

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No. 1763/Ahd/2019
Assessment Year : 2012-13**

Shri Niteshkumar Maganbhai Patel, 3-Keya Duplex, Nr. Radhika Society, Gotri Iscon Temple Road, Gotri Road, Vadodara PAN : ACQPP 8865 J	Vs	The ITO, Ward-1(2)(4), Vadodara
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**ITA No. 924/Ahd/2018
Assessment Year : 2014-15**

Shri Niteshkumar Maganbhai Patel, 3-Keya Duplex, Nr. Radhika Society, Gotri Iscon Temple Road, Gotri Road, Vadodara PAN : ACQPP 8865 J	Vs	Dy. Commissioner of Income-tax, Circle - 1 (2), Baroda
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah & Shri Anil R. Shah, Ars
Revenue by :		Shri Vijay Kumar Jaiswal, CIT-DR & Shri Atul Pandey, Sr DR

सुनवाई की तारीख / **Date of Hearing** : 05/04/2023
घोषणा की तारीख / **Date of Pronouncement**: 17/05/2023

आदेश/O R D E R

PER WASEEM AHMED, AM :

These two appeals are preferred by the assessee against the orders of the learned Commissioner of Income-tax (Appeals) (hereinafter referred to as "CIT(A)") dated 18.09.2019 and 31.01.2018 passed under Section 250(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Years (AYs) 2012-13 & 2014-15, respectively.

First, we take-up ITA No. 1763/AHD/2019 an appeal by the assessee for A.Y 2012-13

2. The assessee has raised following grounds of appeal:

I. On Addition u/s 68 of Rs. 2,38,76,291/-

1. *The CIT(A) has erred both in Law and in Fact in upholding invoking of Sec.68 of the Act by the Assessing Officer.*

It is submitted that on facts of the case and provisions of Law and since all necessary conditions are satisfied Se.68 does not apply.

2. *Your Appellant further submits that Mr. Salim Hamid Memon who deposited a sum of Rs.2,38,76,291/- is a known person who has proved his Identity and Creditworthiness and Genuineness of the transaction and therefore the addition made by the Assessing Officer and confirmed by the CIT(A) is required to be deleted.*
3. *Without prejudice to above and in the alternative your Appellant submits that the amount of Rs. 2,38,76,291/- or part thereof if at all liable to be included as Appellants Income, then it should be taken as his gross Business Receipt and only N.P. thereof be included as his Income as held by various judicial authorities.*

II. On Section 40(a)(ia) of Rs.7,55,750/-

1. *The CIT(A) has erred both in Law and in fact in confirming applicability of Sec.40(a)(ia) of the Act to the case which is not applicable and disallowance I addition is not called for.*
2. *Your Appellant submits that the recipient of money Shri Kanubhai Prajapati is assessed to Income Tax and the amount of land filling and levelling charges paid to him are duly shown as income by him and he has paid Tax thereon and therefore Sec.194C does not apply and Ld.CIT(A) ought to have deleted the said disallowance/addition of Rs.7,55,750/-.*

III. On Sundry Creditor of Rs. 6,20,000/-

1. *The Ld. CIT(A) has also erred in confirming addition of Rs.6,20,000/- as payable by the Appellant to Shri Gavarsinh Mavi as per books of accounts duly Audited showing amount payable to him.*
2. *It is submitted that the amount was due to Shri Gavarsinh Mavi being labour charges and that the same is duly paid in next Financial Year, and therefore the Ld. CIT(A) ought to have deleted the addition holding it to be a genuine Creditor."*

3. The first issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 2,38,76,229/- being unsecured loan under section 68 of the Act.

4. The facts in brief are that the assessee is an individual and claimed to be engaged in the business of civil construction. The AO found that the assessee during the year under consideration received an unsecured loan of Rs. 2,38,76,229/- from Sri Salim Hamid Menon. On question by the AO, the assessee submitted that Sri Salim Hamid Menon is a close friend residing in Dubai who is engaged in the business of package drinking water and plastic industries. He received interest free unsecured loan to fund ongoing project with a condition that amount will be refunded once revenue is generated from the project. The assessee in support of his argument furnished copy of confirmation letter. However, the AO found that the assessee has not furnished proper details of the lender such as the address as well as return of income of the lender. Therefore, merely the amount was received through banking channel and filing confirmation letter will not discharge the assessee from his obligation cast under section 68 of the Act. Hence the AO, treated the credit of loan amount as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal before the learned CIT(A).

6. The assessee before the learned CIT(A) submitted that he has furnished copy of PAN card, confirmation letter and copy of ITR of Sri Salim Hamid Memon during the assessment proceeding but the AO without pointing any defect or providing further opportunity of being heard made addition under section 68 of the Act. The assessee further submitted that during the year under consideration, unsecured loan of Rs. 1,91,76,229/- only was received from Sri Salim Hamid Menon and the balance amount of Rs. 47,00,000/- was received from Sri Navjit Singh Anand but wrongly credited in the ledger of Sri Hamid Memon. The assessee in support of his contention furnished copy of PAN, Confirmation, Bank statement of Sri Navjit Singh Anand.

7. The assessee with regard to the identity, creditworthiness and genuineness of loan from Sri Hamid Memon further submitted that he is resident of Dubai-UAE and active director, holding 25% share in the firm namely Taj Mahal Purification of Portable Water (LLC) and furnished audited financial statement of impugned firm along with bank statement of Sri Salim Hamid Memon maintained with NBD Bank Dubai. He also claimed that Sri Salim Hamid Memon is also an income tax assessee in India and filing regular return of income.

8. However, the learned CIT(A) after considering the facts in totality confirmed the addition made by the AO for the amount credited from Sri Salim Hamid Memon by observing as under:

“The appellant has not furnished any supporting documentary evidence either before the A.O. or during appellate proceedings. The main documents which are crucial for such huge unsecured loans, are not available with the appellant i.e. (i) Formal loan agreement between the appellant (ii) purpose of loan (iii) cashflow and fund flow statement including income and expenditure of lender (iii) Modality of repayment of the said loan along with rate of interest (iv) Certificate/ Permission from Competent Authority since the money received by the appellant has been claimed to have been used for real estate purpose which is prohibited by RBI.

As per rule of R.B.I, the details are as under:

A NRI may purchase shares or convertible debentures of an Indian Company on non-repatriation basis other than portfolio scheme subject to the following conditions:

- (a) The company should not be a Chit Fund company/Nidhi Company doing Agricultural, plantation, real estate construction, of farm houses or dealing in TDR.*
- (b) The amount of consideration shall be by way of inward remittance through normal banking channels from abroad or out of funds held in NRE/FCNR/NRO/NRNR account.*
- (c) The sale/maturity proceeds shall be credited only to NRSR account where the purchase consideration was paid out of funds held in NRSR account and to NRO/NRSR account where the purchase consideration was paid out of NRE/FCNR/NRO/NRNR account.*
- (d) The capital appreciation cannot also be repatriated.*

4.5 Reliance is placed in the case of Sunder Chhabra Vs DCIT [2012] 20 taxmann.com 640(P&H), the Hon'ble High Court held that “Where revenue

authorities had concurrently come to conclusion that two cash credits were unexplained money introduced by assessee in his business, addition made under section 68 in respect of those cash credits was to be upheld.”

In A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC), it was held that it is not necessary for the department to adduce evidence to show from which sources the income was derived and as to why it should be treated as undisclosed income. If the assessee fails to prove satisfactory the source and nature of certain amount of cash received through the accounting year.”

In CIT v. Durga Prasad More [1971] 82 ITR 540 (SC), it was held that the discharge of onus is dependent on the facts and circumstances of each case. Whether the initial onus is discharged or not that has to be ascertained from the materials on record. Once the initial onus is discharged, the onus shifts on the Revenue. Then, it is for the Revenue to act on it and until it comes to a finding that the explanation is insufficient and unsatisfactory, it could either ask for further explanation or could come to a decision on the basis of such material.”

The appellant vide his submission dated 31.01.2018 has claimed that as per RBI regulation this transaction is covered by automatic route and part of current account transactions and hence no permission was required from RBI for accepting loan from Salim Memon. The claim of the appellant is not correct because as per Reserve Bank of India Regulation, the transaction is covered by automatic route only for investment in shares. Under the Foreign Direct Investments (FDI) Scheme, investments can be made in shares, mandatorily and fully convertible debentures and mandatorily and fully convertible preference shares of an Indian company by nonresidents through two routes:

Automatic Route: Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.

Government Route: Under the Government Route, the foreign investor or the Indian company should obtain prior approval of the Government of India (Foreign Investment Promotion Board (FIPB), Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be) for the investment.

From the bank statement it transpired that the appellant has used the said so called loan for the purpose of real estate business which is a capital appreciation and the profit earned out the same cannot be repatriated to NRI. This clearly shows that the unsecured loans is nothing but a circular route of the appellant’s own money, hence, the genuineness of the transactions is not established by fulfilling various conditions as stated above. It is seen that the appellant has shown to have received unsecured loan from year to year from a person who is neither his relative nor has any business connection with him. In this regard, it would be pertinent to

refer to the judicial pronouncement in the case of Sumati Dayal Vs CIT [1995]214 ITR 801 (SC), wherein the Hon'ble Supreme Court has held as under:

"In all cases in which a receipt is sought to be taxed income, the burden lies on the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, "the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But, 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. IN such a case tffire is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut, the said evidence being unrebutted, can be used against him by holding that it was a receipt of an income nature." (emphasis supplied) In that case the amount was credited in the capital account in the books and the assessee offered her explanation about the said receipt being her winnings from horse races. The explanation was not accepted. There was no dispute that the amount was received by the assessee from various race Clubs on the basis of winning tickets presented by her. This Court based on the material available on record found that an inference about such a purchase has to be drawn on the basis of the circumstances available on record inasmuch as no direct evidence about such purchase be rarely available. This Court accordingly upheld the majority opinion of the Settlement Commission based on surrounding circumstances and applying the test of human probabilities. "

4.6 Further, the Hon'ble Supreme Court in the case titled CIT Vs. P. Mohanakala 291 ITR 278 has held that the doubtful nature of the transaction and the manner in which the sums were found credited in the books of accounts maintained by the assessee have been duly taken into consideration by the authorities below. The transactions 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.

The appellant has failed to prove the purpose of receipt of such substantial amount without any business consideration. The person from whom this amount has been shown to have been received is neither related to the appellant nor has any business relation with the appellant. This is thus an arrangement made by the appellant to evade the payment of taxes. The Hon'ble Supreme Court in the case of Me Dowell & Co. Ltd. [1985] 154 ITR 148 (SC) has held that Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. /

The appellant has relied on several case laws. The issue is not of the application of any particular case law. The legal propositions being well settled, each case rests on its own facts. It is apparent and guided solely by the facts and circumstances of the instant case, including the appellant's explanation in respect

thereof. By invoking the provision of s. 68, the burden to prove the credit transaction/s and thus its genuineness, is on the assessee. It is therefore not necessary or incumbent on the Revenue to, i.e. for the purpose of application of sec.68, to either disprove or exhibit the transaction as sham or bogus, and its obligation only extends to show that the genuineness of the impugned credit transaction is doubtful or has not been satisfactorily proved by the assessee.

I fully agree with the Assessing Officer that the ratio of the landmark decisions of the Apex Court delivered in the cases of Sumati Dayal Vs CIT [1995] 214 ITR 801 (SC), Durga Prasad More [1971] 82 ITR 540 (SC) and Mo Dowell & Co. Ltd. [1985] 154 ITR 148 (SC) is fully applicable in the present case and appellant has not been able to satisfactorily prove the genuineness of these unsecured loans from a NRI and keeping in view the facts narrated above.

Recently jurisdictional ITAT, Ahmedabad in the case of Pavankumar M Sanghvi Vs ITO, Ward 3(1)(2), Vadodara [2017] 81 taxmann.com 308 (Ahmd. Tri.) has considered similar issue where alleged unsecured loan from un related person was received through banking channels. Hon'ble ITAT held that the onus of assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that transactions are done through banking channels or even by filing income tax assessment particulars. It was held that the assessee had not been able to produce lenders for verification and reasonably explain complete circumstances in which these lenders, who were not even routinely engage in business of giving loans and advances, gave him unsecured loans on 12 per cent per annum interest and assessee had maintained stoic silence on being told about these lenders being alleged to be shell entities, therefore, alleged loan transactions of lessee had been rightly brought to tax by lower authorities holding them not genuine. Facts of the present case are also identical so far as onus upon the appellant is concerned and he has not been able to satisfactorily prove the genuineness of these unsecured loans from a NRI. Keeping in view the facts narrated above and failure of the appellant to produce basic documents viz. the loan agreement and genuineness of the transactions and in view of the judicial decisions cited supra including jurisdictional Tribunal in the case of Pavankumar M Sanghvi (Supra), I confirm the addition of Rs.2,38,76,291/- (5,03,54,471- 2,64,78,242) made by the AO under section 68 of the I.T. Act. Balance addition of Rs. 2,647,8,242/- is deleted. Thus, grounds No. 1, 2 & 3 are partly allowed."

9. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.
10. The learned AR before us filed the paper book running from pages 1 to 46 and submitted that all the details with respect to the identity, genuineness of transaction and creditworthiness of the parties were furnished during the assessment proceedings. The learned AR in support of his contention has drawn

our attention on the confirmation, income tax return, and copy of PAN along with bank statement of the lender which are placed in the paper book. Thus, it was contended by the learned AR that the assessee should not be made suffer by way of making the addition on account of loan received from the land by treating the same as unexplained cash credit under section 68 of the Act.

11. On the other hand, the learned DR contended that there was no agreement between the assessee and the lender. As per the accepted and prevailing business principles, no prudent businessman will advance money without charging any interest. Similarly, the case has been filed by the lender in the name of the assessee on account of dishonour of cheque under the provisions of section 138 of the Negotiable Instrument Act is nothing but afterthought. The learned DR vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. The provision of section 68 of the Act fastens the liability on the assessee to make proper and reasonable explanation regarding the nature and sources of sum credited in the books of accounts to the satisfaction of the AO. The assessee is liable to provide proof of the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the credit entries under section 68 of the Act by the Hon'ble Calcutta High Court in the case of CIT Vs. Precision finance (p) Ltd reported in 208 ITR 465 wherein it was held as under:

“It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the

creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine."

12.1 Now, first we proceed to understand the identity of the party. The identity of the party refers to the existence of such party which can be proven based on the evidence. As such, the identity of a party can be established by furnishing the name, address and PAN detail, bank details, passport and other details of the Government agencies.

12.2 The next stage comes to verify the genuineness of the transaction. Genuineness of transaction refers what has been asserted is true and authentic. A genuine transaction must be proved to be genuine from all prospective and not merely on paper. The documentary evidence should not provide a mask to cover the actual transaction or designed in way to present the transaction as true but the same is not. Genuineness of transaction can be proved by submitting confirmation of the party along details of mode of transaction but merely showing transaction carried out through banking channel is not sufficient. As such, the same (genuineness) should also be proved by circumstantial/ surrounding evidence as held by the Hon'ble supreme court in case of Durga Prasad More reported in 82 ITR 540 and in case of Smt. Sumati Dayal reported in 214 ITR 801.

12.3 The last stage comes to verify the creditworthiness of the parties. The term creditworthiness as per Black Law Dictionary refers as:

"creditworthy, adj. (1924) (Of a borrower) financially sound enough that a lender will extend credit in the belief default is unlikely; fiscally healthy-creditworthiness.

12.4 Similarly in The New Lexicon Webster's Dictionary, the word "creditworthy" has been defined as under:-

"creditworthy, adj. of one who is a good risk as a borrower."

12.5 It the duty of the assessee to establish that creditor party has capacity to advance such loan and having requisite fund in its books of account. The capacity

to advance loan can be established by the showing sufficient income, capital and reserve or other fund in the hands of creditor. It is required by the AO to find out the financial strength of the creditor to advance loan with judicious approach and in accordance with materials available on record but not in arbitrary and mechanical manner.

12.6 In the light of the above discussion, we proceed to adjudicate the issue on hand. The assessee during the year under consideration received unsecured loan of Rs. 47 Lakh and Rs. 1,91,76,229/- from the parties namely Sri Navjit Singh Anand and Sri Salim Hamid Memon respectively. The assessee during the appellate proceeding furnished the copy of PAN, confirmation letter and bank statement of Sri Navjit Singh Anand. The learned CIT(A) called for remand report from the AO and on perusal of the same, we find that the AO has not pointed out any defect regarding the documents submitted in connection with loan amount credited from Sri Navjit Singh Anand. As such, no finding was given by the AO in the remand report. The learned CIT(A) also without assigning any reason confirmed the addition made by the AO. In our considered opinion, the assessee discharged primary onus cast upon him by furnishing copy of PAN, confirmation and Bank statement of Sri Navjit Singh Anand and onus shifted on the revenue to bring contrary material. However, the Revenue failed to discharge its onus before treating the credit of loan from Sri Navjit Singh Anand as unexplained cash credit as per section 68 of the Act which needs to be set aside/deleted.

12.7 Likewise, the assessee with regard to the credit of loan from Sri Salim Hamid Memon furnished copy of PAN, copy of return filed in India and residence detail in Dubai-UAE and copy of bank statement held with NBD Emirates bank along the detail of firm where he has been director and shareholder. The amount was directly remitted by party from the bank account held NBD Emirates bank which can be verified from copy of bank statement placed on record. Thus, the assessee discharged primary onus with regard to identity, genuineness as well as creditworthiness of creditor. The revenue authority without bringing contrary material in the submission of the assessee has treated the loan from Sri Salim

Menon as unexplained cash credit on the reasoning that there being no formal loan agreement, cash flow statement of lender, schedule of repayment and interest and permission of RBI/authority to accept money from NRI. Thus, the revenue held the amount credited as unexplained cash credit under section 68 of the Act. However, we note that, the allegation of the revenue that there is no formal agreement, repayment schedule cannot be the basis for treating the credit of loan as deemed income of the assessee under section 68 of the Act. As such it is the understanding between the assessee and loan parties whether to enter into formal agreement or not and how to & when to make repayment of such loan. Similarly, not filling cash flow statement of loan party does not tantamount the loan party is not genuine or does not have sufficient credit worthiness.

12.8 Coming to the issue of approval from competent authority for accepting fund from NRI, we are of the considered opinion when the identity and credit worthiness of creditor is established, genuineness of transaction is also not in doubt as the party has confirmed and the transaction was carried out through banking channel by way foreign direct remittance. Then, such amount cannot be deemed as unexplained since the assessee has not got the approval from competent authority to accept foreign direct remittance. As such, it may be the violation RBI which is independent to Income Tax Act. But the violation of certain other statute cannot be used to draw an inference that the amount received as loan represents unexplained cash credit and deemed income of the assessee under the provisions of section 68 of the Act.

12.9 In view of the above, we hold that the assessee has discharged the onus cast under section 68 of the Act. Therefore, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is hereby allowed.

13. **The next** issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of land leveling expenses for Rs. 7,55,750/- under section 40(a)(ia) of the Act.

14. The AO during the assessment proceeding observed that the assessee made payment of Rs. 7,55,750/- to Sri Kanubhai M Parjapati for the work of land filling and leveling which was in the nature of work contract and liable to tax deduction at source under section 194C of the Act. However, the assessee failed to deduct tax at source. Hence the AO invoked the provision of section 40(a)(ia) of the Act and disallowed the impugned expenses.

15. The aggrieved assessee preferred an appeal before the learned CIT(A) who confirmed the order of the AO by observing as under:

"5. Ground No. 4 pertains to addition u/s 40(a)(ia) of Rs. 7,55,750/- for non-deduction of TDS against payment for land development / land leveling charges. Payment of Rs.7,55,750/- made to Kanubhai Prajapati is not in dispute. Work of land labeling undertaken is also not in dispute. AR argued before me that Section 194C r.w.s. Sec. 40(a)(ia) does not apply because amount of Rs. 7,55,750/- is not outstanding at the end of accounting year. AR further argued that Kanubhai Prajapati is assessed to tax also. However, AR did not produce copy of return, computation of income to show expenses of Rs. 7,55,750/- claimed by appellant has been shown in the books of Kanubhai Prajapati. Further, logic behind outstanding payment for TDS is also misplaced. Alternatively, AR did not submit calculation in Form No. 26A r.w.Rule 31ACB in this regard stating that amount of Rs.7,55,750 has been accounted for in the books of the Kanubhai Prajapati and offered for tax. Therefore, I am unable to convince with AR's arguments. The addition of Rs.7,55,750/- is upheld. Ground No. 4 is dismissed."

16. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

17. The learned AR before us did not advance any argument but left the issue at the discretion of the bench.

18. On the other hand, the learned DR before us vehemently supported the order of the lower authorities.

19. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to disallowance of expenses under section 40(a)(ia) of the Act. Admittedly, the Id. AR for the assessee at the time of hearing could not controvert the findings of the lower authorities.

Likewise, the assessee failed to provide the details that the payee has included the amount received from the assessee in its income. Thus, the assessee cannot be given the benefit of the proviso to section 40(a)(ia) of the Act. However, we find that Finance (No.2) Act has made amendment to section 40(a)(ia) of the Act w.e.f. 1-4-2015. Various benches of the Tribunals have held the amendment made by Finance (No 2) Act to be curative in nature. We further find the coordinate bench of the Tribunal in the case of *M/s. R. H. International v. ITO* ITA No. 6724/Del/2018 dated 20-3-2019 has held that disallowance u/s. 40(a)(ia) of the Act be restricted to 30% of the expenses paid as against 100% because amended provision is curative in nature and the provisions should be applied retrospectively. We, therefore, hold that the disallowance of expenses on account of non-deduction of TDS be restricted to 30% of the expenses in the given facts and circumstances. We thus hold so. Hence, the ground of appeal of the assessee is partly allowed.

19. **The next** issue raised by the assessee is that the learned CIT(A) erred in confirming the addition for Rs. 6,20,000/- being outstanding labor charges payable to one Shri Gavarsinh Mavi.

20. The AO during the assessment proceedings found that the assessee claimed labour expenses of Rs. 6.2 lakh in the name of one Shri Gavarsinh Mavi out of which an amount of Rs. 6,13,800/- was outstanding. The AO required the assessee to furnish necessary documentary evidence and confirmation of the party, but the assessee failed to furnish required details. Hence, the AO disallowed the impugned labour expenses of Rs. 6.2 Lakh and added to the total income of the assessee.

21. On appeal by the assessee the learned CIT(A) confirmed the disallowances made by the AO by observing as under:

“Ground No. 5 relates to addition of Rs. 6,20,000/- as unpaid expenses of creditor Shri Gavarsinh Mavi being labour charges. AR argued that such expenses claimed has been settled in next FY. However, I am unconvinced with AR as there is no evidence before me to conclude that payment has been made to the creditors. Ledger

A/c of creditor duly confirmed by him has not been placed before me. AR's argument being hollow and is therefore rejected. Ground No.5 is dismissed."

22. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

23. The learned AR before us did not advance any argument but left the issue at the discretion of the bench.

24. On the other hand, the learned DR before us vehemently supported the order of the lower authorities.

25. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the disallowance has been made concurrently by both the lower authorities in the absence of supporting documents. Even at the time of hearing before us, the learned AR has not brought any iota of documentary evidence suggesting that the Labour expenses has been incurred for the purpose of the business. Be that as it may, we find that the assessee is engaged in the business of civil construction and development besides trading in lands. Admittedly, the activity of civil construction and development cannot be carried out without the involvement of the labours. Thus, in the interest of justice and fair play we are reluctant to confirm the disallowance made by the lower authorities for the entire amount but restrict the same the tune of 50% of Rs. 6,20,000.00 to prevent any revenue leakage. Hence the ground of appeal of the assessee is partly allowed.

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

Coming to ITA No. 924/Ahd/2018 an appeal by the assessee for A.Y. 2014-15

27. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 4,63,76,371/- being unsecured loan under section 68 of the Act.

28. At the outset, we note that the issue raised by the assessee in its grounds of appeal for the AY 2014-15 is identical to the issue raised by the assessee in ITA No. 1763/AHD/2019 for the assessment year 2012-13. Therefore, the findings given in ITA No. 1763/AHD/2019 shall also be applicable for the assessment years 2014-15. The appeal of the assessee for the AY 2012-13 has been decided by us vide paragraph No. 12 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2012-13 shall also be applied for the assessment years 2014-15. Hence, the ground of appeal filed by the assessee is hereby allowed.

29. In the result appeal of the assessee is hereby allowed.

30. In the combined result, assessee's appeal bearing ITA No. 1763/Ahd/2019 for A.Y. 2012-13 is partly allowed and ITA No. 924/Ahd/2018 A.Y. 2014-15 is allowed.

Order pronounced in the open Court on 17th May 2023 at Ahmedabad.

Sd/-

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad, Dated 17/05/2023

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad