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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 24.10.2019*

\+ ITA 917/2019

M/S SIDDHARTH EXPORT ..... Appellant

Through: Mr. Kirti Uppal, Senior Advocate with Mr. B.B. Pradhan, Mr. Aditya Awasthi and Mr. Aditya Raj, Advocates.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr. Zoheb Hossain, Senior Standing Counsel.

**CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**SANJEEV NARULA, J. (Oral):**

**C.M. No. 46336/2019 (exemption)**

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

**ITA 917/2019 & CM. APPLs. 46334-46335/2019**

3. The present appeal under Section 260A of the Income Tax Act, 1961 (hereinafter the Act) is directed against the common order dated 26.06.2018 (hereinafter the impugned order) passed by the Income Tax Appellate

Tribunal in Appeal (s) No. 7700/2017 for AY-2013-14 and 7752/2017 for AY-2014-15.

4. The appeal is accompanied with an application [CM. APPL. 46334/2019] seeking condonation of gross delay of 445 days in filing the appeal. The grounds and reasons stated in the application seeking condonation of delay are completely bereft of merits. This delay is sought to be justified on account of filing of a misconceived writ petition WP (C) No. 193/2019 to assail the impugned order of ITAT. The said petition was dismissed as withdrawn vide order dated 25.07.2019, whereby, Petitioner was permitted to withdraw the writ petition with liberty to file a statutory appeal accompanied by an application for condonation of delay to challenge the impugned order. The application offers no cogent explanation for the delay in approaching the court, except for narrating the fact of filing of the above noted writ petition, which does not help the petitioner under any circumstances. The writ itself was filed beyond the statutory period of filing the appeal and moreover, the same was withdrawn on the first day of listing and the Appellant cannot vindicate the delay for the above reason. The application thus deserves to be dismissed as it does not disclose any cogent ground or reason for seeking condonation. Nevertheless, we have also heard the counsels on the merits of the case and find no ground to entertain the present appeal for the reasons stated hereinafter.

5. Common facts arising out of the two appeals before the ITAT [ ITA No. 7700/DEL/2017 & ITA No. 7752/DEL/2017] are that the Appellant - M/s Siddharth Export is a partnership firm, engaged in manufacturing and trading (export) of engineering and automobile spare parts since 2002. The

assessee filed its income tax return declaring income of Rs. 44,36,580/- for the AY 2013-14 and Rs. 39,94,420/- for the AY 2014-15.

6. In respect of AY 2013-14, assessee received an unsecured loan of Rs. 26 lacs through three cheques as per details mentioned below:

| Sl. No. | Chq. No. | Date | Amount (Rs.) | Bank A/C |
|---|---|---|---|---|
| 1. | 738671 | 23.10.2012 | 600,000 | Canara Bank, Nagpur A/C No. 0265101012274 |
| 2. | 738674 | 23.10.2012 | 10,00,000 | Canara Bank, Nagpur A/C No. 0265101012274 |
| 3. | 649338 | 23.10.2012 | 10,00,000 | Yes Bank, Nagpur NRO A/c No. 002890400000072 |

7. The above noted cheques were issued by Ms. Jasmine Kochhar Kapoor, a citizen of GBR (United Kingdom), who is stated to be an Overseas Citizen of India (OCI). Assessee got its account audited under Section 44AB of the Act. As per the statutory requirement of tax audit under Section 44AB, mandatory disclosure was made under "Particulars of Loan accepted during the previous year 2012-13", by annexing the audit report in Form 3CD, disclosing receipt of "unsecured loan" of Rs. 26 lacs from Ms. Jasmine Kochhar Kapoor, during the previous year.

8. Similarly, in respect of AY 2014-15, Appellant received an unsecured loan of Rs. 87 lacs through six cheques as per details mentioned below:

| Sl. No. | Chq. No. | Date | Amount | Bank A/C |
|---|---|---|---|---|
| 1. | 649341 | 31.05.2013 | Rs. 10,00,000/- | Yes Bank, Nagpur A/c No. 002890400000072 |
| 2. | 649342 | 05.06.2013 | Rs. 15,00,000/- | Yes Bank, Nagpur A/c No. 002890400000072 |
| 3. | 649344 | 12.07.2013 | Rs. 15,00,000/- | Yes Bank, Nagpur A/c No. 002890400000072 |
| 4. | 649345 | 12.07.2013 | Rs. 25,00,000/- | Yes Bank, Nagpur A/c No. 002890400000072 |
| 5. | 649346 | 23.09.2013 | Rs. 15,00,000/- | Yes Bank, Nagpur A/c No. 002890400000072 |
| 6. | 649357 | 05.02.2014 | Rs. 7,00,000/- | Yes Bank, Nagpur A/c No. 002890400000072 |

9. With respect to both the assessment years, the case of the Appellant was selected for scrutiny under CASS, as per guidelines/procedure for selection of cases for scrutiny. Notice under Section 143 (2) was issued on 18.09.2015 for AY 2014-15, followed by a questionnaire dated 04.07.2016 along with the statutory notice under Section 142 (1). Since there was no response to the above notices, follow-up was made by several telephonic calls. Pursuant thereto, the AR of the assessee appeared on 11.11.2016, 18.11.2016 and 28.11.2016 and filed submissions in part. The hearing was then adjourned to 01.12.2016, when assessee failed to appear. On 13.12.2016, on account of the aforesaid irregularity of non-attendance, a penalty under Section 271 (1) (b) was imposed. The assessee then submitted certain documents to

substantiate the receipt of unsecured loan. The explanation was not found satisfactory and, accordingly, the Assessing Officer vide notice dated 22.03.2016, proposed to treat the unexplained cash credit to the income of the assessee as per section 68 of the Act. The assessee strived to explain the cash credit of Rs. 1,70,25,370/- as the closing balance for the previous year i.e. 2011-12, however the Assessing Officer added an amount of Rs. 1,80,65,314/- to the assessee's income. Being aggrieved by the aforesaid assessment order, the Appellant filed an appeal before CIT (A) which was decided against the Appellant vide order dated 18.10.2017, noting that the assessee has failed to discharge the onus of proving the credit worthiness of the lender and the genuineness of the transaction. The order of CIT (A) was challenged before the Income Tax Appellate Tribunal in ITA No. 7700/DEL/2017 (AY 2013-14).

10. Likewise, with respect to AY 2014-15, the Appellant sought to explain the unsecured loan of Rs. 87 lacs, by contending that the same was received by way of cheques issued by Ms. Jasmine Kochhar Kapoor. In this case as well, a notice was issued by the Assessing Officer under Section 143 (2) to the Appellant, followed by a show cause notice dated 06.12.2016 seeking explanation as to why the unsecured loan should not be treated as unexplained credit under Section 68 of the Income Tax Act. Pursuant to the said show cause notice, the Appellant submitted a written explanation. The Assessing Officer made an independent enquiry through emails and telephonic conversation with ITO-Ward 1 (3), Nagpur about the ITR status of Ms. Jasmine Kochhar Kapoor and in response thereto, ITO Nagpur informed that Ms. Kapoor had not filed any income tax return. Accordingly,

the Assessing Officer made an addition of Rs. 87 lacs as unexplained credit and other additions of Rs. 1,47,000/- to the assessee's income. The said order was also carried in appeal before CIT (A), which resulted in dismissal. This order was then further challenged by way of an appeal before the Income Tax Appellate Tribunal in ITA No. 7752/DEL/2017 (AY 2014-15).

11. The aforesaid appeals were decided by the ITAT by way of a common order, impugned in the present appeal. With respect to AY 2013-14, the appeal of the assessee was deemed to be partly allowed for statistical purpose. The learned Tribunal held that the cash credit could be made only in respect of fresh credit during the accounting year relevant to the assessment year under consideration. The Assessing Officer had made an addition of Rs. 1,80,65,313/- for AY 2013-14, whereas, most of the credit reflected in the assessee's books of account was old and the fresh loan during the year under consideration was to the tune of Rs. 26 lacs only . In this view of the matter, the learned Tribunal set aside the issue of addition of unexplained loan, to the file of the Assessing Officer and directed him to verify the quantum of fresh credit in the assessee's books of account during the accounting year relevant to the assessment year under consideration and make the addition only in respect of fresh credit, and not in respect of the opening balance. With respect to AY 2014-15, the Tribunal dismissed the appeal of the Appellant entirely and upheld the additions.

12. The aforesaid order has been challenged by way of the present appeal in respect of both the assessment years. We have heard Mr. Kirti Uppal learned senior counsel on behalf of the Appellant and Mr. Zoheb Hossain learned

senior standing counsel for the Respondent.

13. Mr. Kirti Uppal argued that the tax authorities have completely ignored that material produced before them, which was sufficient to explain the receipt of Rs. 26 lacs from Ms. Jasmine Kochhar Kapoor. He submitted that the loan transactions were reflected in the audited accounts of the assessee and that the money received from Ms. Jasmine Kochhar Kapoor was by way of three cheuqes issued from her NRO account at Canara Bank and Yes Bank at Nagpur. The accounts for the said year have been audited and the disclosure made in the audit report for AY 2014-15 have been ignored. Similarly, the credit of Rs. 87 lacs in the books of account has also been well explained. The Appellant had produced a confirmation of accounts along with the copy of the bank statement, copy of the passport and also the PAN No. of Ms. Jasmine Kochhar Kapoor. If the Assessing Officer had any doubt with regard to the genuineness of the creditor, he ought to have issued a notice under Section 133 (6) of the Act to the creditor for confirming the veracity of the entries made in the books of account of the assessee for the AY 2013-14 and AY 2014-15. The assessee had satisfactorily discharged the primary onus by submitting the relevant documents, explaining the source of receipts. Thereafter, it was for the Assessing Officer to scrutinize the same and if he nurtured any doubt, he could have made an independent inquiry. In support of his arguments, Mr. Kirti Uppal learned senior counsel for the Appellant relied upon the judgment of this Court in ***Mod Creations Pvt. Ltd. v. Income Tax Officer*** (2013) 354 ITR 282 (Delhi). Mr. Uppal also produced a copy of the sale deed to explain the source of funds in the hands of the Creditor- Ms. Kapoor.

14. Mr. Zoheb Hossain learned senior standing counsel for the Respondent who appeared on advance notice on the date of first listing , had been called upon to take instructions on whether the matter could be remanded back to the Assessing Officer to permit the Appellant to produce the relevant documents to substantiate the claim of unsecured advance. Pursuant thereto, Mr. Hossain submitted that the facts of the case did not warrant a remand, as the Appellant had failed to produce the necessary documents to prove the genuineness of the purported unsecured loans, as also the credit worthiness of the lender Ms. Jasmine Kochhar Kapoor, despite grant of several opportunities, during the assessment and the appellate proceedings. He submitted that multiple opportunities had been given to the Appellant, yet he did not file any proof to demonstrate the genuineness of credits in its account. Even during the appellate proceedings, the assessee was granted sufficient opportunities and he chose not to avail the same and, accordingly, in absence of any such material, the view of the ITAT was correct and did not call for any interference. He further stated that the copy of the sale deed, that was handed over in the Court for the first time to demonstrate that the creditor did have the credit worthiness to advance the loan, cannot be taken into consideration as the Appellant had missed the bus, in as much, as, the said document ought to have been produced before the tax authorities at the stage of fact finding. It is impermissible for the Appellant be bring fresh evidence in an appeal under section 260A.

15. We have given our thoughtful consideration to the rival submissions made by both the counsels. We find merit in the contention of Mr. Zoheb

Hossain, learned senior standing counsel for the Respondent that the Appellant's approach has been completely casual and does not call for interference by us, lest we set a bad precedent and open flood gates for others in similar circumstances. Several opportunities were indeed given by the Assessing Officer, as noted in the assessment order dated 30.12.2016 (AY 2014-15), yet Appellant did not furnish the details of the unsecured loan during the hearing. Even before CIT (A), the Appellant was given several opportunities as noted in the order dated 30.01.2017 (AY 2014-15), but the Appellant did not place relevant documents to prove the genuineness of the transactions which are claimed to be unsecured loans. Therefore, at this stage, the sale deed produced by the Appellant for the first time to demonstrate that the creditor had the credit worthiness to advance the loan cannot be taken into consideration. In this regard, it would be relevant to refer to Rule 46A of the Income Tax Rules, 1962 which specifically provides that the Appellant is not entitled to produce before Deputy Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except for the circumstances illustrated in the said provision. The said rule reads as under:

> **"*46A.*** *(1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—*

*(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or*

*(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or*

*(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or*

*(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

*(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.*

*(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—*

*(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or*

*(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.*

*(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any*

*document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]*"

16. The Division Bench of this court in ***Commissioner of Income Tax (Central)-I v. Manish Build Well Pvt. Lt,*** **(2011) 184 DLT 611** held as under:

*"…Rule 46A is a provision in the Income Tax Rules, 1962 which is invoked, on the other hand, by the assessee who is in an appeal before the CIT (A). Once the assessee invokes Rule 46A and prays for admission of additional evidence before the CIT (A), then the procedure prescribed in the said rule has to be scrupulously followed. The fact that sub-Section (4) of Section 250 confers powers on the CIT (A) to conduct an enquiry as he thinks fit, while disposing of the appeal, cannot be relied upon to contend that the procedural requirements of Rule 46A need not be complied with.* ***If such a plea of the assessee is accepted, it would reduce Rule 46A to a dead letter because it would then be open to every assessee to furnish additional evidence before the CIT (A) and thereafter contend that the evidence should be accepted and taken on record by the CIT (A) by virtue of his powers of enquiry under sub-Section (4) of Section 250. This would mean in turn that the requirement of recording reasons for admitting the additional evidence, the requirement of examining whether the conditions for admitting the additional evidence are satisfied, the requirement that the assessing officer should be allowed a reasonable opportunity of examining the evidence etc. can be thrown to the winds, a position which is wholly unacceptable and may result in unacceptable and unjust consequences. The fundamental rule which is valid in all branches of law, including Income Tax Law, is that the assessee should adduce the entire evidence in his possession at the earliest point of time. This ensures full, fair and detailed enquiry and verification. A 7-***

***Judge Bench of the Supreme Court in Keshav Mills Co. Ltd. v. Commissioner of Income-Tax, Bombay North, Ahmedabad (1965) 56 ITR SC 365 had observed as under:-***

> ***"Proceedings taken for the recovery of tax under the provisions of the Act are naturally intended to be over without unnecessary delay, and so, it is the duty of the parties, both the department and the assessee, to lead all their evidence at the stage when the matter is in charge of the Income-tax Officer."***

*23. It is for the aforesaid reason that Rule 46A starts in a negative manner by saying that an appellant before the CIT (A) shall not be entitled to produce before him any evidence, whether oral or documentary, other than the evidence adduced by him before the assessing officer. After making such a general statement, which is in consonance with the principle stated in the above judgment, exceptions have been carved out that in certain circumstances it would be open to the CIT (A) to admit additional evidence. Therefore, additional evidence can be produced at the first appellate stage when conditions stipulate in the Rule 46A are satisfied and a finding is recorded.*

*XXX*

*24… In our opinion and with respect, the error committed by the Tribunal is that it proceeded to mix up the powers of the CIT (A) under sub-section (4) of Section 250 with the powers vested in him under Rule 46A.* ***The Tribunal seems to have overlooked sub-rule(4) of Rule 46A which itself takes note of the distinction between the powers conferred by the CIT (A) under the statute while disposing of the assessee's appeal and the powers conferred upon him under Rule 46A. The Tribunal erred in its interpretation of the provisions of Rule 46A vis-à-vis Section 250(4). Its view that since in any case the CIT (A), by virtue of his conterminous powers over the assessment order, was empowered to call for any document or make any further enquiry as he thinks fit, there was no violation of Rule 46A is***

***erroneous. The Tribunal appears to have not appreciated the distinction between the two provisions. If the view of the Tribunal is accepted, it would make Rule 46A otiose and it would open up the possibility of the assessees' contending that any additional evidence sought to be introduced by them before the CIT (A) cannot be subjected to the conditions prescribed in Rule 46A because in any case the CIT (A) is vested with conterminous powers over the assessment orders or powers of independent enquiry under sub-section (4) of Section 250. That is a consequence which cannot at all be countenanced****."*

[Emphasis supplied]

17. It, thus, becomes clear that taking any fresh evidence on record can only be done in certain circumstances at the appropriate stage. The same is an exception and not the Rule. The Appellant has not been able to provide any justification for not availing the benefit of any of the aforesaid provisions at the appropriate stage. We have also to be mindful of the fact that the said provision is applicable in respect of first appeals against the assessment order. The present appeal under Section 260A of the Act is against the order passed by the Appellate Tribunal, where a substantial question of law has to be shown to exist. Thus, we cannot permit the Appellant to bring new and additional evidence in the proceedings under Section 260A of the Act, and accordingly, we, disregard the sale deed shown to the Court , relied upon to prove the credit worthiness of Ms. Jasmine Kochhar Kapoor and do not find it to be a case worthy for remand.

18. The next question that arises for consideration is whether the Appellant has raised any substantial question of law. The transaction is sought to be proved by producing the bank statement of Ms. Jasmine Kochhar Kapoor. The assessee has strongly relied upon the fact that since the creditor has

been identified by way of her copy of passport, PAN No. etc, the initial onus of proof has been discharged. The Appellant strongly contends that since it had discharged the onus on production of the relevant documents, the onus shifted on the Respondent and if the Assessing Officer had any doubt, he could have carried out independent inquiry. Section 68 of the Income Tax Act, raises a presumption whenever unexplained credits are found in the books of account of the assessee. Indisputably, the credit entries stand in the name of the assessee himself. Thus the burden is undoubtedly on him to prove, satisfactorily, the nature and source of these entries and to show that they do not constitute a part of income liable to tax. There can also be no doubt that the onus is always shifting and oscillates and this burden on the assessee can shift on to the Revenue. However, such a situation can arise only if the initial or primary onus is discharged by the assessee. It is, therefore, first necessary to examine whether the assessee has been able to discharge the initial onus of proving the unexplained cash credit.

19. Law casts an obligation on the the assessee to establish by cogent evidence the genuineness of the transaction, identity of the creditors and the credit- worthiness of the creditor, to the satisfaction of the Assessing officer, so as to discharge the initial onus under Section 68 of the Act. It is for the assessee to prove by credible evidence that the transactions are genuine, since the facts are exclusively in the assessee's knowledge. It is the assessee who has entered into the transaction and thus, the person with whom he has transacted is known to him. In this regard , it would be apposite to refer to the recent judgment of the Supreme Court in the case of ***Principal Commissioner of Income Tax (Central) -1 vs NRA Iron & Steel Pvt. Ltd,***

**2019 SCC OnLine SC 311, wherein it has been** held as under:

> ***"This Court in the land mark case of Kale Khan Mohammad Hanif v. CIT and, Roshan Di Hatti v. CIT laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee****. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68.* ***If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assesse, and there would be no further burden on the revenue to show that the income is from any particular source.***
>
> *8.3. With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge*
>
> *The Delhi High Court in* ***CIT v. Oasis Hospitalities Pvt. Ltd****., held that :*
>
> > ***"The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise."***
>
> *XXX*
>
> *In* ***Sumati Dayal v. CIT*** *this Court held that:*
>
> > *"****if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory, there is prima facie***

***evidence against the assessee, vis., the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted can be used against him by holding that it is a receipt of an income nature.*** *While considering the explanation of the assessee, the department cannot, however, act unreasonably"*

*ii. In* ***CIT v. P. Mohankala*** *this Court held that:*

***"A bare reading of section 68 of the Income tax Act, 1961, suggests that (i) there has to be credit of amounts in the books maintained by the assessee ; (ii) such credit has to be a sum of money during the previous year ; and (iii) either (a) the assessee offers no explanation about the nature and source of such credits found in the books or (b) the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory. It is only then that the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The expression "the assessee offers no explanation" means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The burden is on the assessee to take the plea that, even if the explanation is not acceptable, the material and attending circumstances available on record do not justify the sum found credited in the books being treated as a receipt of income nature."***

*XXX*

***11. The principles which emerge where sums of money are credited as Share Capital/Premium are : i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to***

***discharge the primary onus.***

***ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/ subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.***

***iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."***

[Emphasis supplied]

20. A Division Bench of the Bombay High Court in the case of ***Orient Trading Co. Ltd vs Commissioner of Income Tax (Central), Calcutta***, **1962 SCC OnLine Bom 175** held as under:

"***When cash credits appear in the accounts of an assessee, whether in his own name or in the name of third parties, the Income-tax Officer is entitled to satisfy himself as to the true nature and source of the amounts entered therein, and if after investigation or inquiry he is satisfied that there is no satisfactory explanation as to the said entries, he would be entitled to regard them as representing the undisclosed income of the assessee. When these credit entries stand in the name of the assessee himself, the burden is undoubtedly on him to prove satisfactorily the nature and source of these entries and to show that they do not constitute a part of his business income liable to tax***. *When, however, entries stand not in the assessee's own name, but in the name of third parties, there has been some divergence of opinion expressed as to the question of the burden of proof. In Radhakrishna Behari Lal v. Commissioner of Income-tax, the Patna High Court held that though when the cash credits stood in the assessee's name the burden of proof was upon him to show that*

*the receipts were not of an income nature, the position was different in regard to sums which were shown in the assessee's books in the names of third parties. In the latter kind of cases the onus of proof was not upon the assessee to show the sources or nature of the amount of the cash credit, but the onus shifted on to the department to show by some material that the amount standing in the name of the third party did not belong to him but belonged to the assessee. This view was not accepted by the Andhra Pradesh High Court, where a contrary view was taken. In M. M. A. K. Mohideen Thamby & Co. v. Commissioner of Income-tax, that court held, dissenting from the Patna view, that with regard to the credit entries in the names of partners as well as credit entries in the names of third parties appearing in the accounts of the partnership, the burden is on the assessee to explain the entries and show positively their nature and sources. In the absence of a satisfactory explanation, it is open to the department to infer that the moneys belonged to the assessee and represented his suppressed income. The same view was also taken in another case of the same High Court in Raghava Reddi v. Commissioner of Income-tax. We are ourselves in agreement with the view taken by the Andhra Pradesh High Court in Raghava Reddi v. Commissioner of Income-tax and Mohideen Thamby & Co. v. Commissioner of Income-tax. We agree respectfully with the view expressed by Subba Rao C.J. (as he then was) in Raghava Reddi v. Commissioner of Income-tax, at page 948 of the report, which was as follows :*

> ***"We do not think that the question of burden of proof can be made to depend exclusively upon the fact of a credit entry in the name of the assessee or in the name of a third party. In either case, the burden lies upon the assessee to explain the credit entry, though the onus might shift to the Income-tax Officer under certain circumstances. Otherwise a clever assessee can always throw the burden of proof on the income-tax authorities by making a credit entry in the name of a third party either real or pseudonymous."***

[Emphasis supplied]

21. The plea of the Appellant that on filing of the bank statement and PAN details, the burden stood discharged or that it shifted on to the revenue is tenuous and is not correct. The credit worthiness of the transaction cannot be said to be proved merely on the strength of the bank statement or identity of the creditor. The assessee did not produce the income tax return of the lender or any confirmation. The purported confirmation has been found to be only a copy of unsigned account of the creditor. The source of funds has also not been explained. The judgment relied upon by the Appellant - ***Mod Creations Pvt. Ltd***. (supra) is distinguishable on facts and circumstances, as in the said case, there was sufficient material on record including the tax returns, an affidavit stating the source of funds and an affidavit confirming that monies have been advanced to the assessee to prove the credit worthiness of the creditors and the genuineness of the transaction. In the current case, however, the assessee has failed to produce the tax returns of the creditor or any other material to show the creditworthiness. Thus, the credit worthiness and the genuineness of the transaction cannot be said to have been proved so as to shift the onus on the revenue. The stand of the Appellant that since the alleged transaction is made through normal banking channels, it is sufficient to prove the genuineness of the transaction and the credit worthiness of the creditor, cannot be accepted. The identity as well as the credit worthiness of the creditor must be proved. The credit reflected in the bank account of Ms. Jasmine Kochhar Kapoor, is not explained, as a result her credit worthiness is not proved.

22. In view of the above facts, we do not find any infirmity in the impugned order. The findings of fact are against the Appellant, as held concurrently by

all the tax authorities. The Appellant has not raised any question of law much less substantial question of law. The present appeal is dismissed both on the ground of limitation as well as on merits as no question of law arises for our consideration under Section 260A of the Act. The pending applications, if any, are also disposed of.

**SANJEEV NARULA, J**

**VIPIN SANGHI, J**

**OCTOBER 24, 2019**
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