

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी', अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ B ” BENCH, AHMEDABAD**

श्री जी.डी.अग्रवाल, उपाध्यक्ष (अहम.क्षेत्र) एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT (AZ) And**  
**SHRI KUL BHARAT, JUDICIAL MEMBER**

1. आयकर(ss)अपील सं./IT(ss)A No.19/Ahd/2011 – A.Y.2006-07
2. आयकर(ss)अपील सं./IT(ss)A No.21/Ahd/2011 – A.Y.2007-08

1-2. Mahalaxmi Housing & Finstock Pvt.Ltd. 1, Narayan Chambers 2 <sup>nd</sup> Floor Nr.Nehru Bridge Corner Ashram Road, Ahmedbad	<b>बनाम/</b> Vs.	1-2. The ACIT Central Circle-1(4) Ahmedabad
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCM 0367 R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Prijesh Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Smt. Nidhi Srivastava, CIT-DR

सुनवाई की तारीख / Date of Hearing	29/07/2015
घोषणा की तारीख/Date of Pronouncement	14/08/2015

**आदेश / ORDER**

**PER SHRI KUL BHARAT, JUDICIAL MEMBER :**

Both these appeals by the Assessee are directed against the separate orders of the Ld.Commissioner of Income Tax(Appeals)-I, Ahmedabad ['CIT(A)' in short] dated 18/11/2010 and 18/10/2010 pertaining to Assessment Years (AYs) 2006-07 and 2007-08

respectively. Since identical grounds have been raised in both these appeals by the assessee, therefore these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.

2. First, we take up the Assessee's appeal in IT(ss)A No.19/Ahd/2011 for AY 2006-07 as a lead case. The Assessee has raised the following ground of appeal:-

*1. The learned CIT(A) has erred in Confirming the addition of Rs.17,87,000/- of unsecured loan as unexplained cash credit u/s.68 of the I.T.Act, 1961 which is requested to be quashed.*

2.1. Briefly stated facts are that a search action u/s.132(1) of the Income Tax Act,1961 (hereinafter referred to as "the Act") was carried out in the case of Neptune Group of Cases by the ITO Investigations, Unit-1, Ahmedabad. Subsequently, the assessment u/s.153A(1)(b) r.w.s.144 of the Act was framed via order dated 31/12/2008. While framing the assessment, the AO made addition on account of unexplained cash credit amounting to R.17,87,000/-. Against the assessment order, assessee preferred an appeal before the Id.CIT(A), who after considering the submissions of the assessee, partly allowed the appeal, thereby the CIT(A) directed the AO to verify the facts in case the facts are found to be correct, then the addition to be restricted to Rs.1 lac. The present appeal was originally filed against the confirmation of entire addition of Rs.17,87,000/-, however, the assessee has revised the ground restricting

the ground to the extent of addition of Rs.1 lac. The appeal was barred by 18 days. The reason for condonation of delay in filing the appeal, the Id.counsel for the assessee submitted that Mr.Bholabhai V.Patel has been the Director of Mahalaxmi Housing and Finstock Pvt.Ltd. since many years and he has been handling the almost affairs of the company. Apart from the same, his wife Smt.Deviben Bholabhai Patel is also a Director but the business and other affairs, day-to-day transactions, etc. are handled by the main Director Mr.Bholabhai V.Patel only. In addition to the same, the Director Mr.Bholabhai V.Patel has been at a very senior post being 'Rastriya Sachiv' of National Congress Party and working at all over India level. Since Director Mr.Bholabhai V.Patel has the responsibilities and duties of his political party at all over India level, he has to travel a lot and to various places all over India especially Delhi, Himachal Pradesh, Haryana, Chennai, etc. as directed by the higher authorities of National Congress Party. Further, the Id.counsel for the assessee submitted that Hon'ble CIT(A)-I, Ahmedabad have dismissed the appeal of Mahalaxmi Housing and Finstock Pvt.Ltd. of AY 2007-08 filed before him and such order was delivered on 26/10/2010. The order was handed over to assessee company's office and given to Director Mr.Bholabhai V.Patel, but meanwhile, the Director was urgently called to Delhi on the party work. So, he urgently went to Delhi along with his many other papers in his bag including the CITA('s order of Mahalaxmi Housing and Finstock Pvt.Ltd. The Id.counsel for the assessee also

submitted that after reaching to Delhi, the Director Mr.Bholabhai V.Patel was much engaged in party meetings and other programs. Meanwhile, during the course of these meetings and programs, such order was mixed with other documents and literatures of the party. When Director Mr.Bholabhai V.Patel came back to Ahmedabad after completion of party work assigned to him, he was asked by the staff to give the copy of such order for taking necessary actions like appeal etc. At that time, the Director noticed that such order is not in his bag. Director Mr.Bholabhai V.Patel immediately called to Delhi Office staff to find such order but the same could not be found by the staff members of the party. When he visited Delhi Office thereafter, he verified all the bunches of the party literatures and documents and found the order between them. He immediately sent such order at Ahmedabad to the company office but meanwhile the time limit of 60 days was already been completed. Due to the above reason, the appeal could not be filed within the stipulated time of 60 days after receipt of the order from CIT(A)'s office. This is a bona fide reason due to which there has been a little delay of around 18 days in filing of the appeal before ITAT, Ahmedabad. There was no intention on the part of the company of making the delay in filing of the appeal. The Id.counsel for the assessee submitted that considering the above, humbly request the Hon'ble Bench of ITAT to condone the delay in filing of appeal. Considering the submission made by the Id.counsel for the assessee and also the case-laws relied upon by the assessee (including the

case-law rendered by the Hon'ble High Court of Madras in the case of Sreenivas Charitable Trust vs. DCIT reported at 280 ITR 357 : 154 Taxman 377), we condone the delay in filing the appeal.

3. The only ground in this appeal is against confirmation of addition of Rs.1 lac. The Id.counsel for the assessee reiterated the submissions as were made vide written submissions dated 15/06/2015.

3.1 On the contrary, Sr.DR supported the orders of the authorities below.

4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The written submissions as made by the Id.counsel for the assessee are reproduced hereunder:-

*“At the outset, we mention the fact that we have revised the ground of appeal. A separate letter revising the ground of appeal has been submitted separately on today.*

***Factual Background***

*01. The assessee is a Pvt. Ltd. Company being a builder. During the year under consideration, assessee company has incurred a loss amounting to Rs.83,961.50. The company has filed the Return of Income has been filed on 05/12/2006 Vide Acknowledgement No.90298074. The books of accounts have been maintained and the same have been audited.*

02. At the time of assessment proceedings, the details were submitted to the Assessing Officer including the Profit and Loss Account, Balance Sheet, Audit Report etc. Thereafter, the new Assessing Officer took the charge in the first week of December-2008 and on 31/12/2008, the Assessing Officer passed the order making the addition under section 68 of the Income Tax Act, 1961 amounting to Rs. 17,87,000/-.

03. Before, Honourable CIT(A), vide submission dated 16/11/2010, Assessee submitted the confirmations, Identity proofs, Return of Income, Ledger, Bank Statement, etc of the three parties namely "Mangaldeep Developers Pvt. Ltd.", "Mangal Sagar Associates & Developers Pvt. Ltd." & "Popatlal B Patel" in respect of whom the Assessing Officer made the addition in its Assessment Order.

04. Honourable CIT(A) after considering the submission of the Assessee, passed the appellate order on 18/11/2010 directing the Assessing Officer to verify whether the facts submitted by the assessee are correct and if the same are found correct then addition of Rs. 16,87,000/- in respect of the two parties namely "Mangaldeep Developers Pvt. Ltd." & "Mangal Sagar Associates & Developers Pvt. Ltd." are to be deleted and the addition in respect of Mr. Popatlal B. Patel amounting to Rs.1,00,000/- being the fresh credit introduced during the year under consideration was confirmed.

05. Here, learned CIT(A) failed to pass the speaking order due to the fact that he has not mentioned as to why the unsecured loan amounting to Rs.1,00,000/- in respect of Popatlal B. Patel is unexplained and why the such addition made by the Assessing Officer is confirmed.

06. While confirming such addition in respect of Popatlal B. Patel the learned CIT(A) failed to appreciate the following documents which were submitted vide submission dated 16/11/2010.

<i>Sr.No.</i>	<i>Document submitted</i>	<i>Remark</i>
6.1.	<i>Return of Income &amp; PAN</i>	<i>Revealing the fact that the assessee has been having the adequate identity, Income Tax Return Filer and being assessed to tax.</i>
6.2.	<i>Confirmation on the copy of Account of Unsecured Loan Holder's Books</i>	<i>Revealing the fact that the assessee has taken unsecured loan which has been confirmed by the unsecured loan holder.</i>

6.3.	<i>Bank Pass Book of Unsecured Loan Holder</i>	<i>Revealing the fact that the amount has been given to the assessee through account payee cheque and there has been a sufficient balance in the unsecured loan holder's bank account which proves the capacity and creditworthiness</i>
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*07. The transaction has been done through account payee cheque and the unsecured loan holder's pass book also does not reveal any cash deposit immediately prior to issuance of loan cheque. The source of source is also through account payee cheque. Such documentary evidences are sufficient enough to prove the identity, capacity, Genuineness, creditworthiness of the unsecured loan holder Popatlal B Patel.*

**Case Laws:**

**08.Gujarat High Court - CIT V. Sachitel Communications (P.) Ltd. - [2014] 51 taxmann.com 205 (Gujarat)/[2014] 227 Taxman 219.**

*Section 68 of the Income tax Act, 1961 Cash credit (Loans) Assessment year 2006-07 Commissioner (Appeals) and Tribunal concurrently found that assessee proved identity of creditor and capacity to pay and that payment was made through banking channel Whether no addition could be made on account of unsecured loan Held, yes [Para 3] [In favour of assessee].*

*Where assessee proved identity of creditor, its capacity and further transaction, was made through bank, any addition as unexplained unsecured loans would be unsustainable.*

**09. Gujarat High Court - CIT V. Dharamdev Finance (P.) Ltd. - [2014] 51 taxmann.com 205 (Gujarat)/[2014] 227 Taxman 219.**

*II. Section 68 of the Income tax Act, 1961 Cash credits (Burden of proof) Various additions were made to assessee's income on account of cash credits It was found that in respect of said credits assessee had filed PAN of creditors, their confirmation and their bank statement which established their creditworthiness. Moreover, transactions were made through banking channels. Whether any addition could not be made to assessee's income under section 68 Held, yes [Para 5] [In favour of assessee].*

*No addition on account of cash credits be made, where assessee had given PAN of creditors, their confirmation and their bank statement which established their creditability.*

**10. Gujarat High Court - CIT V. Apex Therm Packaging (P.) Ltd. - [2014] 42 taxmann.com 473 (Gujarat)/[2014] 222 Taxman 125.**

*Section 68 of the Income tax Act, 1961 Cash credit (Unsecured loan) Assessment year 200708 Whether when full particulars, inclusive of confirmation with name, address and PAN Number, copy of income tax returns, balance sheet, profit and loss account and computation of total income in respect of all creditors/lenders were furnished and when it had been found that loans were furnished through cheques and loan account were duly reflected in balance sheet, Assessing Officer was not justified in making addition Held, yes [Para 6] [In favour of assessee].*

*IT : Where name, address, PAN, copy of IT Returns, balance sheet, profit and loss account of all creditors/lenders as well as their confirmation had been furnished, Assessing Officer could not make addition on account of unsecured loan and interest thereon.*

**11. Gujarat HC - CIT Vs. SaileshKumar Rasiklal Mehta - 224 Taxman 212.**

*Section 68 of the Income tax Act, 1961 Cash credit [Burden of proof] Assessment years 2001-02 to 2003-04 Assessing Officer made additions on account of unexplained cash credit in hands of assessee. It was found that all transactions were routed through banking channels and assessee had duly explained source of income Whether Assessing Officer was not justified in treating same as undisclosed income and in making addition under section 68 Held, yes (Para 3) [In favour of assessee].*

*IT: Where transactions were routed through bank and assessee had explained source of income, additions under section 68 could not be made*

*Para 3:*

*3. Having heard Ms. Mauna Bhatt, learned Counsel appearing on behalf of the appellant and on perusal of the impugned common judgment and order passed by the ITAT as well as the finding given by the CIT(A) while deleting the additions made by*



*the Assessing Officer, it appears that on appreciation of evidence and considering the fact that the additions made by the Assessing Officer routed through the Bank and the assessee explained the source of income and considering the same the CIT(A) has deleted the additions made by the Assessing Officer, which was made by the Assessing Officer treating the same as undisclosed income. The assessee successfully proved the source of income and the same was routed through the Bank. Thus, the Assessing Officer was not justified in treating the same as undisclosed income and in making the additions under Section 68 of the Income Tax Act.*

***12. Gujarat HC - CIT Vs. Harishbhai Raojibhai Patel HUF - 219 Taxman 125.***

*Section 68 of the Income tax Act, 1961 Cash credit [Deposits] Assessing Officer made certain addition under section 68 on ground that assessee was unable to establish identity and creditworthiness of depositor and genuineness of transaction On appeal, Commissioner (Appeals) as well as "Tribunal deleted addition by recording finding of fact that said amount was given by one T staying in UK by cheque from his NRE account and said fact had been confirmed by 'J' Whether order passed by Tribunal could be interfered with Held, no [Para 2] [In favour of assessee].*

*IT: When it was established that amount in question was paid by NRI to assessee from his NRE account, no addition could be made under section 68 on that account.*

***13. Ahmedabad ITAT - Shantilal Keshavlal Bhatt Vs. ITO - ITA No. 2919/Ahd/2011.***

***Para 6:***

*6 After hearing both the parties and perusing the record, we find that there is no dispute about the fact that the assessee received the sum of Rs.4,00,000/-from Shri N I Vyas through banking channel. In support of his claim, bank passbook of the depositor along with PAN Card and letter of confirmation from Shri Vyas are already on record. Thus, the identity and creditworthiness of the depositor is established. We further find that the sum has already been repaid by the assessee to Mr. Vyas through the banking channel in installments in support of which necessary evidence is also on record. Therefore, the genuineness of the transaction is also established. In the light of these undisputed facts of this case, the addition made by the AO and sustained by the learned CIT(A) is hereby deleted. The first ground of assessee's appeal is allowed.*

***14JUunedabad ITAT - Sarjan Corporation Vs. ACIT - 25 Taxmann.com 426.***

*1. Section 68 of the Income tax Act, 1961 Cash credit Assessment year 2005 06. When confirmation of all parties, from which unsecured loans were received by assessee, were furnished along with their permanent account numbers, copy of acknowledgement of income tax returns, etc., and no enquiry was made by Assessing Officer, no addition could be made under section 68 in respect of said unsecured loans [In favour of assessee].*

***15 Ahmedabad ITAT - Rohini Builders Vs. DCIT - 117 Taxman 25.***

*Section 68 of the Income tax Act, 1961 Cash credits Assessment year 1989-90 Whether by proving identity of creditors by giving their complete addresses, GUR Nos./PAN and copies of assessment orders wherever readily available and also by proving capacity of creditors by showing receipts of loan amounts toy account payee cheques drawn from creditors' bank accounts, assessee has discharged initial onus which lay on it in terms of section 68 Held, yes Whether under law assessee could be asked to prove source of credits in its books of account but not source of source Held, yes Whether as phraseology employed is 'may' and not 'shall' in section 68, unsatisfactoriness of explanation does not and need not automatically result in deeming amount credited in books as assessee's income Held, yes Whether taking into consideration totality of facts and circumstances of case and, in particular fact that Assessing Officer had not disallowed interest claimed/paid in relation to those credits and TDS had been deducted out of interest paid/credited to creditors, revenue was not justified in making addition Held, yes*

***16. Ahmedabad ITAT - B.S.Corporation Vs. ACIT - 112 Taxman 111.***

*Section 68 of the Income tax Act, 1961 Cash credits Assessment year 1988-89 During relevant accounting year assessee had taken certain loans which were treated as not genuine and additions made Confirmations of depositors were filed before Assessing Officer who also examined them Money was advanced through bank accounts and depositors had disclosed respective amounts in their voluntary disclosure returns Whether even though it was established that such amounts were undisclosed income of respective creditors, yet as Assessing Officer could not establish any link that amounts in fact belonged to assessee, addition made was not justified Held, yes*

***17. Ahmedabad ITAT - Dimco Silk Mills Vs. ITO - 107 Taxman 41.***

*Section 68 of the Income tax Act, 1961 Cash credits Assessment year 1989-90 Whether, where assessee received amounts appearing as deposits in accounts of third parties through account payee cheques and filed confirmation and other materials to support genuineness of those parties, addition made on account of unexplained cash credits in those accounts could be sustained Held, no*

**18. Mumbai ITAT - ACIT Vs. Disha Constructions - 43 CCH 0317. Conspectus:**

*Cash Credits —Creditworthiness of creditors— Assessee was engaged in the line of civil construction activity — AO had called for details of fresh loans obtained during the year relevant to A/Y — from the loan creditors, their respective income tax returns and bank statements relevant to the loan transactions but AO had alleged that that creditors had disclosed income at a low level, which had no commensurate with the loan given to the assessee — AO had concluded that the assessee had failed to prove the credit worthiness of few creditor and assessed loan creditors aggregating to specified amount as income of the assessee u/s 68 — On appeal, CIT(A) had concluded that the assessee had discharged the primary burden placed upon the assessee u/s 68 and the AO had failed to rebut the same — CIT(A) had deleted the assessment made u/s 68 for both A/Y's 2008-09 and 2009-10 —Held, the initial burden of proof to prove the cash credits was placed upon the assessee but if the discharges the initial burden so placed upon him, then the burden of proof gets shifted upon the AO to disprove the submissions of the assessee — In the instant case, since the assessee had furnished their confirmation letters, income tax returns, the identity of all the creditors in both the years stand established —Further, AO had also identified the owners of all the concerns — It was not disputed that the loan transactions were routed through the banking channels and hence the genuineness of the loan transactions were established -- AO had not brought any material on record to show that the explanation furnished was in any manner, unsatisfactory or there was no reliable evidence with the assessee — Thus, CIT(A) had given a definite finding that the evidences filed by the assessee remained un-rebutted — Addition made u/s. 68 was rightly deleted — Finding given by CIT(A) was upheld — Revenue's appeal for A/Y 2008-09 and 2009-10 was dismissed.*

**Conclusion:**

*Where assessee had discharged the initial burden of proof placed upon it u/s 68, no addition thereof was warranted.*

**19. Agra ITAT - Umesh Electricals Vs. ACIT - 12 Taxmann.com 5 ; 141 TTJ 288**

*Conspectus:*

*Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 2000-01 - Whether opinion of Assessing Officer for not accepting explanation offered by assessee under section 68, as not satisfactory must be based on proper appreciation of material and other surrounding circumstances available on record; and Assessing Officer cannot reject each and every explanation of assessee - Held, yes - Assessee had taken a loan of Rs. 1.5 lakhs from one 'OP' vide a bank draft dated 6-8-1999 - Assessing Officer asked assessee to prove genuineness of cash credit, and assessee submitted confirmation of 'OP' along with its PAN number, copy of bank statement as well as copy of cash book - Assessing Officer, however noted that 'OP' had deposited cash of Rs. 1.5 lakhs in its bank on same day, i.e., 6-8-1999 itself, out of which demand draft in favour of assessee was made - Assessing Officer held that assessee had nothing but introduced his own money which was unaccounted, in name of creditor, 'OP', and therefore, added Rs. 1.5 lakhs as income of assessee - Whether since assessee had filed confirmation of 'OP' of having advanced loan to assessee and had also submitted copy of bank statement as well as cash book of 'OP', it could be said that assessee had proved genuineness of loan and no addition could be made under section 68 -Held, yes.*

*Thanking You,*

*Yours truly,*

*For, Pritesh Shah & Associates  
Chartered Accountants  
Sd/-*

*C.A.Pritesh Shah, Proprietor, Authorised Representative”*

4.1. It is the contention of the Id.counsel for the assessee that the assessee had furnished PANs, addresses, etc. to prove the identity, genuineness of the transaction and creditworthiness of the depositors. We find that the assessee has filed PANs, addresses, etc. for demonstrating that the depositors were assessed to tax. In view of the

case-laws as relied upon by the ld.counsel for the assessee more particularly judgement of Hon'ble Jurisdictional High Court in the case of CIT vs. Dharamdev Finance (P.) Ltd. reported at (2014) 51 taxmann.com 205 (Guj.): (2014) 227 Taxman 219. Therefore, we direct the AO to delete the addition. Thus, ground of assessee's appeal is allowed.

5. In the result, assessee's appeal for Asst. Year 2006-07 is allowed.

6. Now, we take up the Assessee's appeal in IT(ss)A No.21/Ahd/2011 for AY 2007-08. The assessee has raised the following ground of appeal:-

*1. The learned CIT(A) has erred confirming the addition of Rs.2,00,000/- of estimating income, which is requested to be quashed.*

7. In this appeal, the facts are identical to the facts of assessee's own case in IT(ss)A No.19/Ahd/2011 for AY 2006-07(supra). The respective representatives of the parties adopted their arguments as were advanced in IT(ss)A No.19/Ahd/2011(supra), wherein we have allowed the assessee's appeal with a direction to AO to delete the addition. Accordingly, for the same reasoning, assessee's appeal in IT(ss)A No.21/Ahd/2011 for AY 2007-08 is also allowed.

8. In the combined result, both the appeals of the Assessee are allowed.

Order pronounced in the Court on Friday, the 14<sup>th</sup> day of August, 2015 at Ahmedabad.

Sd/-

(जी.डी.अग्रवाल)

उपाध्यक्ष(अहम. क्षेत्र)

( G.D. AGARWAL )

VICE PRESIDENT (AZ)

Ahmedabad; Dated 14/ 08 /2015

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

Sd/-

(कुल भारत)

न्यायिक सदस्य

( KUL BHARAT )

JUDICIAL MEMBER

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)-I, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad