

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “G” BENCH: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.1639/Del/2025  
[Assessment Year : 2016-17]**

Surender Singh Sangwan C/o-Kapil Goel, Advocate F-26/124, Sector-7 Rohini, Delhi-110085 <b>PAN-BQSPS5616M</b>	vs	ITO Ward-4, Aayakar Bhawan, Sonepat, Haryana
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Dr. Kapil Goel	
<b>Respondent by</b>	Shri Manish Gupta, Sr. DR	
<b>Date of Hearing</b>	18.09.2025	
<b>Date of Pronouncement</b>	12.12.2025	

**ORDER**

**PER MANISH AGARWAL, AM :**

The present appeal is filed by assessee against the order dated 06.12.2024 passed by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“Ld. CIT(A)”] in Appeal No. CIT(A), Rohtak/10489/2018-19 u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment order dated 27.12.2018 passed u/s 143(3) of the Act pertaining to Assessment Year 2016-17.

2. Brief facts of the case are that assessee e-filed his return of income, declaring total income at INR 7,00,190/-. The case was

selected for scrutiny through CASS and notice u/s 143(2) was issued to the assessee on 07.07.2017 and duly served upon the assessee. Thereafter, notices u/s 142(1) of the Act alongwith questionnaire were issued on 25.04.2018. In response assessee has filed reply which were considered by the AO and the assessment order was passed u/s 143(3) of the Act dated 27.12.2018 wherein the total income stood assessed at INR 1,12,94,400/- by making addition u/s 68 of the Act towards unsecured loans of INR 1,05,00,000/- received during the year under appeal. Besides disallowance of Rs. 94,210/- out of various expenses claimed is also made.

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide impugned order dated 06.12.2024, dismissed the appeal of the assessee.

4. Aggrieved by the order of Ld. CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

- A) *“That Ld. CIT-A vide impugned order passed us 250 dated 06.12.2024 erred in not quashing the impugned assessment order passed u/s 143(3) dated 27.12.2018 for want of valid/requisite SHOW CAUSE NOTICE (SCN) being issued during asst proceedings which is fatal to impugned asstt.;*
- B) *That Ld. CIT-A vide impugned order passed us 250 dated 06.12.2024 erred in not quashing the impugned assessment order passed u/s 143(3) dated 27.12.2018 passed without application of mind and acting in most arbitrary/biased manner;*

- C) *That Ld. CIT-A vide impugned order passed us 250 dated 06.12.2024 erred in not deleting the impugned addition made u/s 68 of 1961 Act amounting to Rs 105,00,000 on a/c of subject unsecured loan where assessee has undisputedly discharged his primary onus u/s 68 (for period prior to AY 2023-2024) qua subject loans and further admittedly no iota of independent inquiry u/s 131/133 is made at end of Ld. AO during asst. proceedings.*
- D) *That Ld. CIT-A vide impugned order passed us 250 dated 06.12.2024 erred in not deleting the impugned addition amounting to Rs 94,210 on a/c of adhoc disallowance of expenses which is patently illegal on face of it.”*

5. **Ground of appeal Nos. (A), (B) and (C)** raised by the assessee are with respect to quashing the assessment order passed u/s 143(3) of the Act.

6. Before us, Ld. AR for the assessee submits that during the year assessee has received total unsecured loans of Rs. 1,05,00,000/- from five individuals namely Shri Aneet Kumar (Rs. 25,00,000/-, Shri Deepak (Rs. 31,00,000/-, Shri Kuldeep (Rs. 10,00,000/-), Smt. Suman (Rs.20,00,000/-) and Shri Om Prakash (Rs. 9,00,000/-). The ld. AR submits that assessee has filed all the necessary details to prove the genuineness of transaction, identity of the lenders and creditworthiness of the loan creditors which contained their confirmations in the shape of affidavits, copy of bank statements, copy of Aadhar, PAN card, and their ITR wherever applicable. Ld.AR submits that all the payments were received through banking channel and in none of the case, AO has made any independent inquires whatsoever before concluding that the loan creditors have no creditworthiness. He submits that the AO doubted the source of source in the hands of the loan creditors however, such amendment

was inserted vide Finance Act, 2022 and made effective from AY 2023-24 and onwards. Therefore, burden on the assessee to prove the source of source of the loan creditors is not applicable. Ld.AR further submits that in the present case, if the AO has any doubts in his mind with regard to the creditworthiness of the loan creditors, he could have issued summons u/s 131/133(6) of the Act to all the creditors since their complete address and other were filed by the assessee before the AO. However, AO has failed to make any enquiry from any of the loan creditor by issue summon u/s 133(6) of the Act nor any field enquiry was made by deputing ward inspector and made the addition of unsecured loans received by holding the same as unexplained money. For this, he placed reliance on the judgment of Hon'ble Supreme Court in the case of **Orissa Corporation reported in [1986] 159 ITR 78 (SC)**. Ld.AR also placed reliance on the judgment of Co-ordinate Bench of Delhi Tribunal in the case of **ITO vs Balwan Singh in ITA No.2869/Del/2019** order dated **07.08.2023** and also in the case of **ACIT vs Filatex India and Others in ITA No.4635/Del/2024 & Others** order dated **30.06.2025**.

7. Ld.AR also submits that AO has not issued any show cause notice before making he additions in the hands of the assessee which is contrary to the CBDT Instruction No.20/2015 where CBDT has given directions to the assessing officers that where any additions/disallowances is proposed, they should provide a fair and reasonable opportunity to the assessee to explain his position on the

proposed addition/disallowance in accordance with the principal of natural justice which is violated in the present case. In this respect, reliance is placed on the judgement of Hon'ble Supreme Court in the case of ***Excise Commissioner Karnataka & Anr. vs Mysore Sales International Ltd. & Ors. reported in 466 ITR 205 (SC)***. With these submissions, Ld.AR for the assessee requested for the deletion of the additions so made.

8. On the other hand, Ld. Sr. DR for the Revenue supported the orders of the lower authorities and submits that assessee has not been able to establish the creditworthiness of the lender parties and further submits that few of the parties are not assessed to income tax. He submits that as per section 68 of the Act, the assessee has to offer explanation about the nature and source to the satisfaction of the AO which includes (i) identity of the creditor; (ii) capacity of creditor to advance money; and (iii) genuineness of the transaction. Ld. Sr DR submits that in the present case, assessee has established the identity as well as genuineness of the transaction, however, has failed to establish the creditworthiness of the loan creditors and the onus lies upon the assessee was not discharged. He thus prayed for the confirmation of the additions made. Reliance is placed on the judgment of hon'ble Supreme court in the case of PCIT Vs. NRA Iron and Steel Pvt. Ltd. reported in 412 ITR 161 (SC).

9. Heard the arguments of both the parties and perused the material available on record. In the instant case, it is seen that assessee has filed all the relevant details of the loan creditors and discharged the onus lies upon him which includes affidavits wherein the loan creditors have duly confirmed the loan given to the assessee, copy of their bank statements indicating that sufficient funds were available as and when the loan amounts were transferred to the assessee and since the transactions were carried out through banking channel, genuineness cannot be doubted.

10. It is settled proposition of law that in case the AO has any doubt with respect to the loan creditors, he should make direct inquiries by issuing summons u/s 133(6) to the respective parties. In the present case, AO has not issued any summons to any of the loan creditor though all the relevant particulars were available before him. Hon'ble Supreme Court in the case of CIT vs Orissa Corporation (supra) has held as under:-

*"...when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee."*

11. It is further seen that the assessee has discharged its burden of establishing the genuineness of loans by filing their bank statements. It is also relevant to state an amendment is made vide Finance Act,

2022 wherein second proviso to section 68 is added, so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well-regulated entity, *i.e.*, it is a Venture Capital Fund, Venture Capital Company registered with SEBI. This amendment has taken effect from 1st April, 2023 and accordingly applies in relation to the assessment year 2023-24 and subsequent assessment years. The year before us is AY 2016-17 thus this amendment is not applicable. Further the coordinate Bench of Delhi ITAT in the case of **ACIT v Smt. Prem Anand** in **ITA No. 3514/Del/2014** vide order dated **13.04.2017** held that amendment made in section 68 of the Act w.e.f. 01.04.2013 empowers the A.O. to examine source of source in case of share application money / share capital / share premium from 01.04.2013 and this amendment does not give power to the A.O. to examine source of source of non-share capital cases.

12. The hon'ble jurisdictional high court in the case of **PCIT vs. Anshika Consultants (P.) Ltd.** reported in **[2024] 162 taxmann.com 792 (Allahabad)** held as under:-

*“Where assessee had received unsecured interest bearing loans from three corporate entities and had furnished necessary acknowledgement of return, balance sheet, profit and loss account, etc., to prove identity,*

*creditworthiness and genuineness of transaction of unsecured loan taken by it, addition under section 68 was not warranted.”*

13. Further in the case of **DCIT vs. Paswara Papers Ltd.** reported in **[2024] 159 taxmann.com 604 (Allahabad)**, the hon’ble court has held as under:

*“Where assessee received loan from various creditors who sold their old jewellery and gave loan to assessee out of sale consideration, since assessee had disclosed name of jewellers to whom jewellery was sold and also established mode of payment through banking channel, and moreover existence of deposits made to assessee by creditors was not in dispute, impugned addition under section 68 with respect to loan could not be sustained.”*

14. The Hon’ble Delhi High Court in the case of **CIT vs Vrindavan Farms Pvt. Ltd.** in ITA No.71 of 2015 dated 12.08.2015 has held as under:-

*“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the Assessing Officer had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High court.”*

15. The Hon’ble Delhi High Court in the case of **PCIT vs. Agson Global Pvt. Ltd** reported in **[2022]134 Taxmann.com 256 (Delhi)** while allowing the appeal in favour of the assessee towards the additions made u/s 68 of the Act has held as under:

*“Section 68 of the Income-tax Act, 1961 – Cash credits (Share capital money) – Assessment years 2012-13 to 2017-18 – Assessee-company received share capital and share premium money from several investors – Assessing Officer made addition in respect of same on account of*

*unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company – Whether since assessee placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuineness of investors was proved, there was no justification to make addition under section 68 – Held, yes [Paras 11.4, 11.5 and 14.4] [In favour of assessee]”*

.....  
 27. *Regarding surrounding circumstances, it is observed that while making addition u/s 68 of the Act, the AO has doubted the financial capacity of loan creditors but such addition cannot be made on preponderance of probability and there has to be some evidence and substance in contention. The Assessing Officer has not brought anything on record to establish that the sources in the hands of loan creditors is non-genuine. Merely because they have shown meager income or no sufficient sources as presumed by Assessing Officer, loan taken by appellant from them cannot be held to be accommodation entries. It is well-settled position of law that no matter how strong suspicion is, it cannot take place of the evidence. Therefore, in the absence of any evidence showing that in fact, appellant has given cash in lieu of unsecured loan taken, merely on the basis of suspicion, no addition can be made for which reliance is placed on decision of Hon'ble Supreme court in the case of Daulatram Rawatmull, (1964) 53 ITR 574.”*

16. The judgements referred by Ld.AR of NRA Iron and Steel is distinguishable on facts in that case, detailed enquiry was made by the AO and assessee has failed to file any details before the lower authorities however, in the instant case, the assessee has already filed all the relevant details to discharge the burden casted upon it u/s 68 of the Act and the AO has failed to make any independent enquiries.

17. On the issue of discharge the onus of establishing the creditworthiness of the loan creditors, the Hon'ble Delhi High court

in the case of **Mod. Creations (P.) Ltd. v. ITO** reported in **[2013] 354 ITR 282**, has held as under:

*"It will have to be kept in mind that Section 68 of the I.T. Act only sets up a presumption against the Assessee whenever unexplained credits are found in the books of accounts of the Assessee. It cannot but be gainsaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the Assessee. **This burden, which is placed on the Assessee, shifts as soon as the Assessee establishes the authenticity of transactions as executed between the Assessee and its creditors. It is no part of the Assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the Assessee to prove the creditworthiness of the sub-creditors.***

17.1 It was further observed by the hon'ble court as under:

14. "With this material on record in our view as far as the Assessee was concerned, it had discharged initial onus placed on it. **In the event the revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it.** A bald assertion by the Assessing Officer that the credits were a circular route adopted by the Assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. **An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation.** The ITAT, in our view, without adverting to the aforementioned principle laid stress on the fact that despite opportunities, the Assessee and/or the creditors had not proved the genuineness of the transaction. Based on this the ITAT construed the intentions of the Assessee as being mala Ride. In our view the ITAT ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the A.O. If the A.O. had any doubt about the material placed on record, which was largely bank statements or the creditors and their income tax returns, it could gather the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the A.O. In any event what both the A.O. and the ITAT lost track of was that it was dealing with the assessment of the company, i.e., the recipient of the loan and not that its directors and shareholders or that of the sub-

*creditors. If it had any doubts with regard to their credit worthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors.”*

18. It is observed that while making addition u/s 68 of the Act, the AO has doubted the financial capacity of loan creditors but such addition cannot be made on preponderance of probability and there has to be some evidence and substance in allegation. The AO has not brought anything on record to establish that the sources in the hands of loan creditors is not genuine. Merely because they have meagre income or cash was deposited in their bank accounts, loans taken from them cannot be held to be accommodation entries. It is well-settled position of law that no matter how strong suspicion is, it cannot take place of evidence. Therefore, in the absence of any evidence showing that in fact, appellant has given cash in lieu of unsecured loan taken, merely on the basis of suspicion, no addition can be made as has been held by Hon'ble Supreme court in the case of ***Daulatram Rawatmull***, reported in ***(1964) 53 ITR 574***.

19. In view of the above discussion and considering the fact that when all the relevant details were filed by the assessee and AO has not made any independent inquiries and sit on the same with folded hands, it cannot be said that the loans taken are not genuine and unexplained money of the assessee. Thus by respectfully following the judgements of hon'ble jurisdictional high court and of other high courts and of the Tribunal as stated above, we are of the view that when the assessee has discharged the burden casted upon it by filing

all the necessary evidences to prove all the ingredients of section 68 of the Act, no addition could be made for the same. Accordingly, we direct the AO to delete the addition. The Grounds of appeal Nos. (A), (B) and (C) raised by the assessee are thus allowed.

20. **Ground of appeal No.(D)** raised by the assessee is with respect to the adhoc disallowance @ 20% made out of various expenses claimed. We find that disallowance was made for non-verification of the expenses in absence of proper bills and vouchers. Looking to the overall facts and circumstances of the case, in our considered opinion, disallowance @ 5% of the expenses is fair and reasonable looking to the facts of present case. We direct accordingly. The Ground of appeal No.(D) raised by the assessee is thus partly allowed.

21. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 12.12.2025.

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Sd/-**

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

**Date:-12.12.2025**

*\*Amit Kumar, Sr.P.S\**

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