

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri Rajesh Kumar, Accountant Member  
and Shri Amarjit Singh, Judicial Member**

**ITA Nos. 1633, 1634 & 1637/Mum/2017**  
(Assessment Years: 2010-11, 2012-13 & 2013-14)

Shri Vasant Ramji Salva Plot No. 170, Rawal Sea View 1st Floor, M.B. Raut Road Shivaji Park, Dadar Mumbai 400028	Vs.	A C I T - 18(1) Piramal Chambers Lalbaugh, Parel, Mumbai
--	-----	---

PAN – AMKPS7067B

**Appellant**

**Respondent**

Appellant by: Shri Dhamesh Shah  
Respondent by: Shri Rajeev Gubgotra

Date of Hearing: 04.10.2018  
Date of Pronouncement 31.10.2018

**ORDER**

**Per Rajesh Kumar, AM**

These appeals filed by the assessee are directed against the order of the CIT(A)-33, Mumbai and they relate to assessment years 2010-11, 2012-13 and 2013-14.

**ITA No. 1633/Mum/2017 – A.Y. 2010-11**

2. The only ground raised by the assessee is against the order of the CIT(A) upholding the order of the AO thereby confirming the addition of ₹2,27,50,000/- u/s 68 of the Act (hereinafter "the Act") being the amount of unsecured loans taken during the year from various parties on the ground that the creditworthiness of the lenders were not established whereas the lenders have duly accepted the notices under Section 133(6) of the Act issued by the AO during the remand proceedings and has confirmed the loans.

3. The brief facts of the case are that the assessee filed his return of income on 30.07.2010 declaring an income of ₹24,85,590/-. The case of

the assessee was selected under CASS and notice under Sections 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The assessee is deriving income by way of salary from private companies, house property, interest and dividend, etc. The AO, on the basis of AIR information, observed that the assessee has received huge unsecured loans to the tune of ₹2,66,35,000/- and accordingly the assessee was asked to confirm the loans with supporting copies of bank statements and other evidences to prove the genuineness and creditworthiness of the lenders. The assessee filed before the AO the bank statements, ITRs, confirmations and PAN etc. After verifying various records and confirmations including the bank statements, the AO came to the conclusion that 3 parties, i.e. **Labh Creations, Labdhi Corporation and Aditya Textiles** have loaned the money out of their over draft account with CKP Co-operative Bank Ltd. and accordingly the assessee was given benefit of ₹38,85,000/- while the remaining loans aggregating to ₹2,27,50,000/- were treated as unexplained cash credit under Section 68 of the Act and added to the income of the assessee on the ground that the assessee has failed to discharge the onus in proving the creditworthiness and genuineness of the loans

4. In appellate proceedings the learned CIT(A) dismissed the appeal of the assessee, after considering various contentions and submissions of the assessee and also the remand report confirming the loan transactions, by observing and holdings as under: -

*“21.4 As observed from the assessment order in para 4.6 that the Department has made all out efforts to locate the lenders but the lenders are not found available at the given address. As a result of this, the appellant was given the opportunity to produce the lenders to ascertain their identity and creditworthiness. However, the appellant failed in his duty to produce the persons for verification of the AO. No doubt, during remand proceedings, it is reported by the AO that in response to notices issue u/s 133(6) of the Act, replies were received from most of the persons, still the creditworthiness of the such alleged lenders are not established before the Department. Therefore, in my opinion, the appellant has not discharged his onus as held in various judicial decisions and it cannot shift his burden and dictate the AO to*

*summon the lenders when such lenders are treated as witnesses of the appellant.*

*22. Since establishing the creditworthiness of the lenders by the appellant is a crucial factor to establish genuineness of the loan, which the appellant has failed completely, it is abundantly clear that the unsecured loans to the extent of Rs. 2,27,50,000/- cannot be held to be genuine Hence, the addition of Rs. 2.27,50.000/- made u/s 68 of the IT. Act is confirmed. Hence, grounds of appeal no. 2 and 3 are dismissed.”*

5. The learned A.R. vehemently submitted before us that the First Appellate Authority completely ignored the facts on records such as loan confirmations, bank statements and other evidences filed by the assessee and also the remand report submitted by the AO and replies to the notices issued under Section 133(6) of the Act. The learned A R submitted that the learned CIT(A) has cited various reasons for not accepting the loans as genuine in para 20 of his order. The learned A.R., while controverting the findings of the learned CIT(A) on each and every point on which the learned CIT(A) disbelieved and doubted the transactions of loans submitted that the assessee has filed all the evidences in the form of confirmation letters, banks statements, ITRs, Balance Sheets and copies of PAN cards in order to prove the identity and creditworthiness and genuineness of the lenders. In para 20(3) the CIT(A) doubted the transactions on the basis that the lender, namely Shri Pratap Dama, who deposed before the Department under Section 131 of the Act has not even a house to live but the learned A.R. strongly reverted the finding of the CIT(A) on the ground that the said person is only 38 years of old and is staying with his family. Another reason cited by the CIT(A) is that all the lenders were found to have been maintaining their accounts with Corporation Bank, Ghatkopar (W) Branch which was strongly rebutted by the learned A.R. by inviting the attention of the Bench to the fact that 16 lenders were from Ghatkopar and therefore it is quite likely that the said persons are having their accounts in Corporation Bank, Ghatkopar (W) Branch. The learned A.R. also advanced another arguments that in Mumbai a person residing in one locality whereas he is having bank account at different locality and that is not the basis for treating the loan transactions as non genuine and

doubtful. Further the learned A.R. submitted that the CIT(A) has also doubted in para 20(5) that there was no transaction in the bank of the assessee and only a few days prior to the loan to the assessee some transactions were there which was controverted by the learned A.R. by submitting that there is no transaction in cash either before or after the date of loan to the assessee and the money has come through RTGS or cheque and possibly through the assessee's own accounts and the Authorities below have failed to establish any transfer of money or money trail between the assessee and lenders. The learned A.R. also stated that the CIT(A) doubted the transfer on the basis that in the case of 41 lenders out of 47 there is only one introducer in the bank and this is not a basis for treating the transaction as non genuine. The learned A.R. also submitted that the CIT(A) has doubted that the income tax returns of the lenders as the same could not be scrutinised despite being filed before the AO and therefore submitted that it is not the fault of the assessee that the returns of the lenders could not be scrutinised by the Department.

6. The learned A.R., while referring to pages 17 to 22 of the Paper Book, submitted that the lenders have responded to the notices under Section 133(6) of the Act issued by the AO. The learned A.R. submitted that in all these cases the loans were repaid by way of account payee cheques. The learned A.R. further submitted that the doubt of the Revenue authorities is baseless and without any reason especially in view of the fact the assessee has duly paid interest on the said loans after deduction of TDS and the Revenue authorities have not disputed the interest amount and was accepted. The learned A.R. contended that how the Revenue authorities can accept the interest on loan whereas treating the loans itself as non genuine and doubtful transactions. The learned A.R. relied heavily on the following judgements in defence of his arguments that once the assessee has filed all the evidences such as confirmations, PAN, bank statements, ITRs and financial statements of the lenders, no addition could be made u/s 68 of the Act :-

- i) CIT vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC)

- ii) CIT vs. Ranchhod Jivabhai Nakhava 21 taxmann.com. 159 (Guj)
- iii) Labh Chand Bohra vs. ITO 219 CTR 571 (Raj)
- iv) Golden Remedies (P) Ltd. vs. ITO 28 SOT 260 (Del-Trib)
- v) Shri Rakesh Kumar Bharagava vs. ITO ITA No. 3432/Del/2015 dated 17.09.2015
- vi) Umesh Electricals vs. ACIT 131 ITD 128 (Agra-Trib) (TM)
- vii) CIT vs. Kamaljeet Singh 147 Taxman 18 (All)
- viii) CIT vs. Smt. P.K. Noorjahan 237 ITR 570 (SC)

The learned A.R. submitted that since the assessee has sufficiently discharged the onus cast upon it by filing all the documents as required by the AO and CIT(A) such as loan confirmation, copy of ITRs, bank statement, lenders PAN and address and therefore it is for the Revenue to carry out investigations. Finally the learned A.R. pleaded that in view of the facts of the assessee and the ratio laid down in various judicial decisions as cited above the case of the assessee may kindly be allowed.

7. The learned D.R., on the other hand, relied heavily on the orders of the Authorities below and submitted that both the Authorities below have unequivocally proved that the said loans were not genuine and were doubtful as the various attendant circumstances clearly pointed towards non genuineness and suspicious nature of the loans. The learned CIT(A) clearly brought out all the facts with detailed reasoning and therefore the order of the learned CIT(A) should be affirmed.

8. We have heard the rival contentions and perused the records carefully including the impugned order and various case laws cited by the assessee. We find that the assessee has filed copies of confirmation letters, bank statement, lenders' ITRs, PAN and addresses, so the primary onus by the assessee was duly discharged and thereafter the onus shifts to Revenue authorities to carry out necessary investigations, which we observe that has not been done. We further find that the notices issued under Section 133(6) of the Act in order to verify the loan transactions were responded and replied by the lenders, copies of which were placed in the paper book . A perusal of the order of the CIT(A) reveals that the

various reasons cited by the CIT(A) in para 20 of the appellate order were specifically rebutted by the learned A.R. which appears to be quite justifiable. Out of the total lenders 16 were from Ghatkopar but CIT(A) doubted the transactions on this basis also. Moreover, opening of account in one bank could not be a basis for doubting the transactions. We further observe that the Revenue authorities have not disputed the interest paid during the year which is duly paid/discharged by the assessee after deducting tax at source. It is very surprising and strange that the Revenue has accepted interest on loan but the genuineness was doubted which appears to be fallacious and wrong. The case of the assessee is supported by a series of decisions such as in the case of CIT vs Orissa Corporation Pvt. Ltd. (supra) wherein the Hon'ble Supreme Court has held that where the assessee has given names and addresses of the alleged creditors and the said creditors were in the knowledge of the Revenue authorities to be income tax assesseees and their index numbers were in the file of Revenue, the Revenue did not pursue the matter further apart from issuing notices under Section 131 of the Act. The Hon'ble Court has held that the Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. Thus there was no effort made to pursue the so called alleged creditors. The Court further held that if Tribunal came to the conclusion that the assessee has discharged the burden they lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence.

9. In the case of Ranchhod Jivabhai Nakhava (supra) the Hon'ble Gujarat High Court has held that once the assessee has established that he has taken money by way of account payee cheques from the lenders who are all income tax assesseees whose PAN have been disclosed, the initial onus under Section 68 of the Act was discharged. Then it is the duty of the AO to find out whether in their respective returns they has shown existence of such amount of money and had further shown that those amount of money had been lent to the assessee.

10. Similarly in the case of Labchand Bohra (supra) the Hon'ble Rajasthan High Court has held that where the identity of the creditor have been established and they have confirmed the credits by making statements on oath and amount has been advanced by account payee cheque, the addition in respect of the entries cannot be sustained.

11. In the case of Golden Remedies P. Ltd. (supra) the Delhi Bench of the Tribunal held that where the loans were accepted through account payee cheques and had been repaid through account payee cheques, which were also confirmed by the parties and the assessee has also produced bank account and PAN of each party to support his case, the AO is not justified in treating the transactions as non genuine and no addition can be made under Section 68 of the Act.

12. Considering the facts in totality in the light of various judicial decisions which squarely cover the case of the assessee we are inclined to set aside the order of the CIT(A) by holding that the assessee has duly discharged the its onus by filing the necessary evidences before the authorities below and therefore addition by the AO u/s 68 of the Act is ordered to be deleted. The appeal of the assessee is allowed.

**ITA No. 1634/Mum/2017 – A.Y. 2012-13**

13. The only issue raised by the assessee is with regard to confirmation of addition of ₹27,97,283/- by CIT(A) as made by the AO on account of interest paid on unsecured loans which were treated as bogus in A.Y. 2010-11.

14. Since we have already decided in ITA No. 1633/Mum/2017 the issue in favour of the assessee by holding that the loans raised by the assessee were genuine, our finding in the above mentioned appeal would , mutatis mutandis, will apply to this appeal also. As a result, the issue of interest on the unsecured loans is decided in favour of the assessee and the AO is directed to the delete the disallowance.

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

**ITA No. 1637/Mum/2017 – A.Y. 2013-14**

16. The issue raised in the 1<sup>st</sup> ground of appeal is against confirmation of addition of ₹20 lakhs by the CIT(A) as made by the AO on account of unsecured loans taken from Smt. Rachana Ravan during year by treating the same as unexplained cash credit for want of creditworthiness of the lender.

17. Identical issue has been decided in ITA No. 1633/Mum/2017 wherein we deleted the addition as made by the AO u/s 68 of the Act. In the present case the AO has added ₹38 lakhs as unexplained cash credit for the reason that the assessee failed to prove the genuineness of the loans. The CIT(A) partly allowed the appeal of the assessee by sustaining partly to the extent of ₹20 lakhs by observing ha genuineness of that loan could not be accepted giving same logic as discussed in as was given qua bogus loans in A.Y. 2010-11.

18. The learned A.R. vehemently submitted before us that all the necessary evidences required to prove the genuineness of the said loan were furnished before the Authorities below. The learned A.R. referred to pages 7,8,9 and 10 of the Paper Book, which comprised of confirmation letter from the lender bank statement evidencing the payment by the lender. The learned A.R. submitted that the assessee has duly filed PAN, address and bank statement of the lender before the Authorities below and therefore it is for the Revenue authorities to carry out further investigations. It was further submitted by the learned A.R. that there was no cash deposit prior to the date of loan to the assessee by Smt. Rachana Ravan and therefore the conclusion of the Authorities below is totally fallacious and wrong that the loan taken by the assessee is not genuine. While referring to the copy of bank statement as attached in pages 9 and 10 the learned A.R. submitted that there is no entry in the bank statement which is of suspicious nature and the assessee has sufficient transactions in her bank accounts. Therefore to treat the loan as non genuine by the Revenue authorities is total wrong and devoid of merit. Finally the learned A.R. submitted before the Bench that the assessee has discharged his

onus by filing all the necessary evidences and it is for the Revenue authorities to carry out necessary investigations. The order of the learned CIT(A) confirming the order of the AO is incorrect as the same is based upon presumptions and surmises. Finally the learned A.R. relying on the decisions as cited in ITA No. 1633/Mum/2017 supra prayed before the Bench that the appeal of the assessee may be allowed as the case of the assessee is squarely covered by the said decisions.

19. The learned D.R., on the other hand, relied on the orders of the Authorities below and submitted that the assessee could not prove the genuineness of the said loan despite being specifically asked to do so. The learned D.R. strongly objecting to the arguments of the learned A.R. submitted that the loan from Smt. Rachana Ravan was not genuine as income of the said lady was very meagre to give such huge loan. The learned D.R., relying heavily on the order of the CIT(A), submitted that the First Appellate Authority has given very convincing reasons for treating the loan as doubtful in para 45 of the appellant order. Finally the learned D.R. prayed before the Bench that in view of the aforesaid facts the appeal of the assessee needs to be dismissed.

20. After hearing both the parties and perusing the record and the impugned order we observe that the issue in the present appeal is similar to the issue raised in ITA No. 1633/Mum/2017 in which we have deleted the addition by setting aside the order of the CIT(A) on the ground that the assessee has discharged its onus by furnishing loan confirmations , bank statements , PAN and ITS etc. In the present case also we find from a perusal of the record before us in the form of Paper Book that the assessee has filed all the evidences before the Revenue authorities such as ITR, copy of bank account, confirmation, and the PAN card of the lender. Therefore our finding in ITA No. 1633/Mum/2017 would, mutatis mutandis, apply to ground No. 1 of this appeal. Accordingly we set aside the order of the CIT(A) on this issue and direct the AO to delete the addition of ₹20 lakhs.

21. The issue raised by the assessee in the 2<sup>nd</sup> ground of appeal is against the confirmation of addition of ₹32,08,252/- as made by the AO on account of interest paid on unsecured loan which has been treated as bogus during A.Y. 2010-11 under Section 68 of the Act. Since we have already decided this issue in favour of the assessee treating the loan as genuine and therefore the interest on such loan has to be allowed, which has also been decided by us in ITA No. 1634/-Mum/2017. Accordingly we direct the AO to delete the disallowance of interest. The appeal of the assessee is allowed.

22. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 31<sup>st</sup> October, 2018.

Sd/-  
**(Amarjit Singh)**  
**Judicial Member**

Sd/-  
**(Rajesh Kumar)**  
**Accountant Member**

Mumbai, Dated: 31<sup>st</sup> October, 2018

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -33, Mumbai
4. The Pr.CIT - 21, Mumbai
5. The DR, "F" Bench, ITAT, Mumbai

By Order

//True Copy//

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai

n.p.