

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

(CONDUCTED THROUGH E- COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

MS. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 67/Rjt/2020

निर्धारण वर्ष/Asstt. Year: 2013-14

Bhumi Poymers Private Limited Plot No. 11B/34-35, Survey No. 236, B/h. Pitru Krupa Area, Veraval (Shapar), Rajkot	V/S	Deputy Commissioner of Income Tax Circle – 1(1), Rajkot
PAN: AAECB6155A		
(Appellant)		(Respondent)

Appellant by	: Shri Rashmin Vekariya, AR
Respondent by	: Shri Ashish Kumar Pandey, Sr. D.R.

सुनवाई की तारीख/**Date of Hearing** : **23/08/2023**

घोषणा की तारीख /**Date of Pronouncement**: **16/11/2023**

PER WASEEM AHMED, ACCOUTANT MEMBER:

The appeal has been preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Rajkot-2, (in short 'CIT(A)') dated 21.01.2020 arising in the assessment order dated 11.03.2016 passed by the

Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition made by the AO by treating the receipt of unsecured loan as unexplained cash credit under section 68 of the Act.

3. The facts in brief are that the assessee, a private limited company, is engaged in the business of manufacturing HDPE Pipes and Sprinkler & Drip items. The assessee during the year under consideration received an unsecured loan for Rs. 17,45,000.00, among other parties, from the persons detailed as under:

<i>Sr. No.</i>	<i>Name</i>	<i>Amount</i>
1	<i>Shri Ashokbhai Butani</i>	<i>2,45,000/-</i>
2	<i>Smt. Jayaben Khimjibhai</i>	<i>1,50,000/-</i>
3	<i>Shri Khimjibhai M. Baldha</i>	<i>5,50,000/-</i>
4	<i>Smt. Bhavnaben B. Savaliya</i>	<i>4,00,000/-</i>
5	<i>Shri Panchabhai Virjibhai Savaliya</i>	<i>4,00,000/-</i>
<i>Total</i>		<i>17,45,000/-</i>

4. However, the AO found that all the loan parties were agriculturists and there was cash deposit before issuing the demand draft to the assessee. Furthermore, there were not furnished sufficient details justifying the quantum of agricultural income. Likewise, the amount of cash deposit in some of the cases was below Rs. 50,000/- against which demand draft was issued by the parties. Thus, the AO in the absence of sufficient creditworthiness of the loan parties treated the amount of loan as unexplained cash credited and added to the total income of the assessee.

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A).

6. The assessee before the Ld. CIT(A) submitted that the confirmation of all the loan parties were filed along with the bank passbook and revenue records in Form 7/12 and 8A. He also submitted that the statement under section 131 of the Act was also obtained by the AO from all the loan parties. Thus, the assessee claimed that it has discharged onus cast under Section 68 of the Act. However, the Ld. CIT(A) disagreed with the contention of the assessee and confirmed the order of the AO by observing as under:

"I have carefully considered the appellant's above written submission the appellant has relied upon the decision of various courts mention supra and careful consider of the same is found squarely distinguishable on fact of the assessee's case and appellant therefore of the opinion that he has made available documents like confirmations, revenue record in the form of 7/12, 8A, bank passbook and even the statements recorded u/s 131 in each case has accordingly met the basic criteria of identity of the depositors, genuineness of the transaction, creditworthiness of the depositors has been satisfied and accordingly appellant has discharged his primary onus hence pleaded that addition made u/s 68 be therefore deleted.

I have carefully considered the appellant's written submission, argument made during the appellant proceedings, and gone through various records produced during the appeal proceedings. In the appellant case glaring finding of the AO's are that in the case of Ashokbhal Bhutani and Bhavnaben Savaliya the sign as per the contra confirmation differs and even in the written submission it has been categorically mentioned that confirmations were signed by the heirs. Moreover Panchabhai Savaliya who cannot sign has produced the confirmation which is the signed one so it clearly establishes that the aspect of non genuineness. As regard the credit worthiness the depositors have claimed that they are the farmers who has agriculture land, at the same time all of them are maintaining a bank account but such bank account do not have annual credit of agriculture income that is to say in the peculiar situation as assessee was required to be allotted share capitals to the near relatives arrangements seems to have been made saying that cash is deposited just a day before the cheque is to be issued from the bank account or the demand draft is to be issued from the same bank account moreover threshold limit of depositing cash below Rs.50,000/- in a bank account is also observed where assessee may not have to give PAN number for the same therefore just before the cheque or demand draft is to be issued so at interval the cash less then Rs.50,000/- is deposited and thereafter cheque or demand draft of bigger amount of the same account is issued and this modus operand has been clearly found followed in the bank accounts of Ashokbhal Bhutani (Rs.2,45,000/-). Jayaben Khimjibhai (Rs.1,50,000/-), Khimjibhai M. Baldha (Rs.5,50,000/-), Bhavnaben B. Savaliya(Rs.4,00,000/-) and Panchabhai Savaliya (Rs.4,00,000/-). Moreover they have advance this money without charging any interest thus it is held that assessee has failed to prove before the AO unsecured loan for total of Rs.17,45,000/- from the

aforementioned persons. I therefore upheld the action of the Assessing Officer to treat sum of Rs.17,45,000/- as unexplained u/s 68 of the Act. The ground of appeal on this account is therefore dismissed."

7. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

8. The learned AR before us furnished paper book running from pages 1 to 69 and contended that all the details about the loan parties were furnished during the assessment proceedings. So, the assessee has discharged the onus imposed under section 68 of the Act.

9. On the other hand, the learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials on record. The issue on hand has bearing on provisions of section 68 of the Act. The provisions of section 68 of the Act suggest that if there is any sum credited in books of account maintained for the any previous year then the assessee is required to offer proper and reasonable explanation regarding nature and sources of such credit to the satisfaction of the AO. Thus, the primary onus lies with the assessee to explain the source of credit in the books. Over the period, the Hon'ble Courts have laid down that the assessee to discharge its onus is required to furnish evidence with respect to identity of the creditor, genuineness of transaction and credit worthiness of the creditor. If the assessee failed to discharge the primary onus cast or the explanation and evidence submitted by the assessee was not found satisfactory by the AO, then the sum credited in the books shall be deemed as income of the assessee. The Hon'ble Supreme Court in case of CIT vs. P. Mohanakala reported in 291 ITR 278 while dealing with scope of

provisions of the section 68 of the Act held that "*the opinion of the AO that the explanation furnished by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion.*" In other words, once the assessee submits primary evidence regarding identity and credit worthiness of creditor and the genuineness of the transaction the onus shift upon the AO to consider the material provided and make independent inquiry to find out genuineness of the evidence or bring material contrary to the fact explained by the assessee. The AO cannot reject the primary evidence furnished by the assessee without appreciating the facts available on record or without bringing contrary material to form the belief that primary document or explanation furnished by the assessee is not satisfactory.

11. Undeniably, the assessee during the appellate/assessment proceedings in support of genuineness of unsecured loan has furnished confirmation, land records, and bank passbook and in some of the cases voter card. Even the loan parties have confirmed the transactions in the statement furnished under section 131(1) of the Act. The money was credited in the books of the assessee through the banking channel. However, the AO and learned CIT(A) based on their observation that there was cash deposit in the bank account of the loan parties, have doubted on the credit worthiness of the loan parties. In our considered opinion, the approach taken by the revenue is not justified. As such, the assessee provided necessary details and thus, the onus shifted on the revenue to bring contrary material, but the Id. CIT-A merely doubting the mismatch in the signature of the loan parties and deposit of cash in the bank account drew adverse inference but without pointing out any specific defect in the documents submitted by the assessee. Therefore, we hereby set aside the finding of the learned CIT(A) and

direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in Open Court on 16 -11- 2023

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 16/11/2023

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER

True Copy

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT, Rajkot