

**INCOME TAX APPELLATE TRIBUNAL: GAUHATI BENCH: GUWAHATI
BEFORE SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

AND

SHRI SANJAY AWASTHI, HON'BLE ACCOUNTANT MEMBER

ITA No. 79 / GTY / 2024

AY: 2017-18

The ACIT, Circle-2, Guwahati	Arman Ali C/o S.A Enterprise, House No. 47 (Opposite Panbazar H.S. School) Moti Lal Nehru Road Panbazar, Guwahati 781001 (Assam) PAN : ABYPA3123D
(Appellant)	(Respondent)

Assessee By:	Shri Manish Jain, CA
Department By:	Shri Kaushik Ray, JCIT
Date of Hearing:	11-06-2025
Date of Pronouncement:	10 .07.2025

ORDER

PER MANOMOHAN DAS, JM

This appeal by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi (hereinafter referred to as the ("CIT(A)" dated 08.01.2024 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and pertains to the Assessment Year [AY] 2017-18.

The grounds of the Revenue are as under:-

(i) *Whether the LD. CIT(A) was correct in law and in fact in deleting the addition made by the assessing officer u/s 68 of the I.T. Act, 1961 by presuming that there was no adverse findings regarding unsecured loans simply on the basis of PAN Numbers of the creditors provided by the assessee.*

2. The facts of the case are that, the assessee e-filed his return of income on 25.11.2017 showing total income of Rs. 21,89,640/-. The case was selected for complete scrutiny through CASS and notice u/s 143(2) of the Act was issued on 10.08.2018 for discussing of certain issues relating to the income shown for the relevant previous year, fixing compliance date on 10.09.2018. The assessee submitted his compliance by furnishing required particulars. Subsequently, notice u/s 142(1) of the Act along with a detailed questionnaire was issued on 17.09.2019 asking the assessee to furnish various details / particulars / documents with compliance date fixed on 23.09.2019. The assessee did not comply this notice. Thereafter notice was re-served upon the assessee on 18.10.2019 fixing compliance date on 25.10.2019 and the same was complied with by the assessee. Notice u/s 142(1) was issued for the third time, but the assessee did not comply the same. The Id. Assessing Officer [AO] inter alia observed that, the assessee has not established the identity, creditworthiness of the lenders or the genuineness of the transactions. The Id. AO disallow the entire amount of unsecured loans on suspicion of them being own money of the assessee disguised as unsecured loans from different parties. The Id. AO has disallowed the entire unsecured loan amount of Rs. 1,75,10,000/- and has added to the total income of the assessee.

3. Being aggrieved, the assessee filed 1st appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 08.01.2024 allowed the appeal of the assessee.

4. Being aggrieved, the Revenue filed the present appeal before the Tribunal.

5. Heard both the parties and perused the material on record.

6. The LD. AR supported the order of the Id. CIT(A), whereas, the Ld. DR supports the order of the AO.

7. We have perused the observations of the Id. CIT(A) and observe that, the Id. CIT(A) remanded the issue of the unsecured loans to the Id. AO observing that, the assessment order is not clear about the documents required or enquiry conducted by the AO to establish identity, genuineness and creditworthiness. The Id. AO vide report stated that, the issue needed further clarifications and investigations, but thereafter, there was no further submissions from the Id. AO on the issue for more than 3 (three) years. There was no further submissions from the Id. AO regarding subsequent clarifications and investigations despite 3 years have lapsed since the date of first report on 21.04.2020. Since, there was no further submissions and clarification from the Id. AO for more than three years, the Id. CIT(A) came to the conclusion that, there are no adverse findings regarding unsecured loans and has allowed the appeal of the assessee. The Id. CIT(A) took rest on the case law in the case of Nemi Chand Kothari, [2004] 136 Taxman 213 (Gauhati) while allowing the appeal of the assessee. The relevant observations of the Id. CIT(A) are as under:-

“ The assessing Officer submitted a remand report stating that the list of unsecured loans is perused. The assessee has provided PAN number of lenders and the relationship with the assessee. The creditworthiness of the lenders to lend such amounts is not ascertained through the said list and

shall need further clarifications and investigations. This report was submitted on 21.04.2020. More than 3 years have lapsed since. There were no further submissions from the AO regarding subsequent clarifications and investigations. Hence, it is presumed that there are no adverse findings regarding unsecured loans. In the Nemi Chand Kothari, [2004] 136 Tazman 213 (Gauhati), the jurisdictional high court held that under section 68 of Income-Tax Act creditor's creditworthiness has to be judged vis-à-vis transactions, which have taken place between assessee and creditor, and it is not business of assessee to find out source of money of his creditor or genuineness of transactions. Hence, it is held that the appellant has discharged the initial burden to prove identity, genuineness and creditworthiness of lenders of unsecured loan. As a result, ground no. 7 is allowed".

8. The LD. DR submitted that, the issue was required further clarifications and investigations as was reported by the Id. AO. We find no force in the submission of the Ld. DR, because, the Id. AO got more than sufficient time to conduct investigations on the issue of unsecured loans. Despite getting of more than 3 years time to conduct investigations, the Id. AO did not make any investigation and nothing was informed to the Id. CIT(A) about the further clarifications and investigations. The Id. AO remained complete silent after filing his first report on 21.04.2020. We observe that, the duty to conduct required investigation on the issue was on the Id. AO and he has failed to perform his duties and for the failure in performing the duties by the Id. AO, no harassment should be given to an assessee.

9. Accordingly, we are in complete agreement with the observations of the Id. CIT(A) that, there is no adverse findings against the assessee. No error was committed by the Id. CIT(A) while presuming that, there is no adverse findings against the assessee. In our considered opinion, the observations of the Id. CIT(A) on the issue of unsecured loans in needs no interference. He, the Id. CIT(A) rightly came to the conclusion in favour of the

assessee after consideration of the responses from the Id. AO. Since, no interference is required on the issue, we upheld the findings of the Id. CIT(A) and dismiss the appeal of the Revenue.

10. In the result, the appeal of the Revenue is dismissed.

11. Order pronounced in the open court on this 10th day of July, 2025.

Sd/-

(Sanjay Awasthi)
Accountant Member

Date: 10 .07 .2025

Copy forwarded to:-

1. Arman Ali, C/o S.A Enterprise, House No. 47 (Opposite Panbazar H.S. School), Moti Lal Nehru Road, Panbazar, Guwahati- 781001 (Assam)

2. The ACIT, Circle-2, Guwahati

3. The Pr.CIT

4. The CIT(A)

5. The DR

5. Guard file

Sd/-

(Manomohan Das)
Judicial Member

By Order

Assistant Registrar
ITAT, Guwahati / Kolkata