

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI BR BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.3433/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2020-21)

Humayun Ahmed Shafi Ahmed Shaikh Ground Floor, Rubberwala House, Dr. A Nair Road, Agripada, Mumbai-400011.	बनाम / Vs.	DCIT, Central Circle-4(2) 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AUWPS7212G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Mani Jain, FCA	
Revenue by:	Smt Sanyogita Nagpal CIT	

सुनवाई की तारीख / Date of Hearing: 08/04/2024

घोषणा की तारीख /Date of Pronouncement: 07/06/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Learned Commissioner of Income Tax (Appeals) -52, Mumbai [in short 'ld. CIT(A)'] dated 31.07.2023 for AY. 2020-21.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) sustaining the addition of Rs.50,00,000/- on account of unsecured loan received during the year u/s 68 of the Income Tax Act, 1961 [in short 'the Act']. The facts relating to this issue are that, according to the AO, details of unsecured loan were found and seized in the form of loose paper ID marked Annexure A1, Page 50 at the residential premises of Mr. Tabrez Shaikh. The AO stated that this sheet contained names of several lenders who had advanced loans to



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

the individuals and entities of Rubberwala Group inter alia including the assessee. The AO further noted that, in the statement recorded u/s 132(4) of the Act, Mr. Shaikh was required to establish the identity, creditworthiness and genuineness of the loan transactions and why these loans should not be treated as accommodation entries. In response, the AO noted that Mr. Shaikh had pleaded that these loans ought not be considered as accommodation entries. The AO however observed that no supporting documents were provided by him to the Investigating Authorities. The AO thereafter discussed the post search enquiries made by the Investigating Authorities from the three (3) lenders from whom loans were received during the year and noted that some of these lenders had not complied with the notices issued to them. The AO in the course of assessment is noted to have made independent enquiries from these lenders u/s 133(6) of the Act. Based on the replies received and the details furnished by the assessee, the AO analyzed each of these three (3) lenders and held that the assessee was unable to discharge the creditworthiness of the lenders and the genuineness of the transactions and therefore, treated the unsecured loans received from these three (3) parties amounting to Rs.65,00,000/- as unexplained cash credits and added the same u/s 68 of the Act. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who partly deleted the addition made by the AO to the extent of Rs.15,00,000/- received from one (1) party. Being aggrieved by the Ld. CIT(A)'s action of sustaining balance addition of Rs.50,00,000/-, the assessee is now in appeal before us.



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

3. Assailing the action of lower authorities, the Ld. AR submitted that complete details of the two (2) lenders in question were furnished before the lower authorities. He showed us that each of these lenders were income tax assesseees and took us through their details viz., loan confirmations, bank statements, financial statements etc. The Ld. AR pointed out that there was no prior cash deposits in these bank accounts which would raise suspicion regarding routing of unaccounted monies. Relying on the decision of the Hon'ble Gujarat High Court in the case of **PCIT vs Ambe Tradecorp Pvt. Ltd. (145 taxmann.com 27)**, the Ld. AR submitted that when the identities of the lenders had been proved and it was also shown that the loans were repaid subsequently, no addition was permissible u/s 68 of the Act. He thus urged that the addition made by the AO u/s 68 be deleted.

4. Per contra, the Ld. CIT, DR has heavily relied on the findings of the AO, wherein the financials and creditworthiness of these lenders had been examined and it was found that these lenders exhibited characteristics attributable to persons providing accommodation entries. The Ld. CIT, DR therefore urged that the order of the Ld. CIT(A) confirming addition to the extent of Rs.50,00,000/- does not call for any interference.

5. We have heard both the parties and perused the material placed before us. It is noted that the unsecured loans in question were received from two (2) individuals, viz. (i) Mr. Paras K Nahar, Prop. of Paras Gems and (ii) Mr. Lalit J Kothari, Prop. of Vishal Overseas.



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

Before the lower authorities, the assessee had furnished confirmation letters, financial statements, Income-tax Acknowledgement and bank statements of these lenders. Since the lenders did not attend the summons u/s 131 of the Act, the AO doubted the genuineness of these loans. The AO after analyzing their financials primarily doubted their creditworthiness to advance the loans and therefore added the same u/s 68 of the Act. On appeal, the Ld. CIT(A) is noted to have sustained the addition.

6. Before we advert to the facts of the case, it is necessary to recapitulate the provisions of Section 68 of the Act, which read as under:

"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 a 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—



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

(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 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."

7. Bare reading of the provision makes it abundantly clear that an individual is required to substantiate only the first source of receipt in relation to advance/loan/deposit and nothing more. The additional burden laid down in the proviso to Section 68 of the Act only applied to 'share application monies' which are raised by closely held companies. In the case at hand therefore, the proviso to Section 68 is not applicable. Under the extant provisions of Section 68 of the Act [as it stood in AY 2020-21], the burden cast on the assessee is only to substantiate the source of receipt of the loan/deposit. Hence, in our considered view, the onus cast upon the assessee is only to establish three things necessary to obviate attracting Section 68 of the Act which are, (i) identity of the creditor; (ii) their creditworthiness and (iii) Genuineness of the transaction.



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

8. In view of the above position of law, let us now examine the facts of the case. From the assessment order, it is noted that, the AO had doubted the respective sources of these creditors and therefore held that their creditworthiness remained unsubstantiated. The AO upon his own analysis of the financials of these lenders had noted that some of them had reported meagre income which did not commensurate with the loans advanced and it therefore raised doubts on their creditworthiness. According to us however only because some of these lenders did not derive sufficient profits during the year cannot be the sole determinative factor to doubt their creditworthiness. It is noted that, each of the lenders have demonstrated that the loans were advanced by them, either out of their own funds or borrowings made by them in their respective capacities through banking channel. On these facts, in our considered view therefore, nothing much turns on the fact that if these lenders had reported meagre income in the relevant year.

9. The Ld. AR further showed us that, even on facts, the above averment was not factually tenable. Having examined the records, it is noted that the assessee has placed on record the PAN details and Income-tax Acknowledgment of both these lenders viz. (i) Mr. Paras K Nahar, Prop. of Paras Gems and (ii) Mr. Lalit J Kothari, Prop. of Vishal Overseas. Both these lenders are noted to be involved in substantial business activities and are regular income-tax filers. In respect of Mr. Paras K Nahar, it is noted that the said lender is engaged



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

in the business of dealing in jewelleryes and gems and the revenue from operations for the relevant year was to the tune of Rs.35.54 crores. The said lender is noted to have consistently disclosed income in the range of Rs. 12.95 lacs in AY 2015-16, Rs.13.73 lacs in AY 2016-17, Rs.13.46 lacs in AY 2017-18, Rs. 12.04 lacs in AY 2018-19 and Rs.10.17 lacs in AY 2019-20 & Rs. 13.60 lacs in AY 2020-21. Likewise, Mr. Lalit J Kothari is also noted to be a businessman operating under the trade name M/s Vishal Overseas. He is also noted to have consistently disclosed income in the range of Rs. 20.27 lacs in AY 2015-16, Rs.22.46 lacs in AY 2016-17, Rs.26.12 lacs in AY 2017-18, Rs. 32.47 lacs in AY 2018-19 and Rs.35.48 lacs in AY 2019-20 & Rs. 42.18 lacs in AY 2020-21. The loans obtained from both these individuals are noted to be have been transacted through banking channels. It is also noted that these loans were also subsequently repaid. The assessee is noted to have placed on record the loan confirmations obtained from these lenders as well. All these documents which were filed by the assessee before the lower authorities have not been found to be incorrect or faulty at any stage.

10. Having regard to the above, it is noted that the source of the loans had been established in as much as the identity of the lenders, their creditworthiness and genuineness of the transaction was substantiated by the assessee as per the requirement of law. Moreover, in our considered view, if the AO suspected their financial ability to advance these loans, then the correct course of action was to proceed



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

against the creditors rather than the assessee because the assessee has discharged the burden as required by law [Section 68 of the Act] and the assessee cannot be expected to do more than what the law prescribed. For this, we rely on the decision of the Hon'ble jurisdictional Bombay High Court rendered in the case of **Gaurav Triyugi Singh v. ITO [2020] 121 taxmann.com 86/423 ITR 531**. In the decided case the assessee had received unsecured loans from two individuals, whose details were submitted before the AO. The AO however doubted the creditworthiness of the individuals and took a view that the assessee had not established genuineness of the loan. On appeal, the Hon'ble High Court deleted the addition by observing as under:

"13. Section 68 of the Act has received considerable attention of the courts. It has been held that it is necessary for an assessee to prove prima facie the transaction which results in a cash credit in his books of account. Such proof would include proof of identity of the creditor, capacity of such creditor to advance the money and lastly, genuineness of the transaction. Thus, in order to establish receipt of credit in cash, as per requirement of section 68, the assessee has to explain or satisfy three conditions, namely : (i) identity of the creditor; (ii) genuineness of the transaction; and (iii) credit-worthiness of the creditor.

14. In Pr. CIT v. Veedhata Towers (P.) Ltd. [2018] 403 ITR 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.

15. In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur i.e. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.

16. Considering the above, we are of the view that the Tribunal was not justified in sustaining the addition of Rs. 14 lakhs to the total income of the assessee as undisclosed cash credit under section 68 of the Act.



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

17. Consequently, finding of the Tribunal to the above extent is set aside. The question framed is answered in favour of the assessee and against the Revenue."

11. Another reasoning given by the Revenue to doubt the genuineness of these loans was that, the assessee had not provided the details of collaterals offered for obtaining these loans, business profile of the lenders etc. To this, the Ld. AR has pointed out that the loans in question were admittedly unsecured and therefore the question of placing collaterals did not arise. Further, he showed that the business profile were verifiable from the financial statements and thus according to him, this averment of the Revenue was also factually misplaced. We are also in agreement with the Ld. AR that, on the overall facts as already discussed in preceding paragraphs, these aspects pointed out by the Revenue were irrelevant in as much as the same could not be viewed adversely to justify the addition/s made u/s 68 of the Act.

12. Before us, the Ld. CIT, DR had also placed emphasis on the AO's findings that both these lenders did not attend the enquiries made by him. In this regard, the Ld. AR has pointed out to us that, the nature of relationship between the assessee and the individual lenders was that of debtor-creditor which is limited to advancement of loan, and thereafter refund of the same. The Ld. AR submitted that, the assessee also cannot be expected to enforce compliance from these creditors, particularly when the loans had been refunded along with interest. The



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

Ld. AR explained that it was purely a case of finance/money-lending transaction and thus under the given circumstances therefore, the loan received by the assessee cannot be doubted on the ground that the AO was unable to make enquiries from these creditors, particularly when the loans had already been refunded. Having regard to the foregoing contentions and the fact that the requisite documentary evidences in relation to the loan creditors which the assessee was required to maintain had already been furnished before the AO, the alleged non-compliance of notices by the lenders cannot be decisive to justify the impugned addition. For this, we rely on the decision of the Hon'ble Supreme Court in the case of **CIT vs Orissa Corporation (P) Ltd (159 ITR 78)** wherein the facts of the case was that *"the assessee, with regard to loans taken produced before the Income- tax Officer letters of confirmation, the discharged Hundis and particulars of the different creditors general index numbers were with the Income-tax Department. Attempts had been made to bring those creditors therefore the Income-tax Officer by issue of notices under Section 131 of the Act, but the said notices were returned with the endorsement 'left'. The Income-tax Officer, therefore, treated the entire amount of R. 1,50,000 as unproved cash credit and added the same to the income of the assessee"*. On these facts, the Hon'ble Apex Court is noted to have held as follows:

“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index number



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

was in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not 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. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.”

13. We also rely on the decision of Hon’ble Gujarat High Court in the case of **Dy. CIT v. Rohini Builders (256 ITR 360)**, wherein the Court 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:-



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

"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."

14. Further, as noted above, these loans had been repaid, and, therefore, the allegation of the AO that assessee was a beneficiary of the loan cannot be sustained on these facts and is liable to be deleted. We gainfully refer to the judgment of the Hon'ble Gujarat High Court



in the case of **PCIT vs. Ambe Tradecorp (P.) Ltd (supra)** where it has been held as follows:

"The Tribunal rightly recorded in para 29 of the judgment. "Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries being carried out in the later years. Thus, in the given facts and circumstances, were hold that there is no infirmity in the order of the Ld. CIT(A)."

10. We, therefore, under the given facts and circumstances of the case, are of the considered view since the assessee has successfully discharged its onus of proving the identity of the loan creditor, which in the instant case duly registered with Ministry of Corporate Affairs, having PAN and had filed return of income as well. Further creditworthiness of the transaction is proved with the fact that they have been carried through banking channel and sufficient funds were available with the loan creditors to explain the amount of loan given and the genuineness of the transaction is proved with the fact that the assessee company is carrying out regular business activity and the loan was obtained at commercial rate of interest which was also repaid at a later date in subsequent year, interest was paid on the loans and tax at source has been deducted and duly reflected by the loan creditor in their income tax return. Therefore, we fail to find any justification in the action of Id. AO invoking the provisions of Section 68 of the Act. We, thus,



ITA No.3433/Mum/2023

A.Y. 2020-21

Humayun Ahmed Shafi Ahmed Shaikh

set aside the finding of Id. CIT(A) and delete the addition of Rs.25,00,000/- made u/s 68 of the Act.

15. In view of the above reasoning therefore, we are of the considered view that the addition of Rs.50,00,000/- sustained by the Ld. CIT(A) u/s 68 of the Act was untenable both in law and on facts and thus the AO is directed to delete the same as well.

16. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on this 07/06/2024.

Sd/-
(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 07/06/2024.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai