

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 657/JP/2024  
निर्धारण वर्ष/Assessment Year : 2013-14

Shri Bimal Prakash Agarwal N-652, Shive Nagar, Malviya Nagar Jaipur	बनाम Vs.	The ITO Ward – 6(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADNPA 3293 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 13/06/2024  
उदघोषणा की तारीख / Date of Pronouncement: 10/07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. Addl. CIT(A)-2, Coimbatore dated 13-03-2024 for the assessment year 2013-14 raising therein solitary ground of appeal as under:-

“The Id.CIT(A) has erred on facts and in law in confirming the addition of Rs.5,49,000/- u/s 68 of the Act by treating the loan received from following parties as unexplained cash credit (1) Swapnil Agarwal – Rs.49,000/- (ii) Meenakshi Gupta – Rs. 49,000/- (iii) Kirti Agarwal – Rs.75,000/- (iv) Aakariti Agarwal – Rs.75,000/- (v) Krishan Kumar Rs.95,000/- (vi) UttamKumar Rs.2,06,000/-

2.1 As per the facts of the present case the assessing officer during the course of assessment observed that the assessee has taken loan of Rs. 5,49,000/- from 6 person and could not establish the genuineness and identity of the creditors therefore made additions by treating the amount as unexplained under section 68 of Income Tax Act. On appeal CIT also confirmed the additions made by AO.

2.2 Feeling aggrieved by the additions made by the revenue authorities assessee preferred appeal before this Bench. At the very outset learned AR appearing on behalf of the assessee apart from relying upon the written submissions reiterated the same arguments as were raised by him before the revenue authorities. It was submitted that the Appellant has filed confirmation of loan taken from Swapnil Agarwal which is at paper book page number 8, Meenakshi Gupta, Kirti Agarwal and Aakruti Agarwal and in respect of loan taken from Krishna Kumar and Uttam Kumar. The appellant has filed confirmation, affidavit and the bank statement of these persons. The summary of loan taken from these persons are as under :-

Name of person	Opening balance (in Rs.)	Loan received during the year (in Rs.)	Repayment during the year (in Rs.)	Closing balance (in Rs.)
Swapnil Agarwal	-	49,000/-	-	49,000/-
Meenakshi Gupta	46,000/-	49,000/-	-	95,000/-
Kirti Agarwal	1,18,000/-	75,000/-	-	1,93,000/-
Aakriti	48,000/-	75,000/-	-	1,23,000/-

Agarwal				
Krishan Kumar	8,31,000/-	95,000/-	-	9,26,000/-
Uttam Kumar	4,49,000/-	2,06,000/-	45,000/-	6,10,000/-

It was further submitted that the appellant has filed confirmation along with the PAN of first four persons however the remaining two persons are not assessed to Income Tax but their affidavit and bank statements have already been filed. Therefore in these circumstances, the Identity of all the person stands proved and also relied upon following judgements.

**Aravali Trading Co. Vs. ITO 187 Taxman 338 (Raj.) (HC)**

The jurisdictional HC while deleting the addition u/s 68 of the Act held as follows:-

*“20. This principle is fully applicable to the present case. The fact that the explanation furnished by the aforementioned four creditors about the sources where from they acquired the money was not acceptable by the Revenue could not provide necessary nexus for drawing inference that the amount admitted to be deposited by these four persons belonged to the assessee. **The assessee having discharged his burden by proving the existence of the depositors and the depositors owing their deposits, he was not further required to prove source of source.***

*21. Accordingly the Tribunal, and the AO had seriously erred and misdirected themselves in law by not correctly appreciating the legal principle about necessity of establishing such nexus once the assessee has discharged his onus by proving the existence of the depositors and the depositors having accepted their deposits with the assessee. Once this onus is discharged the presumption raised under s. 68 stands rebutted and it becomes burden of Revenue to prove that source of such deposits is traceable to assessee before the same can be treated as undisclosed income of the assessee concerned.*

*22. In view of the aforesaid discussion, this appeal must succeed. Accordingly, the appeal is allowed. The orders passed by the Tribunal, the CIT(A) and the AO are set aside to the extent additions of Rs. 3,15,000 in respect of the aforesaid cash credits found in the books of the account of assessee were added in the income of the assessee. The additions made in the income of the assessee of the aforesaid account are directed to be deleted and demand notice to be accordingly modified. There shall be no order as to costs.”*

**Labh Chand Bohra Vs. ITO 189 Taxman 141/ 219 CTR 571 (Raj.) (HC)**

The jurisdictional HC while deleting the addition u/s 68 of the Act held as follows:-

8. Examining the present case even on these parameters, first requirement is not relevant. So far as second requirement is concerned, there is no doubt about initial burden being on the assessee. So far as third requirement is concerned, obviously if the explanation is not satisfactory, then it is added. Then fourth requirement is that the firm has to establish that the amount was actually given by the lender. Fifth requirement is about genuineness and regularity in maintenance of the accounts, obviously of the assessee, and it is not the finding, that the accounts were not regularly maintained. Then sixth requirement is that if the explanation is not supported by any documentary or other evidence, then the deeming fiction created by s. 68 can be invoked. **In the present case, so far as 6th requirement is concerned, it is very much there in existence, inasmuch as the amount has been advanced by account payee cheques, through bank, and is duly supported by documentary evidence, as well as the evidence of the two lenders, and that satisfies the 2nd requirement also, about the discharge of burden on the part of the assessee to prove identity and genuineness of the transaction. So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in Daulat Ram's case (supra), and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source. In that view of the matter, since this part of the judgment runs contrary to the judgment of the Hon'ble Supreme Court, in Daulat Ram's case (supra), while this Court in a subsequent judgment in Mangilal's case (supra) relying upon Daulat Ram's case (supra), has taken a contrary view, we stand better advised to follow the view, which has been taken in Mangilal's case (supra).**

9. The net result is that all the three questions are answered in favour of the assessee and against the Revenue."

**Late Mangilal Agarwal T/H LRs Vs. ACIT (2008) 300 ITR 372 (Raj) (HC)**

Para 25 of this decision read as under:-

25. Considering these provisions, the High Courts have explained that the assessee cannot be presumed to have special knowledge about the source of source or origin of origin. Once the assessee points out a depositor from whom he has received money and if the depositor owns the advancement of money to the assessee, the further enquiry into the source of source or failure to explain source of source cannot result in invoking the provisions of s. 68 unless the existence of the person in whose name the credit entry is found is not proved or he disowns to have made such deposit or advancement. But once the named creditor is proved to exist and he owns to have lent money to the assessee, the same cannot be considered as income of the assessee unless the Revenue establishes by some evidence that it was really flowing directly from the assessee himself.

**CIT Vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC)**

Para 13 of this decision read as under:-

13. 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 numbers were in the file of the Revenue. The Revenue, apart from issuing

*notices under s. 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 creditworthy 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 anything further. In the premises, if the Tribunal came to the conclusion that the assessee has 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.*

2.3 On the contrary learned DR relied upon the orders passed by the revenue authorities and submitted that assessee could not prove the genuineness and identity of the creditors, therefore, additions may be upheld

2.4 I have heard the counsel for both the parties and also perused the material placed on record, judgements cited by the respective parties and the orders passed by the revenue authorities. From the records I noticed that assessee has taken loan of Rs. 5,49,000/- from 6 persons and in order to prove the said transactions, the assessee has filed confirmation of loan taken from Swapnil Agarwal, Minakshi Gupta, Kirti Agarwal and Aakruti Agarwal. However in respect of loan taken from Krishna Kumar and Uttam Kumar, the assessee has filed confirmation, affidavit and the bank statement of these person. I have also perused the summary of loan taken from these persons which is mentioned by me in the above Paras of this order and after analysing the entire factual position I find that the assessee has filed confirmation along with the PAN of first 4 persons and in respect of remaining two persons affidavit and bank statement was filed as these two persons are not assessed to

tax therefore in my view, the Identity of all these persons stands proved. I also noticed that the assessing officer has issued summons to all these persons and it is not the case of AO that summons have received back unserved Thus if these persons have not responded to the summons issued by the AO then he has wide powers to enforce their attendance in this regard. I draw strength from the decision of the Co-ordinate bench of ITAT Kolkata bench in the case of ACIT vs Gold Rush sales and Services Limited (2024), 204 ITD 421 wherein it was held that where assessee has filed all evidences proving identity and creditworthiness of share subscribers then mere non compliance to summons issued under section 131 to director of the assessee could not be a ground for making additions under section 68. I have further noticed from the records that out of the above mentioned 6 persons the assessee has already taken loan from 5 persons in the previous years and the loan taken in the earlier years was accepted by the revenue authorities. Hence it is not correct on the part of revenue authorities to presume that loan taken during the year is unexplained. As far as the case of Uttam Kumar is concerned, the assessee has also repaid Rs. 45000 to him on 8th June 2012 and thereafter has received loan from him on 7th July 2012 and 9th July 2012 therefore the addition to the extent of Rs. 45,000/- is otherwise not justifiable. Therefore, the addition made in the hands of the present assessee is unjustified and thus deleted.

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

Order pronounced in the open court on 10 /07/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /07/2024

**\*Mishra**

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

1. The Appellant- Shri Bimal Prakash Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 6(1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 657/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar