

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.137/Ahd/2024 & 138/Ahd/2024
निर्धारण वर्ष /Assessment Years : 2015-16 & 2016-17

Parth Dinesh Patel 18/19, Utkarsh Society Opp. Market Yard Tal. Visnagar, Mehsana Gujarat - 384 315	<u>बनाम/</u> <u>v/s.</u>	The Income Tax Officer Ward-1, Patan - 384 265
स्थायी लेखा सं./PAN: BWRPP 7811 A		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Dhinal Shah, AR	
Revenue by :	Shri Atul Pandey, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 23/04/2025
घोषणा की तारीख /Date of Pronouncement: 25/04/2025

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

These two appeals are filed by the assessee against the separate orders dated 01.12.2023 passed by the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"], arising out of reassessment orders framed under section 147 r.w.s. 144B of the Income-tax Act, 1961 [hereinafter referred to as "the Act"], by the National Faceless Assessment Centre (NFAC), Delhi [hereinafter referred to as "Assessing Officer /AO"] for the Assessment Years (AYs) 2015-16 and 2016-17, respectively. As the issues involved in both the appeals are common

and interlinked, these were heard together and are being disposed of by this consolidated order.

Facts of the case:

2. The assessee filed his return of income for A.Y. 2015-16 on 03.10.2015, declaring total income of Rs. 6,06,900/-. Similarly, for A.Y. 2016-17, the return was filed on 31.11.2016, declaring income of Rs.8,21,800/-. Subsequently, the cases were reopened under section 147 of the Act on the basis of information received from the Principal Commissioner of Income Tax, Gandhinagar, indicating that the assessee was a beneficiary of accommodation entries in the form of unsecured loans arranged through one Shri Amit Jayantilal Shah, identified as an entry operator. It was reported that Shri Shah had used more than 130 bank accounts to deposit cash and subsequently issued cheques to various beneficiaries, including the assessee. In response to the information, notices under section 148 were issued on 31st March 2021 in both years, and reassessment proceedings were initiated. In case of both the years, the assessee filed return of income on 27.04.2021 in response to notice u/s 148 reiterating the originally declared incomes.

3. During the course of reassessment proceedings for A.Y. 2015-16, the Assessing Officer (AO) made additions under section 68 of the Act aggregating to Rs.86,62,160/-, comprising Rs.32,50,000/- received from five specific parties connected with the entry operator and Rs.54,12,160/- from other lenders. The five parties through whom Rs.32,50,000/- was received were:

Name of the Party:	Rs.:
(i) Meena Rameshbhai Salat	5,50,000/-
(ii) Govindbhai Arjanbhai Patel	6,00,000/-
(iii) Riya Bhaveshbhai Pujara	5,00,000/-
(iv) Dipakbhai V. Chauhan	7,00,000/-
(v) Prakash Dahyalal Shah	9,00,000/-

3.1. In addition, the AO disallowed Rs.2,35,332/- being interest claimed on the said loans and Rs.52,549/- under Chapter VI-A for lack of substantiating evidence, resulting in an assessed income of Rs.95,56,950/-.

3.2. In A.Y. 2016-17, the AO made similar additions under section 68 totalling to Rs.70,54,000/-, of which Rs.35,00,000/- pertained to amounts allegedly received through entities linked to the same entry operator. The four parties through whom Rs.35,00,000/- was received were:

Name of the Party:	Rs.:
(i) Ishvarbhai Karsanbhai Choudhary	7,50,000/-
(ii) Abhabhai Harjibhai Gohil	8,00,000/-
(iii) Riya Bhavesh Kumar Pujara	11,00,000/-
(iv) Dineshbhai Rupabhai Gohil	8,50,000/-

3.3. Further, Rs.35,54,000/- was added representing loans from other individuals for which the AO concluded that genuineness and creditworthiness were not established. The AO also disallowed Rs.15,60,810/- of interest claimed on these loans. The total assessed income for the year was computed at Rs.94,36,610/-.

3.4. In both years, the assessee had submitted confirmations, PAN details, bank statements, and ITRs of the creditors in support of the loan transactions.

However, upon verification, the AO found that the creditworthiness and genuineness of the transactions remained unsubstantiated. The AO observed that most of the lenders had declared incomes marginally above the threshold of taxable limit and that the flow of funds suggested a typical accommodation entry structure – where cash was deposited by Shri Amit J. Shah, routed through these persons' accounts, and ultimately transferred to the assessee's account within a short span of time. On this basis, in case of A.Y. 2015-16, the AO concluded that the amount of Rs.32,50,000/- received from five parties was nothing but unaccounted money of the assessee, introduced in the guise of unsecured loans. In A.Y. 2016-17, similar findings were recorded by the AO based on continued inputs from the Investigation Wing linking the assessee to accommodation entries managed through the same entry operator. The assessee claimed to have received unsecured loans aggregating to Rs.35,00,000/- from four parties. The AO found that these parties too had received cash deposits in their accounts immediately before transferring funds to the assessee and held that these transactions were part of the same modus operandi. In most cases, the AO found that the incomes declared by the lenders were either below taxable limit or were not filed at all. Many confirmations merely stated the names and PANs without any corroborative evidence. Consequently, the entire amount was treated as unexplained credit under section 68 of the Act.

3.5. The assessee filed appeals before the CIT(A), challenging the validity of reopening, the additions made under section 68 of the Act, and the disallowances. However, due to non-compliance with multiple notices issued by the CIT(A), both appeals were disposed of ex parte vide orders dated 01.12.2023, without discussing or adjudicating the merits of the grounds

raised. The CIT(A) relied on the material available on record and upheld the assessment in full.

4. Aggrieved by the orders of CIT(A), the assessee has preferred the present appeals before us raising following grounds:

In ITA No. 137/Ahd/2024

1. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the reopening of assessment under section 147 of the Act in as much as there is no escapement of income and that the notice issued is bad in law and is not in conformity of the provisions of law.*
2. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming an addition amounting to INR 32,50,000 under section 68 of the Act on the ground of accommodation entry in as much as the Assessee has borrowed the money from genuine sources and that the same have been repaid and therefore, there is no question of any addition.*
3. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming addition amounting to INR 54,12,160 under section 68 of the Act on the ground that the assessee has not proved the genuineness and credit worthiness of the transaction in as much as borrowing have been made from genuine source and that the same have been repaid by account payee cheque and therefore, there is no question of any addition.*
4. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming addition amounting to INR 2,35,332 being payment of interest in as much as the interest is paid on genuine borrowing and the funds have been borrowed for the purpose of earning an interest income and therefore the same is allowable as deduction.*

The Appellant craves leave to add, alter, amend or withdraw any of the above grounds at or before the hearing of the appeal.

All the grounds of appeal stated above are without prejudice to each other.

In ITA No. 138/Ahd/2024

1. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the reopening of assessment under section 147 of the Act*

in as much as there is no escapement of income and that the notice issued is bad in law and is not in conformity of the provisions of law.

2. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in not adjudicating the ground of appeal raised by Appellant that the learned Assessing Officer (learned 'AO') has erred in making impugned addition without giving sufficient opportunity to the appellant and thereby violating the principles of natural justice.*
3. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming an addition amounting to INR 35,00,000 under section 68 of the Act on the ground of accommodation entry in as much as the Assessee has borrowed the money from genuine sources and that the same have been repaid and therefore, there is no question of any addition.*
4. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming addition amounting to INR 35,54,000 under section 68 of the Act on the ground that the assessee has not proved the genuineness and credit worthiness of the transaction in as much as borrowing have been made from genuine source and that the same have been repaid by account payee cheque and therefore, there is no question of any addition.*
5. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming addition amounting to INR 15,60,810 being payment of interest in as much as the interest is paid on genuine borrowing and the funds have been borrowed for the purpose of earning an interest income and therefore the same is allowable as deduction.*

The Appellant craves leave to add, alter, amend or withdraw any of the above grounds at or before the hearing of the appeal.

All the grounds of appeal stated above are without prejudice to each other.

5. During the course of hearing before us, the Learned Authorized Representative (AR) submitted that the assessee had furnished confirmations, PAN details, and other relevant documents of the creditors in support of the unsecured loans before the Assessing Officer during the assessment proceedings. However, it was contended that the Assessing Officer failed to appreciate the evidentiary value of such documents and

proceeded to make the additions under section 68 of the Act without conducting any independent inquiry or verification. It was further submitted that the CIT(A) had dismissed the appeal ex parte solely on account of non-compliance, without adjudicating the matter on merits. The AR attributed the non-compliance to the assessee's limited awareness of legal proceedings and inability to respond adequately to appellate notices due to his rural background and lack of legal assistance. The AR placed reliance on the Paper Book filed during the hearing to demonstrate that the unsecured loans in question were subsequently repaid through banking channels in the following financial years. Details of such repayments were furnished before the Bench. It was, however, fairly conceded that the evidence regarding repayment was not submitted during the course of assessment proceedings. The AR, therefore, expressed no objection if the matter were to be restored to the file of the Assessing Officer for the limited purpose of verification of repayments.

6. The Learned Departmental Representative (DR), after perusing the record, submitted that if the assessee is now in possession of evidence substantiating repayment of the loans, and is willing to furnish the same, the Department shall have no objection if the matter is restored to the file of the Assessing Officer for limited verification of such repayments in accordance with law.

7. During the course of hearing, the learned AR submitted that the assessee does not wish to press the ground challenging the validity of the reopening of assessment under section 147 of the Act in both the captioned assessment years, provided that the matter is restored to the file of the

Assessing Officer for the limited purpose of verifying the repayments of unsecured loans claimed to have been made in subsequent years. It was further submitted that the assessee is prepared to furnish documentary evidence regarding the said repayments before the Assessing Officer. In view of the above submission made voluntarily by the AR, and having regard to the limited remand being contemplated, the first ground of appeal in both assessment years is dismissed as not pressed.

7.1. The controversy in these appeals arises out of additions made by the Assessing Officer under section 68 of the Income-tax Act, 1961, in respect of unsecured loans received by the assessee during the relevant years, which were treated as unexplained cash credits. The reassessments in both assessment years were initiated solely on the basis of third-party information emanating from investigation reports concerning one Shri Amit Jayantilal Shah, alleged to be an accommodation entry operator. The Assessing Officer, while relying on this information, failed to undertake any independent verification or enquiry before forming the belief of escapement of income.

7.2. During the course of the reassessment proceedings, the assessee had furnished certain documents including confirmations, PAN details, and bank statements of the creditors. However, the Assessing Officer rejected the same on generalized suspicion, without issuing summons under section 131 of the Act or notices under section 133(6) of the Act to examine the identity, creditworthiness, or the genuineness of the transactions. The additions were made purely based on perceived patterns in fund flow, linking them to alleged accommodation entry practices. Furthermore, the CIT(A), disposed

of the assessee's appeals ex parte without adjudicating the matter on merits or providing reasoned findings in terms of section 250(6) of the Act.

7.3. Before us, the assessee has now produced documentary evidence to show that the unsecured loans in question were subsequently repaid through regular banking channels. Although this material was not placed before the Assessing Officer at the time of reassessment, it has now been brought on record and its relevance in testing the genuineness of the loan transactions cannot be ignored.

7.4. It is pertinent to take note of the legal submissions made by the assessee during the course of the assessment proceedings, as forming part of the paper book. The assessee placed reliance on several judicial precedents, particularly of the Hon'ble Gujarat High Court in *Rohini Builders v. CIT* [(2002) 256 ITR 360 (Guj)], to contend that the initial onus under section 68 of the Act stood discharged. The assessee submitted that the confirmations, PAN, address, and complete identification particulars of the creditors were furnished, and the transactions were carried out through account payee cheques or banking channels. Before us, the assessee has filed evidence of repayment of loans through banking channels in subsequent years, which was not before the AO. It is a well-established legal position that repayment of loans, although not conclusive, is a strong corroborative factor supporting the genuineness of the transaction.

7.5. Accordingly, we deem it just and proper to restore the matter to the file of the Assessing Officer for limited verification of (i) repayment of loans through banking channels and (ii) consequential allowability of interest

expenditure claimed thereon. If, upon such verification, the AO finds that the loans were indeed repaid through verifiable banking transactions and were disclosed in the books of the creditors, appropriate relief shall be granted, and the interest paid on such borrowings shall be adjudicated in accordance with law. The assessee shall extend full cooperation in the remand proceedings and furnish all necessary documents and explanations as may be required.

7.6. In the result, for the reasons set out hereinabove the orders of the CIT(A) dated 01.12.2023 for A.Y. 2015-16 and A.Y. 2016-17 are hereby set aside. The matters are restored to the file of the Assessing Officer for the limited purpose of verifying the following:

- In respect of A.Y. 2015-16, the AR placed on record (Paper Book Page No. 60A) during the course of hearing, the details of unsecured loans aggregating to Rs.32,50,000/-, received from five identified parties, and demonstrated that the said loans were subsequently repaid through verifiable banking channels. The Assessing Officer shall verify the genuineness of such repayments and reassess the nature of the transactions in accordance with law.
- In respect of both A.Y. 2015-16 and A.Y. 2016-17, the Assessing Officer shall also verify the repayments of all other unsecured loans claimed to have been received and subsequently repaid, the evidence for which has now been placed on record.
- The consequential disallowance of interest expenditure, amounting to Rs.2,35,332/- in A.Y. 2015-16 and Rs.15,60,810/- in A.Y. 2016-17, shall also be re-examined. If the loans are found to be genuine and duly repaid, the interest claim shall be decided afresh in accordance with law and based on the nexus of borrowed funds with income-earning activity.

7.7. The ground challenging the validity of reopening of assessment under section 147 of the Act is dismissed as not pressed, in view of the limited remand granted.

8. All other grounds being consequential and dependent on the above verification, are left open for fresh adjudication, as necessary.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 25th April, 2025 at Ahmedabad.

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

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 25/04/2025

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad