

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 391/Ind/2022**  
**Assessment Year:2019-20**

Shri Naresh Navlani, 39, Sai Bagh Colony, Khandwa Road, Indore	<b><u>बनाम/</u></b> Vs.	DCIT/ACIT, (Central Circle)-2, Indore.
(Assessee / Appellant)		(Revenue / Respondent)
<b>PAN: AAZPN2242G</b>		
Assessee by	Shri S.N. Agarwal, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.05.2023	
Date of Pronouncement	18.08.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 29.09.2022 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 15.06.2021 passed by learned ACIT, Central-2, Indore ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2019-20, the assessee has filed this appeal on the grounds mentioned in Appeal Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts leading to present appeal are such that the assessee filed return of income for the relevant assessment year declaring total income of

Rs. 42,24,570/- which was subjected to scrutiny assessment and the AO completed assessment after making an addition of Rs. 9,50,000/- u/s 68 account of unexplained unsecured loan taken by assessee from one Shri Aashish Patwala. Aggrieved by the action of AO, the assessee carried matter in first appeal but could not succeed. Now, the assessee has come in next appeal before us.

4. The sole grievance of assessee is the addition of Rs.9,50,000/- made by AO and confirmed by the first appellate authority. The AO has noted in Para No. 3 of assessment-order that when the assessee was issued questionnaire on 30.09.2020 and 19.10.2020 and asked to file the details of all loans taken during the year and to establish the identity, credit worthiness and genuineness, the assessee submitted details of loan taken from Shri Aashish Patwala alongwith A/c Confirmation, Copy of Bank A/c of creditor and PAN card of creditor. However, the assessee failed to produce the copy of the income tax return of creditor. Then, the AO made an enquiry about Shri Ashish Patawala (seems departmental enquiry based on PAN data) wherein it was found that he has not filed any income-tax return. Ultimately, the AO noted that creditor is a non-filer of income-tax return; the bank a/c has been opened for the purpose of giving unsecured loan only; the assessee has not made any repayment of loan; and the creditor has not charged any interest on loan. Relying upon **CIT Vs. N. Tarika Properties Investment (2014) 387 (SC)** and **PCIT Vs. NRA Iron and Steel Pvt. Ltd. (2019) (SC)**, the AO held that mere furnishing of PAN is not a sufficient proof of identity. Ld. AO finally concluded in Para No. 3.6 of assessment-order that the assessee has failed to prove the identity, genuineness and creditworthiness, accordingly he made addition of Rs. 9,50,000/- u/s 68.

5. During first-appeal, the CIT(A) agreed with observations of AO. He further noted (Page No. 31 of appeal-order) that the assessee has not brought on record any evidence showing income-earning activities of the creditor. He also noted that the A/c Confirmation filed by assessee did not

contain complete address of the creditor which prevented the AO from conducting further enquiries (Page No. 32 of appeal-order). He also relied upon certain judicial rulings including the decision of Hon'ble Delhi High Court in the case of PCIT Vs. Bikram Singh (2017) 399 ITR 407 where it was held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment (Page No. 35 of order). He also distinguished various rulings cited by assessee before him on the footing that in those rulings the assessee has discharged the onus cast upon them u/s 68 whereas in the present case, the assessee has completely failed to establish the identity, creditworthiness and genuineness. This way, Ld. CIT(A) did not grant any relief to assessee.

6. Ld. AR for the assessee carried us to the documents filed in the Paper-Book at Page No. 31 to 33, namely (i) A/c confirmation, (ii) Bank Pass-book of creditor from which the money was given to assessee, and (iii) PAN card of creditor. Referring to A/c confirmation, Ld. AR demonstrated that it is signed and acknowledged not only by assessee but also by creditor; it contains full address of the creditor which is 39, Sai Bagh Colony, Khadwa Road, Indore and it also contains PAN of assessee as well as creditor. Referring to Bank Pass-Book, Ld. AR demonstrated that the creditor has first received a sum of Rs. 10,00,000/- on 05.04.2018 through clearing and by utilizing the fund so received, has given loan of Rs. 9,50,000/- to assessee on 05.04.2018. Thus, it is not a case of immediate cash deposit in bank a/c of creditor prior to giving of loan to assessee. He submitted that it is not the only transaction in the Bank A/c of creditor; there are other transactions of deposit into and withdrawal from bank A/c though the frequency of transactions may not be high. Referring to PAN card of creditor, Ld. AR submitted that the creditor is not a non-living entity like firm, company, etc. The assessee is a living individual to whom PAN card is issued after obtaining valid statutory documents and the PAN card contains the photograph of assessee. Ld. AR submitted that the physical existence of

non-living person can be doubted but it cannot and should not be doubted in case of living person. In nutshell, the Ld. AR contended, the identity is proved by A/c confirmation and PAN Card; creditworthiness/capacity is proved by bank pass-book which clearly reveals that the creditor received a clearing of Rs. 10,00,000/- and the same proceed was utilized for giving loan to assessee; and the genuineness is also proved by bank pass-book.

7. Ld. AR further contended that despite submission of primary documents, if at all the AO had any doubt in mind he could have conducted necessary enquiry from the creditor directly. Ld. AR submitted that the A/c confirmation given by assessee contains full address and the PAN data of creditor was also available with the AO; still no enquiry has been done by AO. Ld. AR submitted that the CIT(A) is wrong in mentioning that the A/c confirmation does not contain full address of creditor. Ld. AR contended that when the AO has not made any enquiry from concerned creditor even though the assessee has filed A/c Confirmation, Bank A/c and PAN Card of the creditor, the AO has no right to draw any adverse inference against assessee and make addition. In support of his argument, Ld. AR relied upon the decision of **Hon'ble Delhi High Court in CIT Vs. Gangeshwari Metal (P) Ltd. (2014) 361 ITR 10** where it was held thus:

*"9. As can be seen from the above extract, two types of cases have been indicated. One in which the AO carries out the exercise which is required in law and the other in which the AO sits back with folded hands till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the later category. Here the AO, after noting the facts, merely rejected the same.*

*10. The facts of Nova Promoters and Finlease (P) Limited (supra) fall in the former category and that is why this Court decided in favour the Revenue in that case. However, the facts of the present case are clearly distinguishable and fall in the second category and are more in line with facts of Lovely Exports (P) Ltd (supra). There was a clear lack of inquiry on the part of the AO once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made u/s 68 of the Act. Consequently, the question is answered in the negative. The decision*

*of the Tribunal is correct in law."*

8. So far as non-filing of income-tax return by creditor is concerned, Ld. AR submitted that the creditor may not be required to file return under the provisions of law, therefore not filed. In any case, it is neither a concern nor a right of assessee to look into the affairs of creditor, that is whether he is filing return of income or not and if not, then why. Ld. AR relied upon the decision of jurisdictional High Court in the case of **CIT vs. Metachem Industries, as reported in (2000) 245 ITR 160 (MP)** wherein it is held thus:

*"4. On appeal, the Commissioner of Income-tax (Appeals) examined the matter in detail and found that Shri S. K. Gupta was the real owner of the business. The explanation given by the assessee was found to be satisfactory and he deleted the aforesaid three entries. The same finding of fact has been affirmed by the Tribunal. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount.*

*5. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. **Whether that person is an income-tax payer or not or from where he has brought this money is not the responsibility of the firm.** The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax. It is open to the Assessing Officer to take appropriate action under Section 69 of the Act, against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the Commissioner of Income-tax (Appeals) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries.*

*6. We are, therefore, of the opinion that the view taken by the Tribunal is correct and the aforesaid question is answered against the Revenue and in favour of the assessee."*

9. With these submissions, Ld. AR prayed that the addition made by AO without any enquiry and in utter disregard of documents submitted by assessee, is unsustainable and the same must be deleted.

10. Per contra, Ld. DR relied upon the orders of lower authorities. He submitted that the assessee has not filed any details of income of creditor. He submitted that the creditor is not filing income-tax return which shows that the creditor does not have sufficient income and in turn capacity/creditworthiness to lend money to assessee. He also submitted that the assessee has not paid any interest to the creditor and it does not make any sense that a person who is not filing income-tax return would give interest-free loan to assessee. Finally, He relied upon decision of **NRA Iron (supra)**.

11. In rejoinder, Ld. AR submitted that the decision of **NRA Iron** is not applicable to present case of assessee for the reason that in **NRA Iron**, firstly all creditors were non-living paper-companies and secondly the AO carried out field enquiries of those creditors and found them non-existent. But in present case, the creditor is a living person and moreover the AO has not made any field enquiry of creditor; the AO has made addition on mere conjecture and presumption sitting in his office. Ld. AR also mentioned that interest is not paid to creditor and this is a fact that the loan is interest-free as evident from A/c Confirmation. This is so because of friendly relations the assessee enjoys with creditor.

12. We have considered rival submissions of both sides and perused the material held in Paper-Book. On a careful consideration, we find the assessee has filed three documents to AO which are un-disputably accepted by both AO and CIT(A), namely (i) A/c confirmation, (ii) Bank Pass-Book and (iii) PAN card. The A/c confirmation is duly signed by creditor and contains full address as well as PAN of creditor. Thus, the identity of creditor is duly proved by these primary documents. The Bank Pass Book clearly shows that the creditor received a sum of Rs. 10,00,000/- through clearing and the loan was given to assessee out of it. Therefore, the capacity/creditworthiness of creditor to give loan to assessee is proved. The creditor has given loan to assessee out of proceeds held in Bank A/c from clearing of cheque and not from his income. Therefore, it is prima facie wrong to judge the capacity/creditworthiness of creditor with his income. Regarding non-filing of income-tax return by creditor, the point is well decided by Hon'ble jurisdictional High Court in **Metachem Industries (supra)** where it has been categorically held "*Whether that person is an income-tax payer or not or from where he has brought this money is not the responsibility of the firm*". The last element of genuineness of loan is also established by the Bank Pass-Book which clearly reflects that the loan has been taken through banking channel and there is no involvement or flow of cash. Thus, all elements of section 68 are satisfied. Regarding the contention of revenue that the assessee has not paid any interest, the same is fully corroborated by the A/c Confirmation acknowledged by the creditor which does not contain any entry of interest payment. Obviously, the assessee has received interest-free loan from creditor. Lastly, we also find sufficient merit in the contention of Ld. AR that the assessee has discharged primary burden cast upon it and still if the AO was not satisfied, he could very well make enquiry or field enquiry from/of the creditor. The AO has not done any enquiry, much less field-enquiry, from/of creditor and fastened the tax liability upon assessee by treating the loan as unexplained without any basis. This approach of AO is not

acceptable as decided by Hon'ble Delhi High Court in **Gangeshwari Metal (supra)**. Even this approach does not get support from **NRA Iron (supra)**.

13. In view of above discussions and for the reasons stated therein, we are of the considered view that the addition made/confirmed by lower authorities is not sustainable. Therefore, we are inclined to delete the addition. Ordered accordingly.

**14. Resultantly, this appeal of assessee is allowed.**

*Order pronounced in the open court on 18.08.2023.*

sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 19.08.2023

CPU/Sr. PS

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*