

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.3189/Del/2017  
(Assessment Year: 2012-13)

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| Shri Praveen Gupta,<br>D-101, First Floor, Tower<br>No. D, Caitriona<br>Residential Apartment<br>Complex, Ambience<br>Island, gurgoan-22001<br>(Appellant)<br><b>PAN: ACJPG4777H</b> | Vs. ACIT,<br>Circle-2,<br>Meerut<br><br>(Respondent) |
|--|--|

|               |                           |
|---------------|---------------------------|
| Assessee by : | None                      |
| Revenue by:   | Shri Vivek Vardha, Sr. DR |

|                       |            |
|-----------------------|------------|
| Date of Hearing       | 12/02/2024 |
| Date of pronouncement | 15/02/2024 |

ORDER

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.3189/Del/2017 for AY 2012-13, arises out of the order of the Id CIT(A), Meerut [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 143/2014-15 dated 17.03.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 24.04.2015 by the Assessing Officer, ACIT, Circle-2, Meerut (hereinafter referred to as 'Id. AO').
2. None appeared on behalf of the assessee. Notice has been sought to be issued by this registry in the address mentioned by the assessee on several occasions and no response whatsoever from the side of the assessee.
3. The Id DR in the past had even furnished the income tax return of the assessee for AY 2022-23 wherein, different address was mentioned. The registry had even issued

notice in the latest address of the assessee as mentioned in ITR for AY 2022-23. No response was made from the side of the assessee. Moreover, the Id DR also filed service report of the notice to the assessee together with the Inspector's report dated 15.12.2022 which clearly stated that the assessee directed the Inspector to serve the notice to the CA Mr. Sunil Kumar, which was accordingly done by the Inspector of Income Tax. Despite this, there was no response from the side of the assessee. Hence, we hold that there is no point in waiting for the presence of the assessee in the instant case. Accordingly, we proceed to dispose of this appeal by hearing the Id DR and based on material available on record.

4. The assessee raised the following grounds of appeal:-

*"1. That each ground of appeal is with out prejudice to each other.*

*2. That the Commissioner of Income Tax was not correct and justify in sustaining the addition of Rs. 1,34,00,000/- u/s 68 of the IT Act, 1961.*

*3. That the commissioner of Income Tax was not correct and justify in sustaining the addition of Rs. 1,14,90,000/- u/s 68 of the IT Act, 1961.*

*4. That the appellant reserved the right to add amends, alter and/or delete any of the grounds of appeal.*

*5. That on the basis of facts of the case and in view of the circumstances it is prayed that either the additions sustained by the Ld. CIT may please be deleted or the matter may please be restore back to the file of Commissioner of Income Tax (Appeals) in the interest of natural justice."*

5. We have heard the Id. DR and perused the material available on record. The assessee is engaged in trading activities of immovable properties since last so many years and had filed his return of income for AY 2012-13 on 31.10.2012 declaring taxable income of Rs. 56,53,510/-. The proprietorship concern business was carried out under the name and style of M/s. Avi Raj Enterprises upto 31.03.2011 and from 01.04.2011 the stock of M/s. Avi Raj Enterprises was taken over by another proprietorship concern namely M/s. Praveen Gupta and Company. The assessment for AY 2012-13 was completed on

30.03.2015 determining total income of the assessee at Rs. 3,92,64,165/- after making the following additions/ disallowances:-

- a) Addition on account of short term capital gains –Rs. 54,70,655/-
- b) Disallowances on account of loss on plot booking-Rs. 1,34,00,000/-
- c) Addition on account of unsecured loan-Rs. 1,14,90,000/-
- d) Addition on account of unexplained cash deposit in several bank accounts of Rs. 32,50,000/-

6. All these aforesaid additions were contested by the assessee before the Id CIT(A). Out of the aforesaid additions, the issues that are disputed by the assessee before this Tribunal are only in respect of disallowance on account of loss on plot booking of Rs. 1.34 crores and addition on account of unsecured loan of Rs. 1,14,90,000/-. We find that the Id CIT(A) had addressed these issues in the following manner:-

*"5.2 Ground No. 3:- Addition Of Rs. 1,34,00,000/-*

*5.2.1 Facts of the Ground*

*Assessee has claimed that he has taken the total advance of Rs. 1,34,00,000/- from total no. of 84 persons in cash in F.Y 2008-09. In the year under consideration assessee created liability of Rs. 1,34,00,000/- as compensation to be paid on total advance of Rs. 1,34,00,000/- Assessee claimed the expenses relying upon the section 37 of the Act. Assessing officer has disallowed the amount of Rs. 1,34,00,000/- claimed as expenses.*

*5.2.2 AR submission*

*In appeal the assessee submits as under:-*

*In this ground it is submitted that the assessee was having land situated at khasra no. 365/- and khasra no. 379 at village Kamalpur, Meerut and on this land he has developed 85 plots and out of 85 plots advance of Rs. 1,34,00,000/- was received from 84 persons for 84 plots during 2008-09. The assessee filed site plan for approval with Meerut Development Authority, but the Meerut Development Authority has rejected the site plan on various grounds vide his letter dated 16.12.2009.*

*That during the course of assessment proceedings the assessing officer has sent notices u/s 133(6) for verification of the amount deposited by various persons against booking of plots although the amount was not received during the year under consideration. That the assessing officer in his assessment order himself accepted that the assessee was unable to provide the addresses of three persons out of 84 persons, so therefore his finding that the*

*deposits is not genuine on the basis of which he has made the addition of Rs. 1,34,00,000/- in A.Y. 2011-12 and against which an appeal was filed before your honour and your honour was kind enough to delete the addition of Rs. 1,34,00,000/-.*

*That to verify the genuineness of the advance received by the assessee of Rs. 1,34,00,000/-, the assessing officer has re-opened the case of the assessee u/s 148 for A.Y. 2009-10. Here it is also submitted that inspite of repeated request the assessing officer has not given the copy of reasons recorded by him before issuing notice u/s 148 and hence we are exactly not aware that on what basis he has initiated the proceedings u/s 148 of the IT Act, 1961.*

*That since the site plan for the plots submitted to Meerut Development Authority was not approved the assessee left with no other option except to refund the amount twice of the amount received as per clause no. 4 of the agreements executed with the persons who have booked the plots. That the assessee has so far refunded Rs. 70,40,000/- to the 21 persons from whom the assessee received 35,20,000/-.*

*That for your kind verification we are enclosing here with the one sample copy of the agreement and a chart showing amount refunded to 21 persons along with their copy of accounts duly confirmed by them.*

*That, the assessee with good intention repaying the amount as per availability of funds. The provision of compensation payable to 84 persons of Rs. 1,34,00,000/- have been made during the year under consideration as the assessee is following mercantile system of accounting.*

*That, the compensation as provided in the books of accounts is allowable u/s 37 of IT Act, 1961. Here it is also submitted that the books of accounts of the assessee have been accepted by the assessing officer and without rejection the books of accounts such type of addition is not tenable in the eyes of law and is therefore liable to be allowed.*

*That as far as the law is concerned it is settled and held by various higher courts that compensation for breach of contract of immovable property is payable although the judgments is on the issue that whether the compensation received on breach of contract for sale of land/immovable property is taxable or not but the basic facts transpired from the judgments is that it is the market trend to give compensation to if the seller breach the contract.*

### **5.2.3 Decision & Reasons:**

*Facts of the ground have been case appraised and counter arguments duly considered. It is seen that amount of Rs. 1,34,00,000/- was received as advance in the F.Y. 2008-09 relevant to assessment year 2010-11 from 84 persons. In the preceding year i.e. Ayr 2011-12 the AO had this amount u/s section 68 of the Act and it was held by this office that since the incoming amount does not pertain to Ayr11-12, it could not have been added by the AO in that assessment year under section 68 of the Act. Now in his submissions the AR has needlessly raised this issue to confuse the CIT (A) stating that this addition was deleted. The matter being adjudicated here is completely different, it relates to the amount*

*of Rs. 1,38,00,000/- for which the Id. AR of the appellant claims provisioning has been done in the books but it is noticed that the said amount has been used to reduce profit in the computation of income for this year. It is to be noted that the AR in appeal has filed so called confirmations of the appellant which are undated their make suggests that they have been prepared in one go stating to return the double of the amount received in advance. The fact of the matter is that till 2016 the Appellant as per the submission of the AR the Appellant had returned only refunded Rs. 70,40,000/- to the 21 persons from whom the assessee received 35,20,000/-.*

*It is an admitted fact by assessee that map for the land was rejected by Meerut Development Authority on 16.12.2009 i.e. during F.Y. 2009-10 relevant to assessment year 2010-11.No provisioning was done in that year, when the liability to pay actually accrued, or even in the subsequent year i.e. Ayr 2011-12 Assessment year but in the Ayr 2012-13, the year in Appeal. Assessee has submitted that since map was not got approved so the decision to refund the money was taken. Assessee has failed to give any plausible explanation that when map was rejected by Meerut Development Authority on 16.12.2009 why he did not refund the money to booking holders there and then.*

*Second, it is also an undisputed fact on record that only adjustment entry was made in computation of income just to reduce the taxable income and actual amount has not been paid in the year under consideration. Assessee himself admitted that till date only he has only refunded Rs. 70,40,000/- to the 21 persons from whom the assessee received 35,20,000/-. In support assessee has filed the copy of ITR, which is prepared and filed in the office of same professional. Income of all persons has been shown either below taxable or on marginal tax. Even compensation amounting to 1,38,00,000/- is not debited to audited profit & loss account, while it has been deducted in computation directly by writing less:- profit from the income from business & profession.*

*From the facts it is clear that initially, there was no such idea to pay compensation, so in audited profit & loss account no such entry was passed. Secondly, assessee is claiming that he is maintaining accounts on mercantile basis, but tax audit report is obtained only for Ms/ Praveen Gupta & Co. and no such entry is accounted for in the books of Praveen Gupta & Co. Accounts of individual is not maintained not filed after they were got audited. It is therefore clearly an afterthought and nothing more than a brazen attempt being down the taxable income and a glaring effort to evade the tax. Only accounting entry is claimed on mercantile basis but not supported by any audited accounts. Amount is shown received in cash and liability is provided by passing entry directly in computation of income. Further, liability is created is also not paid in the year under consideration and even paid in subsequent year in cash. Genuineness of the transaction is also under suspicion.*

*Considering the all facts and circumstances, I hereby confirm the action of assessing disallowing the expenses of Rs. 1,34,00,000/-.*

### **5.3 Ground No. 4:- Addition Of Rs. 1,14,90,000/- u/s 68**

*5.3.1 Assessing officer has added the amount of Rs. 1,14,90,000/- by invoking the provision of section 68 of the Act. He noted as under:*

*"During the year under consideration, the assessee has received unsecured deposit of amounting to Rs. 1,14,90,000/-. Most of them are from relatives. It is also noticed that deposit amount was not proportionate with their return of income. The Assessee has filed their confirmations with copy of ITR in some cases, but has not filed the bank transaction details.*

*In compliance of notice u/s 133(6) of the IT Act, 1961, some of confirmations received which reveal that cheques were issued after depositing cash in their savings bank account. But for most of the case, assessee failed to furnish copy of bank statement. For the same, assessee was required to show cause why the same may not be treated as unexplained as the assessee failed to prove genuineness of transaction and creditworthiness of the depositors. Even most of the transaction for different depositors was having similar timing for cash deposit and fund transfer. Assessee was again afforded opportunity to prove his claim, vide order sheet entry dated 20.03.2015 and vide notice u/s 142(1) of the IT Act, 1961 dated 27.03.2015.*

*In final reply of the assessee, he submitted that assessee has proved their identity and genuineness of the transaction and as already submitted that, as regards creditworthiness the onus lies on the department as held by various higher courts and the judgment. Reply of the assessee is considered but not found acceptable, as the onus regarding the genuineness of transaction and creditworthiness are always on the assessee. As the assessee failed to furnish copy of bank statement and required details, assessee has failed to prove the creditworthiness and genuineness of transaction of the depositor. In view of the above facts and finding, the deposit taken during the year are still for the same remain unexplained on the part of assessee and hereby same is added in income of the assessee u/s 68 of the IT Act, 1961 as unexplained cash credit."*

*5.3.2 The AR submitted that this addition was made on account of unsecured loans received during the year mostly from relatives of the assessee. As already mentioned by the Assessing officer in the assessment order that notices u/s 133 (6) of the IT Act, 1961 were issued and no notice was received back. The assessee filed confirmations and copy of ITRs of the depositors and the details of which have been filed at page 234-235 of the paper book dated 22.06.2016. The main grievance of the Assessing officer on the basis of which this addition has been made is that the assessee was not able to prove the credit worthiness of the loan fenders. Here it is submitted that we have filed a copy of the judgment of Hon'ble ITAT New Delhi at page 42-51 of the paper book dated 22.06.2016 in the case of ITO Bulandshahar v/s Smt. Raj Rani. In the said order the Hon'ble ITAT relying on the judgment of Hon'ble Supreme Court in the case of CIT v/s Orissa Corporation (P) Ltd 52 CTR 138 and the judgment of Hon'ble Gauhati High Court in the case of Nemi Chand Kothari v/s CIT 264 ITR 254 wherein it has been held that the assessee is not required to prove the source of source from which the creditors has advance to assessee. Therefore when the assessee has proved the identity and genuineness of the transaction and the lenders are assessed to tax the credit worthiness and there source on giving loans is not material as per the decision of Hon'ble Supreme Court cited supra.*

*Further to the above in a latest judgment Hon'ble Gujrat High Court in tax appeal no 126 of 2015 with tax appeal no 127 of 2015 in the case of Principal Commissioner of Income Tax v/s Chartered Speed Pvt. Ltd has held in para 6 of the judgment as under.*

*The attempt made to contend that the burden upon the assessee is to prove the identity of the person, creditworthiness of the person and genuineness of the transaction are to be examined in context to the existence of the person concerned, the factum possession of the person and having paid to the mode of payment. Thereafter, if the person of actual money in assessee and concerned is in existence and has actually paid the amount from his account by be said that the initial burden is discharged so far as explanation to be considered under section 68 of the Act. Thereafter, the burden would be upon the revenue to show that either the person was bogus or there was no financial capacity to make the arrangement of money was artificial money has not passed over and it was only by way of an proved by the Revenue in the present case of the persons, but unfortunately, they were not made eve payment and the or that the wash. Such could be through the statement available for cross- examination and therefore, the statements could be used as an evidence against the assessee. No other evidence was available with the Revenue.*

*Further in the case of CIT v/s Southern Rocks and Minerals Private Limited ITTA No. 597 of 2013 and the copy which is placed at page 52-53 of the paper book dated 22.06.2016. It has been held in the last para of the judgment as under.*

*We are unable to accept this extreme argument. High Court is a superior court formed and/or deemed to have been under Constitution of India and decision of High Court on law squarely binds all the subordinate courts and also the Tribunal within the territory of India on the same point, if such judgment is not upset by Hon'ble Supreme Court of India. Judgment of the High Court is also precedent. Therefore, it cannot be said that since the judgment is not rendered by jurisdictional High Court, it cannot be made binding on the Tribunal, particularly the Tribunal is an inferior quasi judicial forum, it cannot afford to ignore the judgment of superior courts namely High Courts. We. therefore, reject this submission. Consequently, the appeal is dismissed. No order as to costs.*

*In view of the above the assessee has discharged his burden as required under the provisions of section 68 of The IT Act, 1961 and therefore the addition is not tenable in the eyes of law and may please be deleted.*

**5.3.3 Decision & Reasons:**

*Fact and law cited by assessee have been appraised with regard to this ground. Assessee is claiming that the impugned loans were taken from his relatives. Assessee himself admitted this fact before assessing officer He has only filed confirmation and copy of ITR. Copy of bank statement of the loan creditors has not been filed. Assessee relied upon various case laws as under:-*

***CIT v/s Orissa Corporation (P) Ltd 52 CTR 138 (SC)***

*In this case court has held that (i) assessee have given the names and addresses of the creditors, (ii) it had also produced before ITO letters of confirmation, the discharged hundis*

*and particulars of the different creditors including their general index numbers with the Income-tax Department, and (iii) the revenue, apart from issuing notices under section 131 to the creditors at instance of assessee, did not pursue the matter further nor did it examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans Whether any question of law arose from Tribunal's order - Held, on facts, no*

*In the present case assessee did not file the bank statements of the lenders and mere filing of the confirmation letter or even the ITR in few cases does not make the primary onus fully discharged by the Appellant. Thus the case law quoted is distinguishable on facts and does not lend support to the Appellant who has not filed bank accounts of the lenders who are relatives.*

**ITO Bulandshahar v/s Smt. Raj Rani Delhi ITAT**

***In this case ITAT has held that AO cannot ask for source of source. In the present case the dispute is not about asking for source of source but that of discharging primary onus regarding source of funds so as to establish the creditworthiness of the loan creditors who happen to be close relatives and yet the appellant is not wanting to bring on record their bank accounts. Assessee has failed to file the copy of bank statement of lender to prove the creditworthiness and genuineness of the transaction. When initial source of not proved then question of asking source of source does not arise. So this judgment is not applicable on the facts of the case.***

***Nemi Chand Kothari v/s CIT 264 ITR 254 (Guj.)***

*When one reads carefully the provisions of section 68, one finds nothing in section 68 to show that the scope of inquiry under section 68 by the revenue department shall remain confined to the transactions, which have taken place between the assessee and the creditor nor does the wording of section 68 indicate that section 68 does not authorise the revenue department to make inquiry into the source(s) of the creditor and/or sub-creditor. The language employed by section 68 cannot be read to impose such limitations on the powers of the Assessing Officer. The logical conclusion, therefore, has to be that an inquiry under section 68 need not necessarily be kept confined by the Assessing Officer to the transactions, which took place between the assessee and his creditor but the same may be extended to the transactions, which have taken place between the creditor and his sub-creditor. Thus, while the Assessing Officer is, under section 68, free to look into the source(s) of the creditor and/or of the sub-creditor, the burden on the assessee under section 68 is definitely limited. This limit has been imposed by section 106 of the Indian Evidence Act.*

*It is settled law that there are three basic ingredients of section 68 of the Act which the assessee is required to discharge the initial onus with regard to the identity of the loan creditor, the capacity or the creditworthiness of the loan creditor as well the genuineness of the transactions.*

*In the instant case the lender because by merely filing their ITR in few cases he only, establishes their identity where the ITR is filed, but assessee has failed to discharge initial burden/onus by proving the creditworthiness and genuineness of the transaction by not filing of the bank accounts of the lender and thus the assessing officer cannot be held to be asking source of source or not making further inquiry when the assessee failed to discharge the initial onus of filing the bank account of the loan creditors who are relatives. In the present case the initial source of money is not established by assessee. So the judgments relied upon by the appellant is not applicable on the facts of the case.*

*Further to the above in a latest judgment Hon'ble Gujrat High Court in tax appeal no 126 of 2015 with tax appeal no 127 of 2015 in the case of Principal Commissioner of Income Tax v/s Chartered Speed Pvt. Ltd has held in para 6 of the judgment as under.*

*The attempt made to contend that the burden upon the assessee is to prove the identity of the person, creditworthiness of genuineness of the transaction are to be examined the person in and context the to the existence of the person concerned, the factum of actual money in possession of the person and having paid to the assessee and the mode of payment. Thereafter, if the person concerned is in existence and has actually paid the amount from his account by be said that the initial burden is discharged so far as explanation to be considered under section 68 of the Act. Thereafter, the burden would be upon the revenue to show that either the person was bogus or there was no financial capacity to make the was artificial of an or that the eye Revenue in the present case payment and the arrangement of money money has not passed over and it was only by way Such could wash. of the persons, but unfortunately, they were not made be available proved by the through the statement for cross- examination and therefore, the statements could be used as an evidence against the assessee. No other evidence was available with the Revenue.*

*In the ratio quoted above by the Ld. Counsel of the assessee, the critical lines are underlined, the factum of actual money being in possession of the person and paid to the assessee has not been established in this case as he has not filed the bank account of the lender. Thus the basic fact has not been established by the Appellant or his counsel merely filing ITR or confirmation does not establish these facts. Thus, the ration relied upon does not come to the rescue of the Appellant.*

*Further in the case of CIT v/s Southern Rocks and Minerals Private Limited ITTA No. 597 of 2013 and the copy which is placed at page 52-53 of the paper book dated 22.06.2016. It has been held in the last para of the judgment as under. 5. We are unable to accept this extreme argument. High Court is a superior court formed and/or deemed to have been under Constitution of India and decision of High Court on law squarely binds all the subordinate courts and also the Tribunal within the territory of India on the same point, if such judgment is not upset by Hon'ble Supreme Court of India: Judgment of the High Court is also precedent. Therefore, it cannot be said that since the judgment is not rendered by jurisdictional High Court, it cannot be made binding on the Tribunal, particularly the Tribunal is an inferior quasi judicialforum, it cannot afford to ignore the judgment of superior courts namely High Courts. We, therefore, reject this submission. Consequently, the appeal is dismissed. No order as to costs.*

*It is indeed a sad state of affairs where not having discharged the basic onus, the Ld. Counsel attempts to override basic lacunas in his case by deliberately not submitting the bank account of the lenders by creating a legal argument that primary onus of the assessee has been discharged. The Assessee has failed to file the copy of bank statement of all lenders, despite the fact that they were relatives and only ITRs in few cases and confirmation have been filed. So the assessing officer was not able to see whether funds were came from the account of lender or not, whether funds were lender's own funds, whether the lenders involved in forwarding loan of Rs. 1,14,90,000/-had the fiscal capacity or creditworthiness to forward this loan. So all the judgments relied upon by the Ld. Counsel are not applicable to the particular facts of this case where a smart attempt has been made by the Ld. Counsel to create a Legal smokescreen instead of discharging primary onus by establishing the creditworthiness of the lenders as well as the genuineness of the transactions involved with the assessee to whom they forwarded loans.*

*In the case of CIT vs. Precision Finance (P) Ltd. 208 ITR 465 Hon'ble Calcutta High Court has held that:*

*It is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions.*

*(ii) On the facts of the case: the Tribunal did not take into account all these ingredients which have to be satisfied by the assessee. Mere furnishing of the particulars is not enough. It was not for the assessing officer to find out by making investigation from the bank A/cs unless the assessee proves the identity of the creditors and their creditworthiness. Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine.*

*Conclusion: Burden lies on the assessee to prove the identity of the creditors and their creditworthiness and mere transaction through bank is insufficient.*

*In the case of Banarsi Prasad v. Commissioner of Income-tax 304 ITR 239 Hon'ble Allahabad High Court (Jurisdictional High Court) has held as under:-*

*It is well-settled that under section 68 the assessee has to prove three conditions, viz., (1) the identity of the creditor, (2) the "capacity" of such creditor to advance the amount, and (3) the genuineness of the transaction. In the present case, the credit entries in the assessee's account during the year previous year, relevant to assessment year 1987-88 showed receipt of Rs. 74,400 from his wife and Rs. 69,300 from his minor son. The wife of the assessee was assessed to tax and returns were filed under the amnesty scheme disclosing total income of Rs. 51,400 the break up being Rs. 15,200, Rs. 18,100 and Rs. 18,100 for the assessment years 1984-85, 1985-86 and 1986-87 respectively. The lady was not assessed to tax either earlier or later and she did not have any known source of income. It was found from her bank account that a sum of Rs. 50,000 was deposited therein on 6-10-1986, and again a sum of Rs. 24,400 was deposited in that account on 24-10-1986. Thereafter the sum of Rs. 74,400 was withdrawn on 25-10-1986, through cheque, which was given to the assessee. Similarly, Om Prakash, ie, the minor son of the*

*assessee, was assessed to tax for the assessment years 1983-84 to 1986-87. Income of Rs. 15,200 was shown for the assessment years 1983-84 to 1985-86 and Rs 18,200 for the assessment year 1986-87. Thus his total income was Rs. 63,800 against which he is said to have given Rs. 69,300 to the assessee.*

*The High Court has held that the second condition referred as to capacity of the credit cannot be said to have been established on the facts and circumstances of the present case, the absence of the details referred to above viz, the source from which non-earning wife and minor son got the money to invest with the assessee. Thus, generally but not always, depending upon the facts and circumstances, when the credits have been received by an assessee from such close relatives, the explanation to be furnished under section 68 would require to disclose the facts necessary to establish the "capacity" of the creditor as above.*

*17. In these circumstances, the question referred is answered as above by holding that on the facts and circumstances of the present case, when the credits were received by the assessee from close relatives like his non-earning wife and minor son, the explanation to be furnished under section 68 in order to qualify as "satisfactory" would require to disclose the source of the depositor for establishing the "capacity" of the creditor as above.*

*Commissioner of Income-tax v. Mihir Kanti Hazra [2015] 61 taxmann.com 315 (Calcutta) it has been held By Calcutta High Court :-*

*Section 68 of the Income-tax Act, 1961 - Cash credit (Loans) - Assessment year 2006-07- Assessee received unsecured loans from 39 persons - Assessing Officer was of opinion that creditworthiness of alleged creditors and genuineness of transactions were not proved by persons who responded to summons issued under section 131; and some of them did not turn up and assessee also failed to furnish any further explanation regarding same - Assessing Officer, accordingly, made addition under section 68 - Commissioner (Appeals) also concurred with views of Assessing Officer - Tribunal, however, deleted said addition - It was observed that Tribunal did not examine correctness of views expressed by Assessing Officer and Commissioner (Appeals) Further, no reasons were disclosed why views expressed by them were wrong Whether order passed by Tribunal was to be set aside - Held, yes [Paras 6, 7 and 13] [In favour of revenue]*

*Under the above facts and case laws it is apparent that assessee has claimed that loan were taken from relatives but he is not able to furnish evidence so as to prove the transactions are genuine and that the loan creditors had the capacity by filing their bank statements. Even notices issued and sent under section 133(6) of the Act, which not received back by assessing officer means duly served upon the lenders. They did not respond the same to the assessing officer, instead the Counsel of the assessee furnished certain details proving that there was complete collusion and matter was under control of the assessee and yet the basic details were not furnished to discharge the primary onus. During appeal proceedings also assessee failed to establish the creditworthiness and genuineness of the transaction and only relied upon the case laws which are distinguishable on the facts. Thus I am constrained to hold Assessee failed to discharge primary onus to prove creditworthiness and genuineness of the transaction. Hence, I*

*confirm the addition of Rs. 1,14,90,000/- as made by assessing officer invoking the provision of section 68 of the Act."*

7. The assessee was not able to controvert the aforesaid actual findings and legal propositions made by the Id CIT(A) before us with contrary evidence. Hence, we do not deem it fit to interfere in the order of the Id CIT(A). Accordingly, the grounds raised by the assessee are dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 15/02/2024.

-Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 15/02/2024

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi