

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.33/LKW/2025  
Assessment Year: 2020-21  
&  
( S.A. No.08/LKW/2025)  
In ITA. No.33/LKW/2025  
Assessment Year 2020-21

<b>Neeraj Jaiswal and others</b> Green Park, Bareilly-243001.	Vs.	<b>The ACIT-1</b> 'C.R. Building', Kamla Nehru Marg, Civil Lines, Bareilly-243001.
<b>TAN/PAN:AAAAN4041K</b>		
(Appellant)		(Respondent)

Appellant by :	Shri Rakesh Garg, Advocate
Respondent by :	Shri Neeraj Kumar, CIT (DR)

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.:**

This appeal has been preferred by the assessee against the order dated 02.12.2024 passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2020-21.

2. The brief facts of the case are that the assessee is an Association of Persons engaged in the business of trading of Liquor. The return of income for the year under consideration was filed on 04.01.2021 declaring total income of Rs. 76,55,100/-. The return was initially processed under section

143(1) of the Income Tax Act, 1961 (hereinafter called “the Act”) and subsequently, the case was selected for complete scrutiny to examine-

- i. Stock valuation
- ii. High creditors/liabilities
- iii. Income from liquor business.

2.1 The assessee was required by the Assessing Officer (AO) from time to time to submit various documents and evidences relating to the issues covered under the scrutiny. The assessee responded to most of the queries and furnished details of lenders, copies of loan confirmations, copies of income tax returns of the lenders as well as bank statements of the lenders. Similarly, the assessee also produced the method of valuation and quantitative details pertaining to valuation of stock and also submitted various details relating to the expenditure incurred and shown as business expenditure. The AO, after going through the various documents furnished by the assessee, proposed variation in the returned income of the assessee with respect to the unsecured loans received by the assessee during the year to the tune of Rs. 31,53,34,318/-.

2.2

The AO observed that this variation was proposed in view of the fact that some of the lenders had not responded to the notice issued under section 133(6) of the Act in order to confirm the amount of unsecured loan. The AO doubted the creditworthiness of the lenders who had advanced unsecured loans and, thereafter, proceeded to add the impugned amount of Rs. 31,53,34,318/- being the amount of unsecured loans received by the assessee from the various lenders during the year. The assessment was completed at a total income of Rs. 32,29,89,418/-

2.2 Aggrieved, the assessee approached the Id. First Appellate Authority challenging the addition. However, the Id. First Appellate Authority dismissed the assessee's appeal and confirmed the addition made by the AO.

2.3 Now, the assessee has approached this Tribunal challenging the dismissal of its appeal by the Id. First Appellate Authority by raising the following grounds of appeal:

*"01. Because the CIT(A),NFAC, has erred on facts and in law in upholding the addition of Rs.31,53,34,318/-under section 68 of the Income-tax Act,1961, which addition is contrary to facts, bad in law be deleted.*

*02. Because the CIT(A),NFAC, has failed to appreciate the facts and circumstances of the case and has arbitrarily held the unsecured loans of Rs.31,53,34,318/- as unexplained, overlooking the fact that the unsecured loans are old balances being brought forward from the earlier years, there was no reason to disbelieve the same and apply the provisions of section 68 of the Act, the order passed is contrary to facts, bad in law, the addition made be deleted.*

*03. Because the assessee on his part having furnished complete details of the borrowers, i.e., the name, address and PAN and the transactions having taken place through banking channels, the initial onus cast on the assessee having been discharged, the CIT (A),NFAC was not justified in upholding the addition of Rs.31,53,34,318/- made under section 68 by the AO, the addition made is bad in law be deleted.*

*4. Because the identity, creditworthiness and genuineness of the creditors not being in dispute, none of the evidences filed by the assessee explaining the deposits/advances/unsecured loans having not been found false or untrue, the CIT(A), NFAC, was not justified in upholding the addition, which addition is contrary to facts, bad in law be deleted.”*

3.0 The Id. Authorised Representative (AR) for the assessee Shri Rakesh Garg, Advocate submitted that the assessee had given lender-wise explanation of the unsecured loans before the Id. First Appellate Authority but the same was dismissed

summarily and the addition was sustained. Our attention was drawn to the written submissions filed before the ld. First Appellate Authority which has been reproduced in the paper book filed by the assessee from pages 1 to 57. The ld. Authorized Representative submitted that a perusal of the said reply would show that all the lending entities who had advanced unsecured loans had availed cash credit limits from their respective banks and further that all these entities were duly assessed to tax. It was further submitted that the amounts received by the assessee in form of unsecured loans had been made from the cash credit limits and, thus, there was no doubt whatsoever about the source of payments of these unsecured loans. It was also pointed out that when the Inspector from the Verification Unit of the Faceless Centre of the Income Tax Department had visited the residential premises and had met Mrs. Neetu Jaiswal W/o Shri Neeraj Jaiswal, a complete paper book containing all the evidences establishing the identity, genuineness and creditworthiness of these lending entities were handed over to him. It was submitted by the ld. AR that the addition was made by the AO only on the premise that since the lending entities had shown meagre incomes in their returns of

income, they had no creditworthiness to advance the unsecured loans whereas it was established with confirmations from the lenders, duly supported by their bank statements that the unsecured loans had been advanced to the assessee AOP by obtaining cash credit limits from their respective banks.

3.1 The Id. AR also drew our attention to copy of factual report as received by the Id. Principal Commissioner of Income Tax, Bareilly dated 10.12.2024 and placed at pages 288 to 304 of the paper book filed by the assessee and it was submitted that this factual report had been obtained by the Id. Pr. CIT, while considering the assessee's request for stay of demand. It was submitted that vide this factual report dated 29.02.2024, submitted by the Deputy Commissioner of Income Tax, Circle-1, Bareilly, party-wise description of all the unsecured loans have been given and in conclusion, it has been observed that most of the lending entities were small firms and that all these lending entities had availed cash credit limits from their banks. It was submitted that in para 14 of the said report, it has been specifically stated that the advances to the assessee on account of the unsecured loans had been made by the lending entities from the cash credits availed by the lending entities from their

respective banks. The Ld. AR submitted that this factual report was never ever disclosed to the assessee and that it was only through an application moved by the assessee under Right to Information Act, 2005 that the assessee had obtained a copy of this factual report which was very clearly in favour of the assessee inasmuch as the source of unsecured loans i.e. being withdrawals from cash credit limits of the various entities was clearly established.

3.2 The ld. AR drew our specific attention to pages 5 to 9 of the paper book filed by the assessee wherein a chart has been reproduced summarizing the unsecured loans taken by the assessee, the mode of receiving them, the PANos of the lenders as well as the amounts received.

3.3 The ld. AR also drew our attention to page 3 of the assessment order which shows a summary of the unsecured loans in the assessee's books of accounts and it was submitted that while making the impugned addition in respect of the entire credits received from the various lenders during the year, the re-payments made during the year have been completely ignored. It was submitted that the opening balance of unsecured loans during the year was to the tune of Rs.

38,70,27,829/- and there was a repayment by the assessee to the tune of Rs. 37,08,71,898/- and after adding the credits received during the year, the closing balance was Rs. 33,14,90,249/-. It was submitted that, thus, the entire addition had been made without appreciating the factual position and only on a premise that the lenders did not have creditworthiness. It was also submitted that the identity stood established by the PAN numbers of the lenders as well as the furnishing of their complete addresses, copy of bank statements and copy of ITRs. As far as the genuineness of the transactions was concerned, it was further submitted that the transactions were genuine as all these entities were engaged in the business of Liquor and as usually happens in business of liquor, many small firms come together to ensure availability of funds and later on partake in profits. It was prayed that based on the facts, the appeal of the assessee deserved to be allowed.

4.0 In response, the ld. CIT DR Shri Neeraj Kumar vehemently relied on the observations of the AO and also the upholding of the order of assessment by the ld. First Appellate Authority. The ld. CIT DR submitted that even the verification unit from the faceless centre had concluded that the genuineness of the

transactions and creditworthiness of the parties could not be ascertained. The ld. CIT DR read out extensively from the Assessment Order and submitted that most of these lending entities had meagre source of income and, thus, they did not have their own business-related funds at their disposal so as to advance unsecured loans to the assessee. The ld. CIT DR prayed that the appeal of the assessee be dismissed.

5.0 We have given a careful consideration to the arguments of both the sides and have also gone through the orders of both the lower authorities. The only issue before us is as to whether the entire unsecured loans received by the assessee during the year can be validly added to the income of the assessee. It is borne out from record that the assessee was required by the AO to establish the genuineness of the unsecured loans received during the year and the AO also issued notices u/s 133(6) of the Act to the lenders who duly responded to the said notices. To establish the creditworthiness of the lenders, it was demonstrated by the assessee before both the lower authorities that all the unsecured loans had been advanced to the assessee by availing of cash credit limits by the lending entities and to evidence the same, copy of bank statements of these lending

entities were furnished. Also, the lending entities had submitted copies of their PAN as well as account confirmations and copies of ITRs.

5.1 The provisions of Section 68 of the Act require that if there is any sum credited in books of account maintained for the any previous year then the assessee is required to offer proper and reasonable explanation regarding nature and sources of such credit to the satisfaction of the AO. Thus, the primary onus lies with the assessee to explain the source of credit in the books. Over the period, the Hon'ble Courts have laid down that the assessee to discharge its onus is required to furnish evidence with respect to identity of the creditor, genuineness of transaction and credit worthiness of the creditor. If the assessee fails to discharge the primary onus cast or the explanation and evidence submitted by the assessee is not found satisfactory by the AO, then the sum credited in the books shall be deemed as income of the assessee. However, undeniably, in the present appeal, the assessee has furnished numerous documents to establish the source of unsecured loans and the lenders have also duly responded to the notices issued u/s 133(6) of the Act by the AO.

5.2 The Hon'ble Delhi High Court in the case of CIT v. Dwarkadhish Investment (P.) Ltd. [2010] 194 Taxman 43 held that though in Section 68 proceedings, the initial burden of proof lies on the assessee yet he once proves the identity of the creditors/share applicants by either furnishing their PAN or Income Tax assessment number and shows the genuineness of transaction by showing money in his books either by way of account payee cheque or by draft or by any other mode, then the onus of proof would shift to the revenue. It was also held that just because creditor/share applicant could not be found at address given, it would not give Revenue right to invoke section 68. Moreover, it was held that it is a settled law that the assessee need not to prove the 'source of source'.

5.3 In our considered view, although having a meager income might be an indicator of a person having low creditworthiness, all the same, if a person is able to demonstrate with evidence, the source of giving credit, the same cannot be ignored. It is not in doubt that the lenders have given evidence to substantiate the availability of funds with them and, thus, it can be rationally held that the assessee was able to discharge its primary onus *vis a vis* the unsecured loans received by it. It

follows that once the assessee has discharged the primary onus, the onus will shift to the Income Tax Department to bring on record, with concrete evidence, any such fact which could prove that the lenders' creditworthiness was not real. However, in the present appeal before us, the AO has not brought any further evidence on record to disprove the evidences and submissions made by the assessee with respect to the unsecured loans taken by the assessee and he has only made the addition based on the meager incomes of the lenders. It also needs to be appreciated that there is no bar against advancing loans only out of declared/tax paid profits or to declare a high income before a loan can be advanced.

5.4 It will also not be out of place to refer to the factual report submitted by the Deputy Commissioner of Income Tax before the Ld. Principal Commissioner of Income Tax in the case of the assessee wherein the Deputy Commissioner has himself conceded that the unsecured advances to the assessee were raised by the various lenders mostly through cash credit limits availed. This factual report does not point out to any unaccounted money being introduced by the assessee in his books but lends credence to the claim of the assessee.

5.5.0 We have also perused the chart furnished by the assessee in its paper-book, wherein the lenders, their Opening Credit Balances, payments made to them during the year and fresh loans received during the year as well as the closing balances have been shown. The said chart is being reproduced herein under for a ready reference:

Sr No	Name	PAN	Opening Balance	Dr.	Cr.	Closing Balance
1	Ajay Jaiswal and Others	AAFYA9757E	-	-	1,50,00,000	15000000 Cr
2	Aryan Jaiswal and Others	AAFYA3626N	-	78,00,000	1,50,00,000	72,00,000 Cr
3	Avdesh Jaiswal and Others	AAFYA3621M	10,00,000 Cr	-	75,00,000	65,00,000 Cr
4	Harikishan Jaiswal and Others	AAHFH5414J	3,00,00,000 Cr	1,56,90,000	75,00,000	2,18,10,000 Cr
5	Mamta Jaiswal and Others	AAXFM4085E	3,00,00,000 Cr	3,11,75,000	2,25,00,000	2,13,25,000 Cr
6	Mohan Jaiswal and Others	AAXFM4086H	1,50,00,000 Cr	1,57,25,000	2,25,00,000	2,17,75,000 Cr
7	Neetu Jaiswal and Others	AAJFN3235F	3,00,00,000 Cr	2,34,75,000	75,00,000	1,40,25,000 Cr
8	Rameshwar Dayal and Others	AAQFR4270B	-	78,00,000	1,50,00,000	72,00,000 Cr
9	Renu Jaiswal and Others	AAOFR4021J	3,00,00,000 Cr	2,35,00,000	75,00,000	1,40,00,000 Cr
10	Shri Kishan Jaiswal and Others	AAKFS5622C	3,00,00,000 Cr	2,34,95,000	1,50,00,000	2,15,05,000 Cr
11	Suryansh Jaiswal and Others	ACKFS5628J	2,75,00,000 Cr	1,32,50,000	75,00,000	2,17,50,000 Cr
12	Vidushi Jaiswal and Others	AAKFV9271A			75,00,000	75,00,000 Cr
13	Omprakash Jaiswal and Others	AABAO0008J	17,00,000 Cr	78,00,000	75,00,000	14,00,000 Cr
14	Stone Solution	EWLPS7817E			6,56,000	6,56,000 Cr
15	O.P Associates	AAAAO0899C	8,42,50,829 Cr	20,11,61,898	15,71,78,318	4,02,67,249 Cr
-	TOTALS				31,53,34,318	

5.5.1 A perusal of the above chart shows that while making the impugned addition, the AO has completely ignored that 11 out of the 24 accounts pertaining to unsecured loans had debit transactions also during the year and in 9 of these accounts, the closing balance had actually reduced as compared to the opening balance as on 1<sup>st</sup> April, 2019. Therefore, it is apparent that the impugned addition has been made without giving a thoughtful consideration to the overall facts of the case. The fact of payments having been made during the year towards refund of loans could not have been completely ignored if the entire credit receipts were being added to the income of the assessee. Similarly, the AO has also completely ignored the fact that in the case of as many as 9 out of 24 lenders, the outstanding credit balances (amounts due to lenders) had actually reduced as compared to the opening balances. This also evidences the mis-appreciation of facts by the AO and lends credence to our view that the impugned addition was not warranted.

5.6 Therefore, on an overall view of the facts of the case, it is our considered view that the AO could not have validly made the impugned addition under section 68 of the Act,

without bringing any further evidence on record that the assessee's claim of having received unsecured loans was false and that the impugned funds had in fact emanated from the undisclosed income of the assessee. Accordingly, we set aside the order of the Ld. First Appellate Authority and allow the appeal of the assessee.

6.0 Since, the appeal has been decided on merits, the stay application moved by the assessee stands dismissed as having become infructuous.

7.0 In the final result, the stay application stands dismissed and the appeal of the assessee is allowed.

(Order pronounced in the open court on 16/02/2026)

**Sd/-**  
**(NIKHIL CHOUDHARY)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 16/02/2026  
Sh/Vijay Pal Singh, (Sr. PS)

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow