

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 4768/Mum/2024
(Assessment Year: 2014-15)**

Sureshkumar Jivraj Suchak 3, Anna Villa, N.P. Thakkar Road, Opp. Rajpuria Baug, Vile Parle (East), Mumbai-400057. PAN : AAIPS2540K	Vs.	ACIT-25(3), 601, 6 th Floor, Bldg No. C-10, Pratyaksha Kar Bhavan, Bandra-Kurla Complex, Bandra East, Mumbai-400051.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Rushabh Mehta, AR

Revenue / Respondent by : Shri Prashant Mahajan, Sr. DR

Date of Hearing : 05.12.2024

Date of Pronouncement : 16.12.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 21.08.2024 for the AY 2014-15. The assessee raised the following grounds of appeal:

- “1. a) *The Ld. Commissioner of Income Tax (Appeal), Mumbai (ITA) erred in facts and law in confirming the addition u/s. 68 of the Act to the tune of Rs. 2,83,84,412/- on account of alleged unsecured loan taken from various parties on his own surmises and conjectures*

b) The Ld. CIT (A) erred in facts and law in not appreciating the fact that the identity, genuineness of the transaction and creditworthiness of the lender were duly established

2. The Ld. Commissioner of Income Tax (Appeals) (“the Ld. CIT(A)”) erred in facts and law in sustaining the disallowance of interest expenses of Rs. 2,98,401/- without appreciating the explanations provided by the appellant company.

3. Your appellant prays that-

(a) Addition of Rs. 2,83,84,412/- u/s 68 as unexplained cash credit be deleted;

(b) Disallowance of Rs. 2,98,401/- of interest paid on alleged loans taken; be deleted,

(c) Such other relief, as may be deemed fit in the matter, be granted.”

2. The assessee is an individual and he is a proprietor of Trupti Catering Contractor which is engaged in catering business since 1980. The assessee filed the return of income for AY 2014-15 on 19.11.2014 declaring a total income of Rs. 63,11,080/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) noticed that during the year under consideration assessee has obtained new loans to the tune of Rs. 7,15,65,279/- and called on the assessee to furnish the documents on the identity, creditworthiness and genuineness. After examining the details furnished by the assessee the AO made an addition of Rs. 3,92,74,029/- as unexplained cash credit under section 68 of the Act. The AO also made a disallowance of Rs. 2,83,895/- as expenses pertaining to prior period. Aggrieved the assessee filed further appeal before the CIT(A). The assessee filed additional evidences to prove the identity, creditworthiness and genuineness of the loan transactions before the CIT(A) and the CIT(A) call for remand report from the AO. Since the AO did not furnish the remand report, the CIT(A) decided the issue on merits by giving partial relief to the assessee and confirming the addition to the tune of Rs. 2,83,84,412/-. The relevant observations of the CIT(A) is extracted below:

“6.3 The appellant in his ground of appeal 1 has assailed the AO for making additions u/s 68 in respect of the unsecured loans and interest thereon.

6.3.1 The appellant during the course of the appellate proceedings has submitted the Name, Address, PAN, Loan Confirmation, Bank Statement and acknowledgment of ITR to prove the identity of the creditor, Creditworthiness of the creditor and the genuineness of the transaction.

6.3.2 The details submitted by the appellant have been examined and the analysis of the same is as under:

1 Krupa Suchak- She has given a loan of Rs. 1,00,000/- during the year. On examination of the documents submitted by the appellant it is seen that the appellant has shown that she did Sales Promotion Work and was supposed to be paid Rs. 1,00,000/- for the same which has been added to her loan account. The perusal of the ITR of Krupa Suchak shows that she has income below taxable limit and this ploy has been devised by the appellant both to build her capita. The appellant has not explained anything about the nature of work performed by Krupa Suchak for which she got a payment of Rs. 1,00,000/-. In view of the same the loan does not seem to be genuine and the addition of same is confirmed.

2. Sunita P Didwana- She has advanced a loan of Rs. 2,00,000/- (her returned income during the year is Rs. 5,57,894/-). The loan was advanced by her on 18.6.2013 and the same was returned to her on 30.7.2013 i.e. during the year only. In view of the same the loan is held to be genuine and the addition of Rs. 2,00,000/- and interest of Rs. 2827/- is deleted.

3. Vinay K Didwana- He has advanced a loan of Rs. 2,00,000/-(his returned income during the year is Rs. 10,97,346/-). The loan was advanced by him on 18.6.2013 and the same was returned to her on 30.7.2013 i.e. during the year only. In view of the same the loan is held to be genuine and the addition of Rs. 2,00,000/- and interest of Rs. 2827/- is deleted.

4. Trupti Caters- On perusal of the submission of the appellant it is seen that during the year Rs. 2,52,84,412/- has been shown as loan. The perusal of the details shows that the loan has been advanced in the form of payments which were made by Trupati Caters on behalf of the appellant. Similarly the appellant has shown some repayments as some of the payments to be received by the appellant have been received by Trupati

Caters against the outstanding loan. From the details submitted by the appellant it is not clear as to who is making the repayment and in lieu of what. The bank statement submitted by the appellant also does not make things any clear so as to reach a conclusion in favour of the appellant. In view of the same the addition of Rs. 2,52,84,412/- made by the AO in respect of the amount received from Trupati Caters is sustained.

5. Donald Fashions (mentioned as Down Load Fashion by AO) - It has given a loan of Rs. 15,00,000/- to the appellant on 31.5.2013 which has been returned on 8.2.2014 Le. during the year only(its returned income during the year is Rs.41,48,176/-). The loan is held to be genuine and the addition of Rs. 15,00,000/- and the interest of Rs.1,24,275/- is deleted.

6. Lotus Fabrics- it has given a loan of Rs. 10,00,000/- to the appellant on 29.4.2013 which has been returned on 19.6.2013 i.e. during the year only(its returned income during the year is Rs.41,48,176/-). The loan is held to be genuine and the addition of Rs. 10,00,000/- and the interest of Rs. 15068/- is deleted.

7. Saryu P Shah- She has advanced a loan of Rs. 25,00,000/- during the year Her returned income for the year is Rs. 14,13,118/-. Her bank account submitted by the appellant is not clear and in the absence of the same the creditworthiness and genuineness of the transaction cannot be verified. In view of the same the addition of Rs. 25,00,000/- and interest of Rs. 2,58,333/- is confirmed.

8. Vidyavati Family Trust- It has given a loan of Rs. 25,00,000/- to the appellant on 2.5.2013 which has been returned on 1.2.2014 i.e. during the year only(its returned Income during the year is Rs 20,10,588/-). The loan is held to be genuine and the addition of Rs. 25,00,000/- and the interest of Rs. 1,83,452/- is deleted.

9. Crown Fab International- It has given a loan of Rs. 5,00,000/- to the appellant during the year. As per the appellant the loan has been received on 1.6.2013 and returned back on 31.12.2013. However on perusal of the documents submitted by the appellant it is seen that in the copy of the bank account submitted by the appellant the said dates on which the transactions were carried out are not there and in the absence of the same the genuineness of the transaction cannot be confirmed. In view of the same the addition of Rs. 5,00,000/- and the interest of Rs, 40,068/- is confirmed.

10. Armani Exports- It has given a loan of Rs. 50,00,000/- to the appellant on 31.8.2013 which has been returned in 2 installments on 8.2.2014 and

17.2.2024 i.e. during the year only(its returned income during the year is Rs. 1,28,29,626/-). The loan is held to be genuine and the addition of Rs. 50,00,000/- and the interest of Rs. 3,62,767/- is deleted.

In view of the observations made above the ground of appeal 1 is partly allowed.”

3. The Id. AR presented arguments with regard to each of the loan creditors and made written submission as extracted below:

“Addition in respect of Loan from Krupa Suchak

CIT (A) Contention:

The Id. CIT(A) has sustained the addition made by the Ld. Assessing Officer by stating that the lender Krupa Suchak has shown income below the taxable limit. Further the assessee has not explained anything about the nature of work performed and hence the loan does not seem to be genuine.

Appellant Submission:

➤ *In this regard, we submit that during the year under consideration the assessee has not taken any loan from Krupa Suchak.*

➤ *In fact, the assessee had availed sales promotion services from her for which amount payable towards said expenditure was credited to her account. The said expense is also reported by the assessee in Form No. 3CD in clause 23 which may be referred at Pg. No. 38 of Paper Book. Further, ledger account confirmation from said party clearly shows that the sum of Rs. 1,00,000/- is credited towards commission for sales promotion services and no actual sum of money is received.*

➤ *Moreover, on perusal of the computation & ITR of said party (Copy of the same has been placed at Pg. No. 43-45 of Paper Book); it can be seen that the said commission is also duly offered by her for the A.Y. 2014-15.*

➤ *Hence, from the above it can be concluded that no addition should have been made u/s. 68 as no loans has been received by the assessee during the year under consideration.*

Addition in respect of Loan from Trupti Caterers

CIT (A) Contention:

➤ *The Id CIT(A) has sustained the addition made by the Ld. Assessing Officer in respect of loan taken from Trupti Caterers by stating that it is not clear as to who is making the repayments and in lieu of what and even the bank statement submitted does not make things clear to reach a conclusion.*

Appellant Submission:

➤ *In this regard, we submit that the lender Trupti Caterers is a proprietorship concern run by Shri Kanaiyalal Jivraj Suchak who is real brother of the assessee.*

Being in same line of business; it happens many a times that the payments from the common clients are received in one or the other account and even expenses are incurred on behalf of each other.

➤ *On perusal of the ledger account confirmation (Refer Pg No. 46-49 of Paper Book), it can be seen that the said ledger is a running account ledger and not a simplicitor of any loan transaction between the parties.*

➤ *The ledger account clearly shows that there is an opening Balance of Rs. 66,11,346/- being debited to M/s. Trupti Caterers which shows that the amount was to be received by the assessee from M/s. Trupti Caterers.*

➤ *Further on Pg. No. 50-53 of Paper Book, we have tabulated the transaction with running balances on each day which too shows that most of the part in the year, M/s. Trupti Caterers was indebted to pay to the assessee. It is only from 07-02-2014 that there is a credit balance in the account of Trupti caterers which even has been reduced to Rs. 42,106/- at the end of the year.*

➤ *Even the assessee has submitted the ITR, Computation and Bank Statement of M/s. Trupti Caterers (Refer Pg. No. 54 to 88 of Paper Book) which also reveals that the said party has declared returned income of Rs. 61,58,581/- and has sufficient balances in his bank account also.*

Addition in respect of Loan from Saryu P Shah

CIT (A) Contention:

➤ *The Id. CIT(A) has sustained the addition made by the Ld. Assessing Officer in respect of loan taken from Saryu Shah by stating that the Bank Account submitted by the appellant is not clear and hence creditworthiness and genuineness of the transaction cannot be verified.*

Appellant Submission:

➤ *In this regard, we submit that the lender Saryu Shah has provided loan of Rs. 25,00,000/- to assessee to which is debited on 24-05-2013 in his bank statement. The lender has made this payment from his overdraft account in Oriental Bank of Commerce (Refer Pg No. 95 of Paper Book)*

➤ *The said lender has also duly charged interest to the assessee and in tum the assessee has paid the interest in respect of the said loan and has also duly deducted TDS on the same. The same can be seen from ledger confirmation and also from the Bank Statement.*

➤ *Further from the intimation order of Saryu Shah which is attached at Pg no. 91-94 of Paper Book it can be seen that main source of income of the lender is earning the interest income as shown under the head Other Source which also includes the interest earned from the loan advanced by the lender to the assessee. Hence, creditworthiness of the lender cannot be doubted as the major income of the lender is in the form of interest from which it can also be stated that the lender except from*

lending amount to assessee also lends to other parties and is earning substantial interest income regularly on the same.

➤ *Further it may be noted that the said loan from the lender has been duly repaid on 31-11-2015 in FY. 2015-16 (Please Refer Annexure 1)*

Addition in respect of Loan from Crown Fab International

CIT (A) Contention:

➤ *The Id CIT(A) has sustained the addition made by the Ld. Assessing Officer in respect of loan taken from Crown Fab International by stating that the said dates on which the transaction were carried out are not there in the bank statement given and in the absence of the same the genuineness of transaction cannot be confirmed and hence addition of 5,00,000/- has been made.*

Appellant Submission:

➤ *In this regard, we submit that the lender Crown Fab International is a proprietorship concern of Madhavdas Assudaram Sewani HUF has provided loan of Rs. 5,00,000/- on 01-06-2013 (Refer Bank Statement entry at Pg No. 108 of the Paper Book) and the same has duly been repaid by the assessee during the year under consideration. Further in respect of loan received the bank statement of the lender cannot be arranged today as the lender and even the wife has expired in year 2020.*

➤ *The assessee has duly repaid the said loan on 14-12-2013 (refer Bank Statement placed at Pg No. 107 & 111 of Paper Book). Thus; it was a mere short term loan of about 6 months. Even interest has been paid on the said loan to the lender and TDS has been deducted.*

➤ *Reliance is placed on the judgement of Bombay High Court in case of Pr. Commissioner of Income Tax, Central-2 Vs M/s Skylark Build (ITA NO. 616 of 2016) wherein it was held that, the fact that the M/s Skylark Build has made repayments of the loans borrowed from creditors proves that there were indeed real creditors; that they had indeed the funds available with them and that the transactions were genuine.”*

4. The Id. DR on the other relied on the order of the lower authorities.

5. We heard the parties and perused the material on records. The addition in assessee's case is made under section 68 of the Act for the reason that the assessee has not produced the relevant documents regarding loan transactions before the AO. The CIT(A) admitted the additional evidence submitted by the assessee to give partial relief. The CIT(A) while confirming the addition has given specific

findings with regard to each of the loan parties as extracted in the earlier part of this order. With regard to loan from **Krupa Suchak**, the CIT(A) has confirmed the addition for the reason that as per the ITR the income declared is below the taxable limit. However, the CIT(A) did not consider the submissions of the assessee that Krupa Suchak is not a loan creditor and that the assessee is liable to pay the impugned amount of Rs. 1,00,000/- for the services rendered by her towards sales promotion work. This fact is substantiated by the documents submitted by the assessee before the Tribunal as well as the lower authorities. The amount standing to the credit is an expenses payable which is substantiated by the documentary evidences and that the payee has included the same in her return of income. Therefore in our considered view the CIT(A) is not correct in confirming the addition merely for the reason that her returned income is below the taxable limit.

6. With regard to **Trupti Caterers** from the perusal of the ledger copy, we notice that it is a running account in which the assessee has entered into various transactions including expenses incurred and payments received etc., on behalf of each other. It is submitted that Trupti Caterer is the proprietorship concern run by assessee's brother and since it is in the similar line of business having common clients the assessee and Trupti caterers enter into transactions on behalf of each other and are having a running account in this regard. Our attention is also drawn to the fact that the closing balance in the said ledger account is the mere sum of Rs. 42,106/- whereas the addition has been made to entire credit transactions to the tune of Rs. 2,52,84,412/-. From the perusal of the ledger account, we see merit in the submission that the impugned party cannot be considered as a loan creditor. We further notice that the assessee has also submitted other relevant documents such as Computation statement, ITR, Bank statements, balance confirmation etc., of Trupti Caterer. We also notice that the CIT(A) while upholding the addition did

not record any adverse finding on the various documents filed by the assessee but has only stated that the ledger / bank statement is not clear. Considering these facts and other supporting documents which are part of records, we are of the view that the assessee has discharged the onus of proving the identity, creditworthiness and genuineness of the party. Therefore we hold that the addition made of the entire credit balance in the ledger account for the reason that the assessee has not discharged the onus is tenable.

7. We notice that the CIT(A) has confirmed the addition made under section 68 towards loan from Saryu P. Shah for the reason that the bank statements submitted by the assessee is not clear. From the perusal of the documents submitted we notice that the lender has given the loan out of the overdraft facility and therefore, there is merit in the submission of the assessee that even the source of the source is explained in this case and therefore the addition cannot be made under section 68 of the Act. We further notice that the assessee has submitted ledger confirmation, ITR and the relevant bank statements with regard to the loan obtained from Saryu P. Shah. A combined perusal of the details submitted and the facts pertaining to the lender, in our considered view the CIT(A) is not correct in confirming the addition under section 68 of the Act merely for the reason that the bank statements is illegible without recording any adverse finding on the document to hold the impugned transaction as non-genuine.

8. We notice that the CIT(A) has confirmed the addition made towards loan from Crown Fab International for the reason that the dates on which assessee claims to taken and repaid the loan do not match with the bank statements. The assessee has submitted the ITR filed by Madhavdas Assudaram Sewani HUF proprietor of Crown Fab International, Union Bank statement and the balance

confirmation. From the perusal of these documents, we notice that the bank statement of the assessee and the lender reflects the impugned transactions of loan taken and returned. Therefore the finding of the CIT(A) with regard to transactions not reflecting bank statement is factually incorrect. The CIT(A) has not recorded any adverse findings with regard to the other documents filed by the assessee and therefore we are inclined to hold that the decision of the CIT(A) based on incorrect understanding of facts is not sustainable.

9. According we direct the AO to delete the addition made under section 68 of the Act made towards loan obtained from Krupa Suchak, Trupti Caterers, Saryu P Shah and Crown Fab International. Before parting, we would like to mention that the relief given to the assessee is purely based on the unique facts of the case and the evidences that are part of the records. According the same cannot be applied as a precedence in any other case. It is ordered accordingly.

10. In result the appeal of the assessee is allowed.

Order pronounced in the open court on 16-12-2024.

Sd/-
(AMIT SHUKLA)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai