

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.763/Ahd/2023  
(Assessment Year: 2013-14)

Atiresh Sales Pvt. Ltd., 603, Status-II, B/h. Shakamba Party Plot, Nr. Manav Mandir, Memnagar, Ahmedabad-380052	Vs.	Income Tax Officer, Ward-1(1)(3), Ahmedabad
[PAN No.AABCA3070E]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Kalpesh Shah, A.R.
<b>Respondent by:</b>	Shri Santosh Kumar, Sr. DR

<b>Date of Hearing</b>	06.09.2024
<b>Date of Pronouncement</b>	03.12.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi vide order dated 28.07.2023 passed for A.Y. 2013-14.

2. The brief facts of the case are that the assessee is engaged in the business of Manufacturing and Trading of Mill Board Paper, Cone, S.S. Rolled Patta and commission agent. The assessee company filed it’s return of income declaring total income of Rs. 2,77,330/-. During the assessment, the AO completed total assessment at an income of Rs. 61,45,700/- and made additions on account of deposits taken from three parties, who the AO observed were not assessed to tax and their credit worthiness was not proved. The loans were taken from the following parties:

(i) Shri B. J. Shah-HUF (Rs. 49,28,500/-):

The AO observed that this HUF had not filed return of income. The assessee did not give evidence in support of its contention that the depositor is doing retail business. The assessee furnished computation and Profit & Loss Accounts, which was clearly an afterthought. On perusal of bank statement, there were total deposits of Rs. 18.43 lakhs, which were transferred to the assessee on the same date itself. The AO was of the view that the cash deposits in this depositor's bank account are nothing but the assessee's own money routed through the depositor B. J. Shah-HUF account.

(ii) Shri Jasubhai Shah (Rs. 60,000/-)

The AO observed that Shri Jasubhai Shah had not filed return of income. On verification of bank statement, AO observed that there is cash deposit of Rs. 60,000/- on 31.12.2012 and on the same date, it has been transferred to the assessee's bank account.

(iii) Vinod Textile (Rs. 8,79,868/-)

The AO observed that the assessee did not furnish bank statement, return of income, confirmation and even the address of the depositor.

2.1 Accordingly, in view of the above observations the AO was of the view that the creditworthiness of the three depositors remained unproved and a sum of Rs. 58,68,368/- was added under Section 68 of the Act.

3. In appeal, with regards to addition of Rs.49,28,000/- in respect of B. J. shah HUF, CIT(A) held that the assessee, in the instant facts, has not been able to prove the creditworthiness of this party and the genuineness of the transaction and accordingly, confirmed the addition. However, Ld. CIT(A) allowed the alternative claim of peak credit to the assessee and restricted the addition to Rs. 24,63,178/- with the following observations:

*“5.2.4 The appellant has taken an alternate plea that peak of the transactions which comes to Rs. 24,63,178/- be added as unexplained cash credit u/s 68 instead of Rs. 49,28,500/-. The table furnished by the appellant shows that various amount were repaid from time to time and the loans have taken on various occasions, so the reply of the appellant appears acceptable and the addition u/s 68 on account of deposits of B.J. Shah HUF is reduced to Rs. 24,63,178.”*

4. Ld. CIT(A) allowed the appeal of the assessee with respect to addition of Rs. 60,000/- from Shri Jasubhai Shah.

5. With regards to addition of Rs. 8,79,868/- from M/s. Vinod Textiles, the CIT(A) observed that the assessee has not been able to prove the creditworthiness of party. However, AO reduced the addition to the peak of the loans to a sum of Rs. 6,58,663/-. While partly allowing the appeal of the assessee, the Ld. CIT(A) made the following observations:

*“5.4 Ground no. 4 is regarding addition of Rs. 8,79,868/- from M/s Vinod textiles treated as unexplained cash credit u/s 68 of the Act by the Assessing Officer. The appellant has submitted that the pleas taken with respect to deposit from B.J. Shah HUF be considered in this case also. I find that only bank statements of the party were submitted during the assessment proceedings nothing was said about the sources of the said party. Therefore, the case laws cited by the appellant are not applicable in this case as credit worthiness has not been proved. The onus of proving credit worthiness of the creditor was on the assesses as discussed in Para 5.2.2 of this order. However, it has been found that the loan has been taken on various dates and repayments also have been made from time to time, therefore, the repaid amount may be treated to be available with the creditor and therefore, the addition is reduced to the peak of the loan i.e. Rs. 6,58,663/- only.”*

6. With regards to the plea of the assessee that for deposits of Rs. 7,10,16,445/- the assessee be allowed the benefit of telescoping of Rs. 17,16,445/- which was confirmed by Ld. CIT(A) for A.Y. 2012-13, Ld. CIT(A) dismissed the appeal of the assessee on the ground that the assessee

has not accepted the cash credit out of these funds which was confirmed by Ld. CIT(A) for A.Y. 2012-13 and therefore, this ground of the assessee was dismissed.

7. Before us, the assessee has taken the following grounds of appeal:

*“1. Unreasons and Non speaking order on Telescoping of Income of Rs. 17,16,445/-: “The Learned CIT Appeal has erred in passing an unreasoned and non speaking order rejecting Telescoping of Income assessed under section 68 in immediately earlier assessment year (AY 2012-13) without looking in to the merits and contentions of the Assessee. The Telescoping of Rs. 17,16,445/- be allowed against addition of income under section 68 for the year under consideration.”*

*2. Denial for Telescoping of income results in double taxation on income: “In absence of the telescoping of the income, the addition to Income of Rs. 17,16,445/- under Section 68 in immediately earlier year previous year 31.03.2012 and addition to income of the Assessee under Section 68, to the tune of Rs. 31,21,841/- in the previous year ended on 31.3.2013, results in double taxation of the income. Therefore under the circumstances and on facts, telescoping of income to the tune of Rs 17,16,445/- be allowed,”*

*3. The Appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”*

8. The assessee has also raised the following additional grounds of appeal:

**“3.1 Binding decision of ITAT Ahmedabad in Assessee’s case for Previous Year 2011-12 (AY 2012-13)**

*The Learned CIT Appeal erred in not deleting additions of Rs. 58,68,368/- and confirming part addition of Rs 24,63,178/- under Section 68, overlooking the bindings nature of the decision of the Hon’ble ITAT Ahmedabad in Assessee’s own case for AY 2012-13.*

**3.2 Loan repaid during the Previous Year is treated as Un-explained**

*The Learned CIT Appeal erred in confirming addition of Rs 6,58,663/- under Section 68 overlooking the fact that the loan is repaid during the previous year, overlooking the binding nature of the decision of the Hon’ble ITAT Ahmedabad in Assessee’s own case for AY 2012-13.”*

8. With regards to the creditworthiness of the parties, the Counsel for the assessee primarily reiterated the submissions made by the assessee before Ld. CIT(A) and submitted that since the income of the B. J. Shah HUF was below

the taxable limit, he did not file return of income. The assessee cannot be asked to explain the source as the assessee had proved the identity of the creditor and explained the genuineness of the transaction. The Counsel for the assessee also relied on the several cases in support of the contention that the assessee cannot be asked to prove the “source of source.” With respect to this transaction, it was further argued that since the assessee had repaid an amount of Rs. 25,87,322/- during the year under consideration, the AO erred in overlooking the debit side of the ledger.

9. Similar arguments were also taken in the case of deposits taken from M/s. Vinod Textiles.

10. On going through the facts of the instant case, we are of the considered view that Ld. CIT(A) has correctly observed that in the instant facts, the assessee has neither been able to prove the creditworthiness of the depositor nor the assessee has been able to prove the genuineness of the transactions. Accordingly, the order of Ld. CIT(A) is hereby confirmed. With respect to the contention of the Counsel for the assessee that certain amounts had been repaid by the assessee to the depositors, we observe that Ld. CIT(A) has already taken the same into consideration and had observed that from the table furnished by the assessee, various amounts had been repaid by the assessee from time to time to the depositors and the addition was proportionately reduced in the case of B. J. Shah-HUF to Rs. 24,63,178/- and in the case of M/s. Vinod Textiles, Rs. 6,58,663/-, being the peak credit during the year under consideration. Accordingly, in our considered view, Ld. CIT(A) has taken a very reasonable view in the matter, taken into consideration the assessee’s set of facts further observe that even with respect to order passed by ITAT for A.Y. 2012-13, the Ld. CIT(A) had allowed the benefit of peak credit of loan taken by the assessee in respect of Shri B. J. Shah-HUF and Shri Jasubhai Shah, against which it was the Department who

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was in appeal before ITAT. Therefore, in our view, the facts of A.Y. 2012-13 do not impact the observations made by us for this year. Accordingly, the appeal of the assessee is dismissed.

11. With respect to the plea of the assessee regarding telescoping of income of Rs. 17,16,445/- we observe that Ld. CIT(A) has correctly observed that the assessee had accepted fresh loans / deposits during the year and it was not the opening balance in respect of deposits taken during the previous year and therefore, no benefit of telescoping has to be allowed taking into consideration the assessee's set of facts. Accordingly, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

12. In the result, the appeal of the assessee is dismissed.

<b>This Order pronounced in Open Court on</b>	<b>03/12/2024</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 03/12/2024

TANMAY, Sr. PS

*True Copy*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad