claimed irrespective of the facts that the additional evidence does not provide complete details. The contentions of the Ld. DR that the CIT(A) should have call for the additional information for supporting the claims. Further the CIT(A) has erred in observing that the A.O does not found discrepancy in evidences furnished by the assessee and there could not be any adverse comments. The Ld.DR supported the order of the A.O. and prayed for allowing the appeal.

6. Contra, the Ld. AR submitted that in the case of unsecured loans, the A.O. has also made addition of

the opening balances of loan accounts carried forwarded from the earlier years and disallowed the interest on loans by invoking the provisions of section 68 of the Act and the Ld.AR has supported the order of the CIT(A) and substantiated the submissions with the paper book, chart and prayed for dismissal of revenue appeal.

7. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. DR that the CIT(A) has erred in deleting the addition of unsecured loans and interest on loans considering the additional evidences filed. Further, the CIT(A) has overlooked the facts that the investor group are providing accommodation entries. The Ld.AR has demonstrated the submissions made before the lower authorities and emphasized that the CIT(A) has rightly considered the facts, submissions and evidences and relied on the judicial decisions and deleted the additions. The contentions of the Ld.AR that the assessee has cooperated in submitting the information in assessment proceedings and in response to notice u/s 142(1) of the Act the assessee has complied with the information.

Whereas the A.O. has also made addition of opening balance of unsecured loan amounts which was wrongly treated as the current year transactions. At this juncture, we consider it appropriate to refer to the observations of the CIT(A) at page 16 Para 6.7 to 7.4 of the order read as under:

*6.7 It is clear from the submission of appellant that the transactions were through account payee cheques and appellant has submitted sufficient details before the AO during the assessment proceedings. The source of receipt through banking channel clearly establish the genuineness of the credit which is reflected in the books of accounts. The decision of the Hon'ble Gujarat High Court in the case of Dy. CIT vs Rohini Builders - [256 ITR 360] is held that all the loans were received by the assessee by account payee cheques and the repayment of loans have also been made by account payee cheques along with interest in relation to those loans and that the assessing officer having allowed the interest claimed/paid by the assessee in relation to the cash credits cannot treat the cash credits as not genuine. It held that the assessee had discharged the initial onus which lay on it in terms of Section 68 by proving the identity of the creditors by giving their complete addresses, GIR nos./PAN nos. and copies of assessment orders wherever readily available and that it has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from the bank accounts of the creditors. It held that the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of accounts but not the source of the source.*

*6.8 As far as the creditworthiness or financial strength of the lender is concerned, that can be proved by producing the*

bank statement, ITR and confirmations of the lender showing that it had sufficient balance in its accounts to enable it to lend to us. Once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the Assessing Officer to scrutinize the same and in case he nurtures any doubt about the veracity of these documents, to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the Assessing Officer and he cannot go into the realm of suspicion. Thus element of credit worthiness and satisfaction of AO thereafter is subjective and requires more efforts/inquiry on the part of the AO to give a finding in the order that lender is not credit worthy. In this regard, the appellant discharged the onus by providing the sufficient details and documents of all lenders during the remand report. However, the A.O. has not made any further inquiries regarding the parties. The A.O. has not issued any notices under section 133(6) or summons under section 131 against these lenders to prove that there are non-genuine.

6.9 The assessee must satisfy three important conditions, namely, (i) the identity of the creditor; (ii) the genuineness of the transaction; and (iii) the financial capacity of the of the person, i.e. the credit worthiness of the creditor. However, the onus of the assessee is limited to the extent of proving the source from which he received the cash credit. The credit worthiness of the creditor has to be judged vis-à-vis the transaction which had taken place between the assessee and the creditor, and it is not the burden of the assessee to find out the source of creditworthiness of the lender to prove the genuineness of the transaction. This issue is dealt by the Gauhati High Court in the case of CIT v. Smt. Sanghamitra Bharali (2014) 361 ITR 481 (Gau). The aforesaid points were also affirmed in the past by the Appex Court in the case of CIT v. Orissa Corporation P. Ltd reported in (1986) 159 ITR 78 (SC). In the case of CIT v. Varinder Rawley (2014) 366 ITR 232 (P & H) the court held that "where the assessee shows

*that the entries regarding credit in a third party's account were in fact received from the third party and are genuine, he discharges the onus. In that case, the sum cannot be charged as the assessee's income in the absence of any material to indicate that it belongs to assessee", particularly in a case where no summons u/s 131 is issued against the third party.*

*6.10 From the assessment order, it transpires that the AO has totally ignored the documentary evidences submitted by the appellant. The AO has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness of transaction cannot be doubted. Once evidences related to a transaction is submitted before the A.O., the onus shifts on him to prove these as non-genuine. The A.O. has not discharged the onus casted on him. The section 68 can be invoked when there is credit of amounts in the books maintained by the assessee (b) such credit has to be a sum of money during the previous year (c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The expression the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record.. The opinion of the AO is required to be formed objectively with reference to the material on record file. While considering the explanation of the assessee, the AO has to act reasonably-application of mind is the sine qua non for forming the opinion. Phrase appearing in the section nature and sources of such credits - should be understood in right perspective, so that genuineness of the transaction can*

*be decided on merits and not on prejudices. The evidence produced by the assessee cannot be brushed aside in a causal manner. In the matters related to section 68 burden of proof cannot be discharged to the hilt. Such matters are decided on the particular facts of the case as well as on the basis of preponderance of probabilities. Credibility of the explanation, not the materiality of evidences, is the basis for deciding the cases falling under Section 68 of the IT Act 1961. Further, it may be pointed out that section 68 under which the addition has been made by the Assessing Officer reads as under:-*

*"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.*

*6.11 The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this, case the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570.*

*6.12 During the remand proceedings, the appellant has submitted Confirmations, Copy of Acknowledgement and Copies of the Bank statements. If the above referred principles are applied to the facts of the case under consideration, it*

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can be seen that the identity of the creditors has been established as they are having PAN and they are regularly filing return of income. The genuineness of the transaction is established from the fact that both the acceptance and repayment of loan has been through banking channels. The creditworthiness of the lenders can be established from the statements. In the assessment order, the A.O. did not at all discuss the merit of submission made by the appellant and casually brushed aside the details filed by the appellant. Further, the appellant has stated that he had furnished all the relevant details during the course of the remand proceedings and accordingly had duly discharged its onus by furnishing the identity and address of the parties. Further, the source of receipt through banking channels to substantiate the genuineness of the credits reflected in its books of Account. After considering the totality of facts, rival submissions, the applicable law and on the basis of discussion mentioned above, I find force in the argument of the appellant and draw strength from the judicial decision, I have come to the conclusion that nature and source of loan transactions of Rs. 5,22,41,495/- stands explained. Consequently, addition made by A.O. cannot be sustained. Therefore, A.O. is directed to delete the addition of Rs. 5,22,41,495/-. This ground is allowed.

Ground No.2 & 3:

7. During the assessment proceedings, the A.O. has observed that the appellant has earned interest income of Rs. 20,15,514/- and claimed deduction of Rs. 64,17,250/-. The A.O. has disallowed Rs. 64,17,250/- as the appellant failed to submit documentary evidence during the assessment proceedings. The A.O. stated during the remand report proceedings that loss has been computed under the head other sources, itself source that entire interest expenses has not incurred for earning interest income. Interest bearing funds are parked by the appellant in interest free area. During the appellate proceedings, appellant has stated that the AO has missed the fact that the assessee has claimed interest expense only to the extent of interest income under

section 57. The excess interest expense of Rs. 44,01,736/- has neither been claimed by the assessee nor carried forward to any subsequent year. The total interest expense of the appellant was Rs. 99,53,533/- of which only Rs. 97,74,308/- has been claimed in the computation of income. The Balance Interest of Rs.1,79,225/- has not been claimed by the assessee. The appellant has earned interest income of Rs. 97,74,308/- and claimed deduction of Rs. 97,74,308/- u/s.57 of I.T.Act. The appellant has submitted detailed explanation alongwith submission during the remand proceedings. Further stated that the interest expense of Rs.33,57,058/- claimed against interest income from firms M/s. Sadguru Properties, M/s. Sadguru Associates, M/s. Eco Fitness & Sadguru Krishna & Developers. In the firm M/s. Sadguru Associates and Sadguru Krishna & Developers no profit in the A.Y. 13-14 and hence the question of disallowance of interest expense claimed u/s. 14A of the income tax act does not arise.

7.1 I have considered the submissions of the appellant and observations of A.O. in the assessment order and remand report. The appellant has given loan and advance to the other parties and incurred interest expenses of Rs. 64,17,250/-. However, the appellant has claimed interest expenses of Rs. 20,15,514/- income from other sources. The excess interest expenses of Rs. 44,01,736/- has not been claimed by the appellant. The A.O. has disallowed interest expenses of Rs. 64,17,250/- u/s.57 of I.T.Act on the ground that appellant could not prove the genuineness of these expenses. However, appellant had submitted all the necessary details and documents and prove the genuineness of loan and interest expenses during the appellate proceedings and remand proceedings. The appellant has submitted further the claim of interest expenses of Rs. 33,57,058/- of appellant are against the income offered. The assessee has claimed interest expense on borrowed money invested in firms where he is a partner only to the extent of Interest Income received from

those firms 1.e. Sadguru Properties, Sadguru Krisha & Developers, Eco Fitness, Sadguru Associates.

7.2 "The expression "for the purpose of business" occurs in Section 36(1)(iii) and also in Section '37(1). A similar expression with different wording also occurs in Section 57(iii) which reads as "for the purpose of making or earning income". This issue came up for consideration before the Supreme Court and the Hon'ble Supreme Court while giving judgment in the case of Madhav Prasad Jatia V. CIT, (SC) 118 ITR 200 has established that the expression occurring in Section 36(1)(iii) is wider in scope than the expression occurring in Section 57(iii). Thus, meaning thereby that the scope for allowing a deduction under Section 36(1)(iii) would be much wider than the one available under Section 57(iii). This phrase, as held by many legal pronouncement, is the most important yardstick for the allowability of deduction Under Section 36(1)(iii) of Income Tax Act, 1961.

7.3 While explaining the meaning of these phrase the Hon'ble Supreme Court in the case of S. A. Builders Ltd. Vs. CIT(A), Chandigarh reported in 288 ITR 1 has used the word "commercial expediency". By using this phrase Hon'ble Supreme Court has given a new dimension and clarified the concept further. In the judgment the Supreme Court has defined commercial expediency as "an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure, if it was incurred on grounds of commercial expediency". Further, following this judgment the High Court of Delhi, in the case of Punjab Stainless Steel Inds. Vs. CIT 324 ITR 396, has further elaborated "The commercial expediency would include such purpose as is expected by the assessee to advance its business interest and may include measures taken for preservation, protection or advancement of its business interests, which has to be distinguished from the

*personal interest of its directors or partners, as the case may be. In other words, there has to be a nexus between the advancing of funds and business interest of the assessee-firm. The appropriate test in such a case would be as to whether a reasonable person stepping into the shoes of the directors/partners of the assessee-firm and working solely in the interest of the assessee-firm/ company, would have extended such interest free advances. Some business objective should be sought to have been achieved by extending such interest free advances when the assessee-firm/company itself is borrowing funds for running its business.*

*7.4 During the remand proceedings, the appellant has submitted sufficient evidence and prove that interest expenditure has been incurred wholly and exclusively for the purpose of earning of income. The appellant has disallowed interest of Rs. 64,17,250/- on the ground that appellant could not prove the genuineness of transactions. However, appellant has submitted all the necessary details and documents during the remand proceedings and prove that the said interest incurred for earning of income. The appellant has earned interest income of Rs. 20,15,514/- on loans given and rightly claimed interest expenses of Rs. 20,15,514/- accordingly. Further, the appellant has claimed interest expenses of Rs. 33,57,058/- to the extent of interest income received from the firm. The said interest of Rs. 33,57,058/- incurred for wholly and exclusively for the business purposes. In the remand report the A.O. did not at all discuss the merit of submission made by the appellant and casually brushed aside the details filed by the appellant. Further, the appellant has stated that he had furnished all the relevant details during the course of the remand proceedings and accordingly had duly discharged its onus by furnishing detailed explanation. After considering the totality of facts and judicial decision, the addition of Rs.97,74,308/- (64,17,250 + 33,57,058) made by the A.O. cannot be justified. Therefore, A.O. is directed to delete the said addition. This ground is allowed.*

8. We find that the CIT(A) has considered the provisions of Sec 68 of the Act in respect of addition of unsecured loans and judicial decisions and relied on the supporting additional evidences furnished. Whereas, the assessee has received the unsecured loans from 3 groups referred at 6 to 6.2 of the A.O. order, and most of the loan creditors are having the opening balance of unsecured loans with the assessee in the F.Y.2012-13. The Ld.AR demonstrated the confirmations, bank statements and income tax returns of family members placed at page 6 to 53 of the paper book. The Ld.AR with the supporting chart has highlighted the unsecured loans received in the F.Y.2012-13 from the same loan creditors/ group who have provided unsecured loans in the earlier years and having outstanding opening balance as on 1-4-2012 which cannot be over looked. The Ld.AR has also submitted the details of sources of money of loan creditors, who have provided the loans to the assessee with supporting capital accounts ledger in the partnership firms where the loan creditor is a partner of the firm. We are of the view that the CIT(A) has considered the submissions and evidences and granted the relief. Further the provisions of section 68 of the Act cannot be invoked on the opening balance of unsecured loan. Whereas, the Ld.DR could not controvert the

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findings of the CIT(A) with any new evidence or information to take a different view. We find that the CIT(A) relied on the judicial decisions and also the facts, additional evidence, remand report and provisions of Sec. 68 of the Act and has passed a reasoned order. Accordingly, we are not inclined to interfere with the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue..

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 19.12.2022.

Sd/-

(M BALAGANESH)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 19.12.2022

KRK, PS

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

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

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सत्यापित प्रति //True Copy//