

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 658/Ahd/2023
Assessment Year 2017-18**

Malvi and Co. 11, Opera Society, Nava Vikasgruh Road, Paldi, Ahmedabad, Gujarat-380007 PAN: AAZFM4612M (Appellant)	Vs	Income Tax Officer, Ward-5(3)(5), Ahmedabad (Respondent)
--	----	--

**Assessee Represented: Shri Rajiv Khandelwal, A.R.
Revenue Represented: Shri Atul Pandey, Sr.D.R.**

Date of hearing : 19-02-2024
Date of pronouncement : 10-05-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 25.07.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. The brief facts of the case is that the assessee is a Partnership Firm and engaged in the business of trading in shares and securities. For the Asst. Year 2017-18, the assessee filed its Return of Income on 18.10.2017 declaring total income at Nil. The case was selected for scrutiny assessment to verify the unsecured loans, securities transactions and cash deposits during the demonetization period. The A.O. found that the assessee had received huge amount of unsecured loan from M/s. Siddhi Investment to the tune of Rs.4.66 crores and requested the assessee to explain the same. In response the assessee along with documentary evidences namely copy of the computation of income, balance sheet, audit report and copy of the assessment orders for the Asst. Years 2015-16 and 2016-17 and bank statements of the person from whom unsecured loans were received were filed before the A.O. The Assessing Officer issued a summon u/s. 133(6) to Siddhi Investment. However the same was not replied but the statement of the Partner namely Shri Harshad S. Pancholi was recorded by the Assessing Officer. Based on the same the unsecured loan was treated as accommodation entry and added as the unexplained cash credit in the hands of the assessee and taxed the same u/s. 155BBE of the Act.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A). The assessee submitted before Ld. CIT(A) that Partner of Siddhi Investment, namely Shri Harshad S. Pancholi confirmed the loan transaction in response to the summons issued u/s. 133(6) of the Act and also submitted bank statements of the firm. However the Assessing Officer failed to

provide cross-examination of Shri Harshad S. Pancholi before making such huge addition of Rs. 4.66 crores u/s. 68 of the Act and relied upon Jurisdictional High Court in the case of PCIT Vs. Chartered Speed Pvt. Ltd. in T.A. No. 126/2015, DCIT Vs. Prathna Construction Pvt. Ltd. in Tax Appeal No. 70 of 2000, ACIT Vs. Govindbhai N Patel (215 taxmann.com 575), CIT Vs. Indrajitsingh Suri (215 taxmann.com 581), CIT Vs. HimatsuBimet Ltd. and PCIT Vs. Vaishnodevi Refoils & Solvex (100 CCH 288 (Guj.)

4. The Ld. CIT(A) considered the above submissions and held that the assessee and the failed to file the ITR of Siddhi Investment for the relevant assessment Year. Further Siddhi Investment has produced financial statements wherein it has claimed losses of Rs.95,072/- and Rs. 49,26,714/- for the Asst. Year 2017-18 & 2016-17. Thus Siddhi Investment does not appear to have adequate creditworthiness to advance such a huge loan to the assessee thereby confirm the addition made by the A.O. and dismissed the assessee appeal.

5. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

Ground No. 1

1. That on the facts and in the circumstances of the case and as per law, learned CIT (Appeals) erred in sustaining additions of Rs.4,66,00,000 on the ground of unexplained cash credit under section 68 of the Income- tax Act, 1961.

1.1 That learned CIT (Appeals) failed to appreciate the fact that appellant had discharged the onus of proving the identity of the lender, its creditworthiness and genuineness of transaction. Additions of Rs.4,66,00,000/- under section 68 is, therefore, not sustainable as per law and as per settled legal propositions.

Ground No. 2

2. Without prejudice, appellant have to submit that learned CIT (Appeals) erred in rejecting the alternate plea of the appellant to reduce the additions, under s. 68, by Rs.2,18,50,000/- being repaid by the appellant during the year under consideration.

6. Ld. Counsel Mr. Rajiv Khandelwal appearing for the assessee submitted before us that the assessee firm received unsecured loan from Siddhi Investment from 05.04.2016 to 03.11.2017 a sum of Rs. 4.66 crores. Similarly assessee repaid Rs. 62,25,000/- on 07.10.2016, Rs. 1,00,00,000/- on 08.11.2016 and Rs. 16,00,000/- on 23.11.2016 and Rs. 40,00,000/- on 29.11.2016 in all together a sum of Rs. 2,18,50,000/- during the year itself. The assessee also produced the confirmation from Siddhi Investment on the unsecured loan and repayments made.

7. Ld. Counsel also drawn our attention to the reply filed by the assessee vide its letter dated 05.12.2019 which is extracted as follows:

Malvi & Co.

*Statement Showing Loan Receipts from Siddhi Investments & its utilization
HDFC Curr A/C No. 04617630000239*

<i>Loan Receipts</i>		<i>Application of Loan Received</i>		
<i>Date</i>	<i>Amount (Rs.)</i>	<i>Date</i>	<i>Payment to Shah Investors Home Limited (Share Broker) Business Payments</i>	<i>Repaid to Siddhi Investments</i>
<i>04/05/16</i>	<i>5000000.00</i>	<i>05/05/16</i>	<i>5100000</i>	
<i>12/08/16</i>	<i>2500000.00</i>	<i>12/08/16</i>	<i>3200000</i>	

12/08/16	2300000.00			
23/08/16	8000000.00	23/08/16	7000000	
26/08/16	2000000.00	29/08/16	2000000	
07/10/16		07/10/16		6225000
17/10/16	1000000.00	18/10/16	1000000	
28/10/16	10000000.00	28/10/16	10000000	
08/11/16		08/11/16		10000000
15/11/16	3400000.00	15/11/16	3400000	
17/11/16	1100000.00	18/11/16	1150000	
22/11/16	1600000.00			
23/11/16		23/11/16		1600000
29/11/16		29/11/16		4000000
20/12/16	800000.00	19/12/16	915000	
31/12/16	7000000.00	02/01/17	7000000	
03/01/17	1900000.00	03/01/17	1900000	
Total	46600000.00		42665000	21325000

7.1. Further the assessee also shown the source of sources to Siddhi Investment and its previous sources namely from Panther Fin Cap & Management Services Ltd. which has received Income Tax Refund of Rs. 3,15,58,280/- on 09.12.2016 for the Asst. Year 2002-03 and another refund of Rs. 10,88,97,689/- relating to the Assessment Year 2003-04. Thus the assessee has fully discharged the initial onus cast upon it and also brought on record, the source of sources of the above unsecured loans. The same are not fully appreciated by the Ld. CIT(A) and confirmed the addition made by the Assessing Officer. The assessee also placed before us the bank statements which clearly reflects the repayment of loans of Rs.

2,18,50,000/- . Thus pleaded to delete the addition made by the Lower Authorities.

8. Per contra, the Ld. Sr. D.R. Autl Pandey appearing for the Revenue supported the order passed by the Lower Authorities and requested to uphold the same and thereby dismissed the assessee appeal.

9. We have given our thoughtful consideration and perused the materials on record including the Paper Book filed by the assessee. It is seen from the reply filed before the Assessing Officer, the assessee claimed that in the share trading business, they do not have sufficient means to get secured loan from banks. Hence they availed unsecured loans to honour its share trading speculative losses. The assessee also produced confirmation account from Siddhi Investment with relevant bank statements, which clearly reflected loan amounts disbursed on various dates between 04.05.2016 to 03.11.2017. All these transaction were made through cheques in HDFC Bank account and a sum of Rs. 2,18,25,000/- repaid during this years is also reflected in the bank statement. Thus the initial burden cast upon the assessee is duly discharged by the assessee. The Assessing Officer after making an enquiry u/s. 133(6) of Shri Harshad S. Pancholi Partner of M/s. Siddhi Investments, without giving any opportunity to cross examine to the assessee, confirmed the demand which is in our considered view is against the settled principle of law. Further the assessee had explained the source of source of the above

unsecured loans from M/s. Panther Fin Cap & Management Services Ltd.

10. The Jurisdictional High Court in the case of PCIT Vs. Chartered Speed Pvt. Ltd. in Tax Appeal No. 126 & 127 of 2015 dated 03.03.2015 held as follows:

5. As recorded by the Tribunal, the Tribunal found that the initial burden was discharged by the assessee. In our view, once the Tribunal upon the appreciation of the material found and recorded the finding of the fact that the assessee had discharged initial burden, such a finding of fact would be outside the judicial scrutiny in the appeal before this Court unless the finding of fact is perverse to the record. It is an undisputed position that the statement of the persons concerned which were recorded by the department, those persons were not made available for cross-examination, may be for one reason or another inspite of the attempts made by the department. Therefore the Tribunal has rightly found that the statement of those persons cannot be read against the assessee.

6. The attempt made to contend that the burden is upon the assessee to prove the identity of the person, creditworthiness of the person and the genuineness of the transaction are to be examined in context 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 cheque, it can 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 payment and the arrangement of money was artificial or that the money has not passed over and it was only by way of an eye wash. Such could be proved by the Revenue in the present case through the statement of the persons, but unfortunately, they were not made 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.

10.1. Further the Hon'ble Jurisdictional High Court in the case of Ayachi Chandrashekhkar Narsangji (cited supra) it was held as follows:

Section 68, read with section 143, of the Income-tax Act, 1961 - Cash credit [Loans] -Assessment year 2006-07 - Assessing Officer framed assessment under section 143(3) wherein he made addition of Rs. 1.45

crore under section 68 on ground that loan taken from one 'IA' was not explained satisfactorily - On appeal, Commissioner (Appeals) was satisfied with respect to genuineness of transaction and creditworthiness of MA' and, therefore, deleted addition - It was found that total loan of Rs. 1.60 crore was advanced to assessee, out of which Rs.15 lakh was repaid - Therefore, an amount of Rs.1.45 crore remained outstanding to be paid to 'IA' - Balance loan amount was repaid by assessee in immediately next financial year - Whether when Department had accepted same, addition made by Assessing Officer was to be deleted - Held, yes [Para 6] [In favour of assessee]

10.2. In the case of CIT Vs. Shri Mahavir Crimpers, [2018] 95 taxmann.com 323 (Guj.) wherein it has been held as follows:

"5. We have heard both the parties. There is no dispute so far as identity of the creditor party M/s. Raj Capital & Finance Pvt. Ltd. is concerned. There is further no quarrel that the Assessing Officer does not dispute the fact that the assessee has not availed any cash loan from the said entity. His only case is that the assessee has not been able to prove source along with genuineness and creditworthiness of the above stated entity. It emanates from above extracted portion that the assessee has filed all relevant details along with assessment records of the said entity explaining source of the loans to the above entity's balance sheet indicating sufficient reserves, surplus and share premium as followed by repayment in succeeding assessment year. Learned Departmental Representative fails to rebut CIT (A)'s conclusion that the assessee has been having regular loan transactions with the said entity. We notice in this backdrop that Hon'ble Jurisdictional high court's decision in DCIT v. Rohini Builders, (2002) 256 ITR 360 (Guj) upholding tribunal's conclusion deleting Section 68 addition in view of identical details; squarely applies here. So in their lordships' latter decision in CIT v. Ayachi Chandrashekhar Narsangji (2014) 42 taxmann.com 251 (Guj) confirming this tribunal's another decision reversing Section 68 addition wherein the department head accepted repayment of loan in subsequent year to be correct. We take into account all these facts and judicial precedents to affirm CIT(A)'s findings under challenge deleting the impugned addition. This first substantive ground is accordingly declined."

10.3. In the case of DCIT Vs. Rohini Builders, [2002] 256 ITR 360 (Guj.) wherein it has been held as follows:

Once primary documents are given, onus shifts from assessee to revenue. In absence of anything contradictory brought on the table, it wouldn't be fair to confirm addition u/s 68 of the Act. Gujarat High Court went on to the extent of confirming that even if creditors didn't turn up on issue of summons, even then, the transaction can't be termed as bogus because preliminary documents have been put forth by the assessee and nothing contradictory is

observed by the revenue. It was contended by revenue that "creditworthiness" continues to remain unproved because a few alleged parties were having a meagre income as against hefty deposits made. To this argument, the court held that assessee's duty is discharged once it shows the bank statement of the depositor. It is not assessee's look out to find out source to source, and get into the subject of how the creditor could afford that money. Source is what is required to be proved by the assessee, and the onus immediately gets discharged on submission of preliminary documents like a bank statement of the depositor. Also, if the revenue seriously felt that the source to source was bogus, in which case the resultant addition would fall in the hands of the depositors or investors u/s 69 of the Act. As far as assessee is concerned, he is required to prove that the alleged depositor or creditor, as the case be, had legitimate monies which were given to assessee through banking channel. How that monies were earned and whether or not the depositor is showing it in his personal return of income is beyond the scope of the assessee; if there are any doubts on the source to source then revenue can always approach the depositor."

10.4. In the case of ITO Vs. Shanti Enterprise, [2016] 71 taxmann.com 275 wherein it has been held as follows:

".....amounts were received by the assessee by account payee cheques and initial burden of proving the credits was discharged. It is held that the assessee need not prove the source of the credits and the fact that the explanation was not satisfactory would not automatically result in deeming amounts as income of the assessee...."

11. Respectfully following the above ratio of the judgments rendered by the Jurisdictional High Court, we hereby delete the addition made by the Assessing Officer u/s. 68 of the Act. Thus the grounds raised by the assessee is hereby allowed.

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

Order pronounced in the open court on 10-05-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 10/05/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद