

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. 206/Ind/2013
Assessment Year: 2007-08

Shri Radheshyam Patel, Prop. of M/s. Geetanjali and Cold Storage, Bicholi Mardana, Indore	<u>बनाम/</u> Vs.	ITO, Ward 2(3), Indore
(Assessee / Appellant)		(Revenue / Respondent)
PAN: ABPPP3172N		
Assessee by	Shri S.S. Deshpande, C.A.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	10.08.2023	
Date of Pronouncement	12.09.2023	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 31.01.2013 passed by learned Commissioner of Income-Tax (Appeals)-3, Baroda having concurrent jurisdiction of CIT(A)-I, Indore ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 18.12.2009 passed by learned ITO, Ward-2(3), Indore ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2007-08, the assessee has filed this appeal on following grounds:

- (1) *That the Ld. CIT(A) erred in law and facts of the case and confirmed the addition made by AO u/s 68 of the Income-tax Act, 1961 in spite of the fact that assessee discharge its onus to prove identity, genuineness and creditworthiness of the creditors. The addition made by the Assessing*

Officer and confirmed by the CIT(A) is totally wrong and illegal on the facts of the case.

- (2) *That the Ld. CIT(A) failed to consider the affidavit of all the creditors in supports of advancing the loan and confirmation obtained by AO directly u/s 133(6) of the Income-tax Act, 1961. The action made by the AO and confirmed by the Ld. CIT(A) is therefore wrong and bad in law."*

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

3. The background of present appeal is such that the assessee-individual was a proprietor of M/s. Geetanjali and Cold Storage. The return of relevant AY 2007-08 was filed on 02.11.2007 declaring a total income of Rs. 1,20,000/-. The case was subjected to scrutiny and the AO passed assessment-order on 18.12.2009 at a total income of Rs. 47,84,680/- after making certain disallowances/additions (including an addition of Rs. 46,29,675/- u/s 68 being contested in present-appeal). The assessee carried matter in first appeal but did not get any success. The assessee filed next appeal to ITAT, Indore registered as I.T.A. No. 206/Ind/2013. The ITAT Indore, vide order dated 13.07.2015, dismissed assessee' appeal for non-prosecution. Thereafter, the assessee filed M.A. No.13/Ind/2021 seeking the re-call of dismissal-order passed by ITAT. The said M.A. was decided by ITAT vide order dated 26.09.2022 wherein the M.A. was also dismissed for non-prosecution by assessee. Thereafter, the assessee approached the Hon'ble High Court of M.P. at Indore by way of Appeal No. 8 of 2023. The said appeal has been decided by Hon'ble High Court vide dated 09.02.2023 wherein the Hon'ble High Court was pleased to set aside both of the orders passed by ITAT, namely (i) Order dated 13.07.2015 in I.T.A. No. 206/Ind/2013, and (ii) Order dated 26.09.2022 in M.A. No.13/Ind/2021. Further, the Hon'ble High Court has remanded the matter back to ITAT, Indore, to decide the original I.T.A. No. 206/Ind/2013 on merits after hearing all concerned. This way, ITA No. 206/Ind/2013, the present-appeal, has come before this Bench for hearing.

4. Ld. AR for assessee referred to the Grounds of Appeal reproduced above and submitted that sole grievance of the assessee to be adjudicated by this Bench is the addition made by the AO u/s 68 in respect of unsecured loans taken from various persons/creditors amounting to Rs. 46,29,675/-. He then carried us to the orders of lower-authorities and submitted that the assessee has taken loan from 19 creditors. He submitted that during the proceeding before lower-authorities, the assessee filed substantial evidences of all creditors to satisfy the lower-authorities but still the lower-authorities were not satisfied. Ld. AR has filed, at Page Nos. 1 to 6 of the Paper-Book, a detailed chart compiled by assessee which shows various documentary evidences filed by assessee. Referring to the chart and other supporting documents filed in Paper-Book, Ld. AR submitted that all 19 creditors are agriculturists and the assessee has filed A/c Confirmations in all cases, documents of land-holding/land passbooks in some cases, voter id/driving licence/ration card in some cases, bank statements in majority of cases, etc. The AO directly issued notices u/s 133(6) to all creditors in response to which the creditors themselves filed replies to AO and accepted having given loans to assessee. Furthermore, the assessee also filed Affidavits of Creditors during first-appeal to CIT(A) but the CIT(A) has not admitted those affidavits. Ld. AR submitted that since the creditors are agriculturists and do not have taxable income or their taxable income is not crossing exemption-limit, they were not required to obtain PAN or to file income-tax returns to department. Ld. AR submitted that the identity of the creditors is proved from notices sent by AO directly to the creditors u/s 133(6) and other documents like voter card/driving licence/ration-card etc. filed by assessee. Regarding genuineness, all loans have been taken through banking channel. Regarding creditworthiness, all creditors (except one) were having adequate agricultural income. Therefore, the lower-authorities have wrongly invoked the provisions of section 68 despite full satisfaction of requirements of section 68.

5. Ld. AR relied upon following decisions to support his argument that no addition could be made in such cases:

- (i) PCIT Vs. Gopal Heritage (P) Ltd.
(2021) 133 taxmann.com 173 (Gujrat HC)

- (ii) Late Shri Sanjay Paliya Vs. DCIT,
ITA No. 922/Ind/2016 order dated 30.05.2017 (ITAT Indore)

6. Having said so, Ld. AR interestingly submitted that the assessee is having brought forward losses and the assessee's income from business of cold storage is also eligible for deduction u/s 80-IB. Therefore, the assessee could very well declare higher income of his own business instead of showing unsecured loans from those 19 creditors and yet not exposed to any additional tax burden. But the assessee has not done so only because he has taken genuine loans from creditors. Therefore, having regard to this fact also, the genuineness of loans shown by assessee must be accepted.

7. Lastly, Ld. AR made an alternative pleading. He relied upon the decision of **ITAT, Indore in Shri Om Prakash Patidar (HUF) VS. ITO-2(4), Indore, ITA No. 220/Ind/2017 order dated 03.01.2019** wherein, according to him, on the same facts the ITAT has restricted/reduced addition made by AO to 50% and thereby granted part-relief to assessee by holding thus:

"6. From the finding of Ld. CIT(A), it is evident that the explanation of the assessee was not found satisfactory on the basis that before advancing money to the assessee, there were cash deposits in the account of the creditors. However, Ld. CIT(A) has admitted the factum of earning of agricultural income. Therefore, inference that the entire amount was not belonging to the creditors would be fallacious. We, therefore, looking into the facts and material available on records, hereby delete 50% of the addition of Rs. 17,51,000/-. The ground of the assessee's appeal is partly allowed."

Ld. AR prayed that the benefit of aforesaid decision should be made available to present assessee also.

8. Per contra, Ld. DR for revenue strongly opposed the submissions made by Ld. AR. He submitted that identity of the creditors may not be in doubt but the genuineness of loan-transactions and creditworthiness of the creditors is certainly unproved. He submitted that it is not sufficient to prove identity alone, the assessee has a heavy onus to establish the genuineness and creditworthiness as well. Ld. DR carried us to the copies of bank-statements of the creditors (where ever filed by assessee) and referring to Page No. 52, 58, 70, 77, 89, 101, 109, etc. he successfully demonstrated that in all cases, the pattern is same i.e. the cash had been deposited in creditors' accounts either on same day or preceding day and used for giving loans to assessee. While explaining, Ld. DR also pointed out that in most of the cases, the transactions took place on 29.06.2006 / 30.06.2006 which further strengthens department's stand. Going further, Ld. DR also emphasized the lower-authorities' finding that the assessee has not paid interest to any of the creditors. Ld. DR submitted that it is totally unbelievable that the creditors, as many as 19 in number, would give interest-free loans to assessee, more particularly when they are having no income source except agriculture.

9. In rejoinder, Ld. AR submitted that the creditors are agriculturists who deposit bulk cash at the time of sale of crop. He further submitted that the crop selling occurs at almost same time for all agriculturists. Therefore, the department's apprehension and thereby disbelieving cash-deposits in creditor's bank a/cs is not valid.

10. We have considered rival submissions of both sides and perused the material held on record including the orders of lower-authorities. First of all,

from the first appellate order, we find that the CIT(A) has upheld AO's action by making following observations and findings:

"5.3 I have considered the facts of the case and submissions made by the AR of the appellant. The AO in his assessment-order has made a detailed analysis of the replies given by the loan creditors in response to notice u/s 133(6) issued by the AO to them. A summary of such analysis applicable to all the loan creditors is as follows:

- (a) All the loan creditors are neither income tax assessee nor are having PAN No.*
- (b) Seventeen of these are claiming ownership of agricultural land and have submitted copy of the Rin Pustika in support of such claim. But in case of 14 loan creditors the AO has stated that the land holding as per Rin Pustika is much less than that being claimed in the letters submitted by them. The appellant has stated nothing in this aspects in his submissions filed during the course of appellate proceedings.*
- (c) The AO in his notice had asked the loan creditors the name of the Bank, Branch address, cheque No. date, and had also asked them to produce the Bank Pass Book as evidence. In their replies submitted the loan creditors did not submit their copies of Bank pass book and these details.*
- (d) The AO had also asked the loan creditors to submit information regarding all sources of income and to produce evidence in support of the same. The loan creditors have only stated that their income is from agriculture but no supporting evidence except copies of Rin Pustika were submitted.*
- (e) As mentioned in the assessment order, the replies to the notices u/s 133(6) were submitted by appellant itself.*
- (f) None of the loan creditors have received any interest from the appellant."***

*5.3.1 It may be mentioned here that during the appellate proceedings, the appellant has submitted affidavits from 20 loan creditors and also copies of Bank accounts of its loan creditors. These are in the nature of additional evidences but no application for admitting such evidences were submitted alongwith these documents. Hence such additional evidences cannot be admitted. Without prejudice to this, it is seen that all the affidavits have been made on the same date i.e. 2nd Feb. 2012, before the same Notary Public located in Indore. The format of the affidavits are also almost same. A perusal of the Bank accounts shows that just before issuing cheques to the appellant, equivalent amount of cash has been deposited in these accounts. Moreover, the narrations in some of the affidavits are not supported by the Bank accounts in all cases. **For example, in the affidavit of Mrs. Nirmala***

Ramprasad, she has stated that she has 17.997 beegha of irrigated land and the income from agriculture was deposited by her in the Bank account and out of that loan was issued to Mr. Patel. But from the Bank statement of these persons it is seen that an amount of Rs. 5.0 lacs has been deposited on 27.07.2006 on account of Mortgage loan and out of this loan of Rs. 4.92 lacs has been issued to the appellant. Thus, the affidavit filed by this lady is a false affidavit.

5.3.2 Besides, the affidavit of Bhanwarlal Mangilal claims that he is a broker of properties and loan has been given to the appellant by depositing cash from such activity. Again, there is nothing on record in support of earning of these income by these persons. In the reply submitted in response to notice u/s 133(6) the person has submitted that he is not an assessee neither has got PAN.

5.3.3 Thus, the capacity of the creditors to advance such loan to the appellant is not established. This is more so in view of the fact that none of these loan creditors have been paid single paisa as interest by the appellant."

11. On a careful consideration of facts of the case, we find that the assessee is claiming to have taken loans from as many as 19 creditors who are agriculturists. So far as identity of the persons is concerned, there cannot be any dispute because the same is proved sufficiently by documents brought on record as narrated earlier. In fact, Ld. DR is also accepting the identity of creditors. But then, the law of section 68 requires something more than mere proving identity i.e. the genuineness of transactions and creditworthiness of the creditors is also required to be satisfied. In the present case, we find certain important facts. Firstly, we find that the assessee has taken loans from not 1 or 2 creditors but from 19 creditors. Secondly, none of those creditors has charged any interest from assessee despite the fact that in majority of cases, the loans remained outstanding for 9 months with assessee. Needless to mention that none of the creditors has been reported to have any relation with the assessee. Ld. DR is very much correct in emphasizing that it is grossly unbelievable that so many persons, who do not have any relation with assessee, would give interest-free loans to assessee. Ld. DR is also very correct in submitting, while presenting analysis of entries in bank accounts of creditors, that there is a uniform

pattern of cash deposits in bank accounts of creditors on the very same or preceding day of giving loans to assessee. In such circumstances, the loan-transactions claimed to have been done by assessee are surrounded by thick cloud of serious doubts in the first glance itself. Needless to mention that none of the creditors is having any PAN or is a filer of income-tax return.

12. The decision in **PCIT Vs. Gopal Heritage (P) Ltd. (2021) 133 taxmann.com 173 (Gujrat HC)** relied upon by Ld. AR for assessee is not applicable to present case because in that case, the facts were different as can be seen from following paragraphs of the order:

"4.1.The CIT(Appeals), as could be noticed, threadbare examined the entire material in case of each of these persons and entities and eventually held that the identity of the depositors had been proved as they had filed the return of income along with the PAN. Moreover, loans have been granted through banking channels and in respect of the same copy of the bank statement also has been provided and hence, genuineness also has been believed by the CIT(Appeals) and further the return of income had been filed by the said depositors and hence, the creditworthiness also has been proved. The appellant provided a copy of audited balance sheet and profit and loss account for the year under consideration in respect of depositors to the Assessing Officer and after verification, the Assessing Officer has the only objection that the company was not having fresh funds in its books of accounts and negligible operational income was derived.

4.2.The CIT(Appeals) has rightly opined that since the depositor company had duly recorded the deposits/loans given to the appellant in its books of accounts out of its own funds or borrowed funds, no addition in the hands of the appellant is permissible so far as the transactions are recorded in the books of depositor company."

13. Another decision of **ITAT, Indore in Late Shri Sanjay Paliya Vs. DCIT, ITA No. 922/Ind/2016 order dated 30.05.2017** relied upon by Ld. AR has also different facts. In that case, the assessee took loan from only 1 creditor who was not only relative of assessee but also a senior citizen. As against this, in assessee's case, the assessee has shown loans from 19 non-relative creditors and that too without any interest payment. Therefore, the said decision is not applicable to assessee's case. The

relevant paras of decisions are re-produced below for immediate reference:

"8. On careful consideration of the above rival submissions, we are of the view that undisputedly the assessee has filed confirmation, copy of bank statement, Adhar card and copy of account of the lender in the books of the assessee, which are available at pages 9 to 12 of the assessee's paper book. Further, it is also not in dispute that the assessee received loan from his relatives Smt. Parvati Bai Chouhan through cheque. However, controversy arose when the Assessing Officer noticed that cash amount has been deposited in the bank account of the lender immediately before issuance of cheque to the assessee and he made addition u/s 68 of the Act.

9. At this juncture, we respectfully take cognizance of the decision of the Hon'ble Rajasthan High Court in the case of Aravali Trading Company (supra) wherein their Lordships held that it could not be presumed that the deposits made by the creditors were the monies of the assessee and there was no basis for such presumption and in such an event if the creditors not found to be acceptable, the investments owned by such persons may be subjected to the proceedings for inclusion of such investments as their income from undisclosed sources but in order to fasten liability on the assessee by including such credits as income from unexplained sources, nexus has to be established that the source of deposits has flown from the assessee. Their Lordships have held that in the absence of any such link, additions of cash credits found in the books of accounts of the assessee could not be considered to be unexplained income of the assessee where existence of depositor of such credits was established and such deposits/advances/loan were owned by such existing person. We also take respectful cognizance of the decision of the Hon'ble High Court of Madhya Pradesh in the case of Metachem Industries (supra) wherein their Lordships rendering the proposition for jurisdictional High Court held that when cash credit is found in the assessee's books then the responsibility of the assessee is over and there is no requirement on the part of the assessee to further show whether the amount received by him as loan has been properly taxed in the creditor's hands.

10. In the present case, the assessee has established the identity, creditworthiness and source of loan from Smt. Parvati Bai Chouhan being 78 years old senior citizen pensioner lady and the Assessing Officer without making any inquiry from the lender lady, proceeded to make the addition u/s 68 of the Act merely on the basis that cash was deposited immediately before issuance of cheque to the assessee. Unless it is established that the money deposited by the assessee was flown from the assessee and the same was routed through a fictitious lender by manipulating the book entry then only the amount can be taxed in the hands of the assessee by making the addition u/s 68 of the Act. At this juncture, we respectfully note that since there is a direct proposition of Hon'ble Madhya Pradesh High Court in the case of Metachem Industries (supra) in favour of the assessee, the benefit of ratio of the decision of the Hon'ble Gujarat High Court in the case of Umesh Krishnani (supra) is not

available to the revenue in the present case. Accordingly, ground no. 1 of the assessee is allowed and the Assessing Officer is directed to delete the addition."

14. Another argument of Ld. AR that the assessee is having brought forward losses or the assessee's income from business of cold storage is also eligible for deduction u/s 80-IB and therefore the impugned loans should be accepted as genuine, is not appealing to us. In fact, we questioned the Ld. AR as to how this argument can be a defense against section 68 to which the Ld. AR could not give any satisfactory reply. We are not influenced by this fancy argument of assessee. Rejected accordingly.

15. As far as the decision of **ITAT, Indore in Shri Om Prakash Patidar (supra)** is concerned, the Hon'ble Co-ordinate Bench has held "*However, Ld. CIT(A) has admitted the factum of earning of agricultural income. Therefore, inference that the entire amount was not belonging to the creditors would be fallacious*". In the present case, the CIT(A) has made some more and stronger observations against assessee as re-produced earlier. Furthermore, in that decision, it was not a point of revenue that interest was not paid to creditors but in the present case, this is a serious as well meritorious contention of revenue. In any case, that decision cannot set any precedent and should not be carried further to any and every case. Otherwise it would set up a wrong practice. Therefore, in the circumstances of present appeal before us, we are not persuaded to grant mechanical benefit of decision to assessee.

16. The above discussion on the entire issue brings us to conclude that the tax authorities have rightly made the addition u/s 68. However, we have carefully probed into the order of CIT(A), Para No. 5.3.1, and found that the CIT(A) has given his own finding that in the bank statement of Mrs. ***Nirmala Ramprasad (one of the creditors), an amount of Rs. 5.0 lacs has been***

deposited on 27.07.2006 on account of Mortgage loan and out of this loan of Rs. 4.92 lacs has been issued to the assessee-appellant. To corroborate this, we also went to the Bank Statement placed at Page No. 118 of the Paper-Book and found correct. The bank has also debited a sum of Rs. 7,554/- to the creditor's a/c on 27.07.2006 on account of "Stamp/PPC/Adv fee". Thus, it is very much clear that the creditor Mrs. Nirmala Ramprasad has taken a mortgage loan of Rs. 5,00,000/- from bank and by utilizing that loan, given loan of Rs. 4,92,000/- to assessee. Therefore, there should not be any addition to that extent. Taking into account this aspect, we hereby direct the AO to delete addition to the extent of Rs. 4,92,000/-. Rest of the addition is hereby upheld. The assessee gets part relief in this appeal.

17. Resultantly, this appeal of assessee is partly allowed.

Order pronounced in the open court on 12.09.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : .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