

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.6294/M/2024  
Assessment Year: 2019-20**

<b>DCIT, Central Circle-8(1)</b> Room No. 656, Aayakar Bhavan, Mumbai-400020.	Vs.	<b>Mr. Atul Ramchandra Kshirsagar,</b> Flat No. 26A Building, Soha Garden, Kothrud, Pune-411038. <b>PAN: AZOPK6042M</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vishnu Kumar Agarwal, Ld. A.R.  
Revenue by : Shri Umesh Chandra Sinha, Ld. D.R.

Date of Hearing : 24 . 02 .2025

Date of Pronouncement : 07 . 04 .2025

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Revenue against the order dated 11.10.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short "Ld. Commissioner") under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2019-20.

2. In the instant case, the assessment of the Assessee was reopened u/s 147 of the Act, by issuing notice dated 12.10.2022 u/s 148 of the Act in terms of explanation 2(i) of section 148 of the Act, on the reason that during the course of survey action at the premises of M/s. Akhilesh Suppliers Pvt. Ltd. at A/6, Skyland Society, Admar Math Lane, Irla Bridge, Andheri West, Near Andheri Railway Station, Mumbai-400 058, ledger account of the Assessee in the books of M/s. Akhilesh Suppliers Pvt. Ltd. was found which is reproduced herein below:

*“Akhilesh Suppliers Pvt Ltd  
13C, Bechu Chatterjee Street  
Kolkata  
CIN: U51109WB2005PTC105179  
Advance - Atul Kshirsagar  
Ledger Account  
1-Apr-18 to 31-Mar-19*

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<i>Date</i>	<i>Particulars</i>	<i>Vch Type</i>	<i>Vch No.</i>	<i>Debit</i>	<i>Credit</i>
31-Oct-18	To Oriental Bank of Commerce	Payment	53	25,00,000.00	
13-Nov-18	To Oriental Bank of Commerce	Payment	55	50,00,000.00	
7-Dec-18	To Oriental Bank of Commerce	Payment	66	25,00,000.00	
1-Feb-19	By Oriental Bank of Commerce	Receipt	34		5,00,000.00 95,00,000.00
	By Closing Balance			1,00,00,000.00	1,00,00,000.00
				<b>1,00,00,000.00</b>	<b>1,00,00,000.00</b>

3. Therefore, vide show cause notice dated 10.01.2023 u/s 142(1) of the Act, the Assessee was show caused “as to why the unsecured loan of Rs.1,00,00,000/- from M/s. Akhilesh Suppliers Pvt. Ltd. being shell company should not be treated as unexplained cash credit as per the provisions of section 68 of the Act”.

**4.** The Assessee in response to the show cause, filed his reply and more or less has claimed that M/s. Akhilesh Suppliers Pvt. Ltd. is a private limited company and wanted to expand its own real estate business around Mumbai city and therefore has given Rs.1,00,00,000/- as advance to the Assessee for purchase of property in Karjat, Jilla Raigad. Though the Assessee has searched 3-4 properties in the vicinity of the Karjat, but due to some forest issues and Hon'ble Supreme Court Judgment, could not conclude the deal for the company and even otherwise M/s. Akhilesh Suppliers Pvt. Ltd. was also not able to pay the second installment for purchase of the property at Karjat on time, therefore the Assessee and M/s. Akhilesh Suppliers Pvt. Ltd. had decided to cancel the proposed deal and in consequence thereof the Assessee refunded the said loan amount back, to such company. The Assessee before the AO also filed the copy of the ledger account in the books of M/s. Akhilesh Suppliers Pvt. Ltd. The Assessee further claimed that transactions have been carried out through banking channel only and the same have been reflected in the books of account of the Assessee as well as of M/s. Akhilesh Suppliers Pvt. Ltd. According to the provisions of section 68 of the Act, three conditions such as identity of the lender, creditworthiness of the lender and genuineness of the transaction are to be satisfied. The Assessee by filling PAN number of the lender and other details has proved the identity of the lender. Further, by submitting photocopy of the balance sheet, showing the transactions in his books of account and the company, who has also shown such amount, in its books of account and therefore the genuineness of the transactions, has also been established. The Assessee further claimed that he has also submitted balance sheet of the lender, photocopy of relevant bank statement of the Assessee company reflecting the transactions of Rs. crore carried out through banking channel and

therefore the Assessee has been able to prove the creditworthiness of the lender as well. The Assessee further claimed that receiving of advance of Rs.1,00,00,000/- was purely a business deal, relating to acquisition of the property, which did not conclude, due to some High Court and Supreme Court decisions and forest restrictions and therefore on the aforesaid submissions and documents, the Assessee has discharged his onus cast u/s 68 of the Act.

**5.** The Assessing Officer (AO), though considered the submissions of the Assessee and the document filed, however, did not get satisfied and therefore treated the said amount of Rs.1,00,00,000/- being unsecured loan, as unexplained cash credit in terms of provisions of section 68 of the Act and consequently added the said amount in the income of the Assessee, by mainly holding that the Assessee has failed to establish the identity and creditworthiness of the lender i.e. M/s. Akhilesh Suppliers Pvt. Ltd. and genuineness of the transactions.

**6.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner and raised various issues and also relied on various judgments and in order to prove the identity, creditworthiness and genuineness of the transactions, filed following documents:

- (1) *copy of PAN, copy of ITR and address of M/s. Akhilesh Suppliers Pvt. Ltd.;*
- (2) *copy of balance sheet and profit & loss account of M/s. Akhilesh Suppliers Pvt. Ltd.;*
- (3) *copy of bank statement showing payments to the Assessee;*
- (4) *copy of bank statement of the Assessee showing receipt from the lender;*
- (5) *copy of ledger account;*
- (6) *copy of company's master data from MCA portal*

**7.** The Assessee had also claimed that such documents were also filed before the Assessee officer.

**8.** The Ld. Commissioner by considering aforesaid documents and the fact that the same were also submitted before the AO and the repayment of loan has been made through banking channels and various judgments in respect of the provisions of section 68 of the Act, has held *“that the Assessee has furnished the documentary evidence to establish the identity and creditworthiness of the creditor and also proved the genuineness of the transactions and the loan was taken and repaid through banking channels and the lender was having sufficient funds and no cash was not deposited immediately before the loan, hence no addition can be made u/s 68 of the Act”* and thus ultimately, deleted the addition of Rs.1,00,00,000/- u/s 68 of the Act, by observing and holding as under:

*“ 18. After considering the submission filed by the assessee, the AO held that the assessee could not substantiate the claim of purpose of loan and has not furnished the documentary evidence in the form of MOU or agreement in this regard. Further, from the loose paper found during the survey, it is seen that this loan has been utilised for payment of taxes, payment of interest and for giving loan and advances. This loose paper shows that the loan has not been utilised for acquisition of land. The AO further held that the assessee has failed to submit conclusive explanation/details which can prove beyond doubt that the transactions entered with the shell company is a genuine transaction in the backdrop of categorical admission by Shri Subhash K Agrawal that the company M/s Akhilesh Suppliers Pvt. Ltd is indulged in providing accommodation entries. Relying on various decisions, the AO held that the assessee has failed to establish identity and credit worthiness of the lender and also failed to establish genuineness of the transactions. Therefore, the unsecured loan is treated as unexplained cash credit u/s 68 of the IT Act.*

*19. Before me, the appellant has furnished the following documentary evidences to prove the identity, credit worthiness and genuineness of the transactions*

*i) Copy of PAN, copy of ITR and address of Akhilesh Suppliers Pvt Ltd*

*ii) Copy of balance sheet and P & L account of Akhilesh Suppliers Pvt Ltd*

- iii) Copy of bank statement showing payments to the appellant*
- iv) Copy of bank statement of the appellant showing receipt from the lender*
- v) Copy of ledger account*
- vi) Copy of company master data from MCA portal*

*These documents were also furnished before the A.O during the Assessment proceedings.*

*20. As stated above, in the impugned assessment order, the AO had made the addition u/s.68 of the Act holding that the appellant had failed to prove the identity and creditworthiness of the party and the genuineness of the transactions in question. Therefore, the question whether the appellant has been able to prove the identity and creditworthiness of the parties and genuineness of the transactions is decided herein below after considering the findings of the AO in the impugned assessment order, submissions of the appellant and the material available on record.*

#### *21. IDENTITY :*

*The appellant has furnished a copy of PAN, copy of ITR, copy of financials and details of CIN from the MCA portal. The appellant has also furnished the address of the company. It is seen from the record that the name of the company was Sahyadri Suppliers Pvt. Ltd and subsequently the name has been changed to Akhilesh Suppliers Pvt. Ltd. The appellant was also one of the directors of this company from the F.Y 2012-13. This fact has also been stated by the A.O in the assessment order. Thus, in my considered view, the appellant has furnished enough documentary evidence to prove the identity of the creditor. Thus the onus cast to prove the identity of the creditor is discharged.*

#### *22. CREDITWORTHINESS :*

*22.1 On perusal of balance sheet of M/S Akhilesh Suppliers Pvt Ltd as on 31.03.2019, it is seen that the share capital of company is of Rs. 1,04,45,000/- and the reserves and surplus is of Rs. 26,55,96,736/-. The reserves and surplus consist of share premium of Rs. 19,65,55,000/- and carried forward profit/surplus of Rs. 7,04,70,838/-. On perusal of P & L account*

*for the year under consideration, it is seen that there are no receipts and the loss is shown at Rs.14,29,103/-.*

*22.2 On perusal of balance sheet and P & L account as on 31.03.2010 to 31.03.2015, it is observed that the company has shown receipts of interest income from the business of investments. The company has also shown profit of Rs. 1,34,34,450/- for the F.Y 2009-10, Rs. 1,96,10,334/- for the F.Y 2010-11, Rs. 2,15,06,081/- for the F.Y 2011-12, Rs.1,84,24,966/- for the F.Y 2012-13, Rs. 2,15,94,698/- for the FY 2013-14, and Rs. 1,95,98,029/- for the FY 2014-15. Thus, over the years, the company has shown profits from investment activities.*

*22.3 In the A.Y under consideration, there are reserves and surplus of Rs. 26,55,96,766/- which includes profit of Rs 7.04 crores. These facts show that this company had enough funds to advance loan of Rs 1 crore to the appellant. From the financials of the creditor, the capacity to advance loan to the appellant is proved. The nature and source of the credit is thus explained. Thus, the onus cast on the appellant to prove the creditworthiness of the creditor stands discharged.*

### **23. GENUINENESS OF TRANSACTIONS :**

*23.1 It is a fact that the transaction has been routed through the banking channel and the same has been recorded in the books of accounts. It is also an undisputed fact that the loan has been repaid on 09.02.2022. It is also a fact that the appellant was one of the director of the company from F.Y 2012 onwards.*

*23.2 The only objection of the AO is that the company Akhilesh Supplier Pvt Ltd was operated by one entry operator Shri Subhash K Agrawal and he had admitted that he was in the business of providing accommodation entries. It is seen from the assessment order that the statement u/s 131 of the I.T Act was recorded on 15.09.2014. At that time the registered office of the company was at Kolkata. Subsequently the registered office of the company was shifted to Mumbai and the name of the company was also changed. The appellant Shri Atul Kshirsagar was one of the directors of the company from F.Y 2012-13. In the assessment order, AO has also stated that statement of Shri.Girish Ravindra Amonkar, who was beneficiary shareholder of Akhilesh Suppliers Pvt Ltd, was recorded u/s 131 of the I.T Act*

*and in the said statement, he had categorically mentioned that the affairs of the company are handled by Shri Atul Kshirsagar. It is evident from this statement that in the assessment year under consideration, the appellant was the director of M/s Akhilesh Suppliers Pvt Ltd and all the affairs of the company were handled by him. Thus, there is no role of Shri Subhash K Agrawal in managing the affairs of the company in the year under consideration. Therefore, reliance on the statement which was recorded way back on 15.09.2014 has no relevance at all in the year under consideration. Shri Subhash K Agrawal is not controlling the affairs of the company and, hence, there is no question of providing accommodation entries by him. The A.O has not brought any evidence to prove that Shri Subhash Agrawal was controlling the affairs of the alleged company when the loan was provided to the appellant. Therefore, reliance on his statement to conclude that the transaction is non-genuine is misplaced.*

*23.3 Further, there are several judicial decisions wherein it is held that in case of repayment of loan through the banks, addition cannot be made u/s 68 of the I.T Act.*

*I. Hon'ble Allahabad High Court in case of Kapoor Chand Mangesh Chand ( 38 taxmann.com 239) has held as under:*

*“From the facts found by the authorities, it is clear that the amount of loan was advanced through the Account Payee Cheques and PANs were also furnished. The amount has been repaid through account payee cheques and the lenders has sufficient funds in their bank accounts not by cash deposited on the preceding date or when the cheques were issued by the money lenders. 6. We, therefore, observe that Commissioner of Income Tax (A) has rightly passed the orders. In such circumstances no addition under Section 68 of the Act was called for.” II. The Honb'le Allahabad High Court in case of Rahul Vineet Traders (41 taxmann.com 86) has held as under- “The submission is wholly mis-conceived. In the search operation carried on in M/s Ganga Ram Agarwal and Companies, there is no admission by the assessee therein that they were involved giving bogus/accommodation entries. Even findings recorded by the Assessing Authority to that effect is not correct and can not be relied upon. From the facts found by the authorities, it is clear that the amount of loan was advanced through the Account Payee Cheques and PAN numbers were also furnished. The amount has been repaid through account payee cheques and the lenders has sufficient funds in their bank accounts not by cash*

*deposited on the preceding date or when the cheques were issued by the money lenders.*

*6. We, therefore, of the opinion that the Commissioner of Income-tax (A) has rightly deleted the additions and allowed the appeal and which order was rightly upheld by the Tribunal”*

*III. The Honb’le Gujrat High Court in case of Ayachi Chandrashekhhar Narsangji (42 taxmann.com 251) has held as under-*

*“6. Having heard Shri Pranav Desai, learned Counsel appearing on behalf of the revenue and on perusal of the order passed by the CIT(A) confirmed by the ITAT, it appears that CIT(A) was satisfied with respect to the genuineness of the transaction and creditworthiness of Shri Ishwar Adwani and, therefore, deleted the addition of Rs.1,45,00,000/- made by the Assessing Officer. It is required to be noted that as such an amount of Rs.1,00,00,000/- vide cheque no. 102110 and an amount of Rs.60 lakh vide cheque no. 102111 was given to the assessee and out of the total loan of Rs.1.60 crore, Rs.15 lakh vide cheque no. 196107 was repaid and, therefore, an amount of Rs.1,45,00,000/- remained outstanding to be paid to Shri Ishwar Adwani. It has also come on record that the said loan amount s been repaid by the assessee to Shri Ishwar Adwani in the immediate next financial year and the Department has accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the ITAT has held that the matter is not required to be remanded as no other view would be possible, we see no reason to interfere with the impugned order passed by the ITAT. No question of law, much less substantial question of law arises in the present Tax Appeal. Hence, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.”*

*IV. The Honb’le ITAT Ahmedabad in case of Asit Surendrabhai Shaha has held as under-*

*“We have given our thoughtful consideration and perused the materials available on record including the Paper Books and compilation of case laws filed by the assessee. In all the above appeals, the unsecured loan given by Smt. Hansaben M. Patel was doubted by the Assessing Officer on the ground that on sale of lands at Sanand District, Ahmedabad for Rs. 149 crores, but she failed to file the computation of Short Term Capital Gain. On completion of*

*the exparte assessment order dated 23-12-2016 in the case of Smt. Hansaben M. Patel, wherein the A.O. determined the Short Term Capital Gain of Rs. 103.02 crores for the Assessment Year 2009-10 the same was also neither paid by Smt. Hansaben M. Patel nor filed any appeal against the assessment order. Thus the sale of the lands and execution of sale deeds by Smt. Hansaben M. Patel was not doubted by the Revenue, but as her whereabouts are not known, thereby the loan transactions to various parties is doubted by the Revenue. Since the respondent-assessee herein provided Copies of the Ledger account, confirmation, Bank Details, PAN and Income Tax Return of Smt. Hansaben M. Patel and contra entry and Bank Statements of Smt. Hansaben M. Patel, etc. After considering the above details we are of the considered view the assessee has discharged its initial onus cast upon him u/s. 68 of the Act and the Revenue failed to disprove the above transaction as bogus. Therefore both the Ld. CIT(A) and the Co-ordinate Benches of this Tribunal deleted the additions made u/s. 68 of the Act. 9.1. Further it is the case of the assessee that the unsecured loan availed was repaid in the next financial year to the creditor namely Smt. Hansaben M. Patel through cheque payments and the bank statement also filed before the Lower Authorities. Therefore we are of the considered opinion, the provisions of section 68 does not attract in the above transaction and thereby we uphold the order passed by the Ld. CIT(A) deleting the addition made u/s. 68 of the unsecured loans availed from Smt. Hansaben M. Patel. Thus the grounds raised by the Revenue are devoid of merits and the same are liable to be rejected and ITA No. 945/Ahd/2018 filed by the Revenue is hereby dismissed.”*

***In the appellant’s case, the loan was taken through banking channels and repaid through banking channels, there were sufficient funds with the creditor and no cash was deposited immediately before loan.***

***24. As the appellant has furnished the documentary evidence to establish the identity and creditworthiness of the creditor and also proved the genuineness of transactions, no addition can be made u/s 68 of the IT Act. Accordingly, the addition made by the AO of Rs 1 crore u/s 68 of the I.T Act is deleted. Appeal on this ground is thus ALLOWED.”***

**9.** Having heard the parties and perused the material available on record and given thoughtful consideration to the orders passed by authorities, it transpires that the Assessee has duly proved the identity and creditworthiness of the creditor and genuineness of the transactions and by producing the relevant documents referred to above, discharged the onus cast u/s 68 of the Act. The Ld. Commissioner therefore before deleting the addition not only analyzed the factual aspects as well as documents filed by the Assessee in order to discharge his onus cast u/s 68 of the Act, but also considered the other factual aspects qua receiving the loan/advance and repayment thereof through banking channels only and the relevant judgements of Hon'ble High Courts. Therefore, on the aforesaid analyzations and determination made by the Ld. Commissioner, the addition in any sense is un-sustainable and thus in our considered view, has rightly been deleted by the Ld. Commissioner. Consequently, the decision of the Ld. Commissioner does not require any interference, hence the same is affirmed.

**10.** In the result, the appeal filed by the Revenue Department stands dismissed.

**Order pronounced in the open court on 07.04.2025.**

**s/d**  
**(BR BASKARAN)**  
**ACCOUNTANT MEMBER**

**s/d**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

\* Kishore, Sr. P.S.  
Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.