

**IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 996/AHD/2017

अाधरण वष/Asstt. Year: 2012-2013

Mahipal Ishwarlal Sottany, B-120, Shree Ghantakarma Mahavir, Market, Nr. New Cloth Market, Sarangpur, Ahmedabad. PAN: AMDPS7616P	Vs.	Income Tax Officer- 4(1)(3), Pratyakshkar Bhawan, Ahmedabad.
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(Applicant)	(Respondent)
Assessee by :	Shri Chetan Agarwal, A.R
Revenue by :	Shri Nilabhra Dasgupta, Sr.D.R

सुनवाई का ताराख/Date of Hearing : 29/08/2019

घोषणा का ताराख /Date of Pronouncement: 01/10/2019

आदेश/O R D E R

PER BENCH:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-7, Ahmedabad dated 10/01/2017 (in short öLd. CIT(A)ö) arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.17/02/2015 relevant to the Assessment Year 2012-2013.

The assessee has raised the following grounds of appeal.

The Authorities below have erred in law and facts by Disallowing sum of Rs.6,50,000/-on account of unexplained cash credit, even though the assessee has submitted all necessary details called for by the Id.Authorities, moreover in some cases the statements of the creditors were also recorded, assessee has fulfilled all the criteria mentioned under section 68 of the Income Tax act.

The Ld.Authorites below have erred in km and facts by adding sum of Rs.50.716/-on account of interest paid to unsecured loans. The assessee had submitted the return copies and bank statement of the concerned parties for the verification which clearly highlights the transaction.

The authorities below have erred in law by not following the judicial judgment on this subject.

Any other ground which may meet the end of justice shall be submitted at the time of hearing.

2. The solitary issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for Rs. 6.50 lakhs on account of unexplained cash credit under section 68 of the Act along with the amount of interest paid on such loan.

3. Briefly stated facts are that the assessee in the present case is an individual and engaged in the business of trading and processing of grey and fabrics cloth under the name and style of M/s Shree Mahavir Fabrics. The assessee in the year under consideration has taken loan from certain parties as detailed under:

S. No.	Name of persons	Amount in Rs.
1	Dinesh Kumar L Patel	1,00,000/-
2	Mahendra P shah	1,00,000/-
3	Bhavar lal Patel	1,00,000/-
4	Niranjan Jain	1,00,000/-
5	Ganeshlal Lumbaram Patel	1,00,000/-

6	Lumbaram Patel	1,50,000/-
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3.1 The AO during the assessment proceedings to verify the veracity of the loan taken by the assessee observed that there was cash /cheque deposit in the bank account of the parties immediately before the date of transfer of the fund to the account of the assessee. The necessary detail stands as under:

S. No.	Name of the lender	Date of deposit of cash/cheque	Amount of deposit(Rs.)	Date of issue cheque	Amount of issue (Rs.)
1.	Dineshkumar L Patel	25/2/2012	1,00,000/-	27/2/2012	1,00,000/-
2.	Mahendra P. Shah	24/2/2012	1,00,000/-	25/2/2012	1,00,000/-
3.	Bhavarlal L Patel	9/2/2012	1,00,000/-	10/2/2012	1,00,000/-
4.	Niranjan Jian	9/2/2012	1,00,000/-	10/2/2012	1,00,000/-
5.	Ganeshlal Lumbram Patel	9/2/2012	1,00,000/-	10/2/2012	1,00,000/-
6.	Lumbaram Patel	9/2/2012	1,50,000/-	10/2/2012	1,50,000/-

3.2 Besides the above the AO observed certain facts as detailed under:

In case of Dinesh Kumar L. Patel

- i. He has filed return of income for the year under consideration showing total income of Rs. 1,60,180/- and had a small bank balance of Rs. 1,899/- before the issue of cheque to the assessee. As such he had no creditworthiness as well as he was not the man of means to advance such loan to the assessee.

- ii. He has a family consisting of 5 members i.e. himself, wife, daughter (married) and 2 sons who are studying. The annual income of the wife from miscellaneous work is of Rs. 12,000 only.

In case of Mahendra P Shah

- i. He has filed return of income for the year under consideration showing total income of Rs. 1,53,117/- and had a small bank balance of Rs. 27,238/- before the issue of cheque to the assessee. As such he had no creditworthiness as well as he was not the man of means to advance such loan to the assessee.
- ii. He has admitted in the statement furnished to the AO that his annual salary is of Rs. 90,000/- only.
- iii. He also admitted that he has given advance to several parties amounting to Rs. 14.10 lakhs.
- iv. The AO was of the view that the impugned party is an entry provider.

In case of Bhavarlal L. Patel

- i. He has not filed return of income for the year under consideration and had a small bank balance of Rs. 991/- before the issue of cheque to the assessee. As such he had no creditworthiness as well as he was not the man of means to advance such loan to the assessee.

In case of Niranjana Jain

- i. He has not filed return of income for the year under consideration and had a small bank balance of Rs. 863.00 before the issue of cheque to the assessee. As such he had no creditworthiness as well

as he was not the man of means to advance such loan to the assessee.

In case of Ganesh Lumbaram Patel

- i. He has not filed return of income for the year under consideration and had a small bank balance of Rs 863.00 before the issue of cheque to the assessee. As such he had no creditworthiness as well as he was not the man of means to advance such loan to the assessee.

In case of Lumbaram Patel

- i. He has filed return of income for the year under consideration showing total income of Rs. 1,79,300/- and had a small bank balance of Rs. 1,966/- before the issue of cheque to the assessee. As such he had no creditworthiness as well as he was not the man of means to advance such loan to the assessee.

3.3 In view of the above the AO was of the view that none of the party, who advanced loan to the assessee was the man of means. Therefore, he held that the assessee failed to prove the creditworthiness of the parties and accordingly made the addition of the amount received by the assessee as unexplained cash credit of Rs. 6.50 lakh to the total income of the assessee.

3.4 Besides the above, the AO disallowed the amount of corresponding interest claimed by the assessee on such loan amounting to Rs. 50,716/- and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).

3.5 The assessee before the learned CIT (A) submitted that he has not taken any loan from the Niranjan Jain in the year under consideration. The assessee also claimed that he has not paid any interest on the alleged loan. The assessee in support of his claim filed the copy of the balance sheet and account of the interest where the name of Shri Niranjan Jain was not appearing. Therefore the assessee claimed that there cannot be any addition on account of such loan.

3.6 The assessee also submitted that he has furnished the copy of the confirmation, PAN, income tax return, bank statement and the ledger account of all the parties in support of his contention.

3.7 However, the learned CIT (A) disagreed with the contention of the assessee and confirmed the order of the AO by observing that the assessee failed to justify the creditworthiness of the parties.

Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

4. The learned AR before us filed a paper book running from pages 1 to 55 and submitted that the assessee has filed confirmation along with bank statement, PAN of all the parties.

4.1 The deposit of cash prior to the issue of cheque to the assessee by the parties in their respective account does not make the impugned transaction as unexplained and non-genuine.

4.2 The statement was recorded by the AO in case of 2 parties namely Dineshkumar L Patel and Mahendra P Shah but the same was not provided to the assessee for the cross-examination.

4.3 There was no enquiry conducted by the AO from the other parties namely Shri Bhavarlal L Patel, Ganeshlal Lumbaram Patel and Lumbaram Patel despite the fact that the assessee has furnished all the requisite details about the parties.

5. On the other hand, the learned DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the case have already been elaborated in the preceding paragraph and therefore we are not inclined to repeat the same.

6.1 Regarding the loan taken from Shri Niranjana Jain, we note that the assessee has submitted before the learned CIT (A) that he had not taken any loan from such party. However, the learned CIT (A) has held that the assessee has not furnished complete financial statements, therefore he confirmed the addition made by the AO. In this regard, we note that that the assessee has discharged his onus by furnishing the basic details of the parties. Therefore in our considered view the learned CIT (A) before disbelieving the contention of the assessee should have cross verified the fact from the concern party. But he has not done so. Therefore we are of the view that there cannot be any addition on account of loan taken from such party namely Shri Niranjana Jain.

6.2 Now coming to the loan taken from the other parties, the provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 of the Act by the Honøble Calcutta High Court in the case of CIT Vs. Precision Finance (P) Ltd reported in 208 ITR 465 wherein it was held as under:

“It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine.”

6.3 Admittedly the assessee has discharged his onus by furnishing the necessary details such as a copy of PAN, bank details, etc. in support of identity of the parties. There is also no dispute that all the transactions were carried out through the banking channel. Therefore, we are conscious of the fact that the assessee has discharged the onus regarding the identity of the parties.

6.4 There is no doubt that the transaction of the loan was carried out through the banking channel. Therefore there cannot be any doubt about the

genuineness of the transactions. In this regard, we find support and guidance from the judgment of Honøble High court of Bombay in the case of CIT Vs. Green Infra Ltd reported in 78 taxmann.com 340 wherein it was held as under:

'So far as the genuineness of the transaction of share subscriber is concerned, it concludes as the entire transaction is recorded in the books of account and reflected in the financial statements of the assessee since the subscription was done through the banking channels as evidenced by bank statements which were examined by the Tribunal. With regard to the capacity of the subscribers the impugned order records a finding that 98 per cent of the shares is held by IDFC Private Equity Fund-II which is a Fund Manager of IDFC Ltd. Moreover, the contributions in IDFC Private Equity Fund-II are all by public sector undertakings. The Tribunal has examined the case of the revenue on the parameters of section 68 and found on facts that it is not so hit. Therefore, section 68 cannot be invoked. The revenue has not been able to show in any manner the factual finding recorded by Tribunal is perverse in any manner.

6.5 Now coming to the 3rd condition, i.e. creditworthiness of the parties, we also note that the assessee has furnished the source of the income in the hands of the following parties:

S. No.	Name of persons	Return Income
1	Dinesh Kumar L Patel	Rs. 1,60,180/-
2	Mahendra P shah	Rs. 1,53,117
3.	Lumbaram Patel	Rs. 1,79,300/

6.6 The assessee in the present case has duly explained the source of money received in their hands. The assessee is not answerable to justify the source of the source of the money received by him. In this connection, we place our reliance on the judgment of Honøble Gujarat High Court in the case of DCIT Vs. Rohini builders reported in 256 ITR 360 wherein it was held as under:

"It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash

deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of Orient Trading Co. Ltd. v. CIT [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques.”

In view of the above and after considering the peculiar facts and circumstances as discussed above, we reverse the order of the authorities below. Thus we direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 01/10/2019 at Ahmedabad.

**-Sd-
(KUL BHARAT)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 01/10/2019
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