

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 20/Rjt/2020  
Assessment Year: 2016-17**

Milap Hareshkumar Somaiya matru Ashish, Amba Vijay Society, Nr. Gita Vidhyalaya Mandir Jamnagar, Gujarat  PAN No: BOYPS7496M  (Appellant)	Vs	The DCIT, Circle-2(2), Jamnagar  (Respondent)
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**Assessee Represented: Shri Dushyant Maharshi, A.R.  
Revenue Represented: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 02-02-2023  
Date of pronouncement : 17-02-2023

**आदेश/ORDER**

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

This appeal is filed by the Assessee against the Appellate order dated 26.11.2019 passed by the Commissioner of Income Tax (Appeals), Jamnagar arising out of 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) 2016-17.

2. The brief facts of the case is that the assessee is a doctor by profession and showing professional income, trading in jaggery and also dealing in share. The assessee filed his Return of Income for the Assessment Year 2016-17 declaring total income of Rs. 2,50,000/-. Assessment was completed and various additions were made and we are concerned now only with the confirmation of addition of Rs.5,00,000/- u/s. 68 of the Act.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) called for Remand Report from the A.O. and partly admitted documents filed by the assessee under Rule 46A namely on house loan interest receipts u/s. 24(b) and 80C deductions and partly allowed the appeal filed by the assessee. However the Ld. CIT(A) confirmed the addition of unsecured loan of Rs. 5,00,000/- made u/s. 68 of the Act as follows:

*“...8.2. The ground of appeal no, 2 of the appellant is that the AD has erred in law as well as on facts in making addition of Rs.5,00,000/- u/s.68 of the Act treating the unsecured loan taken as unexplained income With regard to this ground of appeal it is mentioned that the AO during the course of assessment proceedings found that the appellant had obtained loan of Rs.5,00,000/- from M/s. Dattani Oil Industries. As per the AO the details like identity, creditworthiness of the lender and genuineness of transaction of this loan amount were not proved by the appellant. The AO issued show cause notice to the appellant requesting him to show cause as to why addition of Rs.5,00,000/- towards unsecured loan should not be made u/s. 68 of the Act under the head income from other sources. In response the appellant submitted his reply dated 27/12/2018 and such reply is reproduced by the AO on page no. 3 of the assessment order. However the AO did not accept this reply of the appellant and he added this amount of Rs.5,00,000/- to the total income of the appellant u/s. 68 of the Act on account of unexplained cash credit in view of the reasons as mentioned in the assessment order. While making addition of this amount of Rs.5,00,000/- to the total Income of the appellant, the AO also relied upon decisions of some of the Hon'ble Courts.*

*8.2.1 Again during the course of appellate proceedings, the AR of the appellant submitted confirmation, copy of acknowledgement of return of income and bank statement of the lender. However the AO in his remand report has mentioned that on perusal of bank statement of the lender it is seen that there was cash deposit*

*of Rs.5,00,000/- immediately before advancing the loan from the same account to the appellant, and that before and after the loan transaction, the account has meager amount as balance. The AO in his remand report has further mentioned that on perusal of the copy of return of income of the proprietor of i.e. M/s. Dattani Oil Industries i.e. the lender it is revealed that this party has declared income only to the tune of Rs. 1.70 Lakhs during the year under consideration. As per the AO looking to these facts, the appellant has not able to substantiate all the three limbs of genuine cash credit namely credit worthiness of the lender, genuineness of transactions and identity of the lender. These findings of the AO as given in his remand report are found to be acceptable. It is found that there was cash deposit of Rs.5,00,000/- in the bank account of M/s. Dattani Oil Industries just before the same amount of loan of Rs.5,00,000/- was advanced by this party to the appellant and the same creates serious doubt on genuineness of transaction of loan and also credit worthiness of this party and this loan transactions can be said to be a sham transactions. In this regard support is drawn from the decision of Hon'ble High Court of Gujarat as given in the case of Umesh Krishnani vs. ITO 35 taxmann.com 598. In view of this it is held that the AO has correctly made addition of above amount of Rs.5,00,000/- u/s 68 of the Act on account of unexplained cash credit and therefore, the same is confirmed. Thus the ground of appeal no. 2 of the appellant is dismissed.”*

4. Aggrieved against the same, the assessee is in appeal before us raising the solitary ground of appeal:

*1. Ld. A.O. erred in law as well as on facts in is making addition of Rs. 5,00,000/- u/s. 68 of the Income Tax Act, 1961 treating the unsecured loan taken as unexplained income and Hon'ble CIT(A) erred in confirming the same.*

4.1. The assessee also filed application dated 16.11.2022 for admission of additional evidences as follows:

*“We pray before Your Honour to kindly allow us to request your Honours to consider the additional evidence within the scope of Rule 46A of the IT. Rules to support our argument and bring on record the correct fact relating to grounds of appeal raised in the appeal memo filed.*

*We would like to submit that the appellant has taken unsecured loan from Dattani Oil Industries (Prop. Bharkumar Dattani HUF). The additional evidence i.e. declaration of source of unsecured loan was not submitted during the course of original assessment proceedings because the Karta of HUF, Mr. Bharkumar Dattani was not keeping good health and due to his medical illness, he was unable to sign. The fact was communicated to Ld. AO vide reply to show cause notice dated 27/12/2018.*

*Further, Mr. Bharkumar Dattani had passed away on 16/07/2019 i.e. before finalization of appeal at First Appellate Proceedings Stage. Hence, appellant was not able to submit the declaration before Hon. CIT(A) due to above mentioned circumstances.*

*In view of the facts and circumstances and other evidences placed on record, we shall be obliged if you would kindly consider the facts stated above and allow us*

*to bring additional evidence as referred to above in connection with the appeal filed by us.”*

4.2. The Ld. Counsel further submitted that the assessee borrowed unsecured loan of Rs. 5,00,000/- on 21.05.2015 from Dattani Oil Industries (Prop. Bharatkumar K. Dattani HUF) who is retail trader of Edible Oil and vegetable oil. The loan was repaid on 23.03.2016 within the same assessment year through banking channel. Copy of the ledger account, Income Tax Return, Bank Statement and declaration of source by the lender are at placed by the assessee in Page no. 30-33 of the Paper Book. The lender Mr. Bharatkumar K. Dattani was not keeping good health and due to his medical illness, he was unable to sign, the confirmations and other details. Mr. Bharatkumar K. Dattani passed away on 16.07.2019. Copy of the death certificate is also enclosed at page no. 41 of the Paper Book. Thus the assessee is prevented from producing all these documents before the Lower Authorities. Thus the assessee has proved the money is found credited in the books maintained by the assessee is unsecured loan obtained and was also repaid during the same assessment year. The source of credit is also proved by filing the Income Tax Returns of the lender, Confirmation Letter and Bank Statement. Thus the assessee has proved the identity, creditworthiness and genuineness of the Transaction. Therefore the addition made u/s. 68 is not sustainable in law.

4.3. The Ld. A.R. further relied on the Hon'ble Jurisdictional High Court judgments in the case of CIT Vs. Ayachi Chandrashekhar Narsangji [2014] 42 taxmann.com 251 wherein it is held that where

department has not doubted about repayment of loan during the subsequent assessment year, there cannot be question of addition as unexplained cash credit u/s. 68 of the Act. Further the assessee has not required to prove the source of source as held by the Jurisdictional High Court in the case of Rohini Builders, Shanti Enterprises and Others. Thus the Ld. Counsel prayed to entertain the documentary evidences relying upon Jurisdictional and other decisions and requested to delete the addition of Rs. 5,00,000/- made u/s. 68 of the Act.

5. Per contra, the Ld. D.R. appearing for the Revenue supported the order passed by the Lower Authorities and requested to uphold the same.

6. We have given our thoughtful consideration and perused the materials available on record. The assessee has made out a case that it could not produce the documents before the Lower Authorities because of the illness of the Lender and subsequent death, by producing before us the copy of the death certificate.

6.1. Further Rule 29 of the Appellate Tribunal Rules, 1963 provides to entertain the additional evidences before the Tribunal. The Ld. D.R. appearing for the Revenue has not serious objection on the admission of additional evidences filed before us. From perusal of the above documents, namely Bank Statements, the unsecured loan has been repaid by the assessee on 23.03.2016. Therefore the addition made u/s. 68 following the Jurisdictional High Court

judgments, we hold the same is not sustainable in law. Therefore the addition made u/s. 68 of unsecured loan of Rs. 5,00,000/- is hereby deleted. Thus the grounds raised by the assessee are hereby allowed.

7. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 17-02-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 17/02/2023**

**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,  
राजकोट