

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH  
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.620/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)

Chetan Bipinbhai Bhavsar 304, Monalisha Complex, Shastri Road, Bardoli- 394601	Vs.	Income Tax Officer, Ward-2, Bardoli, Income Tax Office Aaykar Bhavan, Station Road, bardoli-394601
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ANJPB 0949 B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Kiran K Shah, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख/Date of Hearing	20/10/2023
घोषणा की तारीख/Date of Pronouncement	27/10/2023

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the National Faceless Appeal Centre, Delhi, [in short “NFAC/ld. CIT(A)”], which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 24.12.2019.

2. The grounds of appeal raised by the assessee are as follows:

“1) The learned CIT(A) grossly erred the confirming addition of Rs.38,00,000 on account of cash credit as discussed in para 6 of the CIT(A) order.

2) The learned CIT(A) grossly erred in confirming the application of provisions 115BBE of the Act as discussed in para 7 of the CIT(A) order.

3) The appellant reserves right to add, alter and withdraw any grounds of appeal.”

3. Brief facts *qua* the issue are that assessee is an individual and filed his return of income for assessment year (A.Y.) 2017-18, on 06.01.2018, declaring total income of Rs.1,72,924/-. The assessee's case was selected for scrutiny. Accordingly, notice u/s 143(2) of the Act, was issued to submit details on 05.10.2018. Thereafter notice u/s 142(1) of the Act, was issued to the assessee, on 30.01.2019, requiring to furnish details. However, no compliance was made by the assessee. During the course of assessment proceedings, assessee was asked to furnish details of unsecured loans and establish the identity, genuineness of transaction and creditworthiness of lenders. In reply of the same, assessee submitted details of unsecured loan and supporting evidences, before Assessing Officer. Summons u/s 131 of the Act were also issued by the assessing officer to all Lenders on 14.12.2019 requiring them to appear in person before the Assessing Officer, along with books of accounts and other relevant details as called for in summons on 17.12.2019 and 18.12.2019 for examination. None of them appeared before the Assessing Officer on the day fixed for hearing. However, all the Lenders filed written submission through DAK. On perusal of the details filed by the assessee, material available on the record and written submission filed by the lenders, the Assessing Officer noted the following facts about lenders, which are narrated below one by one:

(i) About Smt. Marthaben N Gamit, the Assessee has claimed to receive an amount of Rs.5,50,000/- as unsecured loans. In support of the same, the Assessee submitted copy of ITR and bank statement of the lender. On perusal of details filed by the assessee, it was noticed by Assessing Officer that an amount of Rs. 5,50,000/- was disbursed by the HDFC Bank directly to the

Assessee on 03.03.2017, in connection with home loan account of Marthaben N Gamit. Smt. Marthaben was nowhere involved in this transaction. From the ITR and bank statement of Marthaben, it was noticed by Assessing Officer that she had taken home loan from HDFC Bank and amount of home loan so-called unsecured loans of Rs.5,50,000/- were released simultaneously by the HDFC Bank. Thus, it is clear that the amount received by the assessee is nothing but payment received from bank for additional construction/work/renovation in respect of home loan taken by the Marthaben. Further, in order to verify the genuineness of the transaction, summons u/s 131 of the Act, was issued to Marthaben N Gamit, on 14.12.2019, requiring her to appear before the Assessing Officer, alongwith with books of accounts on 17.12.2019, for examination. However, no compliance was made by the lender. Thus, it was held by the Assessing Officer that the assessee as well as lenders have failed to discharge the onus lies upon them to establish the creditworthiness of the lender and genuineness of the transactions. Therefore, unsecured loan of Rs.5,50,000/- was treated as unexplained credit u/s 68 of the Act and added to the total income of the assessee.

(ii) About, Ritakumari Prabhubhai Surti, the Assessing Officer noted that assessee has received unsecured loan of Rs.2,00,000/- from Ritakumari Prabhubhai Surti on 31.12.2016. The assessee has submitted ledger account and bank statement of the said person. On perusal of bank statement, it was noticed that Ritakumari Prabhubhai Surti, deposited cash of Rs.2,00,000/- on 14.11.2016 (*during the period of*

*demonetization*) and the same was transferred to the assessee on 31.12.2016. No other substantial transactions were noticed in the bank account statement throughout the year. In order to examine the lender, summons u/s 131 of the Act, was issued to Ritakumari Prabhubhai Surti, on 14.12.2019, requiring her to appear before the Assessing Officer, alongwith with books of accounts on 17.12.2019. Instead of appearing before the Assessing Officer, the lender filed a written submission stating that she is doing household work. Moreover, along with forwarding letter, Ritakumari Prabhubhai Surti has also annexed affidavit of her mother, Smt. Naynaben Prabhubhai Surti, *wherein* it was mentioned that amount of Rs.2,00,000/- was deposited by her in bank account of her daughter but failed to submit any supporting evidence in respect of her income, neither she is filing ITR nor filing ITR of her husband. Thus, the assessee has failed to prove genuineness of the transaction and creditworthiness of the lender. Therefore, unsecured loan of Rs.2,00,000/- was treated as unexplained credit u/s 68 of the Act and added to the total income of the assessee.

(iii) About Ekta Bhavsar, the Assessing Officer noted that assessee has shown unsecured loan of Rs.1,50,000/- from Ekta Bhavsar. The assessee has filed ledger account, PAN and bank statement of the above Lender. On perusal of bank statement, it was noticed that Ekta Bhavsar deposited cash of Rs.1,75,000/- on 16.11.2016 (*during the period of demonetization*) and Rs.1,50,000/- was transferred to the assessee on 02.01.2017. No other substantial transactions were noticed in the bank account statement throughout the year. In order to examine the lender,

Summons u/s 131 of the Act was issued to Ekta Bhavsar on 14.12.2019, requiring her to appear before the Assessing Officer alongwith books of accounts on 17.12.2019 for examination. Instead of appearing before the Assessing Officer, Ekta Bhavsar filed a written submission stating that she is doing service and marketing of mobile recharge coupon. Moreover, along with forwarding letter, Ekta Bhavsar has also annexed affidavit of her mother Smt. Rekhaben Nitinbhai Bhavsar, *wherein* it was mentioned that amount of Rs.1,50,000/- and Rs.2,00,000/- was deposited by her in bank account of her daughter, Ekta Bhavsar and her son Sanket Bhavsar respectively. Thus, the assessee has failed to prove genuineness of the transaction and creditworthiness of the lender. Therefore, unsecured loan of Rs.1,50,000/- was treated as unexplained credit u/s 68 of the Act and added to the total income of the assessee.

(iv) About Sanket N Bhavsar, the Assessing Officer noted that during the year under consideration, the assessee has received unsecured loan of Rs. 2,00,000/-. The assessee has filed ledger account, PAN and bank statement of the above lender, Sanket N Bhavsar. On perusal of bank statement, it was noticed by Assessing Officer that Sanket N Bhavsar deposited cash of Rs.2,00,000/- on 14.11.2016 (*during the period of demonetization*) and Rs.2,00,000/- was transferred to the assessee on 31.12.2017. No other substantial transactions were noticed in the bank account statement throughout the year. In order to examine the lender, summons u/s 131 of the Act was issued to Sanket N Bhavsar on 14.12.2019 requiring him to

appear before the Assessing Officer alongwith with books of accounts on 17.12.2019. Instead of appearing before the Assessing Officer, Sanket N Bhavsar filed a written submission stating that he is doing service and marketing of mobile recharge coupon. Thus, Assessing Officer observed that the assessee has failed to prove genuineness of the transaction and creditworthiness of the lender. Therefore, unsecured loan of Rs.2,00,000/- was treated as unexplained credit u/s 68 of the Act and added to the total income of the assessee.

(v) About M/s Bhavsar Traders, the Assessing Officer observed that assessee has taken unsecured loan of Rs.32,50,000/- from M/s Bhavsar Traders. The assessee has filed copy of ledger account, ITR Acknowledgment, balance sheet and bank statement of M/s Bhavsar Traders. On perusal of bank statement, it was noticed that bank account of M/s Bhavsar Traders was credited with cash immediately before transferring the fund to the assessee. Show cause notice was issued to the assessee on 14.12.2019 requiring him to establish the creditworthiness of the lender and genuineness of the transaction as there was immediate cash deposit in the bank account of lender. However, the assessee has failed to substantiate his claim with documentary evidences. In order to examine, summons u/s 131 of the Act was issued to Shri Nainishkumar Guvantlal Bhavsar, Proprietary of M/s Bhavsar Traders, on 14.12.2019, requiring him to appear before the Assessing Officer alongwith with books of accounts on 17.12.2019. Instead of appearing before the Assessing Officer, the assessee submitted his written submission through DAK.

However, Assessing Officer noted that no justification was given in respect of source of cash deposit. Thus, Assessing Officer noted that the assessee has failed to establish creditworthiness of the lenders and genuineness of the transactions. Therefore, unsecured loan of Rs.32,50,000/- received during the year was treated as unexplained cash credit u/s 68 of the Act and added to the total income of the assessee.

4. In view of the above facts the unsecured loan of Rs.41,20,000/- (Rs.5,50,000 + Rs.2,00,000 + Rs.1,50,000/- +Rs.32,50,000) was treated as unexplained cash credit u/s 68 of the Act and added to the total income of the assessee. The Assessing Officer also held that total income assessed should be taxed u/s 115BBE of the Act at the rate of 60%. Since, addition of Rs.41,20,000/- (Rs.5,50,000 + Rs.2,00,000 + Rs.1,50,000/- +Rs.32,50,000) was made u/s 68 of the Act on account of unexplained cash credit.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the NFAC/ld. CIT(A), who has deleted the addition in respect of Marthaben N Gamit of Rs.5.50 lakh, however, in case of remaining lenders, the NFAC/Ld.CIT(A) has confirmed the addition stating that assessee has not proved the creditworthiness and genuineness of such transaction. Therefore NFAC/Ld.CIT(A) sustained the addition of Rs.35,70,000/- (Rs.2,00,000 + Rs.1,50,000/- + Rs.32,50,000). Aggrieved by the order of NFAC/ld. CIT(A), the assessee is in further appeal before this Tribunal.

6. Shri Kiran K Shah, Learned Counsel for the assessee, pleaded that assessee has submitted the entire details and documents and assessee has proved the source of source also. For each lender, the assessee has furnished, name, address, PAN number, bank statements and affidavits. The Ld. Counsel strongly urges that though the depositors did not attend the office of the Assessing Officer, in response to summons u/s 131 of the Act, however still everybody had filed the written submission and thereby they accepted having given loans to the assessee. Therefore, addition should be deleted.

7. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

8. I have heard both the sides and gone through the relevant material on record. I find that the main plank on which the Assessing Officer made the addition was because the depositors/lenders did not turn up before him. In such a case the Hon'ble Apex Court in the case of Orissa Corpn. (P) Ltd. (supra) 159 ITR 78 and the Hon'ble Gujarat High Court, in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR 360 / [2003] 127 Taxman 523, has held that onus of the assessee (*in whose books of account credit appears*) stands fully discharged if the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, the Assessing Officer is dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (*after making due enquiries from such creditor*). In arriving at this conclusion, the Hon'ble Court has further stressed

the presence of word "may" in section 68. Relevant observations at pages 369 and 370 of this report are reproduced hereunder:-

*"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.*

9. In the case of Nemi Chand Kothari 136 Taxman 213, the Hon'ble Guahati High Court has thrown light on another aspect touching the issue of *onus* on assessee under section 68, by holding that the same should be decided by taking into consideration the provision of section 106 of the Evidence Act which says that a person can be required to prove only such facts which are in his knowledge.

10. I find that merely because the depositors did not attend the summons 131 of the Act during the assessment proceedings, the additions as unexplained cash credit is not justified, particularly when the assessee has furnished before the Assessing Officer, the name, address, PAN number, bank statements and affidavits. Though the depositors did not attend the office of the Assessing Officer, in response to summons u/s 131 of the Act, however still every

depositors/lenders had filed the written submission alongwith documentary evidences. All depositors/lenders have filed their respective affidavits and accepted the fact that they had given loans to the assessee. I note that in the case of Bhavsar Traders who deposited of Rs.32,50,000/- the addition was made by the Assessing Officer on plea that “creditworthiness and genuineness of transactions remains unexplained. I find that in the case of major Depositor/Lender, Bhavsar Traders, the assessee had filed confirmation, ITR, balance sheet and the bank statement, to explain the transaction. I note that the whole exercise is to be based on facts and it is the duty of the assessing officer to marshal all the facts and come to a logical conclusion about the income of the assessee for the year under consideration, for that reliance can be placed on the Judgment of Hon'ble Supreme Court in case of Sreelekha Bannerjee (491 ITR 122), wherein it was held that “..... *before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...*”

10. I find that Bhavsar Traders was authorized dealer of Telenor Communication Ltd. and the major turnover is cash and again the said turnover he used to deposit cash time and again in the bank. The assessee had discharged his obligation by filing the confirmation, ITR and bank statements. The depositor had confirmed the transactions and he had directly filed the documents called in the process of summons u/s 131 of the Act. In case the depositor/lender does not attend the proceedings in response to summons u/s 131 of the Act the necessary action ought to be taken in the case of depositor, however, for that reason no addition ought to be made u/s 68 of the Act. The assessee states that his uncle had decided to close the business and the

same business was taken over by him. The relevant letter filed by the assessee before the Assessing Officer is reproduced below:

“PAN:ABAPB3228N

From:

NAINISHKUMAR GUNVANTLAL BHAVSAR

Pro. Of Bhavsar Traders

Building No.19, Janta Society,

Bardoli, DIST-SURAT

To

The Income Tax Officer

Ward-2/Bardoli,

Ayakar Karyalaya,

2<sup>nd</sup> Floor, BSNL Building

Bardoli,

DIST-SURAT

Respected Sir,

Sub: Compliance (AY 2017-18)

Ref: Notice No:ITBA/AST/S/13172019-20/1022329074(I)/14.12./19

With due respect I the undersigned Mr. Nainishkumar Gunvantlal Bhavsar proprietor of Bhavsar Traders submit information u/s 131 of the Income Tax Act, 1961 in connection of:

CHETANKUMR BIPINBHAI BHAVSAR AS Follows:

1. For identity photocopy of PANCARD attached.
2. NATURE OF ACTIVITY:

I am authorized distributor of Telenore Company: I run business of mobile recharge coupon since F.Y 2012-13at 266, Sai Ashirwad Complex, C-Wing,Opp: Modi hospital, Kadodara,Tal-Palsana, Dist-Surat.

Further I have to clarify that I have closed my above business activities from dated 31-10-2016. I hand over the Distributorship of Telenore Company under our family mutual understanding to Mr. Chelankumar Bipinbhai Bhavsar as he is my cousin brother as well as family members. After wind up my business I gave him my capital for purchase of recharge voucher in advance.

3. Photocopies of ITR Acknowledgement computation of total income. Balance sheet, profit & loss account and capital account for A.Y 2017-18 attached.”

The assessee also states that his uncle had given loan for his establishment of the business. I find that all the deposits/loan were received by assessee by account payee cheques and the all depositors/lenders confirmed the transactions also and therefore if anything is to be done the same may be verified in the case of depositors/lenders, for that reliance can be placed on following decisions:

- Associated Transrail Structure Ltd. vs. ACIT (2017) 397 ITR 573 (Guj)

- CIT vs. Ranchhodbhai Jivabhai Nakhava (2012) 208 taxmann.com. 35(Guj)
- DCIT vs. Rohibi Builders (2002) 256 ITR 360 (Guj)
- CIT vs. Orisa Corporation (P.) Ltd. 159 ITR 78 (SC)
- CIT vs. Sayachi Chandrasekhar 992 of 2013(Guj)
- PCIT vs. M/s Skylark Build 616 of 2016 (Bom)
- Rajhans Construction (P) Ltd. vs. ACIT (ITANo.1450/AHD/2016)

11. I note that assessee has explained the source of cash deposits, in respect of remaining lenders, which was collection of cash from recharge mobiles from the customers and the same was accepted also. Besides, the assessee has filed enough documents and evidences before the Assessing Officer such as name, address, PAN number, bank statements, affidavits, balance sheet and profit and loss account etc. I note that Assessing Officer has not refuted or discredited these evidences and documents. The Assessing Officer does not mention why he is not accepting these evidences. On the contrary, the Assessing Officer has just brushed aside these evidences without even a word on why they are not acceptable. It is a well settled Law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises. Based on this factual position, I delete the addition sustained by NFAC/ld CIT(A) to the tune of Rs.35,70,000/- (Rs.2,00,000 + Rs.1,50,000/- + Rs.32,50,000)

12. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 27/10/2023 in the open court.

Sd/-  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत / Surat

दिनांक/ Date: 27/10/2023

Dkp Outsourcing Sr.P.S.

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat