

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND  
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: 1426/Chny/2023

निर्धारणवर्ष / Assessment Year: 2018-19

Sharmila,  
No. 16, Krishna Street,  
T.Nagar,  
Chennai – 600 017.

Income Tax Officer,  
v. Non-Corporate Ward -1(6),  
Chennai.

**[PAN: BAKPS-7799-K]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. N.V. Lakshmi, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri. R. Vikneswaran, JCIT

सुनवाई की तारीख/Date of Hearing : 06.06.2024

घोषणा की तारीख/Date of Pronouncement : 26.07.2024

**आदेश /ORDER**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This appeal instituted by the assessee is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2018-19, vide order dated 06.10.2023.

2. The sole issue raised by the Assessee is that the Ld. CIT(A) erred in confirming the addition U/s.68 of the Act,

(hereinafter referred to as "the Act"), of Rs.30,50,000/- made by the Assessing Officer.

3. At the outset, we find that there is a delay of 1 day in appeal filed by the assessee, for which petition for condonation of delay along with reasons for delay has been filed. After considering the petition filed by the assessee and also hearing both the parties, we find that there is a reasonable cause for the assessee in not filing appeal on or before the due date prescribed under the law and thus, in the interests of justice, we condone delay in filing of appeal and admit appeal filed by the assessee for adjudication.

4. The brief facts are that, the assessee is an individual and has filed her return of income for the assessment year 2018-19 on 29.09.2018, admitting a total income of Rs.16,45,000/-. In the said return of income, the assessee returned a net loss of Rs.53,800/- from business carried on by her. The case was selected for scrutiny under CASS and the statutory notices were issued from time to time for which the assessee responded by submitting the replies along with submissions. The main reason for the selection of the case of scrutiny was to examine the

remuneration paid by the firm to the assessee, business loss and the unsecured creditors. After perusal of details, documents and other submissions made by the assessee before the AO, the assessment was framed U/s.143(3) of the Act, by passing an order on 07/04/2021, by making the addition of Rs.30,50,000/- in respect of following loan creditors as unexplained cash credit U/s.68 of the Act:

Mohan Kumar K	- Unsecured creditor	Rs.5,00,000/-
Sri Bairavar Site	- Unsecured creditor	Rs.5,50,000/-
Lalitha Jain	- Unsecured creditor	Rs.20,00,000/-

Aggrieved by the impugned order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).

5. The Ld.CIT(A) / NFAC, Delhi, was pleased to confirm the order of the AO by passing an order on 06/10/2023 by dismissing the appeal of the Assessee as detailed below :

*"5.7 All the grounds of appeal are on the subject of additions made u/s. 68 of the Income Tax Act. Hence these are examined & adjudicated together.*

*The facts of the case as discussed above are clearly show that the appellant failed to discharge the initial onus u/s. 68 of the Income Tax Act. The appellant has failed to provide cogent evidence to prove the identity & creditworthiness of the lender. No documents are adduced to prove the genuineness of the transactions. As such, the onus did not shift to the Assessing Officer for making any enquiries. Hence, the judicial precedents*

*cited by the appellant are found to be inapplicable in the instant case. Therefore, the additions made u/s. 68 of the Income Tax Act aggregating to Rs.30,50,000/- are upheld. In terms of the aforesaid discussion the grounds of appeal of the appellant fail. Hence, the appeal is Dismissed."*

Aggrieved by the impugned action of the Id.CIT(A), the assessee preferred an appeal before us.

6. The Ld.AR stated that, the Ld.CIT(A) has erred in confirming the additions made U/s.68 of the Act, even though the assessee had filed the details of the loan creditors to prove their identity, genuineness and credit worthiness to pay the loans to the assessee. The Ld.AR further stated that the Assessing Officer erred in making the addition with regard to loan received during the assessment year 2018-19 of Rs.20,00,000/- from private financier Lalitha Jain. The "AO" vide his letter dated 24<sup>th</sup> December 2020 had requested to furnish the details of loan creditors along with confirmation letter from the creditors and bank statements showing the receipt of the amounts received. In response to the above notice, the assessee had furnished break up for the unsecured creditors reflecting in the return of income on 08<sup>th</sup> January 2021. Further on 29<sup>th</sup> January 2021 the assessee had

furnished the copy of the confirmation letter received from Lalitha Jain - Loan creditor. The assessee has also deducted TDS on the interest paid to the Loan Creditor, the same can be seen from the confirmation letter given by the loan creditor. The Ld.AR drew our attention to the paper book 1 & 2 containing the copy of the bank statement of the Loan creditor to show that the lender had sufficient bank balance to give loan to the assessee along with the loan confirmation ledger duly signed by the lender (Page No.1 & 2 of PB 1). Further, going by the judicial pronouncements to establish the fact of receipt of a cash credit as required u/s 68 of the Income Tax Act, 1961, the assessee has to prove three important conditions, namely,

- (1) The identity of the person (Proved via confirmation letter, address).
- (2) Genuineness of the transaction (Proved via confirmation letter, bank statements)
- (3) Capability of the person giving cash credit [Proved via direct bank credit to our account from the lender account).

7. The Ld. AR further submits that the said loan has been paid in full along with the Interest of Rs.3,50,000/-. The Ld.AR stated with regard to another loan during the assessment year 2018-19 had received Rs.5,00,000/- from Mr.Mohan Kumar,

who is the relative (Spouse of the Cousin Sister) of the assessee, who is a non-resident staying in the United States of America. The Ld. AR had provided the copy of the bank statement for the receipt of the amount in Bank account (Page No.8 of the paper book 2) and has also shared the address of Mr. Mohan Kumar. The Assessee submits that the hand loan received from Mr. Mohan Kumar had been subsequently repaid to Mrs. Sumathy Mohan kumar (Cousin sister of the Appellant), Wife of Mr. Mohan Kumar on 18 February 2019. Copy of the relevant payment made to Mrs. Sumathy Mohan Kumar is enclosed (Page No.20 of Paper Book 2).

8. The Ld.AR further submitted that, during the assessment year 2018-19 had received Rs.5,50,000/- from Sri Bhairavar Site Developers, a partnership firm in which one of the Partner is a cousin of the Assessee. The amount received is a hand loan in bank account for personal purpose. The Assessee had submitted the copy of the bank statement for the receipt of the amount in Bank account, the confirmation letter received for the payment of loan and has also submitted the Income tax returns filed for the A Y 2018-19 (Page No.3 to 7 of paper Book 1) having PAN - ACSFS3909C. In view of the detailed

submissions made here above, it is evident that the assessee has provided all the necessary details at the time of assessment with regard to the identity of the loan creditors and the genuineness of the transaction, It is also evident that the transactions were genuine from the fact that all the loan received were subsequently repaid by the assessee. The assessee therefore prays that the appeal may be allowed in respect of all the grounds raised therein.

9. Per contra, the Ld. DR asserted the action of the Id.CIT(A) and stated that, the Ld.CIT(A) has considered the all facts and thereby confirmed the action of the AO and hence prayed for confirming the addition of unsecured loan creditors as unexplained credits U/s.68 by dismissing the appeal of the assessee.

10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The Scrutiny assessment of the assessee for the A Y 2018-19 was carried out by the AO and framed the assessment by accepting the 2 loan creditors and made addition of 3 loan creditors to the tune of Rs.30,50,000/- and passed the

assessment order U/s.143(3) of the Act. Before the Ld.CIT(A), the assessee filed some of the details and documents of the loan creditors to prove its identity, genuineness and creditworthiness of the lenders and the Ld.CIT(A) was not satisfied with the supporting documents filed and confirmed the additions made by the AO. Before us, the Ld.AR has filed the paper book consisting of various documents to prove the creditworthiness of the creditors apart from identity and genuineness.

(1) The following documents are filed in respect of loan of Rs.20.00 Lakhs taken from Lalitha Jain :

- a. Confirmation letter issued by the Lender along with the PAN
- b. Bank statement of the assessee showing the credit of loan amount received from Lalitha jain
- c. Bank statement of the Lender to prove the source for giving loan to the assessee.

(2) The following documents are filed in respect of loan of Rs.5.00 Lakhs taken from Mohankumar.K :

- a. Confirmation letter issued by the Lender along with the PAN

b. Bank statement of the assessee showing the credit of loan amount received from Mohankumar.K

c. Banker's certificate (Kotak Mahindra bank) of the Lender to prove the source for giving loan to the assessee

(3) The following documents are filed in respect of loan of Rs.5.50 Lakhs taken from Sri Bairavar Site Developers :

a. Confirmation letter issued by the Lender along with the PAN

b. Bank statement of the assessee showing the credit of loan amount received from Sri Bairavar Site Developers

c. Copy of Income Tax returns for the A Y 2018-19, Balance sheet & Profit & Loss account as on 31.03.2018.

11. On perusal of the relevant documents filed by the Assessee, we are of the considered view that, the assessee has proved the identity, genuineness and creditworthiness of the lenders to the tune of Rs.25.00 Lakhs in respect of Smt.Lalitha Jain and Mohankumar.K. However, the income tax returns and other financials filed by the assessee in respect of M/s. Sri Bairavar Site Developers, does not support to prove the credit worthiness of the lender. Therefore, considering the facts and circumstances of the case, we are of the considered view that,

the assessee has proved the credit worthiness of the lenders to the tune of Rs.25.00 Lakhs (Rs.20.00 Lakhs of Lalitha Jain and Rs.5.00 Lakhs of Mohankumar.K) and hence we direct the AO to delete the addition of Rs.25.00 Lakhs. The addition made by the AO and confirmed by the Ld.CIT(A) on account of loan creditor of Sri Bairavar Site Developers to the tune of Rs.5.50 Lakhs is sustained.

12. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26<sup>th</sup> July, 2024 at Chennai.

**Sd/-**

(एबी टी वर्की)

**(ABY T VARKEY)**

न्यायिक सदस्य/**Judicial Member**

**Sd/-**

(एस.आर.रघुनाथा)

**(S. R. RAGHUNATHA)**

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 26<sup>th</sup> July, 2024

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF