

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “**SMC**” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.513/SRT/2019 (AY 2012-13)

(Hearing in Physical Court)

Jinesh Rameshchandra Sheth, 72, Princess Street, Chapsey Building, Room No.35, 3 rd Floor, Mumbai-400002 PAN No: AHZPS 5778 K	Vs	Income Tax Officer, Ward-2(2), Bharuch, Bharuch-392001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से /Assessee by	Shri Rajiv Chanda, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	23.02.2023
उद्घोषणा की तारीख/Date of pronouncement	28.04.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Ld. Commissioner of Income-tax (Appeals)-1, Vadodara [for short to as “ld. CIT(A)”] dated 02.08.2019 for assessment year 2012-13, which in turn arises out assessment order passed by Income Tax Officer-Ward-2(2), Bharuch /Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 26.03.2015. The assessee has raised the following grounds of appeal:-

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“I. Addition on account of unexplained cash credit u/s 68 – Rs.21,57,500/-:

1. The learned Commissioner (Appeals) erred in confirming the addition of Rs.21,57,500/- to the income of the assessee by confirming the following amounts as unexplained cash credit u/s 68 of the Act.

	Name	Relationship	PAN	Amount
1	Shri Chimanlal Sheth	Grand father	BCAPS7685D	11,50,000/-
2	Utkarsh V Sheth	Nephew	CXBPS0158K	25,000/-
3	Medha Sheth	Wife	BAWPS2706J	3,99,500/-
4	Chintak Sheth	Son-17 yr.	CWFPS3715P	4,82,000/-
5	V R Sheth	Brother	AHZPS5785J	1,01,000/-
			Sub Total:	21,57,500/-

2. The learned Commissioner (Appeals) failed to take into consideration that the ae had furnished PAN card copy as proof of identity, Account confirmation showing name, address and amounts, duly signed by the creditors, entry wise explanation on the transactions, ledger copy and the bank statements of the respective creditors.

3. The Commissioner (Appeals) erred in forming his decision which is based on presumptions and surmises.

4. The order of the Commissioner of Income-Tax (Appeals) is bad in law and without jurisdiction.

5. Your appellant craves leave to add to, alter ament or delete any of the foregoing grounds of appeal.”

2. Brief facts of the case are that assessee is individual and proprietor of “M/s Organix” engaged in trading of chemicals, solvents, fine chemicals, intermediates, pharmaceutical raw materials. The assessee filed his return of income for AY 2012-13 declaring income of Rs. 8,17,363/-. (Though the assessing officer mentioned at Rs. 709643/-). Case was selected for scrutiny. During assessment assessing officer

noted that assessee has shown turnover of Rs. 2.79 Crore on which gross profit of Rs.45,96,247/- and net profit Rs.9,43,407/-, which is 16.47% and 3.38% respectively. The assessing officer also noted that assessee has shown unsecured loan from various persons of Rs. 79,78,326/-. The assessing officer asked the assessee to file confirmation and supporting evidence to substantiate the genuineness of such loan transaction. The assessee furnished copy of account confirmation of lenders. In order to verify the genuineness of such loan transaction, the assessing officer issued notice under section 133(6) to all the creditors. The reply of seven of lender was received to assessing officer. The assessing officer recorded that reply from seven lenders were received vide reply date 23.02.2015. all the lenders in their reply stated that they have not filed income tax return (ITR), but loan was given through banking channel. The assessing officer was not satisfy with the reply and issued fresh show cause notice dated 13.03.2015 and asked the assessee to prove the identity, creditworthy and genuineness of transaction and to produce the lenders. The assessing officer recorded that assessee filed his reply dated

19.03.2015, the details of such reply is recorded in para-4.4 of his order. The reply of assessee was not accepted by assessing officer. The assessing officer held that the transaction of loan from five persons is not sustainable and the assessee has not produced the lenders, and there was virtually no bank balance in their account and disallowed amount of Rs. 39,80,800/- and added under section 68 of the Act. On appeal before Id CIT(A) the assessee filed his detailed written submissions. The submissions of assessee is recorded in para-5 of his order. The submissions of the assessee were remanded to the assessing officer for his remand report. The assessing officer furnished his remand report vide his report dated 30.11.2016. the contents of remand report of assessing officer are recorded in para-6 of order of Id CIT(A). The assessing officer raised objection on the creditworthy of all the lenders. The Id CIT(A) after considering the submission of the assessee, remand report and the assessment order, restricted the additions to the extent of Rs. 21,57,500/-. The Id CIT(A) upheld the addition in respect of following person*, (** all are family member or close relative of assessee*).

Sr No.	Name	Relation	Amount of loan confirmed Rs.
1	Chimanlal Sheth	Grand Father	11,50,000/-
2	Utkarsh V Sheth	Nephew (Minor)	25,000/-
3	Medha J Sheth	Wife	3,99,500/-
4	Chintan Sheth	Son (minor)	4,82,000/-
5	V R Sheth	Brother	101,000/-
	Total		21,57,500/-

3. The Id CIT(A) confirmed the additions of above lenders by taking view that (i) Chimanlal Sheth neither filed return of income nor have shown long term or short term capital gain on the alleged sale of silver and gold. Further bills of such silver and gold is not filed before assessing officer or before him, (ii) Utkarsh is minor, he is student, moreover father and son never can be treated as separate entity, assessee's own money is routed by giving colour of unsecured loan. (iii) Medha J Sheth is assessee's wife and claiming salary from Organix @ Rs. 15,000/- to 20,000/- pm salary is too meagre. (iv) Chintan V Sheth is minor son of the assessee and he is studying and no source of income. (v) V R Sheth is brother, there is no withdrawal from bank account, assessee has not commented on the report of assessing officer. Further aggrieved, the assessee has filed present appeal before Tribunal by raising the grounds of appeal, which I have recorded in para-1(supra).

4. I have heard the submission of learned authorised representative (ld. AR) for the assessee and learned senior departmental representative (ld. Sr-DR) for the Revenue and perused the materials available on record. The ld AR for the assessee submits that lower authorities have not appreciated various evidence while making / upholding the additions under section 68 of the Act. There is no dispute about the identity of the lenders, who are either relative or family members. Against the addition of loan from Chimanlal Sheth, the ld AR for the assessee submits that he was grandfather of assessee, who is passed away on 11.06.2015. Late Chimanlal Sheth had given loan of Rs. 11,82,000/-, out of which the ld CIT(A) deleted Rs. 30,000/- . Remaining addition of Rs. 11.30 lacs were upheld by ld CIT(A) by holding that source of loan of Rs. 11.30 lacs from sale of silver utensils were remained unexplained. The assessee filed confirmation, bank statement of Madhav Choksey who purchased such silver items. The assessee also filed affidavit of one of son of Chimanlal Sheth that his father was partner in Shah Kevaldas & Co and also made investment in equities, which corroborate with his bank

statement, copy of bank statement is filed at page no. 129 to 137 of paper book (PB). For loan of Rs. 25,000/-from Utkarsh V Shah, the ld AR for the assessee submits that he Utkarsh is nephew of assessee, money given by him is not very big, the source of money was from gifts received on various occasion and there was no reason to doubt such loan. For loan from Medha Sheth, the ld AR for the assessee submits that ld CIT(A) failed to appreciate that entire loan of Rs. 3.99 lacs were not given in the year under consideration. She has received loan given in earlier years and she also given from the repayment of loan of earlier year so peak loan given in this year is only Rs, 46,500/- only. She has a capacity to give such loan to the assessee. Against the loan of Chintan Sheth of Rs. 4.82 lacs , the ld AR for the assessee submits that he is son of the assessee. the lender was minor during the year having age of 17 years. Entire loan was not given by him during this year, some of the loan given in earlier. Considering the peak credit loan of Rs. 1,47,000/- was given in the year was only of Rs. 1,47,000/-. Against the loan of V R Sheth of Rs. 1,01,000/- the ld AR for the assessee submits that during

assessment his pass book was filed. The addition was confirmed on the comment of assessing that there was no withdrawal from his bank. The ld AR for the assessee submits that there is no such comment of assessing officer in his remand report as the assessee is unable to trace such adverse remark in the remand report. The ld AR for the assessee submits that all the transactions of the loan are genuine, the assessee has proved the creditworthy of lenders and genuineness of transaction and all the additions may be delated. To support his submissions, the ld AR for the assessee relied on the decision of Tribunal in Renukaben Parmar Vs ITO (ITA No. 2493/Ahd/ 2015).

5. On the other hand, the ld Sr DR for the revenue support the order of ld CIT(A). the ld Sr DR for the assessee further submits that ld CIT(A) in his order clearly held that all the persons whose loan amount was confirmed are not creditworthy to give loan to the assessee.
6. I have considered the submissions of both the parties and have gone through the orders of the lower authorities. I have also deliberated on the case law relied by ld AR for the assessee. I find that there is no dispute about the identity of

the parties, all the persons who have allegedly given loan is either family member of close relative. The lower authority doubted the creditworthy of all the persons. Before considering the creditworthy and genuineness of transaction of all the party, I find that two of the lenders namely Utkarsh V Sheth and Chintak Sheth were minor at the time of alleged transaction of loan in the assessment year 2012-13. Both were incompetent to make such contract of loan being minor. It is not the case of the assessee that transaction of unsecured loan was with interest and the guardian of the minors made contract on behalf of such minor for their benefit. Therefore, the loan amount of both the lender is confirmed.

7. So far as addition of loan amount of Rs. 11,50,000/- received from Chimanlal Sheth is concerned, I find that the assessee primarily discharged his onus in furnishing the source of lender. The assessing officer as well as Id CIT(A) treated the transaction as not genuine without investigating the facts or bringing adverse evidence on record. No notice or summon was issued to Madhav Choksi Jewellers to discard the contention of the assessee that his grandfather

sold silver articles to him. Thus, I do not find any justification in adding the loan amount and direct the assessing officer to delete such addition. So far as unsecured loan from Medha Sheth (wife) of Rs. 3,99,500/- is concerned, I find that she has filing her return of income for AY 2012-13 showing income of Rs. 335,542/- therefore, doubting her capacity Is not justified. Thus, I direct to deleted the addition of her loan amount as well. Adverting to the unsecured loan from V R Sheth (brother) of Rs. 1,01,000/-, I find that there is no evidence except his confirmation, copy of which is filed at page 88 of PB. On perusal of such confirmation I find that this confirmation is only for Rs. 77,750/-. Moreover, there is no reference of unsecured loan in such confirmation. Mere confirmation is not sufficient to prove the genuineness of transaction of unsecured loan. Thus, the addition of unsecured loan from V R Sheth is upheld. Hence addition of loan from Utkarsh V Sheth, Chintan Sheth and V R Sheth is upheld. In the result, ground No. of the appeal is partly allowed.

8. Ground No. 2 to 5 are general and need no adjudication.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 28/04/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत /Surat, Dated: 28/04/2023
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

By order

// **True Copy** //

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT,
Surat