

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1695/Chny/2024**

निर्धारण वर्ष / Assessment Year: 2021-22

Smart Marketing,
No.19, Ground Floor,
Arun Papers,
Opp to GVN Hospital,
Babu Road,
Tiruchirapalli – 620 008.

[PAN: ADQFS-8517-F]

(अपीलार्थी/Appellant)

The Income Tax Officer,
v. Ward -2(1),
44, Williams Road,
Cantonment,
Tiruchirapalli – 620 001.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Mr. S. Girish Kumar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr. C. Murugesan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 05.02.2025

घोषणा की तारीख/Date of Pronouncement

: 20.02.2025

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 01.05.2024 and pertains to assessment year 2021-22.

2. The assessee has filed the following grounds of appeal:

"1. The order of the Learned Commissioner of Income Tax (Appeals) is contrary to law, weight of evidence, and the circumstances of the case.

2. *The Learned Commissioner of Income Tax (Appeals) upheld the order of the Assessing officer without any independent evaluation of the facts thus rendering the order unsustainable. **337 CTR 978 Madras High Court.***

3. *The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the lender has confirmed the transactions and the transactions have been routed through the banking channels.*

4. *The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had demonstrated before the Assessing officer the capacity and creditworthiness of the lender.*

5. *The Learned Commissioner of Income Tax (Appeals) failed to evaluate the balance sheet of the lender in a holistic way.*

6. *The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the lender had carried on business and had maintained proper books of accounts for the business.*

7. *The Learned Commissioner of Income Tax (Appeals) had overlooked the decision of the Hon'ble Madras High Court that only the peak credit can be brought to tax if the sources are disbelieved.*

8. *The appellant craves leave to add, alter, amend, modify or withdraw the grounds of appeal or produce further documents before or at the time of hearing of this appeal."*

3. The brief facts of the case are that, the assessee is a firm engaged in the business of wholesale trading of water bottles, lunch box, flask etc for the assessment year 2021-22. The assessee filed its return of income by declaring a total income of Rs.13,907/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. During the assessment proceedings, the assessee was asked to submit the supporting documents and evidences for having availed the loan from Smt. Mani Bala. The assessee submitted

the details of financial statement, computation of income, extract of ledger statement of the lender and stated that the lender has not filed her income tax returns as her income in the year does not exceeded the maximum amount chargeable to income tax. However, the AO was not convinced with the details furnished by the assessee and made an addition of Rs.15,74,850/- u/s.68 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and passed an order u/s.143(3) of the Act dated 12.12.2022 by holding as under:

4. Conclusion Drawn:

The submission of the assessee is perused and considered however found not tenable due to the reasons as below:

(i). The source of cash deposit in her bank account is not explained.

(ii). Mostly, the source of loan is cash, deposit in her bank account.

(ii). She has opening capital of Rs.2,54,000/- only and getting salary of Rs.1,32,000/- per annum and profit from business of Rs.1,27,896/-. Thus, her creditworthiness to advance loan of more than Rs.15,00,000/- is not proved.

(iv). No ITR has been filed and cash deposit in bank also strengthen the fact that her creditworthiness is not proved as no explanation of source of cash has been given.

(v). Addition made is not merely on the basis of her not filing the ITR but on the entire facts and circumstances of the case as discussed above.

In view of all the above stated reasons, it is inferred that the lender has no creditworthiness and the sum received from the lender is treated as unexplained credit and added back into the income of the assessee u/s 68 of the Income Tax Act, 1961.

(Addition u/s 68: Rs.15,74,850/-)

Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A), NFAC.

4. The Ld.CIT(A), NFAC was pleased to confirm the addition made by the AO in his order dated 01.05.2024 by holding as under:

2.2. In view of the above, the AO treated alleged loan amount of Rs.15,74,850/- as Unexplained cash credit u/s 68 of the Income Tax Act, 1961. During the appellate proceedings, the appellant has reiterated the submissions made before the AO. The claim that the onus to genuineness of the loan stands discharged is not found tenable considering the findings of the AO stated above. The lender is a mere employee of the firm drawing negligible salary. The claim of revenue from business of dyes and chemicals also does not hold good in the absence of any ITR by the alleged lender. The appellant has itself confirmed that the income of the alleged lender is below taxable limits. Hence, the appellant has failed to establish the credentials of the lender in advancing a loan of more than 15 lacs. Mere filing of confirmation and bank statement of the alleged lender does not prove the creditworthiness or the genuineness of the loan transaction. The nature and source of cash deposits in the bank account of the lender remained to be proved. No documents are filed in support of the business claims. In the circumstances, the action of the AO stands confirmed holding that the appellant has failed to discharge its onus of proving the credit worthiness and genuineness of the loan transaction. In the result, the addition of Rs.15,74,850/- is upheld.

Aggrieved by the order of the Id.CIT(A), the assessee is before us.

5. The Id.AR stated that the Id.CIT(A) has brushed aside all the evidences furnished before him in proving the loan borrowed from M/s.Mani Bala by erroneously invoking the provisions of section 68 of the Act and made an addition in spite of providing the identity of the lender. Apart from that

the Id.AR stated that the assessee had filed the confirmation letter from the lender (page no.60 of PB), with her PAN, financial statements of the lender, computation of total income of the lender (page no. 127 of PB) and also bank statements of the lender (page no.9 of PB) highlighting the transactions made with the assessee and had proven adequately the source of credits appearing in the name of the lender in the assessee's books as required u/s. 68 of the Act.

5.1 The Id.AR stated that the AO and that of Id.CIT(A) have erred in accepting the assessee to prove the source of source of credit as it is against the provisions of section 68 of the Act as held by the Hon'ble Rajasthan High Court in the case of Labh Chand Bohra vs ITO (2008) 8 DTR 44. Further, the Id.AR also stated that the assessee had provided the entire financial statements of the lender along with the details of the turnover which is sufficiently covered for the source of loan amount. To buttress his arguments, the Id.AR filed the details for the paper book consisting of 164 pages as detailed below:

SI No	Particulars	Page No.
1	Response filed before the Assessing Officer on 16.09.2022	1
2	Computation of Taxable Total Income of the Appellant	08

	Bank Statement of the Appellant Firm	09
	Confirmation obtained from the lender	60
	Tax Audit Report of the Appellant and Revised Tax Audit Report	61
3	Ledger account of Manibala in the books of the Appellant	103
4	Bank statements of Manibala	105
5	Reply to the Show Cause Notice dated 30.11.2022 before the Assessing Officer	118
6	Financial Statements of Manibala for the year ending 31.03.2021	124
7	Computation of Taxable Total Income of Manibala for the AY 2021-22	127
8	Hearing Notice issued u/s 250 of the Act by the NFAC, Delhi	131
9	Written Submissions filed before the NFAC, Delhi	135
10	Ledger of Mr. Dinesh in the books of Manibala	155
11	Ledger of Sri Sai Arun Traders in the books of Manibala	156
12	Ledger of Chittu in the books of Manibala	158
13	Ledger of Arun Agencies in the books of Manibala	159
14	Ledger of Anna Poorni in the books of Manibala	160
15	GST Registration Number of Anna Poorni	162

5.2 Further, the Id.AR stated that the source of the source i.e. Smt. Mani Bala's financials has also been furnished before the lower authorities apart from that the Id.AR stated that the assessee had furnished the confirmation of the sundry creditors (page nos. 155 to 160 of PB) had been submitted before the lower authorities and hence stated that the impugned additions confirmed by the Id.CIT(A) need to be deleted.

6. Per contra, the Id.DR relied on the orders of the lower authorities and stated that there is no error in the orders of the Id.CIT(A). Since, lender was an employee of the assessee and has not even filed her return of income for the impugned assessment year which shows that assessee did not have creditworthiness to make such huge lending to the assessee. Hence, the Id.DR prayed for dismissing the appeal of the assessee.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee is a firm and has filed its return of income for the A.Y. 2021-22. During the assessment proceedings the assessee had duly submitted the details called for including the identity, PAN and address of the lender shown in the financials. In respect of the loan amount of Rs.15,74,850/- from Smt.Mani Bala, the assessee had also furnished the confirmation letter obtained from the lender along with bank statement highlighting the amounts received and paid from that lender before the AO.

7.1 We note that in response to the show cause notice issued by the AO, the assessee had also furnished the Financial statements as on 31.03.2021, Computation of income and extract of ledger statement of the lender Smt.Mani Bala and stated that the lender had not filed her return of income for the A.Y. 2021-22 since her income does not exceeded the maximum amount not chargeable to income tax.

7.2 Therefore, we find that the AO has erred in making an addition of loan borrowed from the lender to the tune of Rs.15,74,850/- u/s.68 of the Act, even though the assessee has furnished the entire details of the lender. The AO should have issued notice to the lender for further verification of the source, when the entire details of the lender is provided by the assessee. Further on perusal of the financials of the lender(Page No.144 to 146 of Paper book), we note that the assessee had obtained complete details of her borrowings and corresponding confirmation and ledger extract of the parties who have lent to Smt. Manibala (Page No.155 to 162 of Paper book).

7.3 We find that the closing balance of the loan stood as on 31.03.2021 taken from Smt. Manibala was only Rs.6,75,464/- against the addition made by the AO of Rs.15,74,850/-(Page No.103 of Paper book). The AO and that of Id.CIT(A) have erred in arriving the conclusion that the lender did not have credit worthiness for lending Rs.15.74 lakhs, when the actual highest loan balance outstanding at any point of time during the assessment year was only Rs.8.59 lakhs.

7.4 On perusal of the financials of the lender filed by the assessee, we find that Smt. Mani bala has shown a turnover of Rs.17.31 lakhs and has earned a Net profit of Rs.1.27 lakhs along with salary income of Rs.1.32 Lakhs during the assessment year 2021-22. Further, the loan outstanding as on 31.03.2021 from the assessee was Rs.6.75 lakhs which has been shown in the balance sheet with corresponding sources for the same.

7.5 In view of the above facts, we are of the considered opinion that the Id.CIT(A) has erred in confirming the order of the AO for the only reason the lender has not been filed the return of income for the assessment year 2021-22. Therefore,

we are setting aside the order of the Id.CIT(A) and direct the AO to delete the addition of Rs.15,74,850/- by allowing the grounds of appeal of the assessee.

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

Order pronounced in the court on 20th February, 2025 at Chennai.

Sd/-
(एस एस विश्वनेत्र रवि)
(S.S. VISWANETHRA RAVI)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 20th February, 2025

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF