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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 55/2017

Reserved on: 03rd August, 2017
Date of decision: 25th August, 2017

PRINCIPAL COMMISSIONER OF
INCOME TAX – 7

..... Appellant

Through: Mr. Ruchir Bhatia, Senior
Standing Counsel with Mr.
Gaurav Kheterpal, Advocate.

versus

BIKRAM SINGH

..... Respondent

Through: Mr. C. S. Aggarwal, Senior
Advocate with Ms. Pushpa
Sharma, Advocate.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

JUDGMENT

Prathiba M. Singh, J.:

1. In the present Appeal, the Principal Commissioner of Income Tax - 7, impugns the order dated 19th July, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5609/Del/2015 for Assessment Year 2011-12.

2. Admit. The following question of law is framed for consideration:

“Whether the ITAT was correct in law in deleting the addition under Section 68 of the Income Tax Act, 1961 in respect of four individuals when the genuineness of the transactions and

the creditworthiness of the said four individuals were in serious doubt?”

3. The Respondent-Assessee filed its return of income for AY 2011-12 on 17th August, 2011 declaring a total income of Rs.80,45,590/-. During the assessment proceedings, the Assessing Officer, on 13th March 2014, made additions under Section 68 of the Income Tax Act, 1961 ('the Act') to the tune of Rs.3,25,50,000/- in respect of loans/advances received from eight persons, on the ground that the Assessee was unable to establish the identity, creditworthiness and genuineness of the said persons and transactions.

4. The details of the loans/advances, received by the Assessee, as recorded by the AO, are :

S. No.	S. No. as per list	Name of the Creditor	Amount
1.	2.	Amar Singh	Rs.50,00,000/-
2.	4.	Chandan Singh	Rs.1,10,00,000/-
3.	5.	Harpreet Singh	Rs.3,50,000/-
4.	9.	Om Prakash	Rs.9,00,000/-
5.	11.	Ram Charan	Rs.10,00,000/-
6.	12.	Shiv Tej	Rs.25,00,000/-
7.	13.	Sunita	Rs.98,00,000/-
8.	15	Virender Yadav	Rs.20,00,000/-

5. In the appeal filed by the Assessee, the Commissioner of Income Tax (Appeals) ['CITA (A)'], on 7th September, 2015, upheld the said additions made by the Assessing Officer ('AO').

6. The ITAT, in the appeal filed by the Assessee, deleted the additions in respect of the following four persons:

(i)	Shri Amar Singh	Rs. 50,00,000/-
(ii)	Shri Chandan Singh	Rs.1,10,00,000/-
(iii)	Shri Ram Charan	Rs.10,00,000/-
(iv)	Smt. Sunita	Rs.98,00,000/-

In respect of the remaining four creditors, the ITAT restored the same to the file of the AO for reconsideration.

7. The Revenue has filed the present appeal challenging the said order of the ITAT dated 19th July, 2016.

Order of the Assessing Officer ('AO')

8. The AO on 13th March, 2014 passed the assessment order in respect of eight entries of loans/advances. Prior to the order, a questionnaire dated 10th January, 2014 was issued to the Assessee. The Assessee was called upon to produce the documentary evidence with respect to the said eight persons. Further, the Assessee was asked to produce the persons in order to establish their identity and creditworthiness and the sources of the loans, claimed to have been advanced to the Assessee. Since no documentary evidence or identification or addresses thereof, showing either the identity or creditworthiness of these persons, was furnished by the Assessee, the AO concluded *“that the Assessee has simply routed through its own*

unaccounted/undisclosed funds through the channel of banks in these names and as such the Section u/s 68 of the Income Tax Act attracts to assess such amounts in his own hands from undisclosed sources”

9. A brief summary of each of the eight transactions and creditors thereof, as per the AO's order is as under:

(i) Shri Amar Singh – Only a letter of confirmation was filed. Name of the father and address was not given. PAN number was not given. The information requested from Gurgaon Gramin Bank, from where the cheque was issued with respect to the compensation from land acquisition, was also not received. The person was not produced. Thus, the identity, creditworthiness and genuineness of Shri Amar Singh were not proved.

(ii) Shri Chandan Singh – A confirmation letter of Shri Chandan Singh was filed along with the bank statement. The AO noticed that the bank account was opened with a cash deposit of Rs.500/- and huge amounts of cash was deposited in this account before the cheques of Rs.60, 00,000/- and Rs.50, 00,000/- were issued. The AO concluded that since the source of cash was unverified and Shri Chandan Singh was also not produced, the identity, creditworthiness and genuineness of Shri Chandan Singh was not proved.

(iii) Shri Harpreet Singh – No documents were filed by the Assessee to establish the identity, address etc. Even the PAN number or ID proof was not filed and he was also not even produced.

(iv) Shri Om Prakash – No documents to establish the address, PAN number, source of deposit and ID proof, were filed. Neither was a confirmation letter filed nor was he produced.

(v) Shri Shiv Tej - No documents to establish the address, PAN number, source of deposit and ID proof, were filed. Neither was a confirmation letter filed nor was he produced.

(vi) Shri Ram Chander – Only a confirmation letter was filed. However, the AO observed that the same was not supported by any evidence of identification, cheque numbers, sources of income or sources of loan. The person was not produced.

(vii) Smt. Sunita – Only a confirmation letter was filed. However, the AO observed that the same was not supported by any evidence of identification, cheque numbers, sources of income or sources of loan and even she was not produced.

(viii) Shri Virender Yadav – A confirmation letter was produced but no PAN number was mentioned. The AO observed that the bank statements reveal the deposit of cash of Rs.13,00,000/- and Rs.7,00,000/- immediately before the issuance of the cheque in favour of the Assessee. He was also not produced.

10. Thus, in respect of all these individuals, none of whom were produced by the Assessee, the AO concluded that the identity, creditworthiness and

genuineness of the persons could not be established by the Assessee. Thus, the AO added the total sum of Rs.3,25,50,000/- under Section 68 of the Act to the Assessee's income and also simultaneously initiated penalty proceedings under Section 271 (1) (c) of the Act.

Order of the Commissioner of Income Tax (Appeals) ['CIT (A)']

11. In appeal, the CIT (A) issued notice to the Assessee to appear in the proceedings before him. The Assessee then requested for more time to produce further information and an opportunity to produce the creditors for examination. For this purpose, the matter was referred by the CIT (A) to the AO for his report. The AO, on 21st May, 2015 reported that the statements of Smt. Sunita, Shri Amar Singh, Shri Ram Chander, Shri Chandan Singh and Shri Harpreet Singh were recorded. The remaining three creditors namely Shri Om Prakash, Shri Virender Yadav and Shri Shiv Tej Singh could not be produced by the Assessee. In respect of Smt. Sunita, no new documents were filed. In respect of some of the creditors, fresh documents were filed and considered before the CIT (A).

12. The CIT (A) summarised its findings in respect of each of the creditors, as set out below:

- (i) In respect of Shri Amar Singh, the statement reveals that he did not file any ITR and also did not have a PAN number. His monthly income was from Rs.2,000/- to Rs.2,500/-. Though he confirmed that he has given Rs.50,00,000/- to Mr. Bikram Singh, he could not support this by any documentary evidence and he also could not

explain the entries in his bank statement, which was submitted by the Assessee. He submitted a copy of the cheque no.039522 issued by the Oriental Bank of Commerce dated 18th February, 2015 but since the transaction was related to AY 2010-11, the CIT (A) held that this cheque has no relevance. Shri Amar Singh, according to the CIT (A) confessed that he did not understand dealings with or working with banks.

(ii) In respect of Shri Ram Chander, he confirmed that he does not file IT Returns and he does not have a PAN number. His annual income was Rs.1.75 Lakhs to Rs.1.8 Lakhs. He has no savings. In his statement, he stated that he gave Rs.10,00,000/- to Shri Bikram Singh, out of the proceeds of sale of land but there was no documentary evidence to support the same. He later on claimed that the amounts of Rs.18.48 Lakhs and Rs.5.86 Lakhs reflected in his bank statement came from his sister Vidya.

(iii) In respect of Shri Chandan Singh, he was unable to explain any of the bank entries in his bank statements. In the assessment order for the AY 2011-12 submitted by him, there was no reference to any unsecured loan transactions with the Assessee. He claimed that he had not given loans to anyone except the Assessee.

(iv) In respect of Shri Harpreet Singh, in his statement, he stated that he had no transaction with the Assessee in AY 2010-11. He claimed that the sum of Rs.3.5 Lakhs was given to the Assessee by his son

Mr. Dakshdeep Singh and the said transaction, being attributed to Shri Harpreet Singh, is an inadvertent mistake by the Assessee's Chartered Accountant.

13. The CIT (A) thus held that the transactions with Smt. Sunita lacked in genuineness and creditworthiness; transaction with Shri Amar Singh was questionable as to genuineness and creditworthiness; transactions with Shri Ram Chander and Shri Chandan Singh were not genuine; and that the explanation given by Shri Harpreet Singh showed that the transaction was dubious and its genuineness was not established. The CIT (A), by order dated 7th September, 2015, concluded as under:

“...In respect of all the creditors, it is seen that they are advancing huge sums of money to the appellant but the source of income is not clear. There are huge deposits in their accounts but there is no explanation of the source of deposits. Even where it is stated that the amount advanced is from the sale proceeds of land, no details are given about the land holding and the copy of agreement etc. Most persons appearing not to be filing returns. Their creditworthiness is simply not proved. All are advancing huge sums of money but details are not available of their income savings and expenditures.

Thus the identity, creditworthiness and the genuineness of transactions are all in doubt....”

14. The CIT (A), after discussing the relevant case law, also upheld the findings in the report of the AO and held that the explanation furnished by the creditors and the documents filed do not adequately and sufficiently explain the genuineness of the transactions and the Assessee was also not

able to establish the identity and creditworthiness of these persons. The CIT (A) concluded that no source of funds was established by the Assessee for any of these individuals, the amounts credited to the Assessee's book were unexplained, and were liable to be added to the income of the Assessee under Section 68 of the Act.

Order of ITAT

15. The ITAT by order dated 19th July, 2016 partly allowed the Assessee's appeal and deleted the additions in respect of four of the creditors. The summary of the conclusions of the ITAT in respect of the eight creditors and the transactions is set out below:

(i) In respect of Smt. Sunita, the ITAT held that additional evidence was submitted by the Assessee and the same was taken on record. The ITAT observed that Smt. Sunita, being the wife of the Assessee and her financial affairs having been handled by the Assessee himself, the identity and creditworthiness of Smt. Sunita was established. Her PAN Card has been filed. By assessing the bank accounts of Smt. Sunita, the ITAT concluded that the genuineness and creditworthiness was also established.

(ii) In respect of Shri Virender Yadav, the ITAT observed that since his PAN card had been submitted by the Assessee, the matter deserved to be remanded to the AO to pass a speaking order.

(iii) In respect of Shri Shiv Tej, the ITAT after relying upon the documents, produced by the Assessee, restored the matter to the file of the AO as he had not been produced before the AO.

(iv) In respect of Shri Om Prakash, the Assessee relied upon the letter of confirmation, the PAN card and Voter Identity Card to establish the identity and also submitted that the AO did not record the statement of Shri Om Prakash despite his appearance before the AO. Thus, the ITAT concluded that the matter deserved to be restored to the file of the AO.

(v) In respect of Shri Ram Chander, the ITAT referred to the confirmation letter issued by him, Voter ID Card, the copy of bank statement and the cheque of Rs. 18.48 Lakhs, which was explained by him as having been received from his sister Vidya. Thus, the ITAT concluded that the identity, creditworthiness and genuineness was established and the addition of Rs.10 lakhs in respect of Shri Ram Chander was deleted.

(vi) In respect of Shri Chandan Singh, the ITAT referred to the copy of PAN Card, Voter ID Card and the bank statement, which was submitted by the Assessee. The ITAT held that the identity, genuineness and creditworthiness was established and the addition made to the tune of Rs.1.10 Crores was deleted.

(vii) In respect of Shri Amar Singh, the ITAT referred to the letter of confirmation and Voter ID Card to establish the identity of this creditor. He further referred to the bank statement, which showed a deposit of Rs.84,44,762/- in his bank account, just before the issuance of cheque of Rs.50 lakhs to the Assessee. According to the Assessee, this amount was received from the Land Acquisition Officer, Gurgaon in favour of Shri Amar Singh. The ITAT thus deleted the addition of rupees Rs.50 lakhs in respect of Shri Amar Singh.

(viii) In respect of Shri Harpreet Singh, the ITAT referred to the letter issued by him explaining that the loan was given by his son Mr. Dakshdeep Singh vide cheque no. 58913 dated 18th June, 2010 drawn on HDFC Bank. He also referred to the confirmation letter given by Mr. Dakshdeep Singh. The ITAT noted that the creditworthiness of Mr. Dakshdeep Singh was not established and hence the matter was restored to the file of the AO to examine the identity, genuineness and creditworthiness. However, for statistical purpose, addition of Rs.3,50,000/- in respect of Shri Harpreet Singh was allowed.

16. Thus, the ITAT

- deleted the following additions qua Shri. Amar Singh, Shri. Chandan Singh, Shri. Ram Chander, and Smt. Sunita.
- restored the additions with respect to Shri. Virender Yadav, Shri. Om Prakash, Shri. Shiv Tej Singh, and Shri. Harpreet Singh, to the AO for reconsideration.

17. The Revenue is in appeal challenging the ITAT's order.

Submissions of the Appellant-Revenue

18. Mr. Ruchir Bhatia, learned Senior Standing Counsel for the Revenue submits that though initially the Assessee failed to establish the identity, creditworthiness and genuineness of the creditors before the AO, later on the Assessee made an effort to file some additional documents to establish the identity and creditworthiness in respect of some of the transactions. However, according to Mr. Bhatia, the genuineness of the transactions has not been established.

19. Mr. Bhatia relies upon the settled precedents to submit that in such cases, in respect of each transaction, the identity, creditworthiness and genuineness of the creditor has to be established beyond any pale of doubt by the Assessee. It was his submission that the genuineness, having not been established, the deletion of these additions, that too by the ITAT, cannot be sustained. Mr. Bhatia submits that the onus is on the Assessee to establish that each transaction is a loan and that this initial onus on the Assessee has not been discharged. He relies upon ***Parimisetti Seetharanamma v. Commissioner of Income Tax (1965) 57 ITR 532*** (hereafter 'Parimisetti') and ***Commissioner of Income Tax v. Daulat Ram Rawatmull 87 ITR 349*** (hereafter 'Daulat Ram'). Mr. Bhatia took the Court through each of the transactions and the documents filed by the Assessee to defend the deletions made by the ITAT and submitted that the genuineness of each transaction is in severe doubt. He also relied upon ***CIT***

v. Divine Leasing & Finance Ltd. (2008) 299 ITR 268 (Del) (hereafter 'Divine Leasing') and *CIT v. Kamdhenu Steel & Alloys Ltd. 361 ITR 220 (hereafter 'Kamdhenu')*.

Respondent-Assessee's Submissions

20. Mr. C. S. Aggarwal, learned Senior counsel for the Respondent-Assessee vehemently urged that in this case the Assessee has produced a large number of the documents to establish the identity, creditworthiness and genuineness in respect of each creditor and each transaction. The ITAT rightly deleted four additions, inasmuch as it was convinced about the identity of each of the persons who had appeared before the AO and had made detailed statements. Mr. Aggarwal further submits that apart from the oral statements recorded in respect of each of the creditors, several documents were filed to establish that they were bonafide creditors and that the findings of the AO and the CIT(A), that the Assessee has used these creditors to route his own unexplained money or incomes, was incorrect. Mr. Aggarwal relies upon *CIT v. Dwarkadhish Investment Pvt. Ltd. 330 ITR 298 (hereafter 'Dwarkadhish')* to submit that once the initial onus upon the Assessee is discharged, the onus shifts on the Revenue to challenge the same. Mr. Aggarwal further submits that for any income to be taxed, the burden lies on the Revenue to establish that the transactions were not genuine. In the submission of Mr. Aggarwal, a mere suspicion, conjecture or surmise is not sufficient and the fact, that there were cash credits in the accounts of these creditors, does not raise any presumption against the Assessee. Finally, Mr. Aggarwal submits that the appreciation of evidence being a question of fact,

there being no question of law on perversity and the sources being explained, the appeal does not merit to be entertained. He relies on *CIT, Kolkata v. Mukundray K. Shah 290 ITR 433* (hereafter 'Mukundray Shah') in this behalf.

21. Mr. Aggarwal also relies upon *Kamdhenu (supra), CIT v. Shiv Dhooti Pearls and Investment Ltd. 237 TAXMAN 104* (hereafter 'Shivdhooti') and *Dwarkadhish (supra), Sarogi Credit Corporation vs. CIT 103 ITR 344, Additional Commissioner of Income Tax vs. Hanuman Agarwal 151 ITR 150, Addl CIT vs. Bahri Bros.(P) 154 ITR 244, CIT vs. Ram Narain Goel [1997] 224 ITR 180, Smt. Neelamben Gopaldas Agrawal vs. ITO [2015] 57 taxmann.com 176 (Guj)*, to submit that it is settled law that the source of the source need not be explained.

22. Mr. C. S. Aggarwal further urges that findings of fact ought not to be interfered with at this stage and the question whether the credits were properly explained or not being questions of fact, the same cannot be reappreciated by this Court. He relies upon *CIT Vs. Orissa Cement Corporation 159 ITR 78 and CIT Vs. Gun Nidhi Dalmia 168 ITR 282*.

23. Mr. Aggarwal vehemently urges that even where a question of law has been formulated, under Section 260A, the Court can still hold that no question of law arises as held in *CIT vs. Peoples General Hospital Ltd [2013] 356 ITR 65*. Lastly, Mr. Aggarwal submits that the Appeal has no basis in as much as not question as to the perversity in the ITAT's order has either been raised or pleaded and thus the appeal is not liable to be

entertained. He relies upon *Patnaik & Co. Ltd. vs. CIT 161 ITR 65* and *CIT vs. Bhageeratha Engg. Ltd. 199 ITR 12 (SC)* in support of his submissions.

Analysis and Reasoning

24. In the present appeal, the Revenue has only challenged the impugned order of the ITAT to the extent of deletions made by the ITAT in respect of Shri Amar Singh, Shri Chandan Singh, Shri Ram Chander (sic Ram Charan) and Smt. Sunita. The impugned order, to the extent that the additions in respect of other four creditors has been restored to the file of the AO, has not been seriously challenged by the Revenue. Though ground-G in the appeal has been raised in respect of the said set of creditors, the same was not seriously pressed. Thus, in the present order, the Court is only dealing with the submissions of the Revenue in respect of the deletions of the additions in respect of four of the creditors.

25. The law applicable to transactions of this nature is well settled by this Court in *Divine Leasing (supra)*. Both parties have referred to and relied upon this judgement. This Court, after analyzing the entire law on the subject in the context of Section 68 of the Act, held as under:

“...16. In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the IT Act. The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber. (4) If relevant details of the address or PAN identity of the creditor/subscriber are

furnished to the Department along with copies of the Shareholders Register, Shared Application Forms, Share Transfer Register etc. it would constitute acceptable proof or acceptable explanation by the assessee. (5) The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the AO take such repudiation at face value and construe it, without more, against the assessee. (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation....”

26. In ***Divine Leasing (supra)***, on the question of burden of proof, the Court relied upon ***CIT v. Musaddilal Ram Bharose, (1987) 165 ITR 14***, to hold that the initial burden is upon the Assessee to show the absence of fraud and this is not discharged by the Assessee tendering an incredible and fantastic explanation. The Court also held that every explanation given by the Assessee need not be accepted.

27. In ***Kamdhenu (supra)***, this Court categorically held that the initial burden lies on the Assessee to establish the identity of the shareholders, the genuineness of the transaction and the creditworthiness of the shareholders. It is only after the initial burden is discharged that the onus shifts to the Revenue. This Court in ***Kamdhenu (supra)*** referred to ***CIT v. Sophia Finance, 205 ITR 98*** which had held to the same effect. The ***Divine leasing (supra)*** and ***Sophia Finance (supra)*** judgments were reiterated by this

Court in *Dwarkadhish (supra)*. Thus, the law in relation to Section 68 is well settled.

28. Applying the settled law to the present case, the facts narrated above reveal that the Assessee was unable to discharge the initial onus cast upon him. A review of the documents filed on record, as also findings of the CIT(A) and the AO, reveal that the genuineness of the transactions and the creditworthiness of the creditors is seriously in issue and the findings of the ITAT are contrary to the settled law.

29. In the case of Shri Amar Singh the documents that were submitted by the Assessee, were a letter of confirmation dated 20th March, 2014, a letter dated 12th April, 2014 issued by the Gurgaon Gramin Bank, the bank statement for the period from 1st April, 2008 to 31st March, 2011, a copy of the cheque for Rs.50,00,000/-, the voter ID Card and a copy of letter dated 15th May, 2015 of the Land Acquisition Officer, Gurgaon, Haryana. A perusal of the bank statement reveals that the account of Shri Amar Singh was opened by a cash deposit of Rs.1,000/- and there are several sums running into lakhs withdrawn in cash. There is no explanation, whatsoever, as to why a sum of Rs.50,00,000/- would be given as loan/advance to the Assessee in the absence of any loan agreement either specifying the interest charged on the loan or any security offered in respect of the loan. In the statement of Shri Amar Singh, there was nothing to justify the giving of such a loan to the Assessee. The CIT (A) had noticed that the monthly income of Shri Amar Singh was in the range of Rs.2,000/- to Rs.2,500/-. He could not produce any documentary evidence to explain the entries in his

bank statement. In the case of Shri Amar Singh there was nothing on record to displace the findings of the CIT (A) and his financial strength was clearly not established. Thus, the deletion by the ITAT of the entry of Rs.50,00,000/- is contrary to law and the findings of the CIT (A) qua this transaction deserve to be upheld.

30. The Assessee claimed that Shri Chandan Singh had given an amount of Rs.1,10,00,000/- to the Assessee and the documents, in respect of this transaction, are a letter of confirmation, copy of the bank statement, PAN card, voter ID Card, ledger account for the period from 1st April, 2010 to 31st March, 2011, ITR for AY 2011-12 and the order of the assessment for AY 2011-12. The documents, filed by the Assessee in respect of Shri Chandan Singh, do not inspire any confidence to support a transaction to the tune of Rs.1,10,00,000/-, inasmuch as, the bank statement reveals that while the account was opened with a deposit of Rs.500/-, huge amounts of cash deposits to the tune of Rs.50 Lakhs, Rs.30 Lakhs, Rs.20 Lakhs and Rs.10 Lakhs have been made into the said account. The Income Tax Computation attached to the Income Tax Return does not reveal any unsecured loans. In fact, the documents filed by Shri Chandan Singh establish that the transaction was not even disclosed to the income tax authorities by him. Thus, the AO and the CIT (A) came to the correct conclusion that this amount deserves to be added to the income of the Assessee. This Court finds that the genuineness of this transaction has not been established by the Assessee. The ITAT has ignored the evidence on record and did not even examine the genuineness of the transaction or the financial strength of the creditor as required in law. Merely because the transaction was by payments

through cheque, the ITAT presumes them to be genuine. A creditor who opens a bank account with just Rs. 500/-, depositing huge sums of cash into the account and then lending a sum of Rs. 1,10,00,000/- to the Assessee, without any agreement, interest payment or security, is `fantastic' and `incredible' to say the least. The ITAT ignored vital and tell-tale evidence which showed that the transaction was far from being genuine. The Assessee had clearly failed to discharge the onus cast upon him qua this creditor.

31. Insofar as Shri Ram Chander is concerned, first, there is a doubt as to his actual identity as whether he is *Ram Chander* or *Ram Charan*. The Assessee has produced a confirmation letter where this person is being referred to as Ram Chander in different places. His voter ID card described him as Ram Chander S/o Shri Bhagwana whereas the letter of confirmation purportedly signed by him refers to him as Ram Chander S/o Bhagwant Sahai. The bank statement produced for the period from 1st April, 2008 to 31st March, 2011 shows deposits and withdrawals in cash. He also tried to change his explanation. While in his oral statement, he stated that the amount of Rs.10,00,000/- was given to Shri Bikram Singh out of the proceeds of sale of land, he later claimed that the amounts of Rs.18,48,750/- and Rs.5,86,000/- came from his sister, Vidya. The identity and genuineness is in severe doubt in the case of Shri Ram Chander/Ram Charan and the fact, that his annual income was between Rs.1.75 Lakhs to Rs.1.8 Lakhs and he also does not even file an ITR and does not have a PAN number, clearly points to the irrefutable conclusion that the entire transaction was not genuine and the identity of Shri Ram Chander/Ram Charan was also dubious.

32. Insofar as Smt. Sunita is concerned, she is the wife of the Assessee and from her statement, it is clear that she has no knowledge of any of the transactions being conducted through her bank account. Her letter of confirmation was filed by the Assessee along with a copy of her PAN card, the bank statement, a copy of passport and ITR for AY 2011-12. The AO had rightly concluded that her sources of income were not established and her ITR reveals the gross total income of Rs.1,69,144/-. The amount shown as loan/advance to the Assessee of Rs.98,00,000/- is totally lacking any support from the documents placed on record by the Assessee. The mere fact that these were cheque payments does not necessarily mean that these had to be held as being genuine. The ITAT grossly erred in holding that, just because Smt. Sunita was the wife of the Assessee and her PAN card was filed, the genuineness of the transaction was established. There was no analysis by the ITAT as to her financial strength to lend such a huge amount to the Assessee.

33. The AO and the CIT (A) rightly concluded that in respect of all the transactions, the identity, creditworthiness and genuineness are in doubt.

34. In fact, the Assessee was unable to discharge the onus cast on him in respect of any of the four creditors and the transactions thereof and hence the onus did not shift to the Revenue, as held in *Divine Leasing (supra)*.

35. The Assessee relied upon *Lalchand Bhagat Ambica Ram v. CIT, Bihar and Orrisa 37 ITR 288* (hereafter 'Lalchand Bhagat') to contend that a mere suspicion, conjecture or surmise is not sufficient to deem a transaction

as not being genuine. The analysis of the AO and the CIT (A) as also the documents produced in fact point to the fact that the transactions are not genuine. The statements of the creditors and the documents produced do not leave anything to suspicion but point to the certainty of the transactions being not genuine. Each of the creditors did not have the financial strength to part with such huge sums of money and the transactions, as revealed from chronology of opening of bank accounts, deposits of cash and then the loan transaction, establish lack of genuinity.

36. The Assessee also relied upon *Sona Electric Co. v. CIT 152 ITR 507* (hereafter 'Sona Electric') to argue that mere suspicion is not enough. However, in this case the Court appears to have been persuaded to hold in favour of the Assessee as the Assessee was not allowed to cross-examine the witness, whose statement was recorded and that there was an admitted supply of goods against which the payment was made. Thus, the facts are clearly distinguishable.

37. The Assessee further relied upon *Mukundray Shah (supra)* to argue that there can be no interference when the Tribunal has given findings of fact. However, the Supreme Court in the said case held that the finding of the Tribunal was not perverse, as the concept of giving deemed dividend, under consideration in the said case, was rightly considered by the Tribunal, which ought not to be disturbed. The said judgment deals with deemed dividend under Section 222 (e) of the Act and since the two companies had merged, the accumulated profits of one would be taken into the merged

account. The facts of the said case have no correlation, whatsoever, with the present case.

38. The judgement in *Daulat Ram (supra)* relied upon by Mr. Agarwal, was concerned with a case where the Department could not establish either the source or the recipient of the fixed deposit of Rs.5,00,000/-. In those circumstances, the Supreme Court held that “*the onus to prove that the apparent is not the real is on the party as who claims it to be so.*” This case has no application in the facts of the present case, as here the Assessee has failed to discharge the initial burden upon him after producing the creditors and documents in support of its case. The source of the funds and the recipient is known in the present case.

39. In *Parimisetti (supra)*, it was held that every receipt cannot be taxed as an income and the burden lies upon the department to show that the receipt is within the taxing provision. When an exemption is claimed, the onus to prove that income is exempted, lies on the Assessee.

40. Insofar as this Court is concerned, *Divine Leasing (supra)*, *Dwarkadhish (supra)* and *Kamdhenu (supra)* settles the law under Section 68 of the Act beyond any pale of doubt. The question of law has to be determined on the basis of the ratio laid down in *Divine Leasing (supra)* and thereafter in *Dwarkadhish (supra)* and *Kamdhenu (supra)*. Going by the factors laid down in *Divine Leasing (supra)*, this Court holds that the identity of the four creditors namely Shri Amar Singh, Shri Chandan Singh, Shri Ram Chander and Smt. Sunita has been established. However, the

genuineness of the transactions, though through the banking channels, has not been established. The creditworthiness of these creditors and their financial strength has also not been established.

41. An analysis of the above facts shows that none of these four individuals have the financial strength to lend such huge sums of money to the Assessee, that too without any collateral security, without interest and without a loan agreement. The mere establishing of their identity and the fact that the amounts have been transferred through cheque payments, does not by itself mean that the transactions are genuine. The AO and the CIT (A) have rightly held that the identity, creditworthiness and the genuineness are all in doubt. Moreover, the Court notes that that these amounts have been advanced to the Assessee without any explanation as to their relationship with the Assessee, the reason for the payment of such huge amounts, as also whether any repayments have, in fact, been made. There are contradictions in the explanation given by the Assessee and the statements recorded by these four individuals, which are irreconcilable. For example, in the case of Shri Ram Chander/Ram Charan, he had initially stated that he had given Rs.10,00,000/- out of the proceeds of sale of the land but thereafter it was claimed by him that the money had come from her sister Vidya. Such contradictions clearly render all these transactions dubious. The ITAT could not have, merely because the payments were through cheques, held that the transactions were genuine. The ITAT erred in simply accepting the explanation of the Assessee qua the four transactions. The ITAT, clearly, did not follow the binding precedent in *Divine Leasing (supra)*, which in no uncertain terms requires that the authorities are duty bound to investigate the

creditworthiness of the creditors, subscribers and the genuineness of the transactions. Thus the ITAT did not merely give findings of fact but misapplied the law. Hence the authorities *CIT Madras vs. S. Nelliappan (1967) 66 ITR 722 (SC)*, *CIT Orissa vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC)*, *CIT Vs. Gun Nidhi Dalmia (1987) 168 ITR 282 (Del)* do not support the Assessee's case. The Assessee has failed to discharge his initial burden as the explanation given by the Assessee and the four individuals does not appear to be credible.

42. There is no dispute to the proposition that the source of the source need not be seen as held in *Shiv Dhooti (supra)* and the other cases relied upon by the Assessee. The ITAT has erred in its approach towards dealing with the transactions and has incorrectly held that the Assessee has discharged his onus merely because the money was advanced through the banking channels. The ITAT has ignored all the contradictions and has ignored glaring circumstances such as Shri Amar Singh, not even being an Income-tax Assessee, in holding that the transactions are genuine and creditworthiness is established. The explanation for advancing the loans is clearly contradictory in respect of two of the creditors. To accept such explanations would in effect result in turning a blind eye as has been done by the ITAT, to transactions which clearly lacked bona fides. Thus, the ITAT's order is erroneous and contrary to law and is accordingly, set aside.

43. The transactions in the present appeal are yet another example of the constant use of the deception of loan entries to bring unaccounted money into banking channels. This device of loan entries continues to plague the

legitimate economy of our country. As seen from the facts narrated above, the transactions herein clearly do not inspire confidence as being genuine and are shrouded in mystery, as to why the so-called creditors would lend such huge unsecured, interest free loans - that too without any agreement. In the absence of the same, the creditors fail the test of creditworthiness and the transactions fail the test of genuineness. The findings of the CIT (A) are upheld and the order of the ITAT dated 19th July, 2016 is set aside to the extent of the deletion of four entries. The deletions made in respect of the transactions of the Assessee with Shri Amar Singh, Shri Chandan Singh, Shri Ram Charan/Ram Chander and Smt. Sunita to the tune of Rs.50,00,000/-, Rs.1,10,00,000/-, Rs.10,00,000/- and Rs.98,00,000/-, respectively, are liable to be added back to the returned income of the Assessee for the relevant AY, under Section 68 of the Act.

44. The appeal is allowed in the above terms.

PRATHIBA M. SINGH, J

S. MURALIDHAR, J

August 25, 2017

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