

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1180/Ahd/2024  
Assessment Year 2017-18**

Assistant Commissioner of Income Tax, Circle-3(1)(1), Ahmedabad  <b>(Appellant)</b>	Vs	Puroshottambhai Bachubhai Pitroda Opp. Ambalal Estate Near Cadila Bridge, Ghodasar, Ahmedabad, Gujarat-380050 <b>PAN: ABWPM6274B (Respondent)</b>
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**Revenue Represented: Shri Ashok Kumar Suthar, Sr.D.R.  
Assessee Represented: Shri Dhinal Shah & Shri Bhadresh  
Gandhakwala, A.Rs.**

Date of hearing : 03-09-2024  
Date of pronouncement : 19-09-2024

**आदेश/ORDER**

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

This appeal is filed by the Revenue as against appellate order dated 02.04.2024 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 Grounds of Appeal raised by the Revenue reads as under:

*1) The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.91,50,000/- made by A.O. on account of unsecured loans received from lenders treated as unexplained cash credit u/s. 68 of the Act.*

*2) The appellant craves leave to add, alter and/or to amend all or any the ground before the final hearing of the appeal.*

3. The brief facts of the case is that the assessee is an individual engaged in the business of mining contracts. For the Asst. Year 2017-18, assessee filed his Return of Income on 25-10-2017 declaring total income of Rs.1,30,61,260/-. During the assessment proceedings, the assessee was requested to furnish details of unsecured loans availed from four parties amounting to Rs.91,50,000/-. The assessee furnished confirmation of accounts along with Bank statements and Income Tax Return filed by the creditors. However on perusing the same, the Assessing Officer held that in the bank accounts creditors were maintaining meagre balance amount which is not commensurate with that of the loan given to the assessee. Thus creditworthiness of the loans were not proved by the assessee and thereby treated the entire loan amounts of Rs.91,50,000/- as unexplained cash credit u/s. 68 of the Act and taxed u/s. 115BBE of the Act.

4. Aggrieved against the same, assessee filed an appeal before Ld. CIT(A) and contended that the loans taken from M/s. Darshan Travel Co, M/s Dipak Enterprise and M/s. Rajesh Enterprise, the loans were given by them out of the capital and not out of the income, therefore the income disclosed in the Return of Income has

no relevance. Further copy of the bank statement of the assessee and above creditors, ITR, Ledger Accounts along with Confirmations of three parties filed. Similarly in the case of M/s. Ankit Enterprise [now M/s. Golden Enterprise] copy of the bank statement, ITR, Ledger Accounts along with Confirmation enclosed. The entire loan amounts were taken through cheques through banking channel for the purpose of assessee's business out of personal relationship with the creditors and relied upon various case laws. Further in some of the cases, the assessee repaid the loan through banking channel. Considering the above submissions, the Ld. CIT(A) deleted the additions by observing as follows:

"It is noted that, all the loans were received by the assessee by account payee cheques and the repayments of loans have also been made by account payee cheques in relation to those loans. Thus it is clear that the assessee had discharged the initial onus which lays on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, permanent accounts numbers and bank statements wherever readily available. It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques. The said Depositors 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. Thus, looking to above facts, additions of Rs. 91,50,000/- on accounts of

unexplained cash credit u/s. 68rws115BBE in case of assessee is illegal, bad in law and hence, required to be deleted.

Further, we may point out that section 68 under which the addition has been made by the Assessing Officer reads as under

"Section 68. 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."

The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this, case the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word. "may" and not "shall". Thus the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee.

Further, the various judgments which are cited by the assessee have been considered as well. As can be seen from the aforesaid para of the impugned assessment order, the reasoning given by the A.O. for making addition is not convincing. The A.O. has not given rebuttal to the appellant's contention that the reasoning given by the A.O. do not in any way prove that the impugned cash credit of Rs. 91,50,000/- is unaccounted income of the appellant and the same is merely on the basis of assumptions, presumptions and surmises of the A.O. Therefore, I am inclined to accept appellant's contention that the amount of Rs. 91,50,000/- cannot be brought to tax u/s. 68 of the Income-tax Act, 1961.

Considering the above facts of the case and in law, and after considering the detailed written submission made by the appellant during the course of appellate proceedings, I am of the considered view that addition of Rs.91,50,000/- is treated as unexplained cash credits under section 68rws115BBE of the Income-tax Act, 1961, is not justified. The A.O. is

therefore directed to delete the same. This ground of appeal raised by the appellant is thus allowed.”

5. Ld. Sr. D.R. Shri Ashok Kumar Suthar appearing for the Revenue supported the order passed by the Assessing Officer and requested to confirm the addition made by him.

6. Per contra Ld. Counsel Shri Dhinal Shah appearing for the assessee submitted before us copy of the documents namely confirmation of accounts, bank statements of the creditors, ITR of all the creditors what was filed before the Lower Authorities were placed before us. It is seen that the assessee received unsecured loans of Rs.4,50,000/- on 28-11-2016 and Rs.7,65,000/- on 29-11-2016 from M/s. Darshan Travel Co. which was repaid by the assessee in subsequent year on 13-03-2018 of Rs.8,80,000/- and 14-03-2018 a sum of Rs.3,00,000/- thereby the entire loan was repaid by the assessee. Relevant bank statements placed on record. Similarly in the case of Dipak Enterprise, unsecured loans of Rs.5,00,000/- and Rs.7,00,000/- received on 29-11-2016 and 30-11-2016 were repaid by RTGS to Dipak Enterprise during the same financial year on 23-03-2017. Relevant bank statements are also placed before us. Similarly in the case of M/s. Rajesh Enterprise and M/s. Golden Enterprise wherein partial repayment is made by the assessee through banking channels. Since the ingredients of Section 68 does not attract in the above cases. Thus Ld. CIT(A) deleted the above addition made by the Assessing Officer which does not require any interference and the Revenue appeal is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. It is an undisputed fact that the unsecured loan availed by the assessee were repaid during the year or subsequent years through banking channels. The above loans are stated to be availed for business expediency and duly accounted in his books of accounts. When the assessee discharged its initial onus of proving the identity, genuineness of the transaction and creditworthiness of the parties, the question of invoking Section 68 does not arise. Further Ld. CIT(A) considered the facts of the case in detail and deleted the addition which in our considered opinion does not require any interference. Thus the grounds raised by the Revenue is devoid of merits and is liable to be dismissed.

8. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 19-09-2024

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 19/09/2024**

**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