

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 93/GTY/2024
Assessment Year 2014-15

Shri Prabhudayal Beriwal,

Jyoti Nagar, Dibrugarh – 786001

[PAN : ACIPB8563D]

.....**Appellant**

vs.

Assistant Commissioner of Income Tax,

Circle 1, Dibrugarh (Assam),

Office of Assistant Commissioner of Income Tax,

Circle-1, Pushkara House Natun Gaon

NH-37, P.O. Mohanghat,

Dibrugarh-786008

..... **Respondent**

Appearances by:

Assessee represented by

: Vijay Kumar Deorah, FCA

Department represented by

: Kausik Ray, JCIT

Date of concluding the hearing

: 12.06.2025

Date of pronouncing the order

: 25.06.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal emanates from the order under Section 250 of Income Tax Act, 1961 (hereafter “the Act”) passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”], dated 29.02.2024.

1.1 In this case, a survey was conducted on 18.07.2017 on M/s Kaliapani Tea Company Pvt. Ltd. A Director in this Company had apparently given a statement under oath during the course of survey,

admitting to some undisclosed income, and had thereafter retracted the same. The assessee is also a Director in the said company, besides being Director in one M/s Premsagar Commercial Pvt. Ltd. It has been recorded by the Ld. AO in his order that there was an allegation that unaccounted money was routed back as unsecured loan in the individual hands of the family members of the Directors of Kaliapani Tea Company Pvt. Ltd. The assessee is seen to have received Rs. 1,11,00,000/- during the year under consideration from M/s Premsagar Commercial Pvt. Ltd. On the basis of this material, the case of the assessee was reopened by issuing a notice u/s 148 of the Act. It is recorded in the Ld. AO's order that the assessee could not prove the circumstances under which the funds were received from Shr. Dinesh Dhandania, Director of M/s Premsagar Commercial Pvt. Ltd. Also, the Ld. AO found that the entity M/s Premsagar Commercial Pvt. Ltd. was not doing any business and the main assets were seen to be investments in shares of Rs. 3,15,00,000/-, out of which the assessee had received Rs. 1,11,00,000/-. After not being satisfied with the documents filed by the assessee, the Ld. AO proceeded to add the impugned amount u/s 68 of the Act.

1.2 Aggrieved with this action, the assessee approached the CIT(A), where also he could not succeed on the basis of finding recorded on page 16 at para 5 of the impugned order. The Ld. CIT(A) has held that the assessee did not furnish sufficient evidence to escape the rigours of section 68 of the Act.

1.2 Further aggrieved, the assessee has filed the present appeal with the following grounds:

"1. For that the Additional/Joint/Deputy/Assistant Commissioner of Income tax erred in law and fact of the case while making addition u/s 68 for unsecured loan of Rs 1,11,00,000 taken from Premsagar Commercial Private Limited

2. For that the Additional/Joint/Deputy/Assistant Commissioner of Income tax erred in law and fact of the case for charging interest u/s 234A for Rs 4,59,048. u/s 234B for Rs 36,46,968 and u/s 234C Rs 2666.

3. For that the Additional/Joint/Deputy/Assistant Commissioner of Income tax erred in law and fact of the case for not giving credit for TDS of Rs 45,985. Advance tax paid of Rs 22,000/- and self assessment paid Rs 87,390/-

4. For that the other Grounds of Appeal may kindly be allowed to urged at the time of hearing of Appeal.

5. For that Additional evidences may kindly be allowed to produced at the time of hearing of Appeal.”

2. Before us, the Ld. AR argued with the help of two paper books, comprising over 400 pages and written submissions. It has been pointed out that the loan creditor's PAN, ITRs, balance sheet, confirmation letter, bank statement and MCA Master Data details were duly filed before the Ld. AO to establish the genuineness of impugned transaction. The Ld. AR argued that while the Ld. AO issued a show cause for using section 69A of the Act, but he eventually added the impugned amount u/s 68 of the Act. It was further submitted by the Ld. AR that the information obtained from a survey on a third party has been illegally used against the assessee. Even the statement recorded of a third party, during the survey, was duly retracted and hence it could not have any evidentiary value whatsoever. It was submitted by the Ld. AR that the Ld. AO failed to verify the documents and evidences filed before him and in spite of ample documentation supplied by the assessee, he chose to take an adverse view without pointing out the defect in the documents presented on behalf of the assessee. It was also pointed out the loan creditor (M/s Premsagar Commercial Pvt. Ltd.) had investments in shares amounting to Rs. 3,15,00,000/- as on 31.03.2013 and during the assessment year 2014-15 these shares were sold and the amounts were received in the bank accounts of the loan creditor. In this manner, the Ld. AR said that there was a nexus between the amount of loan advanced to the assessee and the amounts available with the loan creditor through sale of shares. On a query from the bench regarding the exact dates on which shares were sold by the loan creditor and the dates on which the impugned loans were advanced to the assessee, the Ld. AR attempted to demonstrate the said

nexus through specific entries in the bank accounts of M/s Premsagar Commercial Pvt. Ltd. The Ld. AR concluded his arguments by relying on certain case laws to prove that the onus cast on the assessee, with respect to section 68 of the Act, was duly discharged. The Ld. AR also averred that the assessee was not maintaining any books of account and hence section 68 of the Act would not apply since the presence of books of account was *sine qua non* for the application of section 68 of the Act.

2.1 The Ld. DR relied on the orders of authorities below and pointed out that the assessee had not been able to prove the creditworthiness of the loan creditor before either of the lower authorities and hence the provisions of section 68 of the Act had been correctly invoked.

3. We have carefully considered the rival submissions and also gone through all the documents placed before us, including the orders of authorities below. At this stage, we need to remind ourselves about the mandate given u/s 68 of the Act. To this extent, we may refer to the *locus classicus* on the subject, being the case of Shankar Industries reported in 114 ITR 689 (Calcutta). Though this case never travelled up to the Hon'ble Supreme Court but it has been relied on several Apex Court judgments on the subject and hence this case law assumes the strength of an Apex Court decision. The important findings in this case are extracted as under:

*“The law on this point is now well settled. It is necessary for the assessee to prove prima facie the transaction which results in a cash credit in his books of account. **Such proof includes proof of the identity of his creditor; the capacity of such creditor to advance the money and, lastly, the genuineness of the transaction.** [emphasis added] These findings must be proved prima facie by the assessee and only after the assessee had adduced evidence to establish prima facie the aforesaid, the onus shifts on the department. In the instant case, it seemed that the assessee established only the identity of the creditor and nothing more.”*

3.1 Regarding the argument of the assessee that section 68 of the Act would not apply once books of accounts were not maintained, cannot be supported since it is seen that the definition of books or books of account

were inserted into the definition portion of the Act through Section 2(12A) of the Act, with effect from 01.06.2001 only. The said Section reads as under:

“books or books of account” includes ledgers, day-books, cash books, account-books and other books, whether kept 4[in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in] a floppy, disc, tape or any other form of electro-magnetic data storage device;”

While through the case of CIT vs. Bhaichand N. Gandhi reported in [1983] 141 ITR 67 (Bombay), it is understood that a bank pass book would not pass muster as "books of account" but it is felt that this case pre-dates the insertion of definition of books as per Section 2(12A) of the Act and hence, it needs to be clearly pin-pointed whether at all the preliminary requirement u/s 68 of the Act regarding the presence of books is fulfilled or not. In a recent case, the Hon'ble Bombay High Court [Buniyad Chemicals Ltd. reported in 172 taxman.com 462 (Bombay) dated 17.03.2025] it has been held that the scope of definition of books of accounts has been considerably enlarged with the insertion of section 2(12A) of the Act. In this regard, the relevant portions of the Buniyad Chemicals (supra) deserve to be extracted:

“Section 68 was inserted in the 1961 Act and there was no corresponding provision in 1922 Act. The phrase "books of an assessee" appearing in section 68 has to be interpreted by adopting updated construction in accordance with the changes in technology. Legislature is presumed to anticipate the developments and to intend the Act to be applied to such future developments. After the advent of computers, the businessmen records its transaction in computers and not in the "books" as traditionally understood. In the statement recorded of the director of the respondent-assessee, he has stated that the data appearing in 2 CDs are extracted by the investigating wing from books of account. Once more, it is reiterated that the data is extracted from the CDs. He has admitted that the contra entries appearing are entries in favour of beneficiaries. These contra entries are the entries which admittedly are prepared by director of the respondent-assessee. The director of the respondent-assessee has further admitted that whatever details he has, the same, are reflected in the CDs and to the same effect. [Para 31]

On a reading of various answers given by director of the respondent-assessee, it is admitted that books of account are maintained by the respondent-assessee and from those very books of account the revenue has extracted the data by copying the same on 2 CDs. This statement has been given on oath, and respondent-assessee has heavily relied on this very statement in his submissions before this Court. It is viewed that based on above, director of respondent-assessee has admitted that the

respondent-assessee has maintained the books of account. Therefore, it is viewed that the contention of the respondent-assessee that an addition cannot be made under section 68 on the ground that the respondent-assessee has not maintained books and the bank statement cannot be treated as books is self-destructive in itself since, he has admitted that books of account are maintained and the data have been extracted from those very books of account and based on this data, addition has been made. [Para 32]

Even otherwise, the phrase "books of an assessee" should be construed to mean data fed by the assessee in its computer from which the contents are copied on CDs, which is based on the entries recorded in the computer. The definition of "books or books of account" in section 2(12A) as existed for assessment year 2009-10 includes ledgers, day-books, cash books, account books and other books, whether kept in the written form or as printouts of data stored in a floppy, disc, tape or any other form of electromagnetic data storage device. It is viewed that based on this definition read with the answers to various questions in the statement, in the facts of the present case submission of the respondent-assessee that provisions of section 68 are not attracted because no books are maintained is required to be rejected. The data extracted from the computer of the respondent-assessee in which these transactions are recorded would constitute "books of an assessee" for the purpose of section 68. Section 68 should be interpreted to mean books of an assessee to include the computer in which the business transactions are recorded and from which data was extracted on CD's. [para 33]."

3.2 As mentioned earlier, the Ld. AR was asked to demonstrate as to how liquidation of shares by the loan creditor resulted in the availability of sufficient funds to advance the impugned loan amount. Again, as has been mentioned earlier, the Ld. AR could not point out accurately from the bank statement that the liquidation of investments was directly correlatable with the advancement of impugned loan. Be that as it may, one of the important limbs to be proved by the assessee, if he desires to escape the rigours of section 68 of the Act, would be the establishment of the "creditworthiness" of the loan creditor. It is clear that in case the loan creditor has evidence to demonstrate that the impugned loan amount was advanced to the assessee after the shares were liquidated, then this aspect of the transaction would stand proved. However, conversely, if a direct nexus between the liquidation of shares and the advancement of loan cannot be established then the assessee would need to prove that the loan creditor had sufficient creditworthiness to escape the provisions of section 68 of the Act. As has been mentioned earlier, the case of Shankar Industries (supra) would guide both the AO and the assessee in this

regard. Considering the discussions in paras 3 to 3.1(supra) and this para, this matter deserves to be remanded back to the file of Ld. AO for a fresh assessment, after verification of the facts surrounding the impugned loan. To this extent, the impugned order is set aside with respect to the addition on account of unsecured loan of Rs. 1,11,00,000/- taken from Premsagar Commercial Pvt. Ltd. The Ld. AO would be required to be guided by the discussions in paras 3 to 3.2 in this order.

4. It is seen that the assessee has filed several other grounds challenging the charging of interest u/s 234A/B/C of the Act and has also ventilated a grievance that credit for TDS, advance tax paid and self-assessment tax paid, being not been given by the Ld.AO. It is evident that the charging of interest is consequential and hence does not need to be specifically adjudicated. The issue of granting credit for taxes paid/deducted has to be given by the Ld. AO. We direct accordingly.

5. In result, appeal filed the assessee is partly allowed for statistical purposes.

Order pronounced on 25.06.2025

Sd/-
[Manomohan Das]
Judicial Member
Dated: 25.06.2025
AK, Sr. PS

Sd/-
[Sanjay Awasthi]
Accountant Member

Copy of the order forwarded to:

1. Shri Prabhudayal Beriwal
2. Assistant Commissioner of Income Tax, Circle 1, Dibrugarh Assam)
3. CIT(A)-
4. CIT-
5.
CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches