

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.662/DEL/2020
[Assessment Year: 2015-16]**

ACIT, Circle-30(1), Room No.1302, E-2 Block, Shyama Prasad Mukherjee Civic Centre, Delhi-110002	Vs	M/s Hare Krishna Orchid M-33, 02 nd Floor, Greater Kailash-I, New Delhi-110048
		PAN-AAFFH0792R
Revenue		Assessee

Revenue by	Md. Gaysuddin Ansari, Sr. DR
Assessee by	Sh. R.S. Singhvi, CA, Sh. Rajat Garg, CA and Sh. Satyajeet Goel, CA

Date of Hearing	20.07.2022
Date of Pronouncement	12.08.2022

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the Revenue is directed against the order of the Ld. CIT(A)-10, New Delhi, dated 28.11.2019 pertaining to Assessment Year 2015-16.

2. The grounds of appeal reads as under:-

“1. That, in facts and circumstances of the case, Ld. CIT(A) erred in deleting addition of Rs. 4,33,18,870/- made on account of unsecured loan u/s 68 of the Income Tax Act, 1961.

2. That, in facts and circumstances of the case, Ld. CIT(A) ignored the fact that the income of some of the parties/lender was not proportionate to their loan amount provided to the assessee, therefore, creditworthiness of the transaction with assessee is not verified.

3. That, in facts and circumstances of the case, Ld. CIT(A) ignored that where assessee was not able to bring on record any material evidence to prove creditworthiness and capacity of donors to advance huge amount of cash gift from any known source of income, impugned addition made under sec. 68 by authorities below was to be confirmed.

4. That, in facts and circumstances of the case, Ld. CIT(A) ignored that merely because identity of creditor is disclosed burden of assessee to explain money in his hands would not stand discharged if it is not proved to the satisfaction of the AO that donor has sufficient creditworthiness.

5. That, in facts and circumstances of the case, Ld. CIT(A) ignored that the expression "the assessee offers no explanation" u/s 68 of the Income-tax Act, 1961 means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee.

3. Brief facts of the case are that the Assessing Officer noted that the assessee has received unsecured loan during Financial Year 2014-15 from following persons:-

Sl. No.	Name of Entity	Address	Opening Balance	Credit During the Year	Income disclosed in ITR
1	Amarjit Motor Finance Pvt. Ltd.	G-10/66, Ground Floor, Sector-15, Rohini, New Delhi-110085	40,00,000	44,32,000	2,46,179/-
2	Arti Securities and Services Pvt. Ltd.	GDN Extn. I, GZB605/S-1, Shalimar, Ghaziabad, Uttarpradesh.		10,00,000/-	50,43,385/-
3	Brij Kunta & Sons (P)			30,00,000	
4	Consolidated Securities Ltd.	8/19, IIIrd Floor, WEA, Pusa Lane, Karol Bagh		50,00,000	12,41,55,215/-
5	Franklin Leasing Pvt. Ltd.	G-10/66, Ground Floor, Sector-15, Rohini, New Delhi-110085	25,00,000	25,00,000	50,71,786/-
6	Saivi Finance Pvt. Ltd.	Shop No. F-14, First Floor, Property No. A-38, Street No.-2, Madhu Vihar, Delhi-110092		25,59,178	22,27,392/-
7	Ajay Pratap Singh	I-20, South Extn.-II, New Delhi-110049		80,00,000	6,30,863/-
8	Ashok Kumar Narula	C-5/2, 1st Floor, Grand Vasant, Vasant Kunj, New Delhi-110070		25,00,000	1,49,06,622/-
9	Bijay Pratap Singh	L-20, South Extn.-II, Delhi-110049		35,00,000	1,29,371/-
10	Kamlesh Rani	12, Ground Floor, Near Laxmi Nagar Distt. Centre, Chitra Vihar, Dlehi-110092		45,00,000	4,38,655/-

11	Krishna Anand Tripathi	HAF-B, Part-I, Sector-10, Dwarka, New Delhi-110075	40,00,000	30,00,000	13,97,122/-
12	Krishna Mittal			8,00,000	
13	Mahesh Chand Gupta			7,00,000	
14	Mehar Chand	12, Ground Floor, Near Laxmi Nagar Distt. Centre, Chitra Vihar, Dlehi-110092		30,00,000	3,69,328/-
15	Neelam Goel	M-33, Second Floor. Greater Kailash, Part-1, New Delhi-110048	59,00,000	15,00,000	8,75,484/-
16	Nidhi Gupta	881-B, Sec-21, Panchkula-134112	15,00,000	15,00,000	5,93,135/-
17	Pankaj Goel	B-177, Grater Kailash-1, New Delhi-110048		80,00,000	14,61,524/-
18	Pramod Kumar Aggarwal	77, SFS Shakti Appartment, Phase-III, Ashok Vihar, New Delhi-110052		50,00,000	9,91,826/-
19	R C Goel (HUF)	M-33, Second Floor. Greater Kailash, Part-1, New Delhi-110048	30,50,000	35,18,870	2,45,918/-
20	Rajat Gupta	881-B, Sec-21, Panchkula-134112	20,00,000	20,00,000	26,84,108/-
21	Rajiv Agarwal & Sons (HUF)	G-2/106, Pocket-1, Ramprastha Green, Sector-7, Vaishali, Ghaziabad-201010		20,00,000	
22	Rita Aggarwal	77, SFS Shakti Appartment, Phase-III, Ashok Vihar, New Delhi-110052		40,00,000	
23	Seema Mittal	166, SFS, Anupam Apartments, Mehrauli-Badarpur Road, Saket, New Delhi-110068		16,00,000	4,88,228/
24	Tripta Mehra	16/17, Shakti Nagar, Delhi-110007		10,09,000	3,36,060/-
25	U.K.Worah	A-623, Gaur Green Avenue, Abhay Khkand-II, Indirapuram, Ghaziabad, UP		25,00,000	11,39,500/-
26	Vaishali Gupta	12, Ground Floor, Near Laxmi Nagar Distt. Centre, Chitra Vihar, Delhi-110092		30,00,000	4,28,336/-

4. The assessee was also asked to submit ITR of the relevant years for all the parties to prove the creditworthiness of the parties. The Assessing Officer noted that till date no ITR has been submitted in the following cases:-

Sl. No.	Name of Entity	Address	Opening Balance	Credit During the Year	Income disclosed in ITR
1	Brij Kunta & Sons (P)			30,00,000	
2	Krishna Mittal			8,00,000	
3	Mahesh Chand Gupta			7,00,000	
4	Rajiv Agarwal & Sons (HUF)	G-2/106, Pocket-1, Ramprastha Green, Sector-7, Vaishali, Ghaziabad-201010		20,00,000	
5	Rita Aggarwal	77, SFS Shakti Appartment, Phase-III, Ashok Vihar, New Delhi-110052		40,00,000	

5. The Assessing Officer issued summons u/s131(1A) to several parties at the address provided by the assessee requesting their personal deposition and information. During the analysis of the bank statement of the concerned parties, the Assessing Officer noted that the amount forwarded to the assessee was received by the lenders from some other accounts just before it was forwarded. However, no one attended on the given date nor any information requested by the summons was filed. The Assessing Officer again issued reminder. Again, no one attended but details were submitted through their authorized representative. The Assessing Officer noted all the persons had given alibis for not being able to attend personally. In view of this, their identity is doubtful. He further noted by giving examples of certain persons has given loans after themselves received certain amount just before giving loan. The Assessing Officer rejected the submissions of some of the parties that it was their saving from which he has given loan as amount of loan granted was just after receiving amounts in the bank account. Hence, the Assessing Officer found the source to be unexplained. Furthermore, he found that certain parties had meagre income. The Assessing Officer concluded as under:-

“10. Based on the discussion given above the following parties are not found to be creditworthy and also the genuineness of the transactions has not been established by the assessee.

Sl. No.	Name of Entity	Address	Credit During the Year	Income disclosed in ITR
1	Krishna Mittal		8,00,000	
2	Rita Aggarwal	77, SFS Shakti Appartment, Phase-III, Ashok Vihar, New Delhi-110052	40,00,000	7,66,004
3	Mehar Chand	12, Ground Floor, Near Laxmi Nagar Distt. Centre, Chitra Vihar, Delhi-110092	30,00,000	3,69,328/-
4	Kamlesh Rani	12, Ground Floor, Near Laxmi Nagar Distt. Centre, Chitra Vihar, Delhi-110092	45,00,000	4,38,655/-
5	Bijay Pratap Singh	L-20, South Extn.-II, Delhi-110049	35,00,000	1,29,371/-
6	Pankaj Goel	B-177, Grater Kailash-1, New Delhi-110048	80,00,000	14,61,524/-
7	Pramod Kumar Aggarwal	77, SFS Shakti Apartment, Phase-III, Ashok Vihar, New Delhi-110052	50,00,000	9,91,826/-
8	R C Goel (HUF)	M-33, Second Floor. Greater Kailash, Part-1, New Delhi-110048	35,18,870	2,45,918/-
9	Vaishali Gupta	12, Ground Floor, Near Laxmi Nagar Distt. Centre, Chitra Vihar, Delhi -110092	30,00,000	4,28,336/-
10	Ajay Pratap Singh	I-20, South Extn.-II, New Delhi-110049	80,00,000	6,20,863/-
Total unexplained credits			4,33,18,870	

11. Based on the failure of the assessee to show the genuineness of the transaction, the observation of layering seen in all the above loans, the non attendance of the lenders in regards to the summons issued to the lenders and the lack of creditworthiness of the above lenders, the above amount of Rs.4,33,18,870/- is being treated as unexplained and added back as the income of the assessee under section 68 of the Income Tax Act, 1961. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for concealment of income within the meaning of explanation 1 to the sub-section(1) of the section 271(1)(c) of the Income Tax Act, 1961 are initiated.”

6. Against the above order, the assessee appealed before the Ld.

CIT(A).

7. Upon assessee's appeal, the ld. CIT(A) noted that the assessee has stated that all the details were given to the Assessing Officer. Furthermore, the Ld. CIT(A) noted that the assessee has more precisely given the details/documents filed during the assessment proceedings for each parties. The Ld. CIT(A) rejected the Assessing Officer's contention that none of the parties appeared before him by referring to the decision of the Hon'ble Supreme Court decision in CIT vs Orissa Corporation Ltd. He further referred to certain decisions that the assessee is not required to produce the parties. He further referred to the decision of the Hon'ble Supreme Court in the case of Lovely Export (P.) Ltd. vs [2008] 2016 CTR 195 (SC) and several other decisions. The ld. CIT(A) gave great emphasis that the transactions have been through banking channel. He noted that the assessee has proved the identity and genuineness of the transaction and creditworthiness and the assessee has discharged its onus. The Ld. CIT(A) concluded as under:-

"6.11. Crux of the matter is that it was onus of the revenue to prove that nexus between amount deposited in the bank account of lender was belonging to appellant. In the present case, the AO has certainly failed to discharge this onus. There is no cash deposit in the bank accounts of the lender as well as the persons advancing the funds to the lenders. The Assessing Officer failed to establish that any unaccounted money belonging to the assessee has rooted back to it through these lenders. The AO did talk about layering but failed to break any nexus between the lenders and the assessee to establish that there was any unaccounted money, which changed hands. Whereas, the assessee provided all the necessary details to the Assessing Officer to prove identity, creditworthiness and genuineness of the transactions. Income declared in the ITR cannot be the sole criteria for doubting the creditworthiness of the lender, when source of the source has also been proved. Therefore, the addition is not sustainable on merit.

6.12 Considering the above facts and decisions of the judicial authorities, addition made by the AO is not sustainable. Since appellant has furnished confirmation, copy of bank account, ITRs, PAN etc. in order to establish identity, creditworthiness and genuineness of transaction in respect of all the depositors from whom appellant has procured unsecured loan during the year amounting to Rs. 4,33,18,170/-. Thus, AO is not justified in treating the unsecured loan as unexplained cash credit u/s 68 and addition made by the AO at Rs. 4,33,18,170/- is hereby deleted.”

8. Against the above order, the Revenue is in appeal before us.
9. We have heard both the parties and perused the record. The Ld. DR submitted that there is no iota of evidence about the existence of the persons who have given loan, their income is rather meagre and just before giving of loans, amounts have been transferred in their account. The Ld. DR submitted that this is a classic case of routing of unaccounted money in circuititious manner. It is also not clear that the details, which the Ld. CIT(A) has reproduced in his order had been given by the assessee before the Assessing Officer or not. Just because transactions have been routed through banking channel does not prove that the transactions is sacrosanct. The Unavailability of the parties is a clear sign of the transactions not been genuine. The Ld. Counsel for the assessee relied upon the several case laws including that from the ITAT, Mumbai Benches in the case of JCIT vs M/s Shalimar Housing & Finance Ltd.
10. Upon careful consideration, we note that in the present case, firstly the persons who have given loan are not present at their address which clearly shows the lack of genuineness of the transactions. Receipt of the amount in their bank accounts immediately before giving the loans further cast doubt of the creditworthiness. The Ld. CIT(A) has placed reliance on the decision of the Hon'ble Supreme Court that if the Revenue

authorities does not do any after issuing summons u/s 131 of the Act, there would be no onus upon the assessee. Here, we fail to understand that the powers of the ld. CIT(A) is co-terminus with that of the Assessing Officer. If in the appeal, the ld. CIT(A) was of the opinion that further enquiry was required, the same should have been done by the Ld. CIT(A) himself. The Hon'ble Supreme Court in the case of Kapurchand Shrimal vs CIT 1981 AIR 1965, 1982 SCR (1) 505 has held that it is the duty of the appellate authorities to correct the errors in the order of the authorities below and remit the issue for fresh consideration with or without direction unless prohibited by law. In the present case, we note that the Ld. CIT(A) has observed that Assessing Officer has only issued summons and not done anything thereafter. In this regard, we direct the Assessing Officer to make further enquiry/examination. In the entire orders of the authorities below only part figures of the financial are available. The entire financials of the loan given are not on record. Without examining the entire financials of the parties, how their creditworthiness has been accepted by the Ld. CIT(A) itself is a mystery. Hence, relying upon the documents and data picked from here and there, the Ld. CIT(A) has held that the assessee has discharged the onus of creditworthiness. In our considered opinion, the non-existence of the parties who have given loan to the assessee is clear indication of their nature being prima facie bogus. Furthermore, non-discussion of the financials further cast doubt on their creditworthiness. Further, the assessee has raised objection before the Ld. CIT(A) that the Assessing Officer has not done anything after issuing summons. In our considered

opinion, it is also not clear that part of the financial statements which has been referred by the Ld. CIT(A) that order was available to Assessing Officer or not. Moreover, in the entire proceeding, there is no discussion about the loan documentation and terms of condition of loan, the issue of TDS, nothing has been examined. In these circumstances, we remit this issue to the file of the Assessing Officer. The assessee shall co-operate and cogent evidence should be produced in support of identity, creditworthiness and genuineness of the transaction. Needless to say that the assessee be given opportunity of being heard.

11. In the result, this appeal by the Revenue is party allowed for statistical purposes.

Order pronounced in the open court on 12/08/2022.

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

Sd/-

**[SHAMIM YAHYA]
ACCOUNTANT MEMBER**

Delhi; 12.08.2022.

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi