

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Makarand Vasant Mahadeokar, Accountant Member**

**ITA No. 536/Ahd/2023
Assessment Year 2015-16**

Mohammed Saleem Abdulkader Kajalwala, Bakri Pole, Mogalwade, Opp. Madine Masjid, Vadodara-390017 PAN: AAXPK7544C (Appellant)	Vs	Income Tax Officer, Ward-3(1)(3), Vadodara (Respondent)
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**Assessee Represented: Shri Kaushani Shah, A.R.
Revenue Represented: Shri Waghe Prasadrao, Sr.D.R.**

Date of hearing : 27-02-2025
Date of pronouncement : 11-04-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 04.05.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

2. Brief facts of the case is that the assessee is an individual and Proprietor in the name and style of Mohammed Enterprise engaged

in the business of trading in scraps namely paper (pasti). For the Asst. Year 2015-16, assessee filed his Return of Income 29-09-2015 showing total income of Rs.21,03,970/-. The return was taken for scrutiny assessment and the Assessing Officer found unsecured loans received by the assessee from (i) Subhrekha Vyapar Pvt. Ltd., (ii) S.K. Stock Dealers Pvt. Ltd. and (iii) Slow and Sound Electronics Pvt. Ltd. which are all Kolkata based paper or shell companies. Therefore the AO called upon the assessee to prove the genuineness of the loan transactions. In response, the assessee filed documentary evidences namely account confirmations, ITR acknowledgements, bank statements and balance sheets of the three lender companies. The loans were received through banking channels and repaid by way of RTGS within a short period of one month as follows:

Loan Creditors	Loan Amount & Date	Loan Repaid & Date
Subhrekha Vyapar Pvt. Ltd.	15,00,000/- 17/10/2014	17-11-2014 7,00,000
		18-11-2014 8,00,000
Slow and Sound Electronics Pvt. Ltd.	55,00,000/- 17/10/2014	15-11-2014 52,00,000
		17-11-2014 3,00,000
S.K. Stock Dealers Pvt. Ltd.	20,00,000/- 17/10/2014	17-11-2014 16,50,000
		18-11-2014 3,50,000

2.1. However when the Assessing Officer made verification through Kolkata Office, summons could be served on the above creditors and further verification of the bank statement, the pattern of loan transaction are as follows:

Bank details of Lender Patterns				Bank details of Assessee		
source of unsecured loans	Transfer in/Deposit	Name of The Lender	Date	Transfer Our	Date	Destination
The Surat Merchant	15,00,000	Subhrekha Vyapar Pvt. Ltd.	15.10.2014	15,00,000	17.10.2014	Mohammed Enterprise
Pooja Bachu Patel	20,00,000	The S.K. Stock Dealers Pvt. Ltd.	17.10.2014	20,00,000	17.10.2014	Mohammed Enterprise
Prajapati Jankhit	55,00,000	Slow & Sound Electronics Pvt. Ltd.	16.10.2014	55,00,000	17.10.2014	Mohammed Enterprioise

2.2. Thus Ld. A.O. held that it is an arranged financial transaction that there is a pattern of equal and cash/bank deposits immediately prior to the issue of cheques for the alleged unsecured loan transactions. Therefore, AO added the entire Rs.90 lakhs as unexplained income in the hands of the assessee and demanded tax thereon.

3. On appeal against the assessment order, the Ld. CIT(A) who has confirmed the additions by observing as follows:

“... During appeal proceeding, the appellant has submitted that the transactions were made through account payee cheques and furnished the confirmation from the lenders, copy of the bank statements and Income Tax returns of the lender company. However, the identity of the creditor was not conclusively proven as there was an incomplete reply to notice u/s 133(6) issued by the Ld. A.O. and enquiry conducted by the ADIT (Inv.), Unit-3(1), Kolkata was also in negative. Mere payment by account payee cheque cannot make a non-genuine transaction genuine. This was the view of the Kolkata High Court in the case of CIT Vs Precision Finance Pvt. Ltd. 1994, 208 ITR 465, where it held as follows:-

"It is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. In our view, on ingredients which have to be satisfied by the assessee. Mere furnishing the facts of this case, the Tribunal did not take into account all these of the particulars is not enough. The enquiry of the Income-tax Officer revealed that either the assessee was not traceable or there was no such file and, accordingly, the

first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, accordingly, it is to be presumed that the transactions were genuine. 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 that view of the matter, the question before us is answered in the negative and in favour of the Revenue."

As the identity of the lender companies was not traceable, the identity of the creditors had not been established. Therefore, the submission of the appellant cannot be accepted as the AO has brought on record, concrete findings that the transactions of the appellant are bogus as discussed. The mere production of bank statements, contract notes etc may not be sufficient evidence to support the genuineness of transactions when surrounding and attending facts predicate a cover up. It only indicates and reflects proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive.

The principle that the A.O. had to be alert for hollow or colorable transactions which may apparently appear to be legal on the surface was emphasized by the Hon'ble Mumbai ITAT in the case of Bombay Oil Industries Ltd. vs Deputy Commissioner Of Income Tax reported in 2002 82 ITD 626 (Mumbai) after considering the decisions of the Apex Court in Mc Dowell Co Ltd as reported in 1986 AIR 649, 1985 SCR (3) 791 and Gujarat High Court judgment in the case of Banyan & Berry v. CIT[1996] 222 ITR 831 at 851 has held:

"The gist of these authorities appears to us to be that whereas tax planning can be tolerated, tax evasion by dubious means cannot be countenanced. Where the transaction put through or steps taken by the assessee need not have been taken in order to achieve a commercial result or object, and were taken only with a view to reducing the tax burden, then though such transactions or steps may be legal and actually put through, they are hollow and colourable devices. They are not then to be considered as having been undertaken necessarily for achieving the commercial object or purpose but as having been undertaken with the oblique motive of evading taxes."

Therefore after considering the relevant records including enquiry conducted by the Investigation wing, Kolkata and relevant case laws, the addition of Rs. 90,00,000/- is confirmed.

This ground of appeal fails and is not allowed.”

4. Aggrieved against the appellate order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The CIT(A) has erred both in Law and in Fact in confirming by Assessing Officer invoking of Sec. 68 of the IT Act and thereby upholding addition of Rs.90 Lakhs made by him.

2. Your Appellant submits that on facts and circumstances of case Sec.68 does not apply and all the three depositors are known Identified persons are Credit Worthy the transaction is genuine backed by common and Business activities like the Loan/Advance returned in the same accounting year and therefore the CIT(A) ought to have deleted the entire Addition.

3. Your Appellant further submits that Assessing Officer has gathered information and evidences at the back of your Appellant, copy of which was not supplied though fully relied in passing Assessment Order.

The Assessing Officer also did not give a chance of abutting the data and or Cross Examining the witness such evidence relied, therefore the entire addition based on such evidence is against principle of natural justice and requires to be deleted as held by Supreme Court in case of Andaman Timber Industries vs. Comm. Of Central Excise CA No.4228 of 2006.

4. Without prejudice and in the alternative your Appellant submits that if at all any addition is liable to be added u/s.68 then it being related and entirely connected with business of your Appellant only Net Profit is required to be added as held by several judgements.

4. Heard rival submissions at length and perused the materials available on record. In response to the show cause notice, the assessee vide its reply dated 20-12-2017 submitted that the assessee firm had procured a huge order from newspaper supplier due to which assessee required funds of Rs.90 lakhs for the purpose of purchasing material. Since the assessee did not have a huge funds, he borrowed the same by unsecured loan from the

three parties for temporary period. The assessee rised the said loans in the month of October 2014 and as soon as sales were realized, he repaid the loans by RTGS in November 2014 (had stated in Para 2 above). The fact of the above loans were taken only for a temporary period of one month is evident from the copy of the confirmations, ledger accounts and bank statements of the creditors as well as that of the assessee as available in the Paper Book at Page No. 14 to 25.

4.1. Further the observations of the Assessing Officer that there is cash deposit immediate before issuance of the loans by the unsecured creditors is also factually incorrect (as reproduced in Para 2.1 of this order). The sum of Rs.15 lakhs received as loan from M/s. Subhrekha Vyapar Pvt. Ltd. on 17-10-2014 by cheque payment, whereas a sum of Rs.15 lakhs was made through RTGS from the Surat Merchant on 15-10-2014. The finding of the A.O. that it is a cash payment is incorrect. Similarly in the case of M/s. S. K. Stock Dealers Pvt. Ltd. where sum of Rs.20 lakhs received by cheque by the assessee on 17-10-2014. Whereas there is RTGS transaction, Rs. 20 lakhs from Puja Bhachu Patel on 15-10-2014 and not cash deposits. Similarly in the case of M/s. Slow and Sound Electronics Pvt. Ltd., the assessee received unsecured loans of Rs. 55 lakhs on 17-10-2014 by cheque. Whereas the creditor received two RTGS payment from Prajapati Jankhit on 16-10-2014 of Rs. 25 lakhs and 50 Lakhs, there is no question of any cash deposits in the above bank accounts of the unsecured creditors. Thus the findings arrived by the A.O. was erroneous.

4.2. Further perusal of the bank statement, there seems to be no cash deposits in the above accounts. Thus the finding arrived by the Ld. A.O. is baseless. Similarly the assessee repaid the above loans by way of RTGS transaction only. Further perusal of the bank statement of the assessee maintained with Oriental Bank of Commerce, there seems to be no cash deposits at all. All transactions either done through cheques or RTGS payments only and the assessee seems to have maintained good balance in his accounts. Thus the assessee discharged his primary onus of establishing identity, genuineness and creditworthiness of the loan transactions. Whereas the Assessing Officer mainly on the ground of Investigation Report, the unsecured creditors are shell companies and not responded to the notices issued u/s. 133(6) of the Act treated his entire unsecured loans as not genuine and not explained to the satisfaction. The Assessing Officer also held that the lender companies showed meagre income in the ITR cannot be the reasons for making addition in the hands of the assessee.

4.3. The fact that these creditors shown low income does not imply that they could not advance money to anyone. The financial affairs are not in the control of the assessee and the assessee has nothing to do with the balance sheet or financials or directors of these companies. The assessee having done the transaction through banking channel and also repaid the loan within a period of 30 to 32 days within the same financial year, then the addition made u/s. 68 is liable to be deleted as held by the very recent judgment of the Jurisdictional High Court in the case of PCIT vs. Merrygold

Gems (P.) Ltd. [2024] 164 taxmann.com 764 wherein it was held as follows:

“Section 68 of the Income-tax Act, 1961 Cash credit (Scope of provision) Assessment year 2016-17 Assessing Officer made addition of certain amount to assessee's income on account of unsecured loan trading same as unexplained cash credit under section 68 Whether since amount of loan received by assessee was returned within same financial year, appellate authorities had rightly deleted addition made by Assessing Officer - Held, yes”

4.4. Similarly in the case of PCIT vs. Ojas Tarmake (P.) Ltd. [2023] 156 taxmann.com 75, the Jurisdictional High Court after following various judgments held as follows:

“3. What is evident is that the Tribunal found on facts that the amount of loan received by the assessee was returned to the loan party during the year itself and all transactions were carried out through banking channel The ITAT on the decision of CIT v. Rohini Builders [2003] 127 Taxman 523 (2002) 256 ITR 360 (Guj), held in favour of the assessee.

4. On facts therefore, having perused the orders under challenge, we are of the opinion that no error of law committed by the Ld. ITAT. In the case of Rohini Builders (supra), the Court held as under:

“We have considered the rival submissions and have also gone through the order passed by the Assessing Officer, the relevant portion of which we have also extracted in para 2 above. The Commissioner of Income-tax (Appeals) more or less confirmed the addition on the reasoning given by the Assessing Officer in the assessment order. A perusal of the chart given by us in para 1 above indicates that out of 21 creditors the Assessing Officer has recorded the statements of only six creditors, creditors at serial Nos. 1, 2, 3, 4, 6, and 7. However, in respect of all the 21 creditors the assessee has furnished their complete addresses along with GIR numbers permanent account numbers as well as confirmations along with the copies of assessment orders passed in the cases of creditors at serial Nos. 1, 2, 4, 5, 6, 7, 9, 10, 11, 12 and 16. In the remaining cases where the assessment orders passed were not readily available, the assessee has furnished the

copies of returns filed by the creditors with the Department along with their statement of income All the loans were received by the assessee by account payee cheques and the repayments of loans have also been made by account payee cheques along with the interest in relation to those loans. It is rather strange that although the Assessing Officer has treated the cash credits as non-genuine, he has not made any addition on account of interest claimed paid by the assessee in relation to those cash credits, which has been claimed as business expenditure and has been allowed by the Assessing Officer. It is also pertinent to note that in respect of some of the creditors the interest was credited to their accounts/paid to them after deduction of tax at source and information to this effect was given in the loan confirmation statements by those creditors filed by the assessee before the Assessing Officer. Thus it is clear that the assessee had discharged the initial onus which lays on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/permanent accounts numbers and the copies of assessment orders wherever readily available. It has also proved the capacity of the creditors by showing that the amounts were received by the assessed by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of Orient Trading Co. Lad v. CIT [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques. Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 1TR 78 In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts

to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee. In the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

Further, we may point out that section 68 under which the addition has been made by the Assessing Officer reads as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this, case the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570."

5. For the aforesaid reasons, we do not see any merit in the appeal, and therefore, the same is accordingly dismissed with no orders as to costs.”

4.5. Thus when the assessee has repaid the loans within a period of 30 to 32 days that too through banking channels, there is no question of making addition u/s. 68 of the Act. Respectfully following the above Jurisdictional High Court judgments, we have no hesitation in deleting the addition made by the Assessing Officer u/s. 68 of the Act. Thus the addition made by the Assessing Officer are hereby directed to be deleted.

5. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 11-04-2025

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad : Dated 11/04/2025

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद