

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE SMC BENCH, INDORE

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.212/Ind/2024  
(Assessment Year: 2013-14)

Prakash Chand Patel, Prakash Petroleum, Begumgnaj Raisen	Vs.	Addl. JCIT(A) Mysore, Mysore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: BIWPP6940F</b>		
Assessee by	S/Shri Mohit Parihar & Rakesh Merotha, ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	01.08.2024	
Date of Pronouncement	05.08.2024	

**O R D E R**

This appeal by the assessee is directed against the order dated 11.01.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Mysore for A.Y.2013-14 which is arising from the assessment order u/s 143(3) of the Act dated 29.03.2016.

2. Assessee has raised following grounds of appeal:

*"1 That upon the facts and under the circumstances of the case, learned Assessing officer erred in making additions in the total income of the appellant of Rs. 5,00,000/- + Rs. 4,50,000/-. These additions are arbitrary, unwarranted, unjustified, excessive, imaginary and against the law.*

*2 Section 68: That learned A.O. has wrongly held the creditors of Rs. 5,00,000/- and Rs. 4,50,000/- as unproved. It is against the facts of the case and bad in law and also unjustified.*

*3 Upon the facts and under the circumstances of the case, learned Assessing officer erred in initiating the penalty proceeding u/s 271(1)(c) of the I.T. Act 1961. It is wrong, unjustified and also bad in law.*

*4 That the appellant was not provided reasonable opportunity to further justify the genuineness and credit worthiness of the creditors which is against the basic principles of natural law and justice. The learned Assessing officer ignored the fact that both the creditors were having sufficient sources of investment, treating them fully unexplained and unproved.*

*5 The Appellant craves leave to add, alter, amend, and modify any and/or all of the aforesaid grounds.*

*6 The appellant is separately filling an interim application seeking stay of the impugned order with reason for the same.*

*7 The appellant, therefore, submits that the impugned order dated 11/01/2024 be set aside.*

*8 For the reasons stated above, the appellant submits that the impugned order dated 11/01/2024, and received by appellant on 12/01/2024 ought not to have been passed by the respondent. The appellant further submits that grave and irreparable injustice, harm, loss, prejudice and damage will be caused to it if the relief and orders are not granted as prayed herein."*

3. The facts in brief are that the assessee is an individual owns a petrol pump in the name of Prakash Petroleum. Business income of Rs.4,19,475/- declared in the Income Tax return along with agriculture income of Rs.1,32,640/-. Case selected for scrutiny under CASS followed by validly issuing and serving notices u/s 143(2) of the Act. So far as main the issue raised in the instant appeal is concerned the same is regarding unexplained cash credit u/s 68 of the Act. Ld. A.O during the course of assessment proceedings observed that the assessee received unsecured loan of Rs.5 lakh from Shri Laxmi Narayan Patel and Rs.4,50,000/- from Shri Naresh Kumar Kurmi. It was submitted by the assessee that Shri Laxmi Narayan Patel is his father and Shri Naresh Kumar Kurmi is his brother. The assessee submitted the bank account of lenders along with PAN Number. Ld. A.O on perusal of the bank statement noticed that prior to issue of cheque to the assessee there is a cash deposit of Rs.5,00,000/- and Rs.7,00,117/- in the bank account held by Shri Laxmi Narayan Patel and Shri Naresh Kumar Kurmi respectively. Ld. A.O thus directed the assessee to explain the creditworthiness of the alleged cash creditors. It was submitted that both the cash creditors owned agriculture land and have sufficient agriculture income for past many years and out of accumulated cash the alleged sum has been given as loan. Ld. A.O was not satisfied with the submissions and made the addition u/s 68 of the Act at Rs,9,50,000/- along with other minor addition of Rs.45,708/- and assessed the income at Rs.14,15,188/-.

3.1 Aggrieved assessee preferred appeal before Ld. CIT(A) but failed to succeed. Ld. CIT(A) was satisfied the identity and genuineness of the transactions but not satisfied with the creditworthiness of the cash creditors. Relevant observation of the Ld. CIT(A) dismissing the assessee's ground of appeal and confirming the addition of Rs.9,50,000/- reads as under:-

*"10. The submission made by the appellant has been considered but not found to be tenable for the following reasons. The appellant has claimed that the AO has wrongly estimated the income from each acre at Rs. 10,000/- and requested the appellate authority to estimate the same at Rs. 30,400/-. However, the appellant has not submitted any documentary evidences substantiating his claim of creditors earning income from agricultural activity. Except for submitting the land records which holds land under the creditor's name, the appellant has not submitted any evidences viz. sale bills, purchase bills, nature of agricultural activity, agricultural goods produced etc. which proves the income earned by the creditors from the agricultural activity. It is seen that the assessee was asked to prove the "Triple Markers of Cash credits namely Identity, Creditworthiness and Genuineness of Transaction. Despite giving opportunity to prove creditworthiness of the depositor and genuineness of the transaction by furnishing clinching evidences, the appellant could not prove the same. In the absence of corroborating evidences, credit worthiness of the lenders and genuineness of the transactions are not proved. The onus lies on the appellant to prove genuineness of transaction. It is noticed that the appellant was afforded with adequate opportunities to furnish the documentary evidences in support of his claim.*

*The Assessing Officer after discussing the issues in detail, has reasonably made addition amounting to Rs. 9,50 000/- being cash credit within the meaning of section 68 of the I T. Act, 1961.*

*10.1. In the submissions made during the appellate proceedings, the appellant has furnished the confirmation of loan by the creditors and requested the appellate authority to consider the same as an evidence in support of genuineness of the amount taken as loan. The appellant was provided as many as 5 opportunities during the appellate proceedings. However, the appellant has failed to prove the genuineness of the loan by-*

*producing any documentary evidence in support of his claim. Consequently the addition made by the AO was not challenged adequately in the appellate proceedings in the absence of any clinching documentary evidences. In view of the foregoing discussions in pars supra, this appellate authority is of the opinion that this grounds of appeal does not have any leg to stand upon and hence the ground of the appeal Nos. 3 & 4 does not hold good.*

*10.2. Further, reliance is also placed upon the recent Hon'ble Supreme Court decision dated 06.04.2023 in the case of Rupal Jain Vs. CIT. in [2023] 152 taxmann.com 346 (SC) in favour of revenue stating that "assessee though had disclosed source of deposit but could not establish nature thereof, three conditions required to be proved by assessee as per section 68 could not be proved and thus. such deposit was rightly treated as unexplained credit under section 68 and appeal filed by the appellant was dismissed.*

*10.3. The appellant failed to furnish proper explanation with supporting documentary evidence to prove his contentions during the course of the appeal proceedings too. Thus, respectfully following the decision of the Hon, Apex court referred in the above"*

3.2 Aggrieved assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee placed paper book containing 74 pages which consists of various details and documents which already stood filed before the lower authorities and includes copy of Form 35 & 36, copy of I.T. return, bank statement and affidavit of both the cash creditors stating to have given unsecured loan to the assessee etc. Ld. Counsel for the assessee submitted that the alleged loan has been received from the relatives which in this case are father and brother. Alleged cash creditors have submitted in their affidavit stating that they have regular source of agriculture income and out of the savings from agriculture land they have given

the alleged loan to the assessee. Ld. Counsel of the assessee also submitted that Shri Laxmi Narayan Patel holds 45.86 acres of land and Shri Naresh Kumar Kurmi holds 19.68 acres of land in their name. He has also submitted that both the lower authorities have wrongly estimated income from per acre of land and is much below the normal income earned. He submitted that normally around Rs.30,000/- per acre is the income earned by the alleged cash creditors but Ld. A.O estimated it at a very low amount of Rs.10,000/- per acre without any scientific basis. He thus concluded that since the identity and creditworthiness of the cash creditors and genuineness of the transaction is proved no addition is called for u/s 68 of the Act.

3.3 On the other hand Ld. Departmental Representative vehemently supported the orders of Ld. CIT(A) and mainly referred to para 10 of the impugned order which has been extracted above in the preceding para.

4. I have heard rival contentions and perused the record placed before me. Issue of addition on account of unexplained cash credit u/s 68 of the Act at Rs.9,50,000/- is before me. The assessee has received unsecured loans from the following two parties:-

- (i) Shri Laxmi Narayan Patel (father of the assessee)  
Rs.5,00,000/-
- (ii) Shri Naresh Kumar Kurmi (brother of the assessee)  
Rs.4,50,000/-

4.1 Section 68 of the Act has a direct bearing on the issue raised before me and the same is reproduced below:

***"68. Cash credits.***

*- 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] [ Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).], 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—(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 81[or 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."*

4.2 From perusal of the above section, I observed that if any cash credit is found in the books of the assessee, the assessee is required to explain the nature and source of such sum by placing necessary evidence on record but if the A.O. is not satisfied then Section 68 of the Act is invoked and addition of such unexplained amount is made in the hands of the assessee. Now for explaining the nature and source it has been consistently held by the Hon'ble courts that the assessee is required to prove the identity and

creditworthiness of the cash creditor and genuineness of the transaction.

5. Now examining the facts of the instant case I observe that the assessee has placed copies of bank statements and identity proof of both cash creditors and the same has not been doubted by the lower authorities. So far as the genuineness of the transaction is concerned both the cash creditors are relatives of the assessee as Mr. Laxminarayan Patel is the father and Shri Naresh Kumar Kurmi is the brother and they have given the alleged loan to the assessee for carrying on the business in the name of Prakash Petroleum. So the genuineness of transaction is also proved.

6. The last item left is the creditworthiness of the cash creditors. Admittedly cash was deposited by the respective creditors immediately prior to issuing of loan cheque to the assessee. Now the question arises whether the cash creditors had sufficient source to explain the deposit of cash in the bank account. First of all both the cash creditors have filed an affidavit accepting the transaction and also stated that the source of cash deposit in the bank account is the agriculture income earned by them for current and past many years. Now these claim of the cash creditors that they have

sufficient agriculture income is further proved by an uncontroverted fact that Shri Laxmi Narayan Patel owns 45.85 acres of land and Shri Naresh Kumar Kurmi holds 19.68 acres of land. Copies of Rinpustika evidencing their ownership of agriculture land has been placed and not been doubted by the revenue authorities. The only point raised by the Ld. CIT(A) is regarding the amount of income estimated to be earned from per acre of land. Assessee is claiming that normally income of Rs.30,000/- per acre is earned but Ld. CIT(A) confirming the observation of Ld. A.O, estimated at Rs.10,000/- per acre. Even if the average of both the figure is taken then also approximate Rs.20,000/- per acre is earned by Shri Laxminarayan Patel and for 45.85 acres total income would be approximately Rs.10 lakh and for Shri Naresh Kumar Kurmi at Rs.4 lakh. Thus even taking a pessimistic view of Rs.20,000/- per acre of agriculture income, then also sufficient funds is deemed to be available with both the cash creditors including the accumulated funds of preceding years.

6.1 Under these given facts and circumstances of the case I found that the assessee has successfully explained the nature and source of the alleged sum and has filed sufficient evidence to prove the

identity and creditworthiness of cash creditors and genuineness of the transaction and has successfully discharged the primary onus casted upon him to explain the nature of source of alleged sum and further revenue failed to prove on record anything contrary with any evidence to controvert the contentions made by the Ld. Counsel for the assessee. Therefore, in my considered view Ld. CIT(A) erred in confirming the impugned addition made by the Ld. A.O u/s 68 of the Act. I therefore set aside the findings of Ld. CIT(A) and delete the impugned addition of Rs.9,50,000/- made u/s 68 of the Act and allow the effective grounds of appeal raised by the assessee. Remaining grounds being general and consequential in nature needs no adjudication.

7. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 05.08.2024.

***Sd/-***

**(MANISH BORAD)**  
Accountant Member

Indore 05.08.2024

*Dev/Sr. PS*

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*