

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1887/Del/2024  
(Assessment Year: 2015-16)**

Atul Krishna, 1, Ambedkar Bhawan, Subharti Puram, Meerut, Uttar Pradesh (Appellant) <b>PAN:AAYPK2016J</b>	Vs. DCIT, Central Circle, Meerut  (Respondent)
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Assessee by :	None
Revenue by:	Ms. Kanchan Garg, Sr. DR
Date of Hearing	13/11/2024
Date of pronouncement	25/11/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.1887/Del/2024 for 2015-16, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-3, Noida [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. CIT(A),Kanpur-4/10877-17 dated 28.02.2024 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.12.2017 by the Assessing Officer, DCIT, Central Circle, Meerut (hereinafter referred to as 'Id. AO').
2. At the outset, none appeared on behalf of the assessee despite issuance of notice. Hence we proceed to dispose of this appeal on hearing the learned DR and based on materials available on record.
3. The ground No. 1 raised by the assessee is challenging the confirmation of disallowance of interest expenditure of Rs 1,50,045/-.

4. We have heard the learned DR and perused the materials available on record. The assessee is an individual deriving income from salary, interest and income from profession. The assessee disclosed interest income of Rs. 29,34,126/- and against which claimed deduction towards interest expenditure restricted to Rs. 28,74,126/- in the return of income. The interest income was earned primarily from advances made to group concerns namely Subharti KKB Charitable Trust of Rs 7,26,928/- and Lokpriya Nursing Home of Rs 19,97,153/-. The assessee had made payment of interest on unsecured loans to certain parties to the extent of Rs 54,07,966/- but had restricted the claim of deduction only to the extent of interest earned and accordingly claimed deduction of Rs 28,74,126/-. The Learned AO proceeded to disallow the entire interest expenditure of Rs. 28,74,126 in the assessment. The assessee pleaded that the unsecured loans borrowed by him were utilized for advancing loans to aforesaid parties from whom interest income was earned. Hence, there was clear nexus between the borrowed funds and its utilization of advancing loans to certain parties which had earned interest income to the assessee. Accordingly, the interest paid by the assessee becomes an allowable expenditure under section 57(iii) of the Act. Further, alternatively, it was also argued that assessee had indeed shown income from profession and hence the interest expenditure would be allowable as deduction even under section 36(1)(iii) of the Act.

5. The Learned CITA observed that assessee had also shown savings bank interest of Rs 2,10,045/- from bank, but ultimately only a sum of Rs 60,000/- was offered as net interest income in the return. The Learned CITA accordingly restricted the disallowance only to the extent of Rs 2,10,045/- towards interest.

6. From the facts narrated above, it is not in dispute that the borrowed funds have been utilized by the assessee for advancing loans to certain parties from whom interest income has been indeed earned by the assessee. Hence, one-to-one nexus has been proved beyond doubt. Accordingly, the interest expenditure paid by the assessee on the unsecured loans becomes an allowable expenditure for the purpose of earning interest income in terms of section 57(iii) of the Act. Accordingly, we direct the Learned AO to grant deduction on account of interest paid and ground no. 1 raised by the assessee is hereby allowed.

7. The ground no. 2 raised by the assessee is challenging the confirmation of addition of Rs 36 lakhs made on account of unsecured loans received during the year.

8. We heard the learned DR and perused the materials available on record. The assessee during the year under consideration was in receipt of unsecured loans from the following parties:-

Sl. No.	Name of the lender	Amount (Rs.)
1	Renu Sharma	1,00,000/- 1,00,000/-
2	Rakesh Kumar Sharma	2,00,000/-
3	Smt. Pushpa	10,00,000/-
4	Piyush Kumar	20,00,000/- 5,00,000/-
5	Nirmala Medical Store	2,50,000/-
6	Seema Sirhohi	10,00,000/-
7	Soni Jain	2,00,000/-
	Total	53,50,000/-

The learned AO in the assessment proceeded to treat the entire receipt of unsecured loans in the total sum of Rs 53,50,000/- as undisclosed income under section 69A of the Act. Before the learned CITA, the assessee furnished various additional evidences, which were duly admitted and a

remand report was called for from the learned AO. The learned AO vide letter dated 16-11-2023 submitted the remand report, highlighting the fact that confirmed copy of account, copy of ITR and copy of bank statement was produced by the assessee only in respect of one of the lender, M/s Nirmala Medical Store. Accordingly, the three ingredients of section 68 of the Act, i.e identity of the lender, credit worthiness of the lender and genuineness of the transaction stood duly complied only in respect of Nirmala Medical Store. The learned CITA confronted the remand report of the learned AO to the assessee. The learned AR of the assessee submitted confirmed copy of ledger account, bank statement of the lender in respect of Seema Sirohi. The learned CITA examined the same. The learned CITA confronted the assessee as to why the ITR of Seema Sirohi was not filed by the learned AR. In response to the same, the assessee submitted that Seema Sirohi was not falling within the tax bracket and hence she was not obliged to file her income tax return. The confirmation of loan given by Ms. Seema Sirohi to the assessee together with her source of making payment to the assessee was reproduced in page 20 of the order of learned CITA. The learned CITA again forwarded this confirmation to the learned AO via email dated 06.02.2024 seeking his comments. A remainder was also sent on 14.02.2024 by email. But no reply was filed by the learned AO with regard to this confirmation from Seema Sirohi. Accordingly, the learned CITA held that assessee had duly proved the three ingredients of section 68 of the Act in respect of loan received from Seema Sirohi.

9. With regard to loan received from Piyush Kumar, the assessee submitted that the said loan was returned back by the assessee to him to the extent of Rs. 5,00,000/-. In support of this, the assessee submitted a confirmed ledger copy of Mr. Piyush Kumar together with his PAN before the learned CITA. From the perusal of the ledger account, the learned CITA

observed that assessee had received Rs. 20 lakhs on 7-5-2014 and repaid the same on 13-8-2014 by account payee cheque. Subsequently, a fresh loan of Rs. 5 lakhs was received by the assessee on 23-8-2014. The source of the lender for advancing this fresh loan is out of the loan repaid by the assessee. The assessee furnished the bank statement of Piyush Kumar to explain the source available with him to advance the loan of Rs. 5 lakhs on 23-8-2014. The extract of the said bank statement is reproduced in page 22 of the order of learned CITA. The learned CITA observed that out of the total loans received of Rs. 53,50,000 by the assessee, loans of Rs. 17.50 lakhs (from aforesaid three parties) stood duly confirmed and found to be satisfactory by complying with the three ingredients of section 68 of the Act. Accordingly, the learned CITA restricted the addition under section 69A of the Act only to the extent of Rs. 36 lakhs (5350000-1750000). Aggrieved, the assessee is in appeal before us.

10. It is pertinent to note that against the reliefs granted by the learned CITA to the extent of Rs 17.50 lakhs in respect of loans received from three parties, the revenue is not in appeal before us.

11. First of all, we would like to state that in respect of loan received from Mr Piyush Kumar, the loan of Rs 20 lakhs received on 7-5-2014 was repaid on 13-8-2014 and thereafter fresh loan of Rs 5 lakhs was received from the said party. The learned AO in the assessment had added both old as well as the fresh loans. Once the second loan of Rs 5 lakhs is accepted as genuine and found to be satisfactory, there is no case for treating the earlier loan of Rs 20 lakhs from the same party to be non-genuine. Hence we direct the learned AO to delete the addition of Rs 20 lakhs received from Mr Piyush Kumar.

12. It is pertinent to note that the addition on account of unsecured loans) was made by the learned AO under section 69A of the Act. On

perusal of the provisions of section 69A of the Act, the basic pre-condition is that assessee should be found to be the owner of any money, bullion, jewellery, etc. for which assessee was not able to explain the source thereon or the explanation found given by him was not found to be satisfactory in the opinion of the learned AO. In the instant case, no such satisfaction per se has been recorded by the learned AO or by the learned CITA that assessee was found to be the owner of any money, bullion, jewellery, etc. On the contrary, assessee has merely received loans from certain parties totalling to Rs 36 lakhs. The learned CITA sought to examine the veracity of the loans from the angle of section 68 of the Act by asking the assessee to prove the three ingredients of section 68 of the Act. In our considered opinion, though mentioning of wrong section may not be fatal to the addition that is being made, the burden of proof clearly shifts from assessee to the department when provisions of section 69A of the Act are being invoked. When an addition is being contemplated under section 68 of the Act, the burden is on the assessee to prove all the three ingredients by proving the nature and source of credit found credited in the books. If such burden is not discharged by the assessee, then the credits found thereon shall be deemed to be the income of the assessee for the year under consideration in terms of section 68 of the Act. Whereas, for invoking the provisions of section 69A of the Act, the revenue had to first prove that assessee is found to be the owner of any money, bullion, jewellery etc. Unless such burden is discharged by the revenue, the onus does not get shifted to the assessee to prove the source of such money and consequentially the deeming fiction cannot be applied. Hence, there is a huge difference between burden and onus of proof in terms of section 68 and 69A of the Act. This being not satisfactorily explained by the revenue in the instant case, we hold that no addition could be made in the hands of the assessee for the loans received totaling to Rs 36 lakhs from certain

parties under section 69A of the Act. In any case, we have already held that Rs 20 lakhs received from Mr Piyush Kumar cannot be subject matter of addition at all. With these observations, the ground No. 2 raised by the assessee is hereby allowed.

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

Order pronounced in the open court on 25/11/2024.

**-Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 25/11/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi