

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)**

**ITA No. 142/MUM/2024  
Assessment Year: 2015-16**

Juhi Associates,  
1605/1606 The Ambience Court,  
Plot No. 2 Sector 19D, Vashi,  
Navi Mumbai-400703.

**PAN NO. AAIFJ 3791 R**  
**Appellant**

**Vs.**

Asst. Commissioner of Income  
Tax,  
4<sup>th</sup> floor, Vashi Rly, Complex,  
Vashi,  
Navi Mumbai-400 703.

**Respondent**

Assessee by : Mr. Fenil Bhat  
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 02/05/2024  
Date of pronouncement : 06/05/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the assessee against order dated 17.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following grounds:

*1. Order passed under section 250 of the Income tax Act, 1961 ("the Act") erred in dismissing the appeal of the Appellant and confirming the*



*order of the Ld. Assessing officer ("AO") which is bad in law and liable to be quashed*

*2. On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in confirming the addition made by the Ld. AO under section 68 of the Act amounting to Rs. 59,25,000 with relation to unsecured loans taken by the Appellant which has been subsequently repaid by the Appellant*

2. At the outset, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has not considered submissions and explanations of the assessee, which were furnished before him during the appellate proceedings and the Ld. CIT(A) relied on the facts of the other case as mentioned in para 7.4 of the impugned order and upheld the addition made by the Assessing Officer ,therefore, the order of the Ld. CIT(A) need to be set aside for deciding afresh.

3. The Ld. Departmental Representative (DR) on the other hand, objected the proposal of the Ld. counsel for the assessee and submitted that the Ld. CIT(A) has passed a reasoned order.

4. We have heard rival submission of the parties and perused the relevant material on record. Before us, the Ld. counsel for the assessee submitted that documentary evidences filed before the Ld. CIT(A) have not been considered by him and order has been passed on the basis of factually incorrect information. The relevant finding of ld CIT(A) is reproduced below for ready reference:

*"7. Ground No. 1*

<b>Sl. No.</b>	<b>Section</b>	<b>Issue</b>	<b>Ground of appeal</b>
1	68	Disallowance of unsecured loans	Documentary evidence submitted by the appellant was not taken into account



7.1 The facts emanating from the order of the AO is that during the course of assessment proceedings, the AO found that the appellant assessee has shown unsecured loans of Rs. 17,44,75,000/-. The assessee was required to prove the identity, genuineness & creditworthiness of the lenders. Notices u/s 133(6) of the I.T. Act, 1961 were issued to check the genuineness of the loans. The appellant assessee has submitted replies which have been thoroughly examined and after detailed examination, the AO found that the assessee has not proved the creditworthiness of some of the lenders and were show caused as to why the loans amounting to Rs. 59,25,000/- may not be added u/s 68 of the I.T. Act, 1961. In this regard, no replies were furnished by the assessee and accordingly, in the absence of substantiating documentary evidences, the AO made the addition of Rs. 59,25,000/- as unexplained credits by invoking the provisions of section 68 of the I.T. Act, 1961. Aggrieved for the same, the appellant assessee has filed this appeal.

1. 1. During the course of appellate proceedings, the appellant assessee did not furnish any cogent explanation/ documentary evidences with regard to this ground of appeal and not proved the creditworthiness of the enders, even after availing considerable time and opportunities.

2. So as to decide the issue in hand, the relevant provisions of section 68 are being quoted below:

"Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

[Provided that] where the assessee is a company (not being company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

[Provided further] that nothing contained in the first proviso for second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a



*venture capital company as referred to in clause (23FB) of section 10."*

*The Section is meant to curb generation of unaccounted money and it is in clarificatory nature. That means the assessing officer can add a lump sum as of income from undisclosed sources.*

*The Income Tax Act, subsequently, inserted two key provisions vide Finance Act, 2012 (which will be dealt in later part). Further, Section 68 of the present Act is statutorily authorized an Assessing Officer to assess the unexplained cash credit as Income and add back to the total income of an assessee accordingly'.*

*The third ingredient says that if the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in Books of accounts maintained by him in the previous year. For instance, "Gift...By" as stated above, will be taken as absence of satisfactory explanation by the assessee.*

*It is clear from the language of the section, it is the assessee, alone who is to offer the explanation, whether initially or subsequently.*

*The section enacts a golden rule of evidence which is not in dispute, i.e. the onus is on the assessee to explain any sum found credited in his books of account.*

*With respect of credits and investments, the Hon'ble Calcutta High Court in CIT vs. Precision Finance (P.) Ltd. [1994] 208 ITR 465/[1995]82 Taxman 31, laid down that an assessee is expected to establish-*

- Identity of creditors
- Capacity of creditors to advance money
- Genuineness of transaction

*7.4 From perusal of the provisions of section 68 of the Act, quoted above and the relevant observations made by the AO with respect to the impugned addition it is amply clear that the AO while making the addition amounting Rs. 7,34,55.700/- on account of unexplained cash credit by the appellant in the bank account, the has not committed any illegality."*

4.1 The Id Counsel has filed a copy of detailed submission filed before lower authorities. We find that Id CIT(A) has not mentioned any of submission of the assessee, rather noted that no submissions were filed by the assessee, therefore, we are of the opinion that detailed submission filed by the assessee before the



lower authorities have not been considered by the Ld. CIT(A). The Ld. counsel for the assessee further submitted that assessee wishes to file further additional evidence in support of its contention that addition made u/s 68 of the Act is not justified. In view of the facts and circumstances of the case and in the interest of substantial justice, we feel it appropriate to set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to him for deciding afresh after taking into consideration submission of the assessee. It is needless to mention that both the parties i.e. the assessee and the Assessing Officer shall be afforded adequate opportunity of being heard. The grounds raised in appeal are accordingly allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 06/05/2024.**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 06/05/2024  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**