

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 1024/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Raj Kumari Agarwal, A36 Govindi, Takteshahi Road JLN Marg, Jaipur	बनाम Vs.	ACIT, Central Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACMPA 7544 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. L. Poddar, Adv.
राजस्व की ओर से / Revenue by : Smt Hitiesha Ruhela, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 22/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 26/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

On being aggrieved by the order of the Commissioner of Income Tax (Appeal), Jaipur-4 dated 29/07/2024 [for short CIT(A)] the above-named assessee preferred the present appeal. The dispute relates to the assessment year 2017-18. The said order of the Id. CIT(A) arises because the assessee has challenged the assessment order dated 15.11.2019 passed under section 143(3) of Income Tax Act, [for short "Act] by ACIT, Central Circle-02, Jaipur [for short AO].

2. In this appeal, the assessee has raised following grounds: -

“1 Under the facts and Circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 1,00,00,000/- u/s 68 of the IT Act, 1961 made by the Learned Assessing Officer on account of disbelieving the creditworthiness of unsecured loan taken (Rs. 50,00,000/- from Smt. Laxmi Agarwal and Rs. 50,00,000/- from Smt. Suman Agarwal) without considering the submission of the assessee.

2 Under the facts and Circumstances of the case the learned CIT(A) has erred in giving finding regarding signature of loan creditors without any credible evidence and expert opinion that signature on the confirmations are not genuine and confirmations are tailored documents arranged by the assessee.

3 Under the facts and Circumstances of the case the learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in applying of provisions of section 115BBE of the IT Act, 1961 which are not applicable in the assessee's case.

4 The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

3. Succinctly, the fact as culled out from the records is that the assessee e-filed her return of income for the Previous Year 2016-17 relevant to AY 2017-18 on 31-10-2017 declaring an income of Rs. 3,08,89,860/-, The case of the Assessee was taken up for "Complete scrutiny" u/s 143(3) of the Income Tax Act, 1961 ("the Act") on the basis of Computer Assisted Selection for Scrutiny(CASS) and statutory notice u/s 143(2) of the Act, dated 09-08-2018 was issued through ITBA and duly served upon the Assessee. Information u/s 142(1) of the Act was called for vide questionnaire through ITBA. In compliance of the said notices, the

Assessee submitted details/information through e-proceeding. The information/detail(s) so filed was examined. Assessee has declared income from House property, Business and Other sources.

3.1 During the course of assessment proceedings Id.AO found that assessee has shown receipt of loan from Smt. Suman Agarwal and Smt. Laxmi Agarwal. To verify the identity, creditworthiness of the creditor and genuineness of the transaction. Enquiry was conducted u/s 133(6) of the Act.

3.2 In the case of depositor Smt. Laxmi Agarwal, a notice u/s 133(6) of the Act was issued on 13-09-2019 through ITBA and also dispatch with speed post at the address mentioned in PAN base address 1-D-4, Jagruthi Residency, Street no. 10, East Marredpally, Secundrabaad, Andra Pradesh wherein she was requested to furnish following details on or before 20-09-2019:

1. Please furnish your Return of Income along with computation of income Balance sheet & account, Audit report with all Annexures for FY 2015-16 and FY 2016-17
2. Copy of ledger account of the above assessee in your books and confirmation
3. Copy of bank statement for FY 2015-16 and FY 2016-17
4. Please furnish details of interest received on this if no interest received, please mention reason for non-charging the same

Ld. AO noted that the speed post returned back on 24-09-2019. Further no reply was also received on ITBA.

3.3 In the case of Smt. Suman Agarwal, similar notice u/s 133(6) of the Act was issued on 16-10-2019 through ITBA and also dispatched with speed post at the address mentioned in PAN base address 901, JKD Pearl Landmark, B-196, University Marg, Bapu Nagar, Jaipur wherein she was requested to furnish aforementioned details on or before 25-10-2019. In this case notice was duly served to the lender. However, no reply was received on the same till 31-10-2019.

3.4 Since, in verification u/s 133(6) of the Act as discussed above no reply was received in one of the case and in another case the letter sent returned back unserved. Hence, the primary three ingredients i.e. identify and creditworthiness of the creditor and genuineness of the transaction remains unverifiable. Accordingly, two separate show cause notice were issued in case of Smt. Laxmi Agarwal and Smt. Suman Agarwal on 07-10-2019 and 01-11-2019 respectively wherein assessee was asked to show cause as why the amount credited in her books of accounts as unsecured loan amounting to Rs. 50,00,000/- from Smt. Laxmi Agarwal and Smt. Suman Agarwal each should not considered as non-genuine credit u/s 68 of the Act and added back to the total income of the assessee.

3.5 In compliance of the same the assessee submitted confirmation of Smt. Laxmi Agarwal with copy of e-mail send from Shri Manoj Agarwal to

JKD Group which was further forwarded to DCIT, Central Circle-2, Jaipur. Further assessee also submitted confirmation of Smt. Suman Agarwal with letter dated 30-10-2019.

3.6 Ld. AO on perusal of the confirmation found that both the confirmation was signed in same handwriting also the pattern of writing Agarwal was found identical which shows that the confirmation are tailored documents arranged by the assessee after issuance of show cause notice.

3.7 Further, in the reply of show cause the required document as requested u/s 133(6) of the Act such as copy of ITR, Balance sheet, Copy of bank statement were not furnished which are necessary to establish identity, creditworthiness of the creditor and genuineness of the transaction. Hence, all these three ingredients could not be proved in the enquiry conducted u/s 133(6) of the Act. The assessee failed to discharge his onus to establish creditworthiness of the creditors and only furnished a tailored document in form of confirmation. Since, the assessee failed to discharge the onus lies upon him hence an effort was made to find out the creditworthiness of the creditor i.e. Smt. Suman Agarwal and Smt. Laxmi Agarwal from portal of Income Tax Department which reveals that Smt. Laxmi Agarwal has not filed her ITR for the period 2013-14 and onwards. Whereas Smt. Suman Agarwal has filed her ITR from AY 2017-18 and

onwards and as per ITR of AY 2017-18, the year in which assessee has shown loan of Rs. 50,00,000/- from her, she has shown income amounting to Rs. 3,47,530/- only. Hence, it is evident that both the lender Smt. Suman Agarwal and Smt. Laxmi Agarwal possess any worth to lend huge loan amounting to Rs. 50,00,000/- each. Ld. AO further, on perusal of the ledger account of Smt. Laxmi Agarwal and Smt. Suman Agarwal found that no interest has been paid to these persons. This also clearly indicates that no genuine loan was given by these persons to the assessee as they do not have worth/creditworthiness to advance the huge amount of loan Rs. 50,00,000/- and no prudent person will advance huge money as a loan to anyone without consideration of interest when they can earned the same by depositing the money in any bank.

Based on this observation, discussion and evidence brought on record, Ld. AO noted that Smt. Laxmi Agarwal and Smt. Suman Agarwal do not have creditworthiness to advance the loan to the assessee. Accordingly the amount of Rs. 50,00,000/- from Smt. Laxmi Agarwal and Smt. Suman Agarwal each totaling to Rs. 1,00,00,000/- shown in the books of accounts under head unsecured loan as a non genuine u/s 68 of the I.T. Act. and added to the total income of the assessee and considered taxable at the rate of 60% as provided u/s 115BBE.

4. Aggrieved from the order of the assessment passed by the Id. AO, assessee preferred an appeal before the Commissioner of Income Tax, Appeals-4, Jaipur [for short CIT(A)]. Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(A) The Learned Assessing Officer completed assessment u/s 143(3) inter- alia making the addition of Rs. 1,00,00,000 u/s 68 of the Income Tax Act, 1961 for credits shown as received from Smt. Laxmi Agarwal and Smt. Suman Agarwal.

Appellant has submitted that during the assessment year she has received two unsecured loans from the following persons -

(i) Rs. 50,00,000/- from Smt. Laxmi Agarwal (PAN-AJCPA0531F), R/o Flat No. 901, JKD Pearl Landmark, B-196, University Marg, Bapu Nagar, Jaipur

(ii) Rs. 50,00,000/- from Smt. Suman Agarwal (PAN-BVCPS6520D), R/o Flat No. 901, JKD Pearl Landmark, B-196, University Marg, Bapu Nagar, Jaipur

With a view to verify the identity, genuineness and creditworthiness of the parties notices under section 133(6) of the Act were issued to both the parties by the learned AO during assessment proceedings. The notices were sent to speed post as well as on the ITBA system. The speed post notice sent to Smt. Laxmi Agarwal was not served and came back unserved. No reply was received by the learned AO from either of the parties during assessment proceedings.

(B) As mentioned in the assessment order two separate show. cause notices were issued to the appellant with respect of Smt. Laxmi Agarwal and Smt. Suman Agarwal on dated 07-10-2019 and 01-11-2019 respectively wherein assessee was asked to show cause as why the amount credited in his books of accounts as unsecured loan amounting to Rs. 50,00,000/- from Smt. Laxmi Agarwal and Smt. Suman Agarwal each should not be considered as non genuine credit u/s 68 of the Act and added back to the total income of the assessee.

In support of the genuineness, identity and creditworthiness the appellant has filed the (i) confirmation from both parties, (ii) both payer's bank account extract, (ii) Suman Agrawal's ITR page for the year TRUE COPY

(C) From the confirmations of the both the parties the learned AO has given a factual finding that confirmations are tailored documents arranged by the assessee after issuance of show cause notice. Both the confirmations are signed in same handwriting/ by the same person which is evident from the pattern of writing Agarwal in signatures which is identically similar in both the confirmations. I have perused the copies of the confirmations filed by the appellant in the appeal proceedings and the finding of the assessing authority in this regard is found to be correct and is hereby upheld.

In the case of *Bharati (P.) Ltd. v. CIT* [1978] 111 ITR 951 (Hon'ble Calcutta High Court) it was held that production of even confirmatory letters from the lender parties before the Income-tax Officer in support of the loan alone would not suffice the loan as genuine.

In the case of *CIT v. Precision Finance (P.) Ltd.* [1994] 208 ITR 465/11995] 82 Taxman 31 (Hon'ble Calcutta High Court) it was held that "It was not for the Income-tax Officer to find out by making investigation from the bank accounts unless the assessee proves the identity of the creditors and their creditworthiness. Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine."

In the case of *CIT v. United Commercial & Industrial Co. (P) Ltd.* [1991] 187 ITR 596/56 Taxman 304 (Hon'ble Calcutta High Court) it was held that the primary onus lies on the assessee to prove the nature and source of credits in its account. It is necessary for the assessee to prove prima facie the identity of his creditors, the capacity of such creditors to advance the money and lastly the genuineness of the transactions. Only when these things are proved by the assessee prima facie and only after the assessee has adduced evidence to establish the aforesaid facts does the onus shift on to the Department. It is not enough to establish the identity of the creditors. Mere production of the confirmation letters before the Income-tax Officer would not by itself prove that the loans have been obtained from those loan creditors or that they have creditworthiness.

(D) Further, even though the notices were not served on the lender parties and show cause notices were issued to the appellant by the learned AO with respect to each of the lender party, however the appellant did not produce the parties before the learned AO for the cross-examination.

(E) The issue in the assessment order and the appeal is regarding the unsecured loan. The transaction is such that it could not have taken place without the personal knowledge and personal trust between the parties. There is no reason why an unknown person should give huge loan of Rs. 50 lakhs to the appellant

- (i) without charging the interest and
- (ii) without any security or guarantee and
- (iii) without any written agreement

The appellant has also not placed on record the correspondences which would have taken place between the parties while the loan was being discussed between the parties and the correspondences at the time of the disbursement of loan and any correspondences thereafter.

(F) Also, in the appeal, the appellant is silent on the following findings and observations of the assessment order and these findings remain unrebutted and thus stand accepted:-

(a) No interest was paid by the appellant on the loans taken. Reason for non-charging the interest have also not been furnished which were called by the Id. AO from the parties giving the loans.

This also clearly indicate that no genuine loan was given by these persons to the assessee as they do not have worth/creditworthiness to advance the huge amount of loan Rs. 50,00,000/- and no prudent person will advanced huge money as a loan to any one without consideration of interest when they can earned the same by depositing the money in any bank,

(b) Both the confirmation has been signed in same handwriting which is evident from following scan copy wherein the pattern of writing Agarwal is identically similar which shows that the confirmation are tailored documents arranged by the assessee after issuance of show cause notice. (Para 4.5 of the assessment order.

(c) Smt. Laxmi Agarwal has not filed her ITR for the period 2013-14 and onwards

(d) Notice u/s 133(6) of the Act issued to Laxmi Agarwal returned back unserved.

(e) Smt. Suman Agarwal has filed her ITR from AY 2017-18 and onwards and as per ITR of AY 2017-18, the year in which assessee has shown loan of Rs. 50,00,000 from her, she has shown income amounting to Rs. 3,47,530 only.

(G) In the factual background of the case, the mere argument that the transaction has been routed through the banking channel does not prove the ingredients of section 68 of the Act.

Hon'ble Supreme Court in the case of Commissioner of Income-tax V.P. Mohanakala [2007] 161 Taxman 169 (SC)/[2007] 291 ITR 278 (SC)/(2007) 210 CTR 20 (SC)[15-05-2007] has held as under:-

"May be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence."

Hon'ble Guwahati High Court in Nemi Chand Kothari v. CIT [2004] 136 Taxman 213 (Gauhati)/[2003] 264 ITR 254 (Gauhati)/[2003] 185 CTR 635 (Gauhati)(02-09-2003] held that

".....even we do not hold that a transaction, which takes place by way of cheque, is invariably sacrosanct."

In the case of CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31(Calcutta)/[1994] 208 ITR 465 (Calcutta)/[1994] 121 CTR 20 (Calcutta) [14-06-1993] (Hon'ble Calcutta High Court) it was held that

"Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine."

(H) In view of the above discussion the genuineness of the transaction of loans as claimed to have been received by the appellant has not been satisfactorily explained and proved by the appellant. The complain has not been to be artificial and tailor made. Notice under section 133(6) of the Act could not be served on one of the parties. No interest has been charged and no agreement has been placed on record. The appellant has not proved the relationship with the parties which supported such huge loans without documentation and without interest. These facts are beyond human probabilities as no prudent person would do such act without any hidden reasons.

Thus taxability as per section 68 of the Act is attracted in this case.

(I) Further the appellant has also not been able to prove the creditworthines of the parties who are given huge loans of Rs. 50 lakhs each to the appellant durim the year. Smt. Laxmi Agarwal has not filed her ITR for the period 2013-14 a onwards. Smt. Suman Agarwal has filed her ITR from AY 2017-18 and onwards a as per ITR of AY 2017-18, the year in which assessee has shown loan of F 50,00,000 from her, she has shown income amounting to Rs. 3,47,530 only. T learned AO had also asked for the balance sheet of the parties which have not be furnished. Regarding the contention of the appellant that bank balance is showr the bank account of the parties, the same is irrelevant as firstly the appellant furnished only the bank statement of selberal periods (only for June 2016 case of Laxmi Agarwal and only for 24-06-2016 for Suman Agarwal) and secondly the source of the funds in such bank statements are not explained as on the one hand the lender parties are not having taxable income to justify such huge abnormal loans to the appellant and on the other hand such parties are claiming to be harving huge balance in bank account. Further the bank statement of Laxmi Agarwal is incomplete as the first page showing the address and PAN etc. have been concealed and have not been furnished etc.

Taxability as per section 68 of the Act is attracted due to this reason also.

Even the identities of the persons from whom the loans are claimed to have been received are not satisfactorily proved by the appellant as the notices under 133(6) of the act were not replied by these parties. All the more, in case of Laxmi Agarwal the notice under section 133(6) of the Act was not served on the address provided by the appellant and returned back unserved. Further from the copies of the confirma tions filed by the appellant it is seen that in both the confirmations alongside the name of the lender parties name of one same person "Manoj

Agarwal" is mentioned. It is also interesting to note that in the copies of the bank statement excerpts furnished by the appellant for both the parties there is reference to the same "Manoj Agarwal". In case of Laxmi Agarwal the name "Manoj Agarwal" is mentioned along with her name and in case of Suman Agarwal the name "Manoj Agarwal" as appearing in the email ID associated with the bank account of Suman Agarwal. It is also important to note that the address of Suman Agarwal is different in each of the three documents furnished by the appellant (i) confirmation, (ii) bank statement, (iii) income tax return. Similarly in case of Laxmi Agarwal the address mentioned in the confirmation in the address mentioned in the PAN database as referred in the assessment order are completely different.

Taxability as per section 68 of the Act is attracted due to this reason also.

(J) The appellant has also claimed that these loans were repaid by the appellant in the next year. However apparently this contention has been made for the first time in the present appeal and also no evidences in this regard were furnished during the assessment proceedings and no application for the additional evidences has been filed. There is no reference to this aspect in the assessment order and also the appellant has not placed on record the evidences in the form of the submissions made before the assessing authority where this issue was raised. Accordingly this P contention has not been examined. Further the appellant has also not explained the sources from which the loan was repaid in the next year. The genuineness of the repayment has not been accepted in the assessment order. Also, it is irrelevant that the credit received during the year was repaid in the next year as what is taxable in the year under appeal is the credit received during the year because the credit is unexplained.

(K) Where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source (CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC)/A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC)).

In the case of Roshan Di Hatti v. Commissioner of Income-tax [1977] 107 ITR 938 (SC)[08-03-1977] it is held by the Hon'ble Supreme Court as under:-

"Now, the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the revenue is entitled to treat it as taxable income. This was laid down as far back as 1958 when this court pointed out in A. Govindarajulu Mudaliar v. Commissioner of Income-tax [1958] 34 ITR 807, 810 (SC) that:

"There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the

accounting year, the Income- tax Officer is entitled to draw the inference that the receipts are of an assessable nature."''

In the case of Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC)[08-02-1963] it is held by b the Hon'ble Supreme Court as under.-
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"It seems to us that the answer to this question must be in the affirmative and that is how it was answered by the High Court. It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat it as taxable income: see A. Govindarajulu Mudaliar v. Commissioner of Income-tax [1958] 34 ITR 807 (SC)".

Referring to the above judgements of Hon'ble Hon'ble Supreme Court, it is held by the Hon'ble ITAT in the case of Navin Shantilal Mehta v. Income-tax Officer, Ward-32 (2) (4), Mumbai [2018] 90 taxmann.com 16 dba Trib.) as under:-

"3.2 As per section 68 of the Act onus is upon the assessee to discharge the burden so cast upon, First burden is upon the assessee to satisfactorily explain the credit entry contained in his books of accounts. The burden has to be discharged with positive material (Oceanic Products Exporting Co. v. CIT [2000] 241 ITR 497 (Ker.). The legislature had laid down that in the absence of satisfactorily explanation, the unexplained cash credit may be charged u/s 68 of the Act. Our view is fortified by the ratio laid down in Hon'ble Apex Court in CIT v. P. Mohankala [2007] 291 ITR 278/161 Taxman 169. A close reading of section 68 and 69 of the Act makes it clear that in the case of section 68, there should be credit entry in the books of account whereas in the case of 69 there may not be an entry in such books of account. The law is wellsettled, the onus of proving the source of a sum, found to be received/transacted by the assessee, is on him and where it is not satisfactorily explained, it is open to the Revenue to hold that it is income of the assessee and no further burden lies on the Revenue to show that income is from any other particular source. Where the assessee failed to prove satisfactorily the source and nature of such credit, the Revenue is free to make the addition. The principle laid down in CIT v. M. Ganpati Mudaliar [1964] 53 ITR 623 (SC)A. Govinda Rajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC) and also CIT v. Durga Prasad More [1969] 72 ITR 807 (SC) are the landmark decisions. The ratio laid down therein are that if the explanation of the assessee is unsatisfactory, the amount can be treated as income of the assessee. The ratio laid down in CIT v. Daulat Ram Rawatmal [1973] 87 ITR 349 (SC) further throws light on the issue. In the case of a cash entry, it is necessary for the assessee to prove not only the identity of the creditor but also the capacity of the creditor and genuineness of the transactions. The onus lies on the assessee, under the facts available on record. A harmonious construction of section 106 of the evidence Act and section 68 of the Income Tax Act will be that apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of the creditors. In CIT v. Korlay Trading Co. Ltd. [1998] 232 ITR 820 (Cal.), it was held that mere mention of file number of creditor will not suffice and each entry has to be explained separately by the assesseeCIT v. R.S. Rathaore [1995] 212 ITR 390/86 Taxman 20 (Raj.). The Hon'ble Guwahati High Court in Nemi

Chandra Kothari v. CIT [2003] 264 ITR 254/[2004] 136 Taxman 213 held that transaction byrebeques may not be always sacrosanct.....”

In view of the above discussion the addition made in the assessment order is hereby pheld and this ground of appeal of the appelliant is hereby dismissed.

Ground of Appeal No. 3 is as under:

Ground No. 3: Under the facts and Circumstances of the case the Learned Assessing Officer has erred in initiating the penalty proceedings us 271AAC1 of the IT Act 1961.

5.1 The ground is general in nature. The ground is pre-mature as this is against ere initiation of penalty proceedings. Penalty proceedings are independent oceedings and the appelliant is required to make his submissions before the ppropriate authority during the penalty proceedings. Accordingly, the ground of peal raised by the appelliant on this issue is treated as disposed off.

Ground of Appeal No. 4 is as under:

Ground No. 4: The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing. TAY DEPARTMENT

6.1 The appelliant has not added or altered any of the above mentioned grounds of appeal. Accordingly such mention by the appelliant in its ground is treated as general in nature, not needing any specific adjudication and is accordingly treated as disposed off.

In the result, the appeal of the appelliant is dismissed.”

5. As the assessee did not find any favor, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

“The assessee is an individual, having income from house property, business and other sources. The assessee filed return declaring total income of Rs.

3,08,89,860/- on 31/10/2017. The case of the assessee was taken up for scrutiny and the assessment stands completed on total income of Rs. 4,08,89,860/-, vide order u/s 143(3) dated 15/11/2019. While completing the assessment, the Learned Assessing Officer made an addition of Rs. 1,00,00,000/- under section 68 of the IT Act, 1961 by treating the cash credits in the name of Smt. Laxmi Agarwal and Suman Agarwal, of Rs. 50,00,000/- each, as unexplained.

Aggrieved with the order of the Learned Assessing Officer, the assessee preferred an appeal before the Learned CIT(A), who, vide appeal order dated 11/7/2024, has dismissed the appeal of the assessee and confirmed the order of the Learned Assessing Officer.

Aggrieved with the order of the Learned CIT(A), the assessee is in appeal before the Hon'ble ITAT. The individual grounds of appeal are discussed as under :-

Ground No.1

Under the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the addition of Rs. 1,00,00,000/- u/s 68 of the IT Act, 1961 made by the Learned Assessing Officer on account of disbelieving the creditworthiness of unsecured loan taken (Rs.50,00,000 from Laxmi Agarwal and Rs. 50,00,000 from Smt. Suman Agarwal) without considering the submission of the assessee.

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Ground No.2

Under the facts and circumstances of the case, the Learned CIT(A) has erred in giving finding regarding signature of loan creditors without any credible evidence and expert opinion that signature on the confirmations are not genuine and confirmations are tailored documents arranged by the assessee.

I) BRIEF FACTS OF THE CASE

In the case of the assessee, return of income for the year under consideration was filed on 31/10/2017 declaring income of Rs. 3,08,89,860/-. During the year under consideration, the assessee had received loans as under :-

S. No	Name of the cash creditor with PAN	Amount and mode of loan	Date of loan	Date when loan was returned

1.	Suman Agarwal (BVCPS6520D)	Rs.50,00,000 By cheque	24/6/2016	2500000 on 12/4/2019 2500000 on 15/4/2019
2.	Laxmi Agarwal (AJCPA0531F)	Rs. 50,00,000 By cheque	24/6/2016	2500000 on 12/4/2019 2500000 on 15/4/2019

In support of genuineness of loans, the assessee furnished confirmations of the above two cash-creditors along with their PAN. The Learned Assessing Officer doubted the genuineness of the confirmations on the sole ground that these were signed by one and the same person. In view of this, the Id Assessing Officer held that the confirmations were tailored documents and held the loans as ingenuine and added the same to the income of the assessee under section 68. The action of the Learned Assessing Officer was not justified as he doubted the signatures on confirmation purely on assumption and presumption. He did not obtain any FSL report before rejecting the confirmations. Further, copies of these confirmations have been scanned in the assessment order and apparently one can observe that signature of Laxmi Agarwal and Suman Agarwal can by no stretch of imagination be stated as from one and the same hand. The writing on both the confirmations is very different. In any case, the assessee filed appeal before the Learned CIT(A).

II) GROUND ON WHICH APPEAL DISMISSED BY Learned CIT(A)

The Learned CIT(A) has upheld the order of the Learned Assessing Officer on various counts, which are discussed one by one hereunder :-

(i) Notices u/s 133(6) remained uncomplined with

It is submitted that the Id CIT(A) has repeated the same grounds on which the Learned Assessing Officer has made the additions. It is the case of the revenue that in the case of Suman Agarwal, notice u/s 133(6) was issued and served, but remained uncomplined with. However, in this regard, it is submitted that Smt. Suman Agarwal was staying in Agra and directly responded to notice u/s 133(6) confirming that she had advanced the loan interest-free. It was further submitted by her in her letter dated 30/10/2019 addressed to the Mr. Jagdish Saran, ACIT, Central Circle-2, Jaipur that she was 80 years old and the loan was advanced interest free as during the illness of her husband, she was helped a lot by Smt. Rajkumari Agarwal. In view of this reply of Suman Agarwal, it was wrong on the part of the Learned Assessing Officer and on the part of the Learned CIT(T)A to state that Suman Agarwal did not respond to notice u/s 133(6). Copy of her reply is available on Paper Book Page No.1-4.

As regards notice u/s 133(6) to Smt. Laxmi Agarwal, it is mentioned in the assessment order that the notice was not served. In the circumstances, no reply

was received from Laxmi Agarwal. For all this, assessee cannot be held responsible.

(ii) Confirmations of cash creditors were tailored documents.

During the course of assessment proceedings, the assessee had furnished confirmation of both the cash creditors duly signed by them and bearing PAN. Copies of these confirmations are available on Paper Book Page No.5-6. The Learned Assessing Officer doubted the genuineness of the confirmations on the sole ground that these were signed by one and the same person. In view of this, the Id Assessing Officer held that the confirmations were tailored documents and held the loans as ingenuine and added the same to the income of the assessee under section 68. The action of the Learned Assessing Officer was not justified as he doubted the signatures on confirmation purely on assumption and presumption. He did not obtain any FSL report before rejecting the confirmations. Further, copies of these confirmations have been scanned in the assessment order and apparently one can observe that signature of Laxmi Agarwal and Suman Agarwal can by no stretch of imagination be stated as from one and the same hand. The writing on both the confirmations is very different. However, the Learned CIT(A) also agreed with the view taken by the Learned Assessing Officer. In this regard, it is submitted that the Learned Assessing Officer as well as the Learned CIT(A) are not authorities to pass judgments on writing of an individual. The best course would have been to have referred the matter to FSL, which was not done. Hence, the view taken by the Learned Assessing Officer as well as the Learned CIT(A) is of no consequence. The assessee stands by the fact that the confirmations are signed by the concerned cash creditors. These are genuine documents and should not have been rejected purely on presumption and assumption.

(iii) No interest has been charged

It is submitted that the Learned Assessing Officer as well as the Learned CIT(A) were not justified in making addition of the cash credits on the ground that the assessee did not pay any interest on the amount of loans. It is submitted that payment of interest is totally governed by the relations between the parties. There is no provision or rule regarding charging of interest or on rate of interest.

Suman Agarwal in her reply to notice u/s 133(6) had stated that the assessee, Rajkumari Agarwal, had extended a lot of help when her husband was admitted in Jaipur hospital. This was sufficient consideration for not charging interest.

As regards Laxmi Agarwal, it is submitted that she happens to be one of the individual of the group to which the assessee belongs, i.e JKD Group. In view of the ties of the group persons, interest was not charged by her. In view of these facts, it is submitted that cash credits could not have been rejected on the ground that these were not interest bearing. Loans are advanced interest free on various considerations.

(iv) Filing of income tax return by the cash creditors

The Learned CIT(A) has also acted in the same fashion as done by the Learned Assessing Officer . It is the case of the revenue that returns of income have not been filed by Laxmi Agarwal for A.Y. 2014-15 onwards and Suman Agarwal has filed returns for A.Y. 2017-18, but income disclosed at Rs. 347530/- is not commensurate with the amount of loan advanced.

It is submitted that the assessee has provided confirmation of both the cash creditors bearing PAN. Enforcing filing of return of income is the job of the Department and assessee is not in a position to help in this regard. PAN has been given to establish the genuineness of the identity of the cash creditor. Further, return of income of Rs. 347530/- by Suman Agarwal cannot be yardstick to reject the cash credit. She is also her advanced years of life. Sources of income may be meagre. In view of these facts, the Learned CIT(A) was not justified in rejecting the cash creditors with reference to returns of income.

(v) Copies of bank account of cash creditors are only of limited period.

It is submitted that one of the grounds on which the Learned CIT(A) has confirmed the addition of cash credits is that the bank account of the creditors was only of limited period, which does not disclose the sources of loan advanced. In this regard, it is submitted that copy of ICICI bank account of Laxmi Agarwal with PAN for the period 1/4/2016 to 31/3/2017 is enclosed (Paper Book Page No.7-11.) which discloses that at no stage during this period, the amount standing to the credit of Laxmi Agarwal was less than Rs. 10 lacs. This shows the capacity of Laxmi Agarwal that in the saving bank account the amount of more than Rs. 10 lacs was always lying idle. It also explains why interest was not charged by her.

Copy of bank account of Suman Agarwal along with ITR is also available on Paper Book Page No.12-13. She has advanced an amount of Rs. 50,00,000/- on 24/6/2016.

In view of the fact that amount of cash credits have come through banking channels, the same is proved to be genuine. It is further submitted that the assessee is not required to prove the source of source. The Learned CIT(A) is not justified in stating that the bank statements were of selective small periods and could not explain as how the lender parties was having the source of funds. The amendment in the Income Tax Act for proving the source of source in respect of individuals has come w.e.f. 1/4/2023, which is effective from A.Y. 2024-25. In the case of the assessee, the assessment year is 2017-18. In these facts and circumstances, it was enough on the part of the assessee to establish that amount has come from the bank account of the cash-creditors. The assessee is not required to prove the source of amount in the bank accounts of the cash creditors. In view of this, the Learned CIT(A) was not justified in treating the cash credits as bogus. The same deserve to be accepted.

(vi) Source of repayment not disclosed

Before the Learned CIT(A), the assessee also submitted that in the case of both the cash-creditors, the amounts have been returned/repaid by the assessee

through bank on 12/5/2019 and 15/4/2019 as mentioned in the Table above. The Learned CIT(A) has doubted the source of repayment. The assessee has repaid the amounts through banking channels, which stand credited in the relevant bank account of the creditors. Copy of the bank account of the creditors reflecting the repayment of loan amount are available on Paper Book Page No.14-15.

It is further submitted that the Learned CIT(A) was not justified in doubting the repayment capacity of the assessee. For the year under consideration, the assessee has furnished return of income of Rs. 3,08,89,860/-. The income enjoyed by the assessee itself is a good indication regarding her capacity for repayment of loan. As the loans have been repaid, their genuineness cannot be doubted.

(III) CASH CREDITS ARE GENUINE

In view of the aforesaid facts and discussion, the cash credits in the case of the assessee are genuine. The assessee has discharged its onus in proving the identity of the cash creditors, the genuineness of the transaction has also been proved as the same is through banking channel. The assessee has furnished the following documents in support of the genuineness of the cash credits :-

1. Confirmation
2. Letter dated 30/10/2019 from Suman Agarwal addressed to the Assessing Officer in response to notice u/s 133(6)
3. Copy of bank account both of Suman Agarwal and Laxmi Agarwal reflecting the loan transactions.
4. Copy of bank account of Suman Agarwal and Laxmi Agarwal reflecting the repayment of loan.
5. Copy of IT return of AS.Y. 2017—18 of Suman Agarwal
6. Copy of IT return of the assessee establishing her capacity to return the amount.

In view of the above, it is submitted that the genuineness of the cash-creditors stands proved beyond doubt. The addition made by the Learned Assessing Officer and so confirmed by the Learned CIT(A) deserves to be deleted.

(IV) FAVOURABLE DECISIONS

The Learned CIT(A), while confirming the addition made on account of cash credits u/s 68, has cited a number of decisions. It is submitted that on the issue of cash credits and their genuineness, there are more number of decisions in favour of the assessee. The same are quoted in the following para. It is also submitted that when there are two opinions on the same issue, the one favourable to the assessee requires to be accepted (88 ITR 192 Vegetable Products).

- (1) Aravali Trading Co Vs. ITO
25-1-2007 (2008) 8 DTR (Raj) 199

Once the existence of the creditors is proved and such person own the credits which are found in the books of the assessee, the assessee's onus stand discharged and the latter is not further required to prove the source from which the creditors could have acquired the money deposited with him either in terms of section 68 or on general principle.

(2) Kanhialal Jangid Vs CIT

CIT (2008) 217 CTR 354 (Rajasthan high court)

In the case of cash credits, confirmation and existence of the credit is enough.

(3) CIT Vs. Orissa Corporation (P) Ltd (159 ITR 78 (SC))

It was held that the assessee had given names and addresses of the alleged creditors, which were income tax assesseees, their index nos. were also in the file of the Revenue, however, Revenue after issuing notices u/s 131 did not pursue the matter further and examined the source of income of the alleged creditors. There was no effort made to pursue the so called alleged creditors. In these circumstances, Supreme Court held that no addition could be made. The assessee had discharged the burden laid upon it.

(4) CIT Vs. Chandela Trading Corporation Pvt Ltd (2015) 372 ITR 232 (Kolkata High Court)

Mere omission on the part of the creditors to subject themselves to the enquiry by the revenue or their failure to furnish accounts would not lead to the conclusion that the creditors were bogus.

(5) CIT Vs. HS Builders
78 DTR 169 (Rajasthan High Court)

Deposit of cash in the account of creditors just before giving loan to the assessee would not lead to the conclusion that the money was deposited by the assessee.

(6) Mangilal Agarwal Vs. ACIT reported in 300 ITR 372 (Rajasthan High Court)

It was held that where the assessee points out a depositor from whom he has received money and if the depositor owns advancement of the money to the assessee, further enquiry into the source cannot result in invoking the provisions of section 68 of the Income Tax Act, 1961. It was held that once the creditor is proved to exist and he admits having lent money to the assessee, the money cannot be considered as income of the assessee unless the revenue establishes by some evidence that it clearly flowed directly from assessee himself.

(7) Pendurthi Chandrashekhar Vs/ DCIT (2018) 91 taxmann.com 229 (AP & Telengana High Court)

Where the assessee received loan of Rs. 10 lakhs from a person and same was repaid by bank transfer, genuineness of transaction and creditworthiness of said

person having been proved by bank statements, addition of loan amount to assessee's income as unexplained cash credit was not justified.

Ground No.3

Under the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in applying of provisions of Sec. 115BBE of the IT Act, 1961 which are not applicable in assessee's case.

The cash-credits being genuine, no addition u/s 68 is warranted and hence, consequential relief maybe granted.

Ground No.4

The assessee craves your indulgency to add, amend or alter all or any ground of appeal before or at the time of hearing.

The Hon'ble Tribunal is requested to consider the submissions and case laws cited by the assessee and decide the appeal in favour of the assessee by deleting the addition made by the Learned Assessing Officer and sustained by the Learned CIT(A).”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records :

Sr. No.	Particulars	Page No.
1.	Letter filed by Suman Agarwal with encl. in response to notice u/s 133(6) issued by the AO	1-4
2.	Confirmation of Laxmi Agarwal and Suman Agarwal	5-6
3.	Copy of bank statement with copy of PAN of Laxmi Agarwal	7-11
4.	Copy of ITR and bank statement of Suman Agarwal	12-13
5.	Copy of bank account of Laxmi Agarwal and Suman Agarwal reflecting the repayment of loan by Rajkumari Agarwal	14-15

7. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee the assessee has availed loan from two depositors who belongs to same family. The assessee filed the confirmation – ledger account. Ld. AO directly called for information u/s. 133(6) of the Act. Where the notice served the reply was given. Mrs. Suman Agarwal has also stated the reason as to her husband was hospitalized and even she is also aged around 80 years and therefore, she replied late. She has in the reply submitted to AO also confirmed that he has received the money back. In the paper book so filed reply u/s. 133(6) supports the ITR and bank statement. As regards the submission of email by Manoj Agarwal he is the husband of Lakshmi Agrawal has submitted the email. After receipt of reply to Id. AO did not further confirmed the bank transaction with bank nor did he doubt the source of source. Merely the assessee has not paid interest on the loan cannot be considered as unexplained, when the assessee also confirms that she has repaid those loan amount too. As regards the non submission of ITR for one depositor she being super senior citizen having income below the maximum amount not chargeable to tax ITR was not filed. As regards the capacity Id. AR of the assessee invited our attention to the fact that the assessee keeps high bank balance through out and the same was also not doubted the Id. AO.

8. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). Ld. DR vehemently argued that in the assessment order Id. AO made all efforts but the assessee could not establish the identity, credit worthiness and genuineness of the transaction before the Id. AO and therefore, he has invoked the provision of section 68 of the Act. The reply was not received from the depositor but the third-party files the details and the signature made becomes not genuine. The assessee borrowed the substantial amount, but no interest was paid by the assessee. So, relying on these facts and case laws cited by the Id. CIT(A) Id. DR supported the orders of the lower authority.

9. In the rejoinder Id. AR of the assessee submitted that assessee has supplied, confirmation, bank statement and complete address all documents are sufficient to prove the criteria as given u/s. 68 of the Act. As regards the reply by Manoj Agarwal he being the family member of those depositor there is nothing uncommon to submit the reply on behalf his wife. Ld. AR of the assessee submitted that Shri Manoj Agarwal and his wife and mother belong to a reputed Dainik Bhaskar group and there by doubting their identity is not correct.

10. We have heard the rival contentions and perused the material placed on record. The bench noted that the apple of discord in this case is “whether the loan accepted by the assessee Ms. Suman Agarwal and Ms. Laxmi Agarwal for an amount of Rs. 50,00,000/- be considered as unexplained credit or not”. The brief facts related to this dispute as emerges from the records are that assessee e-filed her return of income on 31-10-2017 declaring an income of Rs. 3,08,89,860/-.

Thereafter, the case of the Assessee was taken up for "Complete scrutiny" u/s 143(3) of the Income Tax Act, 1961 ("the Act") on the basis of Computer Assisted Selection for Scrutiny(CASS) and statutory notice u/s 143(2) of the Act, dated 09-08-2018 was issued through ITBA and duly served upon the Assessee.

Information u/s 142(1) of the Act was called for vide questionnaire through ITBA. In compliance of the said notices, the Assessee submitted details/information through e-proceeding. The information/detail(s) so filed was examined. Assessee has declared income from House property, Business and Other sources.

During the course of assessment proceedings Id.AO found that assessee has shown receipt of loan from Smt. Suman Agarwal and Smt. Laxmi Agarwal. To verify the identity, creditworthiness of the creditor and

genuineness of the transaction. Enquiry was conducted u/s 133(6) of the Act. In the case of depositor Smt. Laxmi Agarwal, a notice u/s 133(6) of the Act was issued on 13-09-2019 through ITBA and also dispatch with speed post at the address mentioned in PAN base address 1-D-4, Jagruthi Residency, Street no. 10, East Marredpally, Secundrabaad, Andra Pradesh wherein she was requested to furnish Return of Income along with computation of income Balance sheet & account, Audit report with all Annexures for FY 2015-16 and FY 2016-17, Copy of ledger account of the assessee in her books and confirmation, Copy of bank statement for FY 2015-16 and FY 2016-17, details of interest received on this loan or not. In this case speed post returned back on 24-09-2019. Whereas in the case of Smt. Suman Agarwal, similar notice u/s 133(6) of the Act was issued on 16-10-2019 through ITBA and dispatched with speed post at the address mentioned in PAN base address 901, JKD Pearl Landmark, B-196, University Marg, Bapu Nagar, Jaipur wherein she was requested to furnish aforementioned details on or before 25-10-2019. In this case notice was duly served to the lender. However, no reply was received on the same till 31-10-2019. Since, in verification u/s 133(6) of the Act as discussed above no reply was received in one of the case and in another case the letter sent returned back unserved.

Accordingly, two separate show cause notice were issued in case of Smt. Laxmi Agarwal and Smt. Suman Agarwal on 07-10-2019 and 01-11-2019 respectively wherein assessee was asked to show cause as why the amount credited in her books of accounts as unsecured loan amounting to Rs. 50,00,000/- from Smt. Laxmi Agarwal and Smt. Suman Agarwal each should not considered as non-genuine credit u/s 68 of the Act and added back to the total income of the assessee. In compliance of the same the assessee submitted confirmation of Smt. Laxmi Agarwal with copy of e-mail send from Shri Manoj Agarwal to JKD Group which was further forwarded to DCIT, Central Circle-2, Jaipur. Further assessee also submitted confirmation of Smt. Suman Agarwal with letter dated 30-10-2019. Ld. AO on perusal of the confirmation found that both the confirmation was signed in same handwriting also the pattern of writing Agarwal was found identical which shows that the confirmation are tailored documents arranged by the assessee after issuance of show cause notice. Further, in the reply of show cause the required document as requested u/s 133(6) of the Act such as copy of ITR, Balance sheet, Copy of bank statement were not furnished which are necessary to establish identity, creditworthiness of the creditor and genuineness of the transaction. Hence, all these three ingredients could not be proved in the enquiry conducted u/s 133(6) of the Act. The

assessee failed to discharge his onus to establish creditworthiness of the creditors and only furnished a tailored document in form of confirmation. Since, the assessee failed to discharge the onus lies upon him hence an effort was made to find out the creditworthiness of the creditor i.e. Smt. Suman Agarwal and Smt. Laxmi Agarwal from portal of Income Tax Department which reveals that Smt. Laxmi Agarwal has not filed her ITR for the period 2013-14 and onwards. Whereas Smt. Suman Agarwal has filed her ITR from AY 2017-18 and onwards and as per ITR of AY 2017-18, the year in which assessee has shown loan of Rs. 50,00,000/- from her, she has shown income amounting to Rs. 3,47,530/- only. Hence, Id. AO noted that both the lender Smt. Suman Agarwal and Smt. Laxmi Agarwal do not possess any worth to lend huge loan amounting to Rs. 50,00,000/- each. Ld. AO further, on perusal of the ledger account of Smt. Laxmi Agarwal and Srnt. Suman Agarwal found that no interest has been paid to these persons. This also clearly indicates that no genuine loan was given by these persons to the assessee as they do not have worth/creditworthiness to advance the huge amount of loan Rs. 50,00,000/- and no prudent person will advance huge money as a loan to anyone without consideration of interest when they can earn the same by depositing the money in any bank. Accordingly, the amount of Rs.

50,00,000/- from Smt. Laxmi Agarwal and Smt. Suman Agarwal each totaling Rs. 1,00,00,000/- shown in the books of accounts under head unsecured loan as a non-genuine u/s 68 of the I.T. Act. and added to the total income of the assessee and considered taxable at the rate of 60% as provided u/s 115BBE.

11. When the matter carried before the Id. CIT(A), he has confirmed that addition by observing as under :

As per section 68 of the Act onus is upon the assessee to discharge the burden so cast upon, First burden is upon the assessee to satisfactorily explain the credit entry contained in his books of accounts. The burden has to be discharged with positive material (Oceanic Products Exporting Co. v. CIT [2000] 241 ITR 497 (Ker.)). The legislature had laid down that in the absence of satisfactory explanation, the unexplained cash credit may be charged u/s 68 of the Act. Our view is fortified by the ratio laid down in Hon'ble Apex Court in CIT v. P. Mohankala [2007] 291 ITR 278/161 Taxman 169. A close reading of section 68 and 69 of the Act makes it clear that in the case of section 68, there should be credit entry in the books of account whereas in the case of 69 there may not be an entry in such books of account. The law is wellsettled, the onus of proving the source of a sum, found to be received/transacted by the assessee, is on him and where it is not satisfactorily explained, it is open to the Revenue to hold that it is income of the assessee and no further burden lies on the Revenue to show that income is from any other particular source. Where the assessee failed to prove satisfactorily the source and nature of such credit, the Revenue is free to make the addition. The principle laid down in CIT v. M. Ganpati Mudaliar [1964] 53 ITR 623 (SC)A. Govinda Rajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC) and also CIT v. Durga Prasad More [1969] 72 ITR 807 (SC) are the landmark decisions. The ratio laid down therein are that if the explanation of the assessee is unsatisfactory, the amount can be treated as income of the assessee. The ratio laid down in CIT v. Daulat Ram Rawatmal [1973] 87 ITR 349 (SC) further throws light on the issue. In the case of a cash entry, it is necessary for the assessee to prove not only the identity of the creditor but also the capacity of the creditor and genuineness of the transactions. The onus lies on the assessee, under the facts available on record. A harmonious construction of section 106 of the evidence Act and section 68 of the Income Tax Act will be that apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of the creditors. In CIT v. Korlay Trading Co. Ltd. [1998] 232 ITR 820 (Cal.), it was held that mere mention of file number of creditor will not suffice and each entry has to be explained separately by the assessee. CIT v. R.S. Rathaore [1995] 212 ITR 390/86 Taxman 20 (Raj.). The Hon'ble Guwahati High Court in Nemi

Chandra Kothari v. CIT [2003] 264 ITR 254/[2004] 136 Taxman 213 held that transaction byrebeques may not be always sacrosanct.....”

In view of the above discussion the addition made in the assessment order is hereby upheld and this ground of appeal of the appellant is hereby dismissed.

12. So far as regards the grounds so taken by the assessee, we note that the assessee furnished confirmations of the above two cash-creditors along with their PAN. The Learned Assessing Officer doubted the genuineness of the confirmations on the sole ground that these were signed by one and the same person. In view of this, the Id. Assessing Officer held that the confirmations were tailored documents and held the loans as ingenuine and added the same to the income of the assessee under section 68, doubting the signature on confirmation purely on assumption and presumption. Ld. CIT(A) upheld the order of the Id. AO on the reasons that notices issued u/s. 133(6) remained non complied. It was submitted that Smt. Suman Agarwal was staying in Agra and directly responded to notice u/s 133(6) confirming that she had advanced the loan interest-free. It was further submitted by her in her letter dated 30/10/2019 addressed to the Mr. Jagdish Saran, ACIT, Central Circle-2, Jaipur that she was 80 years old and the loan was advanced interest free as during the illness of her husband, she was helped a lot by Smt. Rajkumari Agarwal. In view of this reply of Suman Agarwal, it was wrong on the part of the Learned Assessing Officer and on the part of the Learned CIT(T)A to state that Suman Agarwal did not

respond to notice u/s 133(6). As is evident that in the assessment proceeding the assessee had furnished confirmation of both the cash creditors duly signed by them and bearing PAN. Copies of these confirmations are available on Paper Book Page No.5-6. The Learned Assessing Officer doubted the genuineness of the confirmations on the sole ground that these were signed by one and the same person. In view of this, the Id Assessing Officer held that the confirmations were tailored documents and held the loans as ingenuine and added the same to the income of the assessee under section 68. The action of the Learned Assessing Officer was not justified as he doubted the signatures on confirmation purely on assumption and presumption. As regards the not paying the interest it was submitted that the payment of interest is totally governed by the relations between the parties. There is no provision or rule regarding charging interest or on rate of interest. Suman Agarwal in her reply to notice u/s 133(6) had stated that the assessee, Rajkumari Agarwal, had extended a lot of help when her husband was admitted in Jaipur hospital. This was sufficient consideration for not charging interest. As regards Laxmi Agarwal, it is submitted that she happens to be one of the individual of the group to which the assessee belongs, i.e JKD Group. In view of the ties of the group persons, interest was not charged by her. In

view of these facts, it is submitted that cash credits could not have been rejected on the ground that these were not interest bearing. Loans are advanced interest free on various considerations having faith respect and relations. As regards the filling the ITR we note that Ms. Laxmi Agarwal filed ITR for A.Y. 2014-15 onwards and Ms. Suman Agarwal has filed returns for A.Y. 2017-18. Thus, as it is clear that the assessee has provided confirmation of both the cash creditors bearing PAN. Enforcing the filing of return of income cannot decide the genuineness of loan. The depositors PAN were supplied and Id. AO noted that the profile of both the depositor were checked so the identity of the cash creditor established. So far genuineness and capacity is supported by the bank statement and confirmation. In view of these facts, the Learned CIT(A) was not justified in rejecting the cash creditors. As regards the contention that the bank account of the creditors was only for a limited period, which does not discloses the sources of loan advanced. In this regard, it is submitted that copy of ICICI bank account of Laxmi Agarwal with PAN for the period 1/4/2016 to 31/3/2017 placed on record (Paper Book Page No.7-11.) which discloses that at no stage during this period, the amount standing to the credit of Ms. Laxmi Agarwal was less than Rs. 10 lacs. This shows the capacity of Ms. Laxmi Agarwal that in the saving bank account the amount

of more than Rs. 10 lacs was always lying idle. It also explained by her as why interest was not charged by her. As regards the copy of bank account of Ms. Suman Agarwal along with ITR is also available on Paper Book Page No.12-13. She has advanced an amount of Rs. 50,00,000/- on 24/6/2016. In view of the fact that amount of cash credits have come through banking channels, the same is proved to be genuine. It is further submitted that the assessee is not required to prove the source of source. The Learned CIT(A) is not justified in stating that the bank statements were of selective small periods and could not explain as how the lender parties was having the source of funds. The amendment in the Income Tax Act for proving the source of source in respect of individuals has come w.e.f. 1/4/2023, which is effective from A.Y. 2024-25. In the case of the assessee, the assessment year is 2017-18. In these facts and circumstances, it was enough on the part of the assessee to establish that the amount has come from the bank account of the cash-creditors. The assessee is not required to prove the source of the amount in the bank accounts of the cash creditors. In view of this, the Learned CIT(A) was not justified in treating the cash credits as bogus and the considering the fact that the cash credits in the case of the assessee are genuine because identity of the cash creditors, the genuineness of the transaction has also been proved as the

same is through banking channel and it supports the Confirmation, letter dated 30/10/2019 from Suman Agarwal addressed to the Assessing Officer in response to notice u/s 133(6), Copy of bank account both of Suman Agarwal and Laxmi Agarwal reflecting the loan transactions, Copy of bank account of Suman Agarwal and Laxmi Agarwal reflecting the repayment of loan, Copy of IT return of AS.Y. 2017—18 of Suman Agarwal, Copy of IT return of the assessee establishing her capacity to return the amount. Thus, considering the discussion so recorded and based on the evidence so placed on record we hold that the genuineness of the cash-creditors stands proved beyond doubt. The addition made by the Learned Assessing Officer and so confirmed by the Learned CIT(A) directed to be deleted. We get strength of our view from the decision of our High Court decision in the case of Mangilal Agarwal Vs. ACIT reported in 300 ITR 372 (Rajasthan High Court), wherein High Court observed that :

It was held that where the assessee points out a depositor from whom he has received money and if the depositor owns advancement of the money to the assessee, further enquiry into the source cannot result in invoking the provisions of section 68 of the Income Tax Act, 1961. It was held that once the creditor is proved to exist and he admits having lent money to the assessee, the money cannot be considered as income of the assessee unless the revenue establishes by some evidence that it clearly flowed directly from assessee himself.

Based on the discussion so record herein above appeal filed by the assessee stands allowed.

Order pronounced in the open court on 26/12/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 26/12/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Raj Kumari Agarwal, Jaipur
2. प्रत्यर्था / The Respondent- ACIT, Central Circle-02, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1024/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar