

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.72/Del/2020
Assessment Year: 2016-17

The ACIT, Circle30(1), New Delhi 110002	vs.	Bhushan Kumar Jain, E-5/8, Vasant Vihar, New Delhi 110057 PAN AGRPJ 1187 G
(Appellant)		(Respondent)

For Revenue :	Shri Satish Kr. Agarwal, CA
For Assessee :	Shri Kanav Bali Sr. DR

Date of Hearing :	09.05.2023
Date of Pronouncement :	31.07.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-34 New Delhi dated 25.10.2019 for AY 2016-17.

2. The grounds of revenue are as follows:-

1. That, in facts and circumstances of the case, Ld. CIT(A) erred in deleting addition of Rs. 4,50,68,325/- made u/s. 68 of the Income Tax Act, 1961.

2. That, in facts and circumstances of the case, Ld. CIT(A) ignoring the fact the in the absence of supporting evidences i.e. source of income of the person who provided the loan to the assessee, creditworthiness of the person cannot be verified.

3. The Id. Senior DR pressing into service grounds of revenue and drawing our attention towards relevant para 4.3 and 4.4 of assessment order submitted that since the assessee has completely failed to discharge the onus to prove the creditworthiness of the person extending loan and genuineness of the transaction and the credits of Rs. 4,50,68,325/- in the books of accounts of assessee therefore the same remained as unexplained credit and in such a situation the Assessing Officer was quite correct and

justified in invoking provision of section 68 of the Income Tax Act 1961, (for short the 'Act') and making addition in the hands of assessee.

4. Further drawing our attention towards relevant paras 7 to 7.13 of first appellate order the learned Senior DR submitted that the Id. CIT(A) has incorrectly applied ratio of the various orders & judgments of Hon'ble High Court of Delhi and co-ordinate benches of the Tribunal in paras 7.5 to 7.13 and unreasonably hold that the assessee held discharge onus laid on him u/s. 68 of the Act. The Id. Senior DR submitted that the source of investment by the assessee in property E-14/21, Vasant Vihar Delhi was consisting of a loan from Modern Lotus General Trading LLC (Dubai) amounting to Rs. 4,50,68,325/- and on being show caused by the Assessing Officer the assessee submitted certificate of confirmation of loan and bank account statement of lender but failed to provide the loan agreement to show that the said amount was an advance. The Id. Senior DR submitted that the assessee has also not submitted any financial of said lender entity to establish its creditworthiness and genuineness of the transaction and the copy of bank statement of lender it was revealed that there were various cash deposits to the bank account of lender, immediately prior to the transfer of amount to the assessee which clearly shows that the lender company was not having sufficient funds in his hands and absence of agreement showing advance of loan again fortifies the findings of Assessing Officer. The Id. Senior DR also pointed out that there is categorically finding by the AO that the assessee could not provide any details of payment of interest or repayment of loan till the date of passing of order i.e. 27.12.2018 despite the fact that the loan was taken during FY 2015-16 i.e. from 01.04.2015 to 31.03.2016 therefore it cannot be presume that the assessee discharge onus lay on his shoulders as per mandate of section 68 of the Act. Therefore, he submitted that the first appellate order may kindly be set aside by restoring that of the Assessing Officer.

5. Replying to the above, the learned authorized representative of the assessee vehemently supporting the first appellate order submitted that the Id. CIT(A), after considering the explanation of the assessee supported by various documentary evidence rightly held that the assessee has discharge onus lay on his shoulders as per requirement of section 68 of the Act. Therefore, the Id. CIT(A) was right in deleting the base less addition therefore, conclusion drawn by the Id. CIT(A) may kindly be upheld by dismissing the grounds of revenue. He took us through the relevant part of the first appellate order and submitted that the Id. CIT(A) was right in relying on the judgments of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd. (2010) 194 taxmann 49 (Del.) and CIT vs. Oasis Hospitality (P) Ltd. [2011] 331 ITR 119 (Del.) submitted that the assessee discharged onus lay on him

u/s. 68 of the Act, therefore, the addition made by the AO was rightly held as unsustainable.

6. Placing rejoinder to the above, the Id. Senior DR again drew attention towards para 4.3 & 4.4 of assessment order and also took us through the para 7.2 to 7.4 of first appellate order and submitted that the Id. CIT(A) has considered that the assessee has submitted copy of commercial license issued by Dubai Government and copy of passport of proprietor and thereafter only observed that the money has been routed through banking channel without controverting the findings recorded by the Assessing Officer in para 4.3 of assessment order. The Id. Senior DR submitted that there was clear finding of the Assessing Officer that there was cash deposit immediately before the transfer of amount to the assessee and the assessee could not file agreement or any other document showing the terms and condition of big amount of loan from abroad to the assessee. The Id. Senior DR also submitted that even till date there is no evidence from the assessee to show payment of interest or repayment of loan to the creditor after lapse of many years this again fortifies the findings of the Assessing Officer for making addition u/s. 68 of the Act.

7. On careful consideration of above rival submissions, first of all, from relevant part of assessment order we note that the Assessing Officer made addition in the hands of assessee with following observations and findings:-

4.1 The assessee was asked to submit the source of investment of Rs. 22,57,20,000/- in property purchased vide Notice u/s 142(1) of the Act, but no response was received and penalty show cause notice u/s 271(1)b was issued and served on 06.12.2018 for non compliance to statutory notice. Further show cause notice was issued on 06.12.2018. In response the assessee submitted reply vide letter dated 14.12.2018 regarding source of investment in property which is as under:

From sale of house property Rs. 148500000/-

The Balance of Rs. 77220000/- (Rs. 225720000 - Rs. 148500000) is from commercial property sold during A.Y. 2015-16, interest income and loan taken from M/s Modern Lotus General Trading LLC, 316, Ahmed Al Juma Building, Naif Road, Deira, Dubai. Assessee has shown Loan of Rs 4,50,68,325/- from M/s Modern Lotus General Trading LLC(Dubai)

4.2 Assessee was show-caused vide letter dated 15/12/2018 as follows:

"In your reply dated 14/12/18 you have submitted that the source of investment in property E- 14/21, Vasant Vihar Delhi 110057 consisted among others a loan from the Modern Lotus General Trading LLC.(Dubai) amounting to Rs 4,50,68, 325/- but you have not provided any supporting documents. In this connection you are required to

a) Provide the personal statement of affairs as of ,03.2015 and 3103.2016, copy of loan agreement and details of Interest paid and principal amount repaid till date alongwith documentary proof.

b) Please provide audited financials of Modern Lotus General Trading LLC. (Dubai) with all the annexures for F.Y 2014-15 and FY 2015-16

c) List of shareholders/beneficial owners Modern Lotus General Trading LLC (Dubai) as on 01.04.2015 and as on 30.03.2016 and if there is any change in shareholding pattern during F.Y. 2015-16 then provide details of the same.

d) Please substantiate with all documentary evidence the identity and creditworthiness of Modern Lotus General Trading LLC. (Dubai) from which you have taken loan,You are hereby also show-caused as to why in the absence of satisfactory explanation the amount of Rs 4,50,68,325 should not be considered as unexplained and added back to your income."

4.3 In reply to the show cause notice the assessee submitted certificate of confirmation of loan from M/s Modern Lotus General Trading LLC, 316, Ahmed Al-Juma Building, Naif Road, Deira, Dubai and account statement of the entity. But the assessee has failed to provide the loan agreement in respect of loan from M/s. Modern Lotus General Trading LLC (Dubai), or any agreement to show that the said amount is an advance as submitted in confirmation letter issued by the above entity. Assessee has also not submitted any financials of the above entity to establish its creditworthiness and genuineness of transaction. Moreover on perusal of the bank statement of the above entity, it was observed that there were various cash deposits made, immediately prior to transfer of amount to the Assessee. It raises a strong suspicion on account of the genuineness of the transaction, taking into account that no financials of the entity have been submitted by the assessee in spite of multiple opportunities provided to him over a long span of time. Another fact pertinent to mention here is that assessee has also not provided details of any interest paid or repayment of loan till date. Principle of natural justice was duly followed and assessee was given ample opportunities to prove the creditworthiness of the entity extending loan/advances to the assessee and genuineness of the transaction. In wake of the above findings the nature and sources of Rs. 4,50,68,325/- remains unexplained. Section 68 enacts a golden rule of evidence which is not in dispute, i.e., if any sum is found credited in the books of account of an assessee, the onus is on him to explain the said credit. The principle embodied in Section 68 is only a statutory recognition of what was always understood to be the law based upon the rule that the burden of proof is on the taxpayer to prove the genuineness of credit transactions in his book of accounts since the relevant facts are exclusively within his knowledge. For the sake of clarity, Provision of Section 68 of the Income Tax Act are being reproduced here as below:

"Cash credits.

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

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless.

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

4.4 In view of the above facts, submissions made by assessee and the discussion above it is clear that assessee has squarely failed to discharge the onus to prove the creditworthiness of the person extending loan and genuineness of the transaction. Therefore the Credits Of Rs.4,50,68,3254) in the books of accounts of assessee remains unexplained. So the above amount comes under the purview/of Section 68 of the Income Tax act and is hereby added to income of assessee. Also tam satisfied that the assessee has furnished the accurate particulars of income therefore penalty proceedings us 271(1) c) is being initiated separately.

8. Further, from careful and vigilant reading of first appellate order, we find that the Id. CIT(A) deleted the addition with following observation and findings:-

7.1 During the year appellant had purchased one residential house property bearing no. E 14/21, Vasant Vihar, New Delhi for a sum of Rs.22,57,20,000/-. The AO has asked the appellant to submit the source of investment of Rs.22,57,20,000/- in respect of property purchased. The appellant has submitted that source of investment in property is from sale of house property at Rs. 14,85,00,000/- and balance of Rs.7,72,20,000/- is for commercial property sold during assessment year 2015-16, interest income and loan taken from M/s Modern Lotus General Trading LLC, 316 Ahmed Al Juma Building, Naif Road, Deira, Dubai. The appellant has shown loan of Rs.4,50,68,325/- from M/s Modern Lotus General Trading LLC (Dubai). The AO has asked the appellant to provide the supporting documents in support of loan taken from Modern Lotus General Trading to establish identity, creditworthiness and genuineness of the transaction. The appellant has filed the certificate of confirmation of loan and account statement of the entity. The appellant has failed to provide loan agreement in respect of loan from M/s Modern Lotus General Trading LLC or any agreement to show that said amount is an advance. The appellant has also not submitted the financials of the above entity to establish its creditworthiness and genuineness of the transaction. Further AO has observed that in the bank account there were various cash deposits made, immediately prior to transfer of amount to the assessee. The appellant has also not provided details of any interest paid or repayment of loan till date. Therefore A hold that nature and source of

Rs.4,50,68,325/- remains unexplained and added it to the taxable income of the appellant u/s 68.

7.2 During the course of appellate proceedings, appellant has filed written submission which is reproduced as under:-

3. Ground No 3: relates to addition of 4,50,86,325 Us 68 of the income tax act as stated in the Assessment order that the appellant has squarely failed to discharge the onus to prove the credit worthiness of the person extending loan and genuineness of the transaction.

The brief fact of the loan transaction is that the Appellant had received a loan from M/S modern lotus general trading LLC, Dubai amounting to RS 4,50,86,325. The Appellant had filed the following documents in support of the loan taken.

a) Foreign inward remittance certificate issued by the bank confirming the remittances are attached herewith as Annexure-5.

b) Confirmation of loan issued by modern lotus general trading LLC, Dubai has been attached herewith as Annexure-6.

c) Bank statement for the period of 01/04/2015 to 31/03/2016 issued by Dubai bank (RAKBank) Dubai belonging to modern lotus general trading LLC from where the loan was advanced to the appellant and same is attached herewith as Annexure-7.

d) Copy of the commercial license issued by the government of Dubai in the name of Modern lotus general trading LLC, DUBAI. The license was issued in the year of 2001 which shows the said entity was formed 15 years prior to giving loan and copy of the commercial license issued is attached herewith as Annexure-8.

e) Copy of the passport of Mohd Shalful Islam owner of Modern lotus general trading, LCDUBAI to prove the identity of the person giving the loan and the same is also attached herewith as Annexure-9.

f) The learned A.O has made addition/s 68 of the income tax act on the basis of suspicious raised by him as per assessment order as stated in the assessment order as under:-

"On perusal of the bank statement of modern lotus general trading LLC DUBAI it was observed there was various cash deposits made immediately prior to transfer of amount to the assessee. It raises a strong suspicious on account of genuineness of transaction taking into account that no financials of the entity have been submitted by the appellant. And the fact is that the appellant has not provided details of interest paid or principal repayment."

We further submit as under in respect of above observation.

During the course of assessment hearing the appellant had filed the bank Statement of modern lotus general trading LLC, Dubai for the period of 01/04/2015 to 31/03/2016(Annexure-7)which has not been seen by the learned A.O properly and raised the suspicion without going into the detail of full bank statement because the leaned AO has failed to see the cash withdrawal from bank and only seen the cash deposit made before the transfer of money to the appellant without looking into the full year bank statement. The analysis of cash withdrawal and deposit into the bank is attached herewith as Annexurc-10which clearly tells that cash deposit was made from cash withdrawal from the same bank prior to deposit of cash or business receipts and cannot be linked to loan given to appellant.

The total cash withdrawal during the year was 9,01,81,300 AED equivalent to approx.. 162 Cr and cash deposit was only 4,76,87,968 AED equivalent to approx. 85 Cr. Hence net cash withdrawal from the bank comes to 77 Cr even if say nothing was received from business transactions and the deposit was made from withdrawals from same bank.

Hence, the suspicion of the learned A.O that the cash deposit before transfer of money does not prove the genuineness of the transaction is unfounded and addition made on basis of this suspicion is not justified. From the bank statement and enquiry made from the person giving the loan, we were informed that most of the business was done in Cash and there is no restrictions UNDER THE DUBAI LAW which bars the dealing in CASH. Hence the decision taken by A for correlating to cash deposit and the loan given was not at all justified.

g) The learned A.O has not brought any material on record which proves that cash deposit in the bank account of modern lotus general trading LLC, Dubai before the transfer to the appellant actually belong to appellant.

h) The learned A. O. has failed to prove that loan received by appellant is in any way linked with any income earned by the appellant.

Delhi high court in various cases has held that the case of Divine leasing (SUPRA) and Dwarkadhish (SUPRA) and Kamdhenu(SUPRA) settles the law Us 68 beyond any pale of doubt. It is the duty of assessee to

- 1. Prove the identity of the creditors*
- 2. Prove the genuiness of the transactions*
- 3. Creditworthiness and financial strength of the creditors*

IDENTITY OF THE CREDTOR

The appellant has fulfilled his duty by proving the identity of the lender by providing the commercial license issued by Dubai Government which mention the name of the Proprietor and the appellant has also filed the passport copy of the proprietor.

GENUINENESS OF THE TRANSACTIONS

The Appellant has proved the genuineness of transaction as the same was done through banking channels. The money has been transferred from the account of the creditor directly to the account of the appellant and the appellant has filed his bank statements alongwith the bank advices for the remittance and the FIRC issued by the bank for the remittances.

CREDITWORTHINESS AND FINANCIAL STRENGTH OF CREDITORS

The Appellant has proved the credit worthiness of the lender by providing bank statement for the whole year and if we look to the volume of the bank which normally seen with the total of Debit transactions and credit transactions and sums of both these transactions works out to more than 334Cr.as per Annexure-10 which is in any way sufficient to prove the credit worthiness of the Lender so far as the loan of Rs. 4,50,86, 325 is concerned. It is very-very important to mention here that the bank statement of any organization is primary record to show the financial strength of such organization as compared to profit and loss account and balance sheet as there may be a turnover of crores but such financial statements cannot prove creditworthiness unless such transactions are reflected in the Bank account of such persons. The appellant has fulfill his duty by providing the bank statement for full year from the creditor. However the Dubai country does not have income tax on the income earned by any organization and the figures stated in the bank statement are more authenticated than the figures stated in the final balance sheel .The learned AO has verified the bank statement and has accepted that the loan has been given by the creditor out of above said bank account. In view of the above submissions, we mention here that the addition made us 68 may please be ordered to be withdrawn in view of following established facts:

- 1. The Appellant has proved his onus casted us 68 by proving that the money has been received and recorded in the books of account.*
- 2. The Money received is a loan.*
- 3. The appellant has proved the identity of the person, genuineness of the transaction and credit worthiness of the lender.*
- 4. The suspicion raised by the Learned AO while making decision that the cash deposited in the bank before giving loan proves the loan given is not genuine which has been presumed without establishing Any link with the deposit in the bank with the appellant income.*
- 5. The Learned AO has also doubted the genuineness of the transaction for the reasons that the financials of the lender was not provided and there is no principal repayment or interest payment against which the appellant has filed copy of the air ticket to Dubai for 23/12 due to paucity of the time being time barring case on 31/12 but the appellant got such statements after assessment and can be produced now. But one of the important question arose in the above context is that once it is established that it is a loan, it Is not relevant whether the said loan is repaid back now in view of the decision of the Delhi High court*

CIT VS VELOCIENT TECHNOLOGIES LTS (copy enclosed) as Annexure-11 decided on the basis of the Supreme Court judgment

Both T.V. Sundaram (supra) and the judgment in Punjab Distilling Industries V. CIT AIR 1959 SC 346 rely upon the decision in Morley v. Tattersall 1938 (22) Tax Cas 51. The Supreme Court however, held that once amounts are shown as trading receipts, they contain a profit making element within them. the subsequent treatment, therefore, could well attract compulsion dictated by law, i.e. their inclusion for the later year. In the present case, the amounts were never treated as trading receipts but as unsecured loans - no doubt for the purpose of establishing or furthering a business, yet they were loans and not trading receipts or loss from expenditure - the other instances attracting Section 41(1).

6) Please refer to the Delhi High court judgment ITA 429/2003 CIT VS SHIV DHOOTI PEARLS & INVESTMENT LTD decided on 21/12/2015. The copy of the judgement is attached herewith as Annexure-12.

8. It has been held that assessee cannot be asked to prove the source of the source of the creditor.

7.3 I have considered the facts of the case, finding of the AO and submissions of the appellant. Appellant has received the loan from M/s Modern Lotus General Trading LLC, Dubai amounting to Rs.4,50,86,325/-. The appellant has filed the foreign inward remittance certificate issued by the bank confirming the remittances, confirmation of loan issued by Modern Lotus General Trading LLC, bank statement for the period 01.04.2015 to 31.03.2015 issued by Dubai Bank, copy of commercial licenses issued by Govt. of Dubai in the name of Modern Lotus General Trading LLC Dubai & copy of passport of Mod. Shalful Islam owner of Modern General Trading LLC Dubai. The AQ has raised the doubt about the creditworthiness and genuineness of the transaction as appellant has not furnished the financials for the above entity and in the bank account there were various cash deposits made. During the appellate proceedings, appellant had filed the bank statement of M/s Modern General Trading LLC Dubai and it is observed that cash deposit was made from cash withdrawal from the same bank prior to deposit of cash or business receipts and cannot be linked to loan given to the appellant. The total cash withdrawal during the year was 9,01,81,300/- AED equivalent to approximately Rs.162 Crore and cash deposit was only 4,76,87,968 AED equivalent to approximately Rs.85 Crore. Hence net cash withdrawal from the bank comes to Rs.77 Crore. It is brought into the notice by the appellant that most of the business was done in cash by Modern General Trading LLC and there is no restriction under the Dubai law which bars the dealing in cash.

7.4 As per the provisions of section 68 if there is any credit in the books of account of the appellant, onus is upon the appellant to establish identity, creditworthiness and genuineness of the transaction. The appellant has proved the identity of the depositor by providing commercial license issued by Dubai Govt. which mention the name of the proprietor and appellant has also filed the passport copy of the proprietor. The genuineness of the transactions was proved

as the same was done through banking channel. The money has been transferred from the account of the creditor directly to the account of the appellant and appellant has filed his bank statement alongwith the bank advises for the remittance and FIRC issued by the bank for the remittances. The appellant has proved the creditworthiness of the deposits through his bank account and total debit transactions and credit transactions works out to more than Rs.334 Crore. The appellant has provided the bank statement of the full year from the creditor. In Dubai there is no income tax on income earned by any organization thus figures stated in the bank statement are more authenticated. Thus appellant has brought evidences on record to establish identity, creditworthiness and genuineness of the transactions.

7.5 The appellant has discharged the onus as laid out in section 68 of the Act. Once the appellant has discharged the initial onus lay on it in terms of section 68 of the Act for proving the identity of the persons and creditworthiness along with genuineness of the transaction, then it is on revenue to disprove the same and shift the onus on the appellant. The AO has out rightly rejected the evidences furnished by the appellant without establishing falsity of these documents. The personal identity of the investor was proved beyond any doubt and AO has not disputed about the identity of the creditor. The appellant has duly satisfied genuineness of loan transaction by submitting bank statements. Thus AO is not justified treating the unsecured loan received by the appellant during the year under consideration. as unexplained cash credit u/s 68. In the case of CIT vs. Dwarkadhish Investment Pvt. Ltd. (2010) 194 taxman 43 (Del.) Hon'ble Delhi High Court held that "In any matter, the onus of proof is not a static one. Though in section 68 proceedings, the initial burden of proof lies on the assessee, yet once he proves the identity of the creditors/share applicants by either furnishing their PAN numbers or income-tax assessment numbers and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the revenue the right to invoke section 68. One must not lose sight of the fact that it is the revenue which has all the powers and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the 'source of source'."

7.6 It is held by Division Bench of Hon'ble Delhi High Court in the case of CIT Vs Oasis Hospitalities (P) Ltd [2011] 331 IT 119, "....11. It is clear from the above that the initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. In order to discharge this burden, the assessee is required to prove:

- (a) Identity of shareholder;
- (b) Genuineness of transaction; and
- (c) Credit worthiness of shareholders.

13. *Genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers from that very shareholder. The Division Bench held that when the money is received by cheque and is transmitted through banking or other indisputable channels, genuineness of transaction would be proved. Other documents showing the genuineness of transaction could be the copies of the shareholders register, share application forms, share transfer register, etc.*

14. *As far as creditworthiness or financial strength of the credit/subscriber is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. This judgment further holds that once these documents are produced, the assessee would have satisfactorily discharge the onus cast upon him. Thereafter, it is for the AO 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 AO and he cannot go into the realm of suspicion."*

7.7 *In the case of Rajesh Bhatia Vs DCIT [2017] 88 taxmann.com 350 (Delhi - Trib.) Hon'ble ITAT, Delhi held that "Section 68 of the Income-tax Act, 1961 - Cash credit (Loan) - Assessment year 2002-03 - Where assessee proved identity of creditors by either furnishing PAN or income-tax assessment number and other relevant details showing genuineness of transaction and creditworthiness of creditors and transaction in books of account of assessee had been made through banking channel, addition under section 68 could not be made."*

7.8 *In the case of ACIT Vs Vikrant Puri [2017] 82 taxmann.com 48 (Delhi - Trib.) Hon'ble ITAT, Delhi held that "Section 68 of the Income-tax Act, 1961 - Cash credit (Loan) - Assessment year 2007-08 - Where assessee had furnished name, address and PAN of creditor and genuineness of transaction and creditworthiness of creditor was also fully established, addition made on account of loan taken from said creditor was to be deleted."*

7.9 *In the case of ITO Vs A I developer (P.) Ltd. [2017] 83 taxmann.com 57 (Delhi - Trib.) Hon'ble ITAT Delhi held that "Section 68 of the Income-tax Act, 1961 - Cash credit (Loan) - Assessment year 2007-08 - Where assessee had filed names, address, details etc., of all loan creditors and even filed their confirmation as on date, addition on account of unsecured loan was to be deleted."*

7.10 *In the case of CIT Vs Real Time Marketing (P.) Ltd. [2008] 173 Taxman 41 (Delhi) Hon'ble High Court of Delhi held that "Section 68 d. the Income-tax Act, 1961 - Cash credits - Assessment year 2001-02 - Assessee-company took some unsecured loan from ACL and also filed confirmation thereof - Assessing Officer asked assessee to file a copy of income-tax return of ACL along with its audited profit and loss account, balance sheet and copy of bank statement for relevant period - Assessee furnished all documents asked for -*

From bank statement of ACL, Assessing -AD Officer noticed that funds were transferred through internal transfer to ACL and then in same manner in bank account of assessee-company - Assessing Officer, therefore, treated same as unexplained cash credits under section 68 - On appeal, Commissioner (Appeals) held that assessee had discharged its burden of proving identity, capacity and genuineness of transaction and in those circumstances, addition made by Assessing Officer was not justified - An appeal preferred there against by revenue was dismissed by Tribunal - Whether since there was no material with Assessing Officer to come to conclusion regarding any in genuineness or fictitious identity of entries or non-capacity of lender, addition was rightly deleted."

7.11 In the case of the unsecured loan even after the amendment in the Finance Act 2012, the appellant has not to explain the source of source of the credit and act clearly mentions that requirement only for share application money. It is held by Hon'ble Delhi High Court in the case of Shiv Dhooti Pearls and Investment Ltd. (2015) 64 taxmann.com 329 (Del.) that "What, thus, transpires from the above discussion is that while Section 106 of the Evidence Act limits the onus of the Assessee to the extent of his proving the source from which he has received the cash credit, Section 68 gives ample freedom to the Assessing Officer to make inquiry not only into the source(s) of the creditor, but also of his (creditor's) sub-creditors and prove, as a result, of such inquiry, that the money received by the Assessee, in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of, the Assessee himself. In other words, while Section 68 gives the liberty to the Assessing Officer to enquire into the source/sources from where the creditor has received the money, Section 106 makes the Assessee liable to disclose only the source(s) from where he has himself received the credit and it is not the burden of the Assessee to show the source(s) of his creditor nor is it the burden of the Assessee to prove the creditworthiness of the source(s) of the sub-creditors. If Section 106 and Section 68 are to stand together, which they must, then, the interpretation of Section 68 has to be in such a way that it does not make Section 106 redundant. Hence, the harmonious construction of Section 106 of the Evidence Act and Section 68 of the Income Tax Act will be that though apart from establishing the identity of the creditor, the Assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the Assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the Assessee and the creditor. What follows, as a corollary, is that it is not the burden of the Assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the Assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the Assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be judged vis-a-vis the transactions, which have taken place between the Assessee and the creditor, and it is not the business of the Assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the Assessee."

7.12 Hon'ble ITAT Delhi in the case of Empire Buildtech Private Limited vs Department of Income Tax - ITAT, Delhi, IT No 4656/Del/2009 held that "We find that the assessee has furnished the names and complete addresses of the persons from whom share application money was received. The copy of the share application and amount invested and details of number of shares applied were also furnished to the Assessing Officer. The assessee has also given the details of mode of payment and cheque/demand draft numbers and the banks from which the amounts were received. The confirmations from the investors were also filed before the Assessing Officer. The assessee has filed the copy of return of income of these investors. Thus, the assessee has furnished the relevant information during the assessment proceedings itself. In our considered view, assessee had discharged obligation/onus as laid out in section 68 of the Act. The assessee has provided to Assessing Officer the information by which he could have tracked the investors by way of further investigation if required. In this situation, we hold that the assessee has discharged the onus casting upon it u/s 68 of the Income-tax Act, 1961. In our considered view, the assessee submitted a satisfactory explanation for the credits received in its accounts in the form of share application. Once the assessee has discharged the initial onus lay on it in terms of section 68 of the Income-tax Act, 1961 for proving the identity of the person and creditworthiness along with the genuineness of the transaction. Then it is on revenue to disprove the same and shift the onus on assessee. The Assessing Officer has rightly rejected such evidences without establishing falsity of these documents. Once the burden has shifted on the revenue then it is on the Assessing Officer to be establish that explanation submitted or document furnished by the assessee were false or non-genuine. Income tax records were also furnished. The personal identities of these investors were proved beyond any doubt. Assessing Officer had not taken any step to further verify the creditworthiness of these investors. No efforts were made to pursue these investors. No addition can be made on the basis of assumptions and presumptions. No document can be disregarded or ignored without proving otherwise."

7.13 Considering the above facts and decisions of the judicial authorities, addition made by the A is not sustainable. The appellant has furnished confirmation, copy of bank account, passport, commercial license etc. in order to establish identity, creditworthiness and genuineness of transaction in respect of the depositor whom appellant has procured unsecured loan during the year amounting to Rs.4,50,68,325/-. Thus AO is not justified in treating the unsecured loan as unexplained cash credit u/s 68 and addition made by the AO at Rs.4,50,68, 325 / - is hereby deleted.

7.14 This ground of the appeal of the appellant is allowed.

9. In view of above, first of all, we note that the Assessing Officer invoked provision of section 68 of the Act, precisely on the basis following grounds:-

a. Assessee has failed to provide the loan agreement or any other agreement in respect of loan from M/s. Modern Lotus General Trading LLC, Dubai, to show that loan amount was an advanced as mentioned in the certificate of confirmation of loan issued by the lender.

b. The assessee, despite several opportunities given, has not submitted any financial of the said lender entity to establish its creditworthiness and genuineness of transactions.

c. The Assessing Officer on perusal of the bank statement of said lender entity observed that there was various cash deposit made immediately prior to transfer of amount to the assessee which raises strong clouds over the genuineness of the transaction.

d. The assessee did not provide details of any interest paid or repayment of loan to the lender entity till date of passing order despite several opportunities given.

e. The assessee could not prove the creditworthiness of the lender entity located at Dubai and therefore genuineness of transaction has also not proved as per requirement of section 68 of the Act.

10. At the very outset, from the relevant part of assessment order(supra) we note that the Assessing Officer after taking note of investment by the assessee in the property purchased and situated at E-14/21 Vasant Vihar New Delhi, show cause the assessee and after taking reply of assessee on record the Assessing Officer made addition of Rs. 4,50,68,325/-. Before the Assessing Officer the assessee submitted certificate of confirmation of loan from the creditor M/s. Modern Lotus General Trading LLC Dubai and its bank account statement. The Assessing Officer noted that assessee has failed to provide the loan agreement with the said creditor or any other agreement to show that the said amount was an advance as mentioned in the confirmation letter issued by the creditor. The Assessing Officer also noted that the assessee has also not submitted any financials of the creditor to establish its creditworthiness and genuineness of transaction. On perusal of bank statement of creditor the Assessing Officer observed that there were various cash deposit made immediately prior to transfer of amount to the assessee which raises a strong suspicion on the genuineness of transactions and thus the creditworthiness of the creditor was also not found to be acceptable by the Assessing Officer.

11. The Assessing Officer provided multiple opportunities to the assessee over long span of time but the assessee could not filed any financial of the creditor which also goes against the explanation of assessee. The Assessing Officer also noted that the assessee has also not provided details of any interest paid or repayment of loan till the date of passing of order. The Assessing Officer noted that principles of natural justice were duly followed and the assessee was given ample opportunities to prove the creditworthiness of the creditors extended loan/advance to the assessee and genuineness of transaction. With these observations the Assessing Officer concluded that as per scheme of section 68 of the Act the burden of proof is on the assessee to prove the genuineness of credit transaction in his books of accounts along with capacity and creditworthiness of creditor and the assessee has failed to discharge the onus to

prove the creditworthiness of the person extending loan to him and genuineness of transaction. With these observations the Assessing Officer made addition u/s. 68 of the Act, in the hands of assessee.

12. From relevant part of the first appellate order (supra), as has been reproduced hereinabove we note that the Id. CIT(A) firstly, noted that the appellate has submitted certificate of confirmation of loan and bank account statement of lender entity and thereafter para 7.1 reiterated the basis and observation of the Assessing Officer. In para 7.2 he reproduced the written submission of the assessee and para 7.3 and 7.4 recorded his observations on the explanation of document submitted by the assessee. The Id. CIT(A) thereafter in para 7.5 noted her observations regarding onus of proof u/s. 68 of the Act and in subsequent paras 7.6 to 7.12 she mentioned the proposition rendered by coordinate benches of Tribunal and Hon'ble High Court of Delhi and deleted the addition by making observations in para 7.13 of the impugned order.

13. Thus, on careful and vigilant reading of first appellate order, we find that the Id. CIT(A) in para 7.1 noted the facts emanated from the assessment order and findings of the Assessing Officer and in para 7.2 reproduced the written submissions of assessee. Thereafter she recorded her observations and findings in broadly in paras 7.3 to 7.5 & 7.13 only. The Id. CIT(A) has considered the stand of the Assessing Officer as well as explanation of the assessee and granted relief precisely by observing that the cash deposit was made by the creditor from cash withdrawal from the same bank account prior to deposit of cash which cannot be linked to loan given to the assessee. He also noted that most of business was done in cash by the lender company as there is no restriction under the Dubai law which bars the dealing in cash and the Id. CIT(A) proceeded to conclude that the appellant has proved the identity of the creditor by providing commercial licence and passport issued from Dubai Govt. and the genuineness of transaction has been proved as the same was done through banking channel. The Id. CIT(A) also noted that there is no income tax on income earned by any organisation thus figures stated in the bank statement are more authenticated therefore the appellant has brought evidences on record to establish identity, creditworthiness of creditor and genuineness of transaction. The Id. CIT(A) further observed that, since the assessee has discharged onus as per section 68 of the Act, then the onus shifts on the revenue/Assessing Officer to disprove the same and to further shift the onus on the appellant. To support this conclusion the Id. CIT(A) has relied on various judicial pronouncements.

14. On logical analysis of the stand and allegation of the Assessing Officer and basis taken by the Id. CIT(A) we clearly note that the Id. CIT(A) has deleted the addition by adopting a very casual approach and without dislodging and controverting the allegations of the Assessing Officer based on logical analysis of the facts and

circumstances of the case. The Id. CIT(A) has only considered the passport and bank statement of assessee which establish the identity of creditor. We are unable to see any evidence substantiating the financial capacity and position of lender who, as per assessee has undertaken transactions of more than Rs.334 crore during relevant financial period we are unable to see any balance sheet or any audited or unaudited accounts of the creditor establishing his financial capacity and creditworthiness to extend interest free loan of Rs. 4,50,68,325/- which has not been repaid till date. It is worth to mention that on being asked by the bench the Id. AR could not show us any documentary evidence or prove regarding payment of interest to the creditor and repayment of loan by the assessee to the creditor till date and he fairly accepted that the assessee has neither paid any interest on the unsecured loans nor has repaid the loan till date. Therefore, we hold that the Id. CIT(A) has granted relief to the assessee without controverting and dislodging the basis and allegation of the Assessing Officer as precisely noted in the para 9 of this order thus, we are not in agreement with the basis and conclusion drawn by the Id. CIT(A) and hence, we reverse the same by restoring the assessment order and addition made therein. Accordingly, grounds of revenue are allowed.

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

Order pronounced in the open court on 31.07.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 31st July, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi