

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT****BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM****आयकरअपील./ITA No.231/SRT/2020****(निर्धारणवर्ष / Assessment Years: (2013-14)****(Virtual Court Hearing)**

The ACIT, Vapi Circle, Vapi.	<b>Vs.</b>	Shri Anand Jayantilal Kharbhari, 409, tirupati Towrs, GIDC Char Rasta, Vapi- 396195.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJQPK7929K</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by: Ms Poonam Joshi, Advocate

Revenue by: Shri H. P. Meena, CIT(DR)

**सुनवाईकीतारीख/ Date of Hearing : 22/03/2022****घोषणाकीतारीख/Date of Pronouncement: 31/05/2022****आदेश / O R D E R****PER DR. A. L. SAINI, AM:**

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Valsad [in short 'ld. CIT(A)'], in Appeal No. ITBA/APL/S/250/2020-21/1028054664(1) dated 24.09.2020, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') dated 30.03.2016.

2. Grounds of appeal raised by the Revenue as follows:

*“i) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.60,000/- under the head house property income in respect of shop at Subh Laxmi tower, Vapi.*

*ii) On the facts and in the circumstances of the case and in law, the old. CIT(A) has erred in deleting the addition of Rs.3,65,00,000/- done by the assessing officer on account of unexplained unsecured loan.*

*iii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding the creditworthiness of the lenders as genuine merely on the fact that the assessee has submitted copy of ITR of lenders.*

*iv) It is therefore, prayed that the order of the CIT(A), be set-aside and that of the Assessing Officer be restored.*

*v) The assessee craves to add, modify or alter any grounds during the course of appeal proceedings.”*

3. Ground No.1 raised by the Revenue relates to addition of Rs.60,000/- under the head income from house property in respect of shop at Subh Laxmi tower, Vapi.

4. Succinct facts are that assessee before us is an individual and engaged in business activities of Trading of building materials i.e. sand, metal, carting and also in trading of shares. The assessee has declared his net taxable income to the tune of Rs.10,48,930/- after deductions under Chapter – VIA of the Act. On perusal of Income Tax Returns (ITR), the assessing officer observed that assessee has shown Rs. NIL/- income from house property that was rented to Shri Manoj Shahu. The assessee was asked to give clarification regarding rent income from property at Subh Laxmi Tower, Vapi that was rented to Shri Manoj Shahu.

5. In response, the assessee had submitted the reply to the assessing officer as follows:

*“Assessee has not earned any rent income from shop at Subh Laxmi, since this shop is situated at the interior area and thereby it is vacant for the entire year. However, **prevailing market rate of that area for letting out is Rs.5,000/- per month.** Please note that other than this property, assessee had two more property, one was flat and one more shop which were used for own purpose and business only.”*

6. However, assessing officer rejected the contention of the assessee and held that income from prevailing market rate of the house for letting out to Shri Manoj Shahu is at Rs.5,000/- per month that comes to Rs.60,000/-. Therefore, assessing officer disallowed Rs.60,000/- and added back to the income of the assessee for year under consideration.

7. On appeal, the Id. CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before us.

8. Learned DR for the Revenue pleaded that notional rent of Rs. 5000 per Month should be added in the hands of the assessee, which comes Rs. 60,000/- for one year. Thus, Id DR supported the order of assessing officer.

9. On the other hand, Id Counsel for the assessee, defended the order passed by the Commissioner of Income Tax (Appeals).

10. We have heard both the parties and perused the material available on record. We note that assessee has not given his shop on rent therefore notional rent based on prevailing market rate cannot be taxed in the hands of the assessee. We note that rent income has not accrued in the hands of the assessee, hence question does not arise to tax notional rent. The tax should be imposed on real income. In the assessee`s case neither rent income has accrued nor received actually by the assessee. The Hon`ble Supreme Court in the case of E.D. Sassoon & Co. Ltd. v. CIT, (1955) 1 SCR 313 at 343 held as follows:

*“It is clear therefore that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed debitum in presenti, solvendum in futuro; See W.S. Try Ltd. v. Johnson (Inspector of Taxes) [(1946) 1 AER 532 at p. 539], and Webb v. Stenton, Garnishees [11 QBD 518 at p. 522 and 527]. Unless and until there is created in favour of the assessee a debt due by somebody it cannot be said that he has acquired a right to receive the income or that income has accrued to him.”*

11. Thus, in assessee`s case under consideration neither rent income has accrued nor assessee has acquired a right to receive the rent income. We note that assessee`s shop was lying vacant for the whole year and no actual rent was received. We also note that assessing officer has not mentioned about any factual evidence of shop given on rent. If the shop is vacant and no rent is received, the addition should not be made. Therefore, based on this factual position, we note that conclusions arrived at by the CIT(A) are correct and admit no interference by us. We, approve and confirm the order of the CIT(A). Thus, ground no.1 raised by the Revenue is dismissed.

12. Coming to Ground No.2 and 3 raised by the Revenue, which relate to addition of Rs.3,65,00,000/- made by the Assessing Officer on account of unexplained unsecured loan.

13. Brief facts of the issue in dispute are stated as under. During the assessment proceedings, the assessing officer noted that assessee did not submit any details in respect of unsecured loans from Shri Mahasati (Rs.1,75,00,000/-), Urmila D. (Rs.1,00,00,000, Usha mangsingka (Rs.10,00,000/-) and VC Finance (Rs.80,00,000/-). Therefore, assessing officer issued a show-cause notice to the assessee to submit the bank statement, confirmations and copy of Income tax Returns etc. In response, assessee submitted bank statement, confirmations, PAN number and name and address of creditors. However, assessing officer noted that assessee failed to furnish the copy of Income Tax Return and Balance Sheet in respect of the following creditors:

<i>Sr. No.</i>	<i>Name of the person</i>	<i>Amount shown</i>	<i>Details not submitted</i>	<i>Remarks</i>
01	<i>Shri Mahasati</i>	<i>17500000</i>	<i>ITR or balance sheet</i>	<i>During FY</i>
02	<i>Urmila Davidbhai</i>	<i>10000000</i>	<i>ITR or balance sheet</i>	<i>During FY</i>
03	<i>Usha Mansingka</i>	<i>1000000</i>	<i>ITR or balance sheet</i>	<i>During FY</i>
04	<i>V C Finance</i>	<i>8000000</i>	<i>ITR or balance sheet</i>	<i>During FY</i>
		<i>36500000</i>		

The assessing officer further noted that assessee's case was selected under CASS for scrutiny to verify the reasons of not filling the return of income by persons whose names were appeared as unsecured loan. Therefore, assessing officer observed that in absence of complete documents it is not possible to establish the identity of person, genuineness of transactions and creditworthiness of persons, therefore, amount of Rs.3,65,00,000/- was disallowed by assessing officer u/s 68 of the Act.

14. On appeal, Id CIT(A) deleted the addition. The Id CIT(A) noted that assessing officer has mainly made the addition of Rs.3,65,00,000/-, as the assessee has failed to furnish the copy of income tax return of these creditors. In respect of these creditors, the assessee has filed the copy of income tax return of these creditors before Id CIT(A). Other evidences, such as bank statement, confirmations,

PAN Numbers, name and address of creditors were submitted by the assessee before the assessing officer. Therefore, Id CIT(A) was of the view that even the assessing officer could have himself verified through, the available PANs of these four parties regarding ITRs status as also further enquiry u/s 133(6) could have been made. Based on this factual position, Id CIT(A) deleted the addition.

15. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

16. Shri H. P. Meena, Ld. CIT(DR) for the Revenue submits that during the course of assessment proceedings, the assessing officer noted that assessee had taken large amount of unsecured loans from various parties. Therefore, the assessee was asked to furnish confirmation, creditworthiness, identity of the parties, source and genuineness of transaction. On perusal of the submission made by the assessee, it was observed by assessing officer that assessee had not furnished the copies of Income Tax Return in respect of loans received from the following parties:

<i>1. Mr. Mahasti</i>	<i>Rs.1,75,00,000/-</i>
<i>2. Ms. Urmila Davidbhai</i>	<i>Rs.1,00,00,000/-</i>
<i>3. Ms. Usha Marringlca</i>	<i>Rs.10,00,000/-</i>
<i>4. M/s. V C Finance</i>	<i>Rs.80,00,000/-</i>

The Id DR further argued that reason for scrutiny selection of assessee's case was large amount of unsecured loan received from the parties who have not filed their return of income during the year. Since the assessee has failed to furnish the copy of Income Tax Return before the assessing officer therefore, assessing officer was right in making the addition of Rs.3,65,00,000/- under section 68 of the Act.

17. On the other hand, Learned Counsel for the assessee defended the order passed by the Id. CIT(A).

18. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that Revenue has challenged

deletion of addition to the tune of Rs.3,65,00,000/-. During the assessment stage, the assessing officer noted that assessee was given time to furnish Income Tax Returns of these four parties but no compliance was made by the assessee. It was also noted by the assessing officer that reasons for CASS selected scrutiny of this case was non-filing of return of income by persons appearing in the list of unsecured loans to the assessee. Based on these findings, the assessing officer treated unsecured loans of Rs.3,65,00,000/- as unexplained cash credits u/s 68 of the Act. We note that PAN and confirmation letters from the said four lenders were given to the assessing officer during assessment proceedings. The PAN details of these four parties were also available in the tax audit report and balance sheet of the assessee and all the loans were received through banking channel. The assessee submitted bank statements. The assessee claimed that assessing officer was requested to call further requisite details by sending notices u/s 133(6) to these parties. However, the assessing officer treated these loans as unexplained merely for non-submissions of Income Tax Returns of these four parties. The assessee also filed copies of Income Tax Returns (ITRs) of these four parties before Id CIT(A). We note that 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 should not make addition on account of unsecured loan. In this regard, reliance can be placed on the judgment of Hon`ble Jurisdictional Gujarat High Court in the case of Apex Therm Packaging (P.) Ltd.[2014] 42 taxmann.com 473 (Gujarat). The findings of the Hon`ble Court is reproduced below:

*“5. Heard Shri Sudhir Mehta, learned advocate appearing on behalf of the revenue. At the outset, it is required to be noted that the Assessing Officer directed to make the addition of Rs. 33,55,011/- under Section 68 of the Income Tax Act with respect to 17 lenders. However, it has been found that with respect to most of the lenders, except two, necessary documents, inclusive of confirmation with name, address and PAN Numbers, copy of the IT return and acknowledgment, balance sheet and profit and loss account and computation of total income in respect of all the parties, except two parties, were furnished before the Assessing Officer. Even with respect to the remaining two depositors the assessee filed the confirmation, address and PAN Numbers. Under the circumstances, when it was found that the assessee already discharged the initial onus cast upon him with respect to all the creditors and accordingly when the CIT(A) has deleted the addition of Rs. 33,55,011/- made under Section 68 of the Income Tax Act and consequently deleted the disallowance*

*of Rs. 3,10,478/-, which was made with respect to interest and when the same has been confirmed by the ITAT, it cannot be said that ITAT has committed any error and/or illegality, which calls for the interference of this Court.*

*In paragraph 11, ITAT has observed and held as under:*

*"We have heard the rival submissions and perused the material on record. It is an undisputed fact that during the year the assessee had received loan from 17 parties aggregating to 33,35,011/-. The details of which are listed at page 2 of Assessing Officer order. CIT(A) while deleting the addition has given a finding that the assessee had filed before Assessing Officer the confirmations with name, address, PAN Number, copy of ledger account, copy of balance sheet and profit and loss account, copy of Income Tax returns and computation of total income in respect of all the parties except two depositors. With respect to the two depositors, the assessee had filed confirmation, address and PAN Numbers and hence the assessee had also discharged the initial onus cast upon the assessee with respect to the two creditors. He has further noted that the loans were received through cheques and the loan account were duly reflected in the balance sheet of lenders CIT(A) has further held once the onus was fulfilled by the assessee, it was for the Assessing Officer to examine and bring any material on record which may help in rebutting the onus of assessee. The Assessing Officer has not brought any material on record in its support CIT(A) while deleting the addition has also relied on the decision of the Hon'ble Gujarat High Court in the case of Dy. CIT v. Rohini Builders [\[2002\] 256 ITR 360](#) and the decision of Hon'ble Supreme Court, in the case of Orissa Corpn. Ltd. [153 ITR 78](#). Before us, nothing has been brought on record by the revenue to controvert the findings of CIT(A). Revenue has relied on the decision of Hon'ble Delhi High Court in the case of N.R. Portfolio (supra). We however find that the ratio of the aforesaid Delhi High Court decision are distinguishable on facts and therefore cannot be applied to the facts of the present case. In view of the aforesaid facts, we find no reason to interfere with the order of CIT(A) and thus dismiss this ground of revenue."*

*6. We are in complete agreement with the reasoning given by the CIT(A) as well as the ITAT. When full particulars, inclusive of the confirmation with name, address and PAN Number, copy of the Income Tax Returns, balance sheet, profit and loss accounts and computation of the total income in respect of all the creditors/lender were furnished and when it has been found that the loans were received through cheques and the loan account were duly reflected in the balance sheet, the Assessing Officer was not justified in making the addition of Rs. 33,55,011/-. Under the circumstances, no question of law, much less substantial question of law arises in the present Tax Appeal. Accordingly, the present Tax Appeal deserves to be dismissed and is accordingly dismissed."*

19. We note that addition of unsecured loans of four parties totaling to Rs.3,65,00,000/- was made by the assessing officer only for want of Income Tax Returns. The assessing officer had mentioned in the assessment order about the confirmation and other details filed but because scrutiny selection through CASS was based on non-filing of Income Tax Returns by some lenders and the assessee

did not file the same during assessment, therefore these loans were treated as unexplained. However, this lacunae was also cured by the assessee by filing copies Income Tax Returns (ITRs) of these four parties during of appellate proceedings before the Id CIT(A). Even the assessing officer could have himself verified through, the available PANs of these four parties regarding ITRs status as also further enquiry u/s 133(6) could have been made. Since confirmation with name, address and PAN Number, copy of the Income Tax Returns, balance sheet, profit and loss accounts in respect of all the creditors/lender were furnished and when it has been found that the loans were received through cheques and the loan accounts were duly reflected in the balance sheet, the Assessing Officer was not justified in making the addition. Therefore, based on this factual position, we note that Id CIT(A) has rightly deleted the addition made by the assessing officer. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

20. In the result, appeal filed by the Revenue is dismissed.

Order is pronounced on 31/05/2022 by placing result on notice board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सूरत /Surat / दिनांक/ Date: 31/05/2022

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat