

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 378/DEL/2024 [A.Y. 2013-14]

The Dy. CI.T.
Central Circle
Meerut

Vs.

Smt. Kamlesh Singh
w/o Shri Sunder Singh
H. No. 12/09, Mandawali,
Fazalpur, Saket Block, Delhi

PAN - AKYPK 3905 E

(Applicant)

(Respondent)

Assessee By : Shri Rohit Agarwal, CA

Department By : Shri Dayainder Singh Sidhu, CIT-DR

Date of Hearing : 02.12.2024

Date of Pronouncement : 03.12.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 3, Noida dated 08.11.2023 pertaining to A.Y. 2013-14.

2. The Revenue has raised the following grounds of appeal:

"1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs. 3,15,18,000/- made by the Assessing Officer u/s 68 of the Income Tax Act on account of unexplained cash credit being unexplained unsecured loans, without appreciating the facts brought on record during the course of assessment proceedings.

2 Whether on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that creditworthiness of the lenders of the unsecured loans amounting to Rs 3,15,18,000/-has not been established properly for want of ITR, complete bank accounts and other details during the course of assessment proceedings.

3 Whether on facts and circumstances of the case and in law, the Ld. CIT(A) is justified in pronouncing its decision only based upon the judgement in favor of the appellant by not considering the decision of Hon'ble Supreme Court in the case of Kale Khan Mohammad Hanif v. CIT wherein it has been held that "if an assessee fails to prove satisfactorily the source and nature of certain amount received during the accounting year, the AO is entitled to draw the inference that the receipts are of an assessable nature" Further in the case of Som Nath Maini v. CIT, the Hon'ble Punjab & Haryana High Court has also held that "the burden of proving that income is subject to tax is on the Revenue

but on the facts, to show that the transaction is genuine the burden is primarily on the assessee."

3. The representatives of both the sides were heard at length, the case records carefully perused and we have duly considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

4. The solitary issue raised vide above grounds of appeal revolves around the deletion of addition of Rs. 3,15,18,000/- made by the Assessing Officer and deleted by the ld. CIT(A).

5. Brief facts as emanating from the order of the Assessing Officer are that a search and seizure operation was carried out by the Investigation Wing, Ghaziabad on 05.02.2017 at the residential premises at 1402 & 1403 Vinhyanchal Tower, Kaushambi, Ghaziabad comprising of Shri Vipin Kumar & others. The search warrant was in the name of Smt. Kamlesh among others. On request by the assessee to centralize their case with DCIR, Meerut, jurisdiction order was passed by the PCIT, Kanpur on 11.01.2018. Accordingly, notice u/s 153A of the Income-tax Act, 1961 [the Act, for short] was issued to the assessee on 12.07.2018.

6. In response, the assessee vide reply dated 29.08.2018 submitted that original return filed on 27.07.2013 declaring income of Rs. 13,27,350/- may be treated as return filed in response of notice u/s 153A of the Act. Notice u/s 143(2) of the Act was issued 08.10.2018 and duly served upon the assessee. Notice u/s 131 of the Act was also issued to the assessee on 17.12.2018 to confront with the seized material, because the assessee did not make any compliance.

7. Thereafter, notice u/s 142(1) of the Act with detailed questionnaire was issued on 08.10.2018 and on 17.10.2018. However, no compliance was made by the assessee. Notice u/s 271(1)(b) of the Act was issued on 26.11.2018 in response to which the assessee filed return declaring income of Rs. 13,69,350/-. Assessee vide submission dated 12.12.2018 filed part reply and with confirmation of the parties from whom loan has been received. However, no confirmation was found attached with details of unsecured loan, copy of ITR and bank statement of lender. The main source of income declared by the assessee is business income u/s 44AD of the Act.

8. During the course of assessment proceedings, the Assessing Officer noticed that the assessee was having unsecured loan amounting to Rs. 53,60,000/- as on 01.04.2012 and has taken fresh unsecured loan of Rs. 3,68,68,000/- during the year from Ocean Apartments, Rajendra Kumar and Solitaire Foods Pvt. Ltd. After the repayment of Rs. 53,50,000/- to M/ Salotaire Foods Pvt. Ltd. during the year, outstanding unsecured loan as on 31.03.2013 was Rs. 3,68,78,000/-.

9. The Assessing Officer came to the conclusion that the assessee has shown bogus unsecured loan in order to cover up her various kinds of investments/expenses/deposits. Therefore, the investments/expenses/deposits to the extent of this unsecured loan also remained unexplained. Therefore, the Assessing Officer made addition of fresh unsecured loan during the year amounting to Rs. 3,15,18,000/- and treated the same as unexplained cash credit u/s 68 of the Act and added back to the income of the assessee.

10. Aggrieved, the assessee went in appeal before the ld. CIT(A) and vehemently submitted that the Assessing Officer has completed assessment u/s 153A of the Act when no incriminating material was found as a result of search and the assessment order deserves to be

quashed on this ground alone. The ld. CIT(A) relied upon the decisions of the Hon'ble Apex Court in the case of Kalpatru Power Transmission, the decision in the case of Sahara India 169 Taxmann 328, Maneka Gandhi Vs. UOI 1 SCC 248, Dhakeshwari Cotton Mills 26 ITR 775 SC deleted the impugned addition.

11. Now the department is aggrieved and has come in appeal before us against this order of the ld. CIT(A).

12. Before us, the ld. DR strongly relied upon the findings of the Assessing Officer. The ld. counsel for the assessee reiterated what has been stated before the lower authorities.

13. It is the say of the ld. counsel for the assessee that whatever evidences were furnished before the CIT(A) were very much available with the Assessing Officer and since the Assessing Officer had not considered those evidences, the CIT(A) had called for remand report and has decided the issue after considering the remand report of the Assessing Officer. The ld. AR supported the findings of the CIT(A).

14. We have heard the rival submissions and have perused the relevant material on record. No doubt, the initial onus is upon the assessee to explain the credit transaction in its books of account in the light of provisions of section 68 of the Act. However, this burden of proof is not permanent but keeps oscillating, meaning thereby, that once the initial burden has been discharged by the assessee, the burden shifts upon the revenue to make further enquiry.

15. We find that the submissions of the assessee were sent to the Assessing Officer by the ld. CIT(A) to make necessary enquiry. We also find that in her remand report, the Assessing Officer has reported that the assessee has filed documents in support of identity, genuineness and creditworthiness of the transactions. The Assessing Officer has also reported that the unsecured loans have been given out of bank accounts of the lenders and details are clearly mentioned. The assessee has also furnished before us the details of loans taken and the creditworthiness of persons giving loan to the assessee. The ld DR has not provided any materials to dislodge the claim of the assessee regarding the

identity, genuineness and creditworthiness of the transactions.

16. We find that the ld. CIT(A) held that once the assessee has furnished the identity, details of the investor alongwith their bank account statement showing credit worthiness and genuineness. The onus shifted on the Assessing Officer to prove that the investor did not have sufficient balance of funds to provide the money to the assessee company. We are of the considered view that no adverse inference can be drawn from such findings of the CIT(A) and the conclusions of the CIT(A) cannot be faulted with.

17. Considering the facts of the case in totality, we are of the view that since the assessee has successfully explained the three ingredients necessary to discharge the onus cast upon her, section 68 of the Act is clearly not applicable. We, therefore, do not find any merit in the grievance of the revenue. The Assessing Officer is, accordingly, directed to delete the impugned addition.

18. In the result, the appeal of the Revenue in ITA No. 378/DEL/2024 is dismissed.

The order is pronounced in the open court on 03.12.2024.

Sd/-

**[MAHAVIR SINGH]
VICE PRESIDENT**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 03rd DECEMBER, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date on which the file goes to the Head Clerk	
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