

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2152/Del/2024  
Assessment Year: 2014-15

DCIT, Central Circle, Meerut	<b>Vs.</b>	Smt. Kamlesh, 1402/1403, Vidhyanchal Tower, Kaushambi, Ghaziabad
<b>PAN :AKYPK3905E</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Rohit Agarwal, CA
Department by	Ms. Jaya Choudhary, CIT(DR)

Date of hearing	26.11.2024
Date of pronouncement	06.12.2024

**ORDER**

**PER SATBEER SINGH GODARA, JM**

This Revenue's appeal for assessment year 2014-15, arises against the Commissioner of Income Tax (Appeals)-3 [in short, the "CIT(A)"], Noida's order dated 05.03.2024 passed in case no. CIT(A), Kanpur-4/10344/2019-20 involving proceedings under section 153A r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties at length. Case file perused.
3. The Revenue raises following substantive grounds in the instant appeal:

*1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida, has erred in deleting the addition of Rs.3,73,00,000/- made by the AO u/s 68 of IT Act on account of unexplained cash credit being unexplained unsecured loans without appreciating the fact brought on record during the course of assessment proceedings.*

*2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in not appreciating the fact that creditworthiness of the lenders of the unsecured loans amounting to Rs.3,73,00,000/- has not been established properly for want of ITR, complete bank accounts and other details during the course of assessment proceedings.*

*3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs.43,73,000/- made by the AO u/s 56(2)(vi)(b)(ii) of the Act, as the assessee had filed no documents with respect to the land sold being in the nature of agricultural land or otherwise during the course of entire assessment proceedings.*

*4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-3 Noida is justified in pronouncing its decision only based upon the judgements in favor of the appellants by not considering the decision of Hon'ble Supreme Court in the case of Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 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 Assessing Officer is entitled to draw the inference that the receipts are of an assessable nature". Further, in the case*

*of Som Nath Maini v CIT, [2008] 306 ITR 414 the Hon'ble Punjab and 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, burden is primarily on the assessee."*

*5. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

4. It in this factual backdrop that we advert to the CIT(A)'s lower appellate discussion reversing assessment findings making section 68 addition of Rs.3,73,00,000/- representing unsecured loans from M/s. Mahendra Dairy (P) Ltd. and Sunder Singh HUF amounting to Rs.23,00,000/- and Rs.3,50,00,000/-; respectively as under:

*"6.3 Ground of appeal No. 3: In this ground, the AR contested the addition of Rs. 3,73,00,000/- made by the AO u/s 68 of the Income Tax Act, 1961. The AR during the course of appellate proceedings has submitted that during the year under consideration, the appellant received unsecured loan from two persons namely Mahendra Dairy Pvt. Ltd. and Sunder Singh HUF. The AO considered the credits from the above persons as unexplained u/s 68. During the course of appellate proceedings, the appellant submitted documents justifying the identity, genuineness and creditworthiness of the loan givers in the nature of confirmed copy of account of both the lenders, copy of bank statements, copies of ITR and copies of balance sheet of M/s. Sunder Singh HUF. The said documents were forwarded to the AO in remand and the report of the AO was received vide letter dated 05.10.2023. The AO in the relevant para of her report conveyed as under (full report has already been reproduced above):*

*"Now, during the course of appellate proceedings before your honor, the assessee has submitted an application under Rule 46A of I.T. Rules 1962 along with requisite details in support of the unsecured loans taken during the F.Y. 2013-14 relevant to A.Y. 2014-15. In its application is stated that the unsecured loan was taken from 2 persons namely M/s Mahendra and*

*Sunder Singh HUF, with an amount of Rs.23,00,000/-, & Rs.3,50,00,000/respectively. In support of Identity, genuineness and credit worthiness of the transaction, the confirmed copy of account of both the lenders, copy of bank statements and the copies of respective ITR's and copy of balance sheet of M/s Sunder Singh HUF, with an application under Rule 46A of the I.T. Act, 1962, has been submitted by the assessee along with submission."*

*During the year under consideration, the assessee had received an amount of Rs. 23,00,000/- from Mahendra Dairy Pvt. Ltd. and Rs. 3,50,00,000/- from Sunder Singh HUF as unsecured loan. The AO treated the outstanding amount of Rs. 3,73,00,000/- as income of the assessee u/s 68 of the Income Tax Act, 1961. During the course of appellate proceedings, the submissions of the appellant were forwarded to the AO. The AO in her remand report sent vide letter dated 05.10.2023 filed detailed report. The AO has reported that the assessee has filed documents in support of identity genuineness and creditworthiness of the transactions. The AR during the appellate proceedings submitted various documents in support of the Identity, genuineness and creditworthiness of the Investors which has been acknowledged by the AO. The confirmed copies of accounts are scanned below for ready reference:*

12

Kamlesh Singh  
H No 12/C9  
Mandawali, Fazaipur  
Saket Block  
Delhi

From Sunder Singh HUF  
H No 12/C9  
Mandawali, Fazaipur  
Saket Block  
Delhi

Dear Sir/Madam,

Dated 30-Nov-2013

Sub : Confirmation of Accounts  
1-Nov-2013 to 29-Nov-2013

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period  
Kindly return 3 copies stating your I.T. Permanent A/c No. duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below

Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
29-Nov-2013	Bank Being amount transfer from SBI A/c No 32505710012 to SBOP A/c No 65137592929	50,00,000 00			
29-Nov-2013	Bank Being amount transfer from SBI A/c No 32505710012 to SBOP A/c No 65137592929	50,00,000 00			
29-Nov-2013	Bank Being amount transfer from SBI A/c No 32505710012 to SBOP A/c No 65137592929	50,00,000 00			
29-Nov-2013	Bank Being amount transfer from SBI A/c No 32505710012 to SBOP A/c No 65137592929	50,00,000 00			
29-Nov-2013	Bank Being amount transfer from SBI A/c No 32505710012 to SBOP A/c No 65137592929	50,00,000 00			
29-Nov-2013	Bank Being amount transfer from SBI A/c No 32505710012 to SBOP A/c No 65137592929	50,00,000 00			
29-Nov-2013	Bank Being amount transfer from SBI A/c No 32505710012 to SBOP A/c No 65137592929	50,00,000 00			

3,50,00,000.00

3,50,00,000.00

Closing Balance

3,50,00,000 00

3,50,00,000 00



We hereby confirm the above

*[Signature]*

AKYPK3905E

Yours faithfully,  
For Sunder Singh (HUF)

*[Signature]*

Karta

Our I.T. PAN No. : AAWS6074C

Amlesh Singh  
 A. No. 12/09  
 Mandawali, Fazalpur  
 Saket Block  
 Delhi

From Mahendra Dairy Pvt. Ltd.  
 1/32, Single Storey  
 Tikka Nagar  
 New Delhi

17

Dear Sir/Madam,

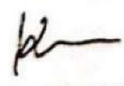
Dated: 1-Apr-2014

**Sub : Confirmation of Accounts**  
 1-Apr-2013 to 31-Mar-2014

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period  
 Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please  
 note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown  
 below.

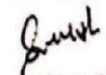
Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
24-Jun-2013	Bank Ch No Trf	23,00,000.00			
		23,00,000.00		Closing Balance	23,00,000.00
		23,00,000.00			23,00,000.00

We hereby confirm the above



I.T. PAN No. AKYPK3905E

Yours faithfully  
 Mahendra Dairy Pvt. Ltd.



Our I.T. PAN No. AAASO15784J

*Once the appellant has furnished the identity details of the Investor/loan giver along with their bank account statement showing the creditworthiness and genuineness, the onus shifted on the AO to prove that the Investor/loan giver did not have sufficient balance of funds to provide the money to the assessee company, From the above, it is apparent that the All has furnished complete details regarding the transactions.*

*In the Judgment of Hon'ble High Court of Punjab & Haryana in the case of Principal Commissioner of Income-tax, Bathinda vs. Amravati Infrastructures Developers (P.) Ltd. reported at [2020] 117 taxmann.com 152 (Punjab & Haryana) on similar issue, it has been held as under:*

*"Section 68 of the Income-tax Act, 1961- Cash credit (Share Capital) - Assessment year 2009-10-Assessing Officer made addition in hands of assessee-company on account of failure of assessee to prove identity and genuineness of persons who had introduced share capital and on account of failure to prove capacity of loan creditors as well as genuineness transactions Commissioner (Appeals) found that shareholders were all private limited companies who had made investments out of their share capital and reserve through banking channels and assessee had filed a confirmation from loan creditors, regarding advancing of loan by them along with confirmation date, cheque No. and other relevant information along with PAN of companies Accordingly, he deleted additions Whether since question of genuineness of Investors who introduced share capital and capacity of persons from whom loan was borrowed and genuineness of transactions, had been considered at length by first appellate authority and revenue had failed to point out any infirmity in fact or law, no question of law arose for consideration - Held, yes [Para 8] [in favour of assessee]*

*Further, the Hon'ble High Court of Delhi in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd. reported at [2010] 194 Taxman 43 (Delhi) has held as under:*

*"Section 68 of the Income-tax Act, 1961-Cash credits - Assessment year 2001-02 Whether though in section 68 proceedings, initial burden of proof lies on assessee, yet once he proves identity of creditors/share applicants by either furnishing their PAN numbers or Income-tax assessment numbers and shows genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then onus of proof would shift to*

*revenue and just because creditors/share applicants could not be found at address given, it would not give revenue right to invoke section 68-Held, yes"*

### **Analysis**

*The addition made by the AO u/s 68 requires the assessee to discharge its onus on the following three issues:*

- a. The Identity of the lender*
- b. The creditworthiness of the lender*
- c. The genuineness of the transactions*

*The onus to prove the three ingredients u/s 68 was discharged. In the recent judgment Hon'ble Apex Court in the matter of Commissioner of the Income Tax Vs. Orchid Industries (P.) Ltd. [2020] 116 taxmann.com 113(SC) dismissed the SLP filed by the department against the judgment of Hon'ble Bombay High court in the matter of Commissioner of Income Tax Vs. Orchid Industries (P.) Ltd [2017] 88 taxmann.com 502 (Bombay), where it was held as under:*

*"The assessee had produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money only because those persons had not appeared before the Assessing Officer would not negate the case of the assessee. Therefore, the addition was liable to be deleted."*

*Further, reliance is also placed on decision of Hon'ble Apex Court in PCIT Vs. Himachal Fibres Ltd. (2018) 259 Taxmann 5 in which the decision of Hon'ble Delhi High Court was confirmed in case of PCIT vs. Himachal Fibres and it was held as under:*

*"In a case where the assessee has furnished all the relevant facts within the knowledge and offered a credible explanation, then the onus reverts to the Revenue to prove that these facts are not correct. In such a case, Revenue cannot draw Inference based on suspicion or doubt or perception of culpability etc."*

*Also, reliance is also placed on the order dated 24th August 2022 of Ld. ITAT Mumbai Bench in case of Raw Pressery Pvt. Ltd Vs ACIT [2022] 143 taxmann.com 158 (Mumbai - Trib.) where it was held that:*

*"Where assessee received share premium from founder promoter and had discharged its burden of proving his identity, genuineness and creditworthiness, and both lower authorities could not find any defects or fault therein, addition made under section 88 was directed to be deleted."*

*Further, reliance is also placed on the judgment of Ld. ITAT Chennai D Bench in KP Manish Global Ingredients (P) Ltd. vs. ACIT where it was held as under:*

*"Section 68 of the Income-tax Act, 1961 Cash credit (Unsecured loans) - Assessment year 2009-10-During year assessee company received an unsecured loan of certain amount from three parties - Assessing Officer made addition towards said amount received on grounds that loan transactions were nothing but accommodation entries of assessee's own unaccounted income in form of unsecured loan - It was noted that assessee had produced various details including financial statement and bank statements of creditors and their confirmation letters - Assessee had also produced source of income of said creditor firms which was commission received by them from certain companies Further, all these transactions of receiving loan by assessee were routed through proper banking channel- Thus, assessee had proved identity and credit-worthiness of parties and genuineness of transactions - Further, Assessing Officer had not brought on record any evidence to prove that said sum was undisclosed income of assessee Whether, on facts, impugned addition made under section 68 on account of said amount received by assessee was unjustified and same was to be deleted - Held, yes [Paras 9 and 11] [In favour of assessee]"*

*Further, the Hon'ble High Court of Bombay in the case of Principal Commissioner of Income-tax-1 vs. Aml Industries (India) (P.) Ltd. reported at [2020] 116 taxmann.com 34 (Bombay) has held as under:*

*Section 68 of the Income-tax Act, 1961- Cash credit (Share application money) Assessment year 2010-11-Assessing Officer noted that assessee had disclosed funds from three Kolkata based companies as share application money - But, since whereabouts of above companies were doubtful and their Identity could not be authenticated, Assessing Officer treated aforesaid funds as money from unexplained sources and added same to income of assessee as unexplained cash credit under section 68 - However, it was found that assessee-company bank furnished PAN, copies of income tax returns of creditors as well as copy of bank accounts of three creditors*

*through which share application money was deposited in order to prove genuineness of transactions - Further, insofar as creditworthiness of creditors were concerned, Tribunal recorded that bank accounts of creditors showed that creditors had funds to make payments for share application money and in this regard, resolutions were also passed by Board of Directors of three creditors - Thus, first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of creditors, genuineness of transactions and creditworthiness of creditors which finding of fact stood affirmed by Tribunal Revenue had not been able to show any perversity in aforesaid findings of fact by authorities below Whether therefore, Tribunal was right in confirming order passed by Commissioner (Appeals) and holding that no addition could be made under section 68- Held, yes (Paras 21, 23 and 24) [In favour of assessee]*

*The Hon'ble High Court of Patna in the case of Addl. CIT v. Hanuman Aggarwal [1985] 151 ITR 150 (Pat.) has held as under:*

*"It can never be within the exclusive knowledge of the debtor to know the sources of income of the creditor. Once he is supplied the credit that he wants, he is satisfied. Once he has furnished the true identity, the correct address and the correct GIR number of the creditor, fulfils his obligation under the Act. The assessee is not supposed to know the capacity of the money-lender or the cash creditor. It is within the exclusive domain of the creditor. It is for that specific purpose that section 131 of the Act has been introduced so that in case of any suspicion, the ITO or the authorities concerned may exercise the power of a civil court under that provision and call upon the creditor concerned to prove his capacity to pay and the genuineness of the transaction. Once the ITO or the authority concerned is satisfied that the creditor is not telling the truth, it has been left open to the assessee to discharge his subsequent onus of proving the genuineness of the transaction and the capacity of the creditor to pay, by cross-examining him."*

*Further, in the judgment of Ld. ITAT Delhi Bench in the case of ACIT vs. Enrich Agro Food Products (P.) Ltd. reported at 2022] 141 taxmann.com 309 (Delhi -Trib.), it has been held as under:*

*Where assessee-company received share capital including share premium and furnished various documentary evidences in form of confirmation from investor, statement of bank account of investor etc. so as to substantiate identity and*

*creditworthiness of investor and genuineness of transaction and revenue failed to bring on record anything adverse to these evidences, impugned addition made Under section 68 in respect of such share capital amount was unjustified.*

*The facts outlined in paras above show that the appellant has duly discharged the onus cast on it to prove the identity, creditworthiness and genuineness of transactions in respect of the lenders.*

### **Discharge of burden**

*The intention of law is that unaccounted money should be brought to tax. As per provisions of section 68 of the Act onus is on the person in whose books of account such money has surfaced. If an amount has surfaced in the books of an assessee either in the shape of share application money or a deposit/loan; it is presumed that such money belongs to the person in whose name it has been shown. However, as per provisions of section 68 of the Act, deeming provisions postulate that it is possible that the assessee may circulate its own unaccounted money in the shape of bogus persons and therefore legal onus has been created.*

*What is relevant is the identity, creditworthiness of the depositor and genuineness of the transaction. All these three conditions have been established and onus of the assessee/appellant has been discharged u/s 68 of the Act. The appellant has amply proved and discharged its burden. The AO has to be bridged the gap between suspicion and proof to bring home the allegation. There was neither direct nor circumstantial evidence on record to show that the said loan amount actually belonged to or were owned by the appellant. No material has been placed by the AO to allege that such sums/funds raised by the appellant were from the coffers of the appellant.*

*The Ld. Tribunal Bench of Delhi in the case of ITO vs. Jaidka Woolen & Hosier Mills Pvt. Ltd. in ITA. No. 5302/Del/2015, has held as under:*

*"There is no finding that material disclosed was untrustworthy. No evidence has been brought on record, if investment made by the Investor Company actually emanated from the coffers of the assessee company so as to enable the total Investments to be treated as undisclosed income of the assessee. No interference is called for in the matter. Ground No.3 of the appeal of the Revenue is dismissed. No other point is argued or pressed."*

### **Three criterias of Section 68**

Section 68 speaks of three criterias of the identity, genuineness and creditworthiness of the lender for justifying the credit as acceptable. There are plethora of judgments which clarify the extent to which the assessee is supposed to justify the above three criterias.

#### **(On identity)**

5.1.26 The Hon'ble High Court of Mumbai in the case of Orient Trading Company Ltd. CIT 49 ITR 723 held as under:

*"When the entry stands in the name of the third party and the assessee establishes identity of the creditor and produces evidence showing that the entry is not fictitious, initial burden lying on the assessee stands discharged; the burden shifts on to the Revenue to show that the entry represented assessee's suppressed Income."*

#### **(On Capacity)**

It has been held by the Ld. Mumbai Tribunal Bench in the case of ACIT Vs. Krishna Sheet Processors Pvt. Ltd. (2015) 44 CCH 0280 as under:

*"Where the assessee furnished the bank statements of the loan creditors, evidencing their worthiness, the assessee has discharged its burden. No additions can be made unless a contrary finding is established by the AO."*

#### **(On Genuineness)**

It has been held by Hon'ble High Court of Calcutta in the case of CIT Vs. Sahibganj Electric Cables (P) Ltd. reported at (1978) 115 ITR 408 (Cal.) as under:

*"Amounts of loan were received by cheques and repayment also made by cheques through assessee's bankers. The creditors gave confirmation letters mentioning therein their Income-tax file numbers. ITO without making any further enquiry disbelieving the evidence of the assessee made addition. ITAT held the addition not justified as the assessee discharged the onus. High Court held that the Tribunal was justified in deleting the addition. Similar view was expressed in the case of ACIT vs. Divine (India) Infrastructure (P) Ltd. reported at [2014] 42 CCH 0022 (Del Trib.)"*

*In view of above, there appears to be no reason to consider the said credits in the books of accounts of the assessee on account of unsecured loans as unexplained income u/s 68 of the Income Tax Act, 1961, the said addition is liable to be deleted."*

5. This leaves the department aggrieved.
6. We have given our thoughtful consideration to the vehement rival stands against and in support of the impugned CIT(A)'s foregoing findings deleting the impugned addition. The first and foremost aspect noticed during the course of hearing is that the assessee had filed her additional evidence under Rule 46A of the Income Tax Rules, 1962 in the lower appellate proceedings which included confirmation, income tax return, acknowledgement as well as bank statement of M/s. Mahendra Dairy Pvt. Ltd. and M/s. Sunder Singh HUF. The CIT(A) thereafter appears to have duly sought for a remand report from the Assessing Officer, which came to be submitted twice on 05.10.2023 and 05.12.2023, not making any adverse comment thereupon during verification process. This clinching fact has gone unrebutted from the departmental side before us.
7. Learned Departmental Representative at this stage quotes Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC), CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC) and PCIT Vs. NRA Iron & Steel Co. (2019) 412 ITR 161 (SC) that it was the assessee's bounden

duty only to plead and prove all the relevant facts explaining identity, genuineness and creditworthiness, which she failed to discharge.

8. We find no merit in the Revenue's instant former substantive ground once the assessee had discharged its onus of proving genuineness/creditworthiness of the impugned unsecured loans in foregoing terms. Rejected accordingly.

9. Next comes the second issue of section 56(2)(vi)(b)(ii) addition of Rs.43.73 lakhs representing the actual difference between the stamp price paid by the assessee of Rs.58.73 lakhs as against the actual price of the agricultural land as Rs. 15 lakhs; respectively. There is admittedly no indication in the Assessing Officer's twin remand reports (supra) that the assessee's land purchased herein forms a "capital" asset so as to satisfy the rigor of section 56(2)(vii)(b)(i) of the Act wherein the legislature has itself incorporated the clinching statutory expression **"property; means the following capital asset of the assessee."** We thus see no reason to interfere with the learned CIT(A)'s findings deleting the impugned addition in very terms. This Revenue's instant latter substantive ground also fails.

10. No other ground or argument has been pressed before us.
11. This Revenue's appeal is dismissed.

***Order pronounced in the open court on 6<sup>th</sup> December, 2024***

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

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

Dated: 6<sup>th</sup> December, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi