IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.184/LKW/2010
Assessment year:2005-06

Shri Suresh Chandra (Indl.) Prop. M/s Shri Raja Ram Textiles, Jhangirabad. PAN:ABWPC1521H	Vs	Dy.C.I.T., Circle-Faizabad.
(Appellant)		(Respondent)

ITA No.185/LKW/2010
Assessment year:2005-06

Shri Suresh Chandra (HUF) Prop. M/s Shri Raja Ram Textiles, Jhangirabad. PAN:AANHS0271G	Vs	Dy.C.I.T., Circle-Faizabad.
(Appellant)		(Respondent)

ITA No.239/LKW/2010
Assessment year:2005-06

Dy.C.I.T.-VI, Lucknow.	Vs	Shri Suresh Chandra (Indl.) Prop. M/s Shri Raja Ram Textiles, Jhangirabad. PAN:ABWPC1521H
(Appellant)		(Respondent)

Assessee by	Shri P. K. Kapoor, C.A.
Revenue by	Shri Harish Gidwani, D.R.
Date of hearing	24/04/2015
Date of pronouncement	12/06/2015

O R D E R

PER A. K. GARODIA, A.M.

There are two cross appeals by the assessee and the Revenue in the case of Shri Suresh Chandra (Individual) and the remaining appeal is

assessee's appeal in the case of Shri Suresh Chandra, HUF. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience. In the assessee's appeal, in the case of Shri Suresh Chandra, Individual, i.e. I.T.A. No.184/Lkw/2010, in ground No. 1 to 7, the dispute is regarding addition made by the Assessing Officer of Rs.59,65,729/- u/s 68 in respect of various cash credits received by the assessee in the present year. In the Revenue's appeal for the same assessee, the dispute raised by the Revenue is regarding deletion of addition made by Assessing Officer of Rs.27.91 lac u/s 68 of the Act. In the case of Shri Suresh Chandra, HUF in I.T.A. No.185/Lkw/2010 also, the assessee has raised as many as 10 grounds but the only grievance of the assessee is regarding addition made by the Assessing Officer of Rs.23.08 lac u/s 68 of the Act.

2. It was submitted by Learned A.R. of the assessee that for all the cash creditors in the case of both the assessees, the assessee has bought on record sufficient evidence to establish the identity of loan creditors, their creditworthiness and also genuineness of the transactions. He submitted that the assessee has submitted confirmations from all the creditors and copy of bank statement of all the creditors along with the copy of income tax return filed by each of the creditors. He submitted that under these facts, it has to be accepted that the assessee has established the identity and creditworthiness of the creditors. He further submitted that in some of the cases, in the bank account of the loan creditors, there is cash deposit before issue of cheque by the creditor to the assessee. He submitted that merely on this basis that cash was deposited in the bank account of the loan creditor prior to the issue of cheque, it cannot be said that the cash deposited by the loan creditor in his bank account was belonging to the assessee and in the absence of any evidence in this regard, it cannot be said that the loan has not been explained and any addition is called for u/s

68 of the Act. Reliance was placed by him on a judgment of Hon'ble Gujarat High Court rendered in the case of CIT vs. Rohini Builders [2002] 256 ITR 360 (Guj). He submitted that in this case, it was held by Hon'ble Gujarat High Court that when the assessee has established the identity of creditors and the amount was received by account payee cheques, initial burden lying on the assessee of proving credits is discharged and the source of credit need not be proved. He also placed reliance on a judgment of Hon'ble Guwahati High Court rendered in the case of Nemi Chand Kothari vs. CIT & Ors [2003] 264 ITR 254. Reliance was also placed on the judgment of Hon'ble Allahabad High Court rendered in the case of CIT vs. Kamaljeet Singh [2005] 147 Taxman 18 (All). He also placed reliance on a judgment of Hon'ble Allahabad High Court rendered in the case of CIT vs. Jauharimal Goel [2006] 201 CTR (All) 54. Regarding various judgments cited by learned D.R. in the written submissions dated 10/07/2012, he submitted that these judgments are not applicable in the facts of the present case.

3. Learned D.R. of the Revenue submitted that the written submissions filed by him on 10/07/2012 may be considered for deciding these appeals.

4. We have considered the rival submissions. First of all we reproduce the written submissions dated 10/07/2012 filed by learned D. R., which is as under:

> "1. The assessee could not prove the creditworthiness of the depositors which has been dealt in detail by the CIT(A) in the order.
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> 2. The following case laws are relied upon:-
>
> (a) In the case of Banarsi Prasad Vs. CIT 304 ITR 239 (All.) Hon'ble High Court held as under as per head note:-
>
> "It is well-settled that under section 68 of the Income-tax Act, 1961, the assessee has to prove three conditions (a)

the identity of the creditor, (b) the "capacity" of such creditor to advance the amount, and (c) the genuineness of the transaction, the contents of section 68, may be divided into two part, (a) It requires the assessee to explain the sum found credited in the books of the assessee about the nature and source thereof This part only requires the assessee to disclose the source from which the money has been received by the assessee. This does not require the assessee to disclose the source of that source, i.e., the source from which the donor or investor has received the money which has been invested, (b) It consists of offering an explanation which is "satisfactory" in the opinion of the Income-tax Officer. What explanation would be considered "satisfactory" and how much of details should be furnished to make the explanation "satisfactory" normally depend upon the facts.

(b) In the case of Ram Lal Agarwal Vs. CIT 280 ITR 547 (All) Hon'ble High Court observed as under as per head note:-

"Under section 68 of the Income-tax Act, 1961, if any amount is found credited in the books of account of the assessee, the burden lies upon the assessee to prove its nature and source, while proving the same the assessee has to prove the identity of the person, genuineness of the transactions and creditworthiness of the person, who has given the money.

Held, that in the resent case though the identity of the person, who had given the money had been established the assessee had failed to prove the creditworthiness of those persons making the payment of such amount to the assessee. All the authorities found that both the persons, who were alleged to have made the payment had not source and capacity to make such payment Learned counsel for the assessee was not able to make out any case to the contrary. The assessment of the amounts under section 68 was valid.

(c) In the case of CIT Vs. P. Mohankala 291 ITR 278(SC) the Hon'ble Supreme Court held has as under:-

"15. ... When and in what circumstances Section 68 of the Act would come into play? The a bare reading of Section 68 suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be a sum during the previous year; and the assessee offer no explanation about the nature and source of such found in the books; or explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, ft is only them the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The expression "the assessee offer no explanation" means where the assessee offer no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion."

(d) In the case of CIT Vs. Orissa Corporate (P) Ltd., 159 ITR 78 (SC) the Hon'ble Supreme Court held as under:-

"25. ... The doubtful nature of the transaction and the manner in which the sums were found credited in the books of account maintained by the assessee have been duly taken into considerations by the authorities below. The transaction though apparent were held to be not real one. May be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence."

(e) In the case of Vijay Kunar Talwar V CIT 330 ITR 1 (SC) Hon'ble Supreme Court held as under:-

"24. ... All the authorities below, in particular the tribunal, have observed in unison that the assessee did not produce any evidence to rebut the presumption drawn against him under Section 68 of the Act, by producing the parties in whose name the amounts in question had been credited by the assessee in his books of account. In the

> absence of any cogent evidence, a bald explanation furnished by the assessee about the source of the credits in question viz., realization from the debtors of the erstwhile firm, in the opinion of the assessing officer, was not satisfactory. It is well settled that in view of Section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income tax as the income of the assessee of that previous year, if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the assessing officer, not satisfactory."
>
> 3. In view of the above Hon'ble Bench may be Pleased to confirm the action of CIT(A) and Assessing Officer."

5. As per the above written submissions, learned D. R. has placed reliance on several judgments and we consider and examine the applicability of these judgments in the facts of the present case.

5.1 The first judgment cited by learned D. R. is the judgment of Hon'ble Allahabad High Court rendered in the case of Banarsi Prasad Vs. CIT (supra). We find that in this case, it was held by Hon'ble Allahabad High Court that u/s 68, the assessee has to prove three conditions i.e. the identity of creditor, the capacity of the creditors and genuineness of the transactions. It was also held in this case that section 68 requires the assessee to explain the sum found credited in the books of the assessee. It was also held that this section only requires the assessee to disclose the source from which the money has been received by the assessee and it does not require the assessee to disclose the source of the source. In that case, the assessee merely gave an explanation that the amount was received by him from his wife and minor son and it was held by Hon'ble Allahabad High Court that this is not sufficient. In the present case, the facts are different. The assessee has not only stated that money was received from whom, the assessee has furnished the complete address,

confirmation, PAN, bank statement etc. of each of the creditors and therefore, this judgment is not applicable in the facts of the present case.

5.2 The second judgment cited by learned D. R. is also the judgment of Hon'ble Allahabad High Court rendered in the case of Ram Lal Agarwal Vs. CIT (supra). In this case, it is noted by Hon'ble High Court that the assessee has failed to prove the creditworthiness of those persons who have given money to the assessee. It is also noted by Hon'ble Allahabad High Court that all the authorities found that both the persons who are alleged to have made the payment, have no capacity to make such payment. In the present case, the assessee has furnished various evidences regarding source of loan creditors and bank statements are brought on record and merely because there is cash deposit in the bank account of the creditor, it cannot be said that the creditor has no creditworthiness. Considering the facts of the present case, we are of the considered opinion that this judgment is not applicable in the facts of the present case.

5.3 The third judgment cited by learned D. R. is the judgment of Hon'ble Apex Court rendered in the case of CIT Vs. P. Mohankala (supra). In this case, it was noted by Hon'ble Apex Court that all the gifts were received from Ariavan Thotan and Suprotoman and only after the enquiry from the Department, it was informed by letter dated 30/09/96 that Ariavan Thotan and Suprotoman are same person. It was also noted that even at that time, no mention was made about Sampathkumar and for the first time, Sampathkumar's name figured in the letter dated 30/08/96 and thereafter, it was stated that the names of Ariavan Thotan and Suprotoman are the other names of Sampathkumar. It is also noted by the Assessing Officer that the letters suggested that Sampathkumar reserved his right to receive suitable compensation from the respondents-assessees. Under these facts, the Assessing Officer came to the conclusion that the gifts though apparent are

not real and accordingly treated all those amounts credited in the books of the assessee as the income of the assessee. Hence, it is seen that in this case, the dispute is regarding receipt of money from abroad and not a loan from local source and there is no contradiction in the present case regarding the names of the creditors as in that case. Therefore, this judgment is not applicable in the present case.

5.4 The next judgment cited by learned D. R. is the judgment of Hon'ble Apex Court rendered in the case of CIT Vs. Orissa Corporate (P) Ltd. (supra). In fact this, judgment of Hon'ble Apex Court supports the case of the assessee and not of the Revenue. In that case, the assessee furnished letter of confirmation and discharged Hundies and furnished the particulars of the creditors along with their index number. The notices were issued to the creditors, which were returned unserved with the remark 'left' and no further attempt was made to examine source of credits. Under these facts, it was held by Hon'ble Tribunal that the assessee has discharged its onus and this finding of the Tribunal was confirmed by Hon'ble High Court and also by Hon'ble Apex Court. In the present case also, the assessee has furnished the complete details of the creditors such as name, address, PAN etc. along with the bank statements. In fact, in the present case, not even a notice was issued by the Assessing Officer to the creditors to examine and verify the case of the assessee regarding creditworthiness and identity of the creditors and therefore, as per this judgment of Hon'ble Apex Court, no addition is justified in the facts of the present case.

5.5 The next judgment cited by learned D. R. is also the judgment of Hon'ble Apex Court rendered in the case of Vijay Kunar Talwar V CIT (supra). In that case, the search took place in assessee's premises on 27/05/83 and in course of search, certain incriminating documents were recovered and seized. One of the registers, so examined, revealed cash

receipt of Rs.3,49,991/- in the name of 15 persons, from most of whom were perpetual receipts during the period April 1982 to October 1982. When the Assessing Officer sought explanation with regard to said cash credit, the assessee stated that the cash receipts were in the nature of realization from the past debtors of the erstwhile firm. In order to appreciate the said stand, the Assessing Officer called for the account books of the Calcutta Branch of the erstwhile firm for the relevant period but the assessee failed to produce them. The Assessing Officer also found that the outstanding realizations of the Calcutta branch in the preceding years varied from Rs.25,000/- to Rs. 30,000/-. Under these facts, the Assessing Officer held that the assessee's submission that cash receipts of Rs.3,49,991/- related to earlier years was not tenable. Under these facts, the Assessing Officer added this sum as assessee's income under the head unexplained cash receipts. These facts show that in that case, this was the fact that the assessee was not able to establish the identity and creditworthiness of the loan creditors. In fact in that case, the assessee's explanation was that the amount received was in respect of old debtors of a partnership firm but this claim could not be established by the assessee by producing books of account of the said firm and therefore, the Assessing Officer treated the said receipt as income of the assessee. In the present case, the facts are different and therefore, this judgment is not rendering any help to the revenue.

6. As per above discussion, we have seen that none of the judgments cited by Learned D.R. of the Revenue is rendering any help to the Revenue.

7. Now we examine the applicability of various judgments cited by Learned A.R. of the assessee.

7.1 In the case of CIT vs. S. Kamaljeet Singh (supra), it was held by Hon'ble Allahabad High Court that where the assessee has brought on record the confirmation of creditor, their affidavits, their full address, GIR/PAN, the assessee's burden stood discharged and addition is not called for.

7.2 Similarly in the case of Nemi Chand Kothari vs. CIT and Another (supra), it was held by Hon'ble Gauhati High Court that when the assessee established identity of creditors and amounts received by him is by way of cheques, it should be accepted that the assessee has proved the creditors and their creditworthiness and failure of creditor to show creditworthiness of his sub-creditor does not amount to failure of the assessee to establish the creditor.

7.3 Similarly, in the case of DCIT vs. Rohini Builders (Supra), it was held by Hon'ble Gujarat High Court that when the assessee has established the identity of the creditor and the amount is received by account payee cheque, source of the credits need not be proved. We find that the facts in the present case are similar to the facts of the cases on which reliance was placed by Learned A.R. of the assessee. In the present case, confirmation of all creditors with full address and PAN, bank statement and assessment particulars are brought on record. Only adverse feature is that in some cases, there is cash deposit in the bank account of the creditor. Merely on this basis alone, it cannot be said that those creditors are not having credit worthiness particularly when these creditors are assessed to tax and their PAN, address and assessment particulars are furnished and the A.O. has not made any effort to call any detail from the creditors or to verify the details from the A.O. of the creditors. Therefore, respectfully following these judgments, we hold that in the facts of the present case, no addition is justified u/s 68 of the Act in respect of any of the cash credits.

8. In the result, the appeal of the Revenue is dismissed and both the appeals of the assessee are allowed.

9. There is no other issue in the revenue's appeal or in the assessee's appeal in the case of HUF. In the assessee's appeal in the case of individual i.e. in ITA 184/LKW/2010, Ground No. 8 & 9 are to decided. The same are asunder:-

> "Gr. 8:- Because the disallowance of Rs. 31,830/- out of car expenses as made/ sustained by the authorities below is wholly erroneous.
>
> Gr. 9:- Because the disallowance of Rs. 106,000/- on account of household expenses as made/ sustained by CIT (A) is wholly erroneous."

10. Learned AR of the assessee reiterated the same contentions which were raised before CIT (A). Learned DR of the revenue supported the orders of the authorities below.

11. We have considered the rival submissions. We find that regarding Ground No. 8, it is stated by learned CIT (A) in Para 10.2 of his order that element of personal use of car cannot be ruled out and disallowance is only 10% of the expenses and hence justified. It is not shown that the assessee was having any personal vehicle for personal use, expenses of which were not claimed as business expenses. Hence, we do not find any infirmity in the order of CIT (A) on this issue. Accordingly, Ground No. 8 is rejected.

12. Regarding Ground No. 9,we find that it is stated by learned CIT (A) in Para 11.2 of his order that keeping in view the size of the family, the addition is restricted to Rs. 50,000/- as against addition of Rs. 156,000/-

made by the A.O. Hence, he has allowed relief of Rs. 106,000/- and sustained the addition of Rs. 50,000/- only. So the amount mentioned in Ground No. 9 should have been Rs. 50,000/- and not Rs. 106,000/-. Moreover, it is not shown to us that even after keeping in view the size of the family, addition partly sustained by CIT (A) to the extent of Rs. 50,000/- is not justified. Hence, we do not find any infirmity in the order of CIT (A) on this issue. Accordingly, Ground No. 9 is also rejected.

13. In the result, the appeal of the revenue is dismissed and the appeal of the assessee in HUF's case is allowed and the remaining appeal of the assessee in Individual's case is partly allowed.

(Order was pronounced in the open court on the date mentioned on the caption page)

Sd/.	Sd/.
(SUNIL KUMAR YADAV)	(A. K. GARODIA)
Judicial Member	Accountant Member

Dated:12/06/2015
*C.L.Singh

Copy of the order forwarded to :

1.The Appellant
2.The Respondent.
3.Concerned CIT
4.The CIT(A)
5.D.R., I.T.A.T., Lucknow

Asstt. Registrar