

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER  
and  
SHRI A.T. VARKEY, JUDICIAL MEMBER**

**ITA No.1542/Del./2012  
ASSESSMENT YEAR : 2008-09**

Shri Banwari Lal,  
S/o Shri Bishan Dass,  
31, Anaj Mandi, Bhuna  
Distt. Fatehabad.

vs.

ITO, Ward 2,  
Fatehabad.

**(PAN : ACFPL3821R)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : S/Shri Gautam Jain & Peeyush Kamal, Advocates  
REVENUE by : Shri K.K. Jaiswal, Senior DR

Date of Hearing : 30.11.2015

Date of Pronouncement : 15.01.2016

**ORDER**

**PER A.T. VARKEY, JUDICIAL MEMBER :**

This appeal, at the instance of the assessee, is directed against the order of the CIT (Appeals), Rohtak dated 30.01.2012 for the assessment year 2008-09.

2. The assessee has taken the following grounds of appeal :-

“1. That the learned Commissioner of Income Tax (Appeals) Rohtak has erred both in law and on facts in upholding addition of Rs.12,50,000/- representing loans received by the assessee and, held to be unexplained cash credit u/s 68 of the Act.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that unsecured loans aggregating to Rs.12,50,000/- had been received by account payee cheques from

identifiable parties who had duly confirmed in their statement that loans had been advanced to the appellant and as such, addition so sustained is invalid and untenable.

1.2 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate that, inability of the assessee to explain source of source cannot be a basis to confirm addition u/s 68 of the Act.

1.3 That the learned Commissioner of Income Tax (Appeals) has overlooked relevant evidence placed on record and, drawn factually incorrect and legally unsustainable inferences based on irrelevant and extraneous consideration and thus, addition sustained is wholly unwarranted and not in accordance with law. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts that in upholding lump sum addition of Rs.25,000/- out of the expenses incurred and claimed by the appellant.

1.4 That various adverse findings recorded by the learned Commissioner of Income Tax (Appeals) are contrary to record and law and thus unsustainable.

2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts and in upholding lump sum addition of Rs.25,000/- out of the expenses incurred and claimed by the assessee.”

3. Ground No.2 is not pressed by the assessee, hence, the same is dismissed as not pressed.

4. Ground Nos.1 to 1.4 are against the sustenance of addition of Rs.12,50,000/- representing loans received by the assessee as unexplained cash credit u/s 68 of the Income Tax Act, 1961 (hereinafter ‘the Act’).

5. Brief facts relating to the aforesaid ground are that the assessee is a part time accountant and maintain books of account and also dealing in the business of trading of shares during the relevant assessment year i.e. 2008-09. The return

of income was filed on 30.09.2008 at a loss of Rs.1,20,122/- and the same was processed on 29.03.2010. Subsequently, the case was selected for scrutiny and notices were issued. During the year under consideration, the assessee had shown loss in share trading. The assessee had shown unsecured loans of Rs.21,55,000/- out of which the AO made addition of Rs.12.50 lakhs in respect of three unsecured creditors. The facts relating to the addition made by the AO and confirmed by the Id. CIT (A) in respect of three unsecured creditors are summarized below.

#### **5.1 Loan in respect of Shri Faquir Chand Godara**

The AO observed that an amount of Rs.6.00 lakhs was shown as outstanding unsecured loan as on 31.03.2008 out of which Rs.5.00 lakhs was fresh unsecured loan (Rs.3.00 lakhs on 17.05.2007 and Rs.2.00 lakhs on 14.06.2007). The AO recorded the statement of Sh. Faquir Chand Godara produced by the assessee on 15.12.2010. From a perusal of the bank account of Shri Faquir Chand Godara, the AO revealed that on the dates of issuing cheques of Rs.3.00 lakhs and Rs.2.00 lakhs to the assessee, an identical amount was deposited in cash. The AO, after going through the bank statement and the statement of Shri Faquir Chand Godara, concluded that creditworthiness and genuineness of the loan shown in the name of Shri Faquir Chand Godara had not been proved and accordingly, made addition of Rs.5.00 lakhs u/s 68 of the Act.

The Id. CIT (A), after going through the submissions of the assessee, the remand report of the AO and the rejoinder of the assessee, confirmed the addition by observing as under:-

“3.5 I have considered the issue and the submissions made by the AR. There are many contradictions and inconsistencies in the facts stated by Sh. Faquir Chand Godara and the documentary evidence furnished in support of the same. Whereas Sh. Faquir Chand Godara stated that he sold the agriculture produce to M/s Girdhari Lal Ramesh Chand, the AR furnished copy of account of one M/s Shree Shyam Traders, commission agent, which/has no relevance to Sh. Faquir Chand Godara. The partner of M/ s Girdhari Lal Ramesh Chand stated that they did not have any transactions with Sh. Faquir Chand Godara at any time. The salient aspects of the statements of Sh. Faquir Chand Godara produced in the assessment order and reproduced in para 3.1 above clearly indicate that the loan transaction is not genuine and Sh. Faquir Chand Godara does not have creditworthiness. It is further reinforced by the fact that till now the loan of Rs.5.00 lacs has not yet been repaid by the assessee to Sh. Faquir Chand Godara, who is not an IT assessee, and further no interest has been paid to him even though he is not a relative. The argument of the AR that Sh. Faquir Chand Godara cannot give right statement before the AO due to pressure is without any basis and devoid of any merit. The case laws relied upon by the AR are distinguishable on facts. In view of the above, I hold that the assessee failed to discharge the onus cast on him of proving the genuineness and creditworthiness of the creditor and therefore addition of Rs.5.00 lacs made by the AO is upheld.”

## **5.2 Loan in respect of Shri Joginder Mongia**

The AO observed that an amount of Rs.4,75,000/- was shown as outstanding unsecured loan on 31.03.2008 and fresh unsecured loans of Rs.3.00 lakhs each were received on 18.08.2007 and 04.10.2007 out of which Rs.1,25,000/- was shown as returned on 29.03.2008. The AO recorded the statement of Shri Joginder Mongia produced by the assessee on 23.12.2010.

From the perusal of the bank statement of Shri Joginder Mongia, it revealed that cash of identical amount was deposited on the dates of issuing cheques in favour of the assessee. The AO further observed that Shri Joginder Mongia had taken loan of Rs.6.50 lacs from bank on which he was paying interest whereas he had not charged any interest on the loan given to the assessee. The AO concluded that the genuineness and creditworthiness of loan shown in the name Shri Joginder Mongia had not been proved and made addition of Rs.6.00 lakhs u/s 68 of the Act.

After going through the submissions of the assessee, the remand report of the AO and the rejoinder of the assessee, the Id. CIT (A) confirmed the addition by observing as under:-

“4.3 The submissions of the AR have been forwarded to the AO for enquiry and report. The remand report of the AO dated 21.11.2011 and the rejoinder of the appellant have been taken on record. I have considered the issue and the submissions made by the AR. The salient aspects of the statements of Sh. Joginder Mongia produced in the assessment order and reproduced in para 4.1 above clearly indicate that the loan transaction is not genuine and Sh. Joginder Mongia does not have creditworthiness. It is further reinforced by the fact that till now the loan of Rs.4.75 lacs has not yet been returned by the assessee to Sh. Joginder Mongia, who is not an IT assessee, and further no interest has been paid to him even though he is not a relative. The crucial aspect of Sh. Joginder Mongia taking loan of Rs.6.50 lacs from PNB on which he is paying interest whereas he is not charging any interest from the assessee goes against the appellant. It is surprising to note that a person having 25 acres of a e land has to sell the trolley and livestock for giving loan to the assessee and further he has to take loan of Rs.6.50 lacs from PNB. The case laws relied upon by the AR are distinguishable on facts. In view of the above facts I hold that the assessee failed to discharge the onus cast on him of

proving the genuineness and creditworthiness of the creditor and therefore addition of Rs.6.00 lacs made by the AO is upheld.”

### **5.3 Loan in respect to Smt. Satyawanti, Mother**

An amount of Rs.4.50 lakhs was shown as outstanding unsecured loan as on 31.3.2008 out of which Rs.1.50 lakhs was fresh unsecured loan accepted on 12.03.2008. The AO recorded the statement of Smt. Satyawanti produced by the assessee on 15.12.2010. From the facts and the statement of Smt. Satyawanti, the AO held that a person earning income of Rs.25,000/- per annum by stitching of clothes did not have any capacity to advance the loan of Rs.1.50 lakhs to the assessee. The AO also observed that her bank account also revealed that identical cash was deposited on the same date before issuance of cheque to the assessee. The AO also observed that she could not furnish the account copy of M/s Shree Gian Chand, commission agent from whom money was received which in turn was given as loan to the assessee. Accordingly, the AO made the addition of Rs.1.50 lakhs.

The Id. CIT (A) confirmed the addition after going through the submissions of the assessee, the remand report of the AO and the rejoinder of the assessee, by observing as under:-

“5.5 I have considered the issue and the submissions made by the AR. It was stated by Smt. Satyawanti before the AO that source of cash deposit of Rs.1.50 lacs in her bank a/c is the amount received from M/s Shree Gian Chand, commission agent. During the course of enquiry in remand proceedings, the partner/proprietor of M/s Shree Gian Chand, commission agent denied to have had any transactions with Smt. Satyawanti

during the year under consideration. Having been cornered on this account, the AR takes the plea now that the said amount was given out. of her past savings which is duly reflected in her IT return. It is unbelievable that a Senior Citizen who is unable to give proper statement before the AO is earning income of Rs.25,000/- p.a. from stitching of clothes and from the savings on this account she has given loan of Rs.1.50 lacs to her son during the year under consideration (infact the total loan outstanding in her name is Rs.4.50 lacs). From the facts, it is apparent that the assessee has rotated his own unaccounted money as loan in the name of his mother. The mere fact of filing IT return and showing the amount in the balance sheet is not conclusive to establish the creditworthiness of the creditor. The case laws relied upon by the AR are distinguishable on facts. In view of the above facts, I hold that the assessee failed to discharge the onus cast on him of proving the genuineness and creditworthiness of the creditor and therefore addition of Rs.1.50 lacs made by the AO is upheld.”

6. The assessee, being aggrieved, is in appeal before us against the aforesaid addition of Rs.12,50,000/- representing loans received by the assessee to be held as unexplained cash credit u/s 68 of the Act.

7. Ld. AR, while reiterating the submissions made before the Id. CIT (A), made his submissions in respect of deletion made in the cases of the aforesaid three parties as under :-

**(i) FAKIR CHAND**

The Id. AR submitted that the identity of the creditor is not in dispute. As regards the creditworthiness and genuineness, the Id. AR submitted that there is consistency and contradiction in the statement of the aforesaid creditor since he never sold produce to firm, M/s. Girdhari Lal Ramesh Chand though he stated that such produce was sold to the said firm. Ld. AR submitted that in fact, such

produce was sold to M/s. Shyam Trades which is evident from Form – J issued by M/s. Shyam Trades, copy whereof is placed at pages 49 – 65 of the Paper Book (PB). In this regard, he submitted that M/s. Shyam Traders filed the confirmation also which is placed at pages 40 to 42 of the PB. Ld. AR submitted that the aforesaid evidences were furnished before the AO and subsequently, the books of accounts of M/s. Shyam Traders had also been produced. The Id. AR, therefore, submitted that as there was no sale to M/s. Girdhari Lal Ramesh Chander, no adverse inference can be drawn on the basis of statement of Shri Fakir Chand, who duly confirmed the factum of credit but his inability to explain the source of advance at the time of statement on account of his age of 79 years, could not be a justified basis to draw adverse inference by disregarding other evidences and facts on record. He further submitted that non-payment of loan or the interest free loan could not be a ground to state the creditors were not creditworthiness or transaction is not genuine. In this regard, he submitted some facts which are - the creditor owns land measuring 39 acres (page 110 of PB); annual agricultural income of Rs.10.19 lakhs (page 42 of PB); only confirmed the factum of advance which was received by account payee cheque (page 110 of PB); saving of funds support by J-Form and confirmation; opening loan of Rs.1 lakh was accepted; and he had deposed that they are having family relations and also it is the prerogative of creditor and assessee. The Id. AR further submitted that certain documents to prove his contention are filed in the PB i.e. copy of ledger account in the books of



Banwari Lal Kataria for the period 01.04.2007 to 31.03.2008 & 01.04.2006 to 31.03.2007 (Page 39 & 45 respectively of PB); copy of account in the books of M/s. Shree Shyam Traders, Commission Agents, Bhuna and confirmation from M/s. Shree Shyam Traders, Bhuna (Pages 40 & 42 of PB); copy of bank statement of Shri Fakir Chand (Page 41 of PB); copy of statement of Shri Fakir Chand (Pages 43 & 44 of PB); copy of bank statement of Shri Banwari Lal (Pages 46 to 48 of PB); copy of statement of Shri Satish Kumar dated 08.11.2011, partner of M/s. Girdhari Lal Ramesh Chander (Pages 106 – 108 of PB); and copy of statement of the assessee dated 11.11.2011 (pages 101 – 102 of PB). The assessee also placed on record a chart highlighting evidences which is reproduced below :-

Sr. No.	Name of creditor	Evidence
i)	Shri Faquir C  hand Godara	i) Copy of ledger account in the book of Banwari Lal Kataria for the period 1.04.2007 to 31.03.2008 (page 39 of Paper Book)  ii) Copy of account in the books of M/s Shree Shyam Traders, Commission Agents, Bhuna and, confirmation from M/s Shree Shyam Traders, Bhuna (pages 40 and, 42 of Paper Book)  iii) Copy of bank statement of Shri Fakir Chand (page 41 of Paper Book)  iv) Copy of statement of Shri Fakir Chand (pages 43-44 of Paper Book)  v) Copy of ledger account in the book of Banwari Lal Kataria for the period 1.04.2006 to 31.03.2007(page

		45of Paper Book)  vi) Copy of bank statement of Shri Banwari Lal (pages 46-48 of Paper Book at page 46)  vii) Copy of Form J issued to Shri Fakir Chand by M/s Shree Shyam Traders (pages 49-65 of Paper Book)  viii) Copy of statement of Shri Satish Kumar dated 8.11.11 partner of M/s Girdhari Lal Ramesh Chander (pages 106-108 of Paper Book)  ix) Copy of statement of appellant dated 11.11.2011 is Partner of Shree Shyam Traders (pages 101-102 of Paper Book) and, books produced records

**(ii) Joginder Mongia**

Ld. AR submitted that the identity is not disputed. As regards that loan is not genuine, the Id. AR submitted that the creditor duly confirmed the loan along with source; loan was duly repaid within one year; transactions are through account payee cheque; creditor was having land measuring 35 acres and his yearly income was Rs.20 lakhs. He further submitted that this was supported by statement of account of the firm to whom crops had been sold (page 75 to 77 of PB) and also bank statement of the creditor was filed (page 67 to 70 of PB). He submitted that subsequently, even the firm had duly confirmed the sale of crop in a statement (page 116 of PB). He submitted that the loan was paid and for this contention, he relied on pages 115 & 78 of the PB). He further relied on the documents submitted in the PB and submitted that factual facts were overlooked by the lower authorities while deciding the

genuineness and creditworthiness. The assessee also placed on record a chart giving the evidences which is reproduced below :-

ii)	Joginder Mongia	<p>i) Copy of ledger account in the book of Banwari Lal Kataria for the period 1.04.2007 to 31.03.2008 (page 66 of Paper Book)</p> <p>ii) Copy of bank statement of Shri Joginder Mongia (pages 67-70 of Paper Book at pages 67-68)</p> <p>iii) Copy of statement of Shri Joginder Mongia dated 15.12.2010 (pages 71-74 of Paper Book)</p> <p>iv) Copy of account in the books of M/s Kishore Kumar Jitender Kumar (page 75 of Paper Book)</p> <p>v) Copy of confirmation (page 76 of Paper Book)</p> <p>vi) Copy of ledger account in the book of Banwari Lal Kataria for the period 1.04.2008 to 31.03.2009 (page 77 of Paper Book)</p> <p>vii) Copy of bank statement of Shri Joginder Kumar (pages 78-79 of Paper Book)</p> <p>viii) Copy of bank statement of Shri Banwari Lal (page 80 of Paper Book)</p> <p>ix) copy of statement Mahender Kumar dated 11.11.2011 Prop, M/s Kishore Kumar Jitender Kumar (pages 98-100 of Paper Book)</p>
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**(iii) Satyawanti**

Ld. AR submitted that the creditor is mother of the assessee and the loan was received through account payee cheque. He further submitted that the creditor is an income tax assessee and loan was duly disclosed in the return. In this regard, he filed a chart at page 5 of the written submissions. He submitted that the opening loan of Rs.3 lakhs was accepted and the creditor has also given

the confirmation of giving loan of Rs.4.50 lakhs in her statement. He submitted that the identity of the creditor is not disputed. As regards the genuineness and creditworthiness, Id. AR submitted that the finding of the Id. CIT (A) that a person who is unable to give proper statement cannot earn income was based on suspicion, is not a valid basis. The assessee also placed on record a chart highlighting evidences which is reproduced below :-

iii)	Satyawanti	<p>i) Copy of ledger account in the book of Banwari Lal Kataria for the period 1.04.2007 to 31.03.2008 (page 81 of Paper Book)</p> <p>ii) Copy of bank statement of Smt. Satyawanti Kataria (page 82 of Paper Book)</p> <p>iii) Copy of statement of Smt. Satayawanti dated 15.12.2010 (pages 83-84 of Paper Book)</p> <p>iv) Copy of ledger account in the book of Banwari Lal Kataria for the period 1.04.2006 to 31.03.2007 (page 85 of Paper Book)</p> <p>v) Copy of acknowledgement of return of income for Assessment Year 2006-07 (Rs. 75270/- (pages 86-88 of paper Book), 2005-06 (Rs. 49,480/- (pages 89-92 of paper Book), 2007-08 (Rs. 4,640/- (pages 93-95 of Paper Book), 2008-09 (Rs. 1,40,593/- (pages 95-97 of Paper Book)</p> <p>vi) Copy of statement of Shri Amount Kumar dated 8.11.2011 (pages 106-108 of Paper Book)</p>
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The learned AR submitted that the authorities below have accepted that the identity of the creditors is that established that have held that creditworthiness and genuineness of the creditors was not proved on the ground that there was inconsistency or contradiction in the statement of the creditors. It was submitted

that such inconsistency and contradiction is vis-à-vis the sources of the creditors and therefore, it was submitted that mere fact that the source of source of the creditors was not explained could be a ground to bring to tax sum received as loan by the appellant. The appellant supported his submission by relying upon the following judgments:

- (i) CIT vs. Jai Kumar Bakliwal 366 ITR 217 (Raj)
- (ii) CIT vs. Kamdhenu Steel and Alloys Ltd. 361 ITR 220 (Del)
- (iii) Mod Creation (P) Ltd. vs. ITO 354 ITR 282 (Del.)
- (iv) CIT vs Mayawati 338 ITR 563 (Del)
- (v) Nemi Chand Kothari vs. CIT 264 ITR 254 (Gau)
- (vi) DCIT vs. Rohini Builders 256 ITR 360 (Guj)
- (vii) CIT vs Metachem Industries 245 ITR 160 (MP)
- (viii) CIT vs. Ram Narain Goel 224 ITR 180 (P&H)
- (ix) Sarogi Credit Corporation vs CIT 103 ITR 344 (Pat.)
- (x) Dwarikadhish Sugar Industries vs. ITO 149 TTJ 401 (TM)

In view of the above submissions, the ld. AR pleaded that the order of the ld. CIT (A) be set aside and the ground taken in the appeal be allowed.

8. The learned DR relied upon the findings of the authorities below and submitted that the facts on record established that the burden as laid down by the appellant has not discharged. It was submitted that so far as loan raised from Shri Faquir Chand Godara is concerned remained unpaid till date and Shri Faquir Chand Godara is not an income tax assessee and no interest has been paid by the assessee and therefore, the authorities below were correctly to hold that the assessee has failed to discharge its onus vis-à-vis the creditor. So far as Shri Joginder Mongia is concerned, it was contended that mere repayment of

loan from a creditor who is not an income tax assessee and also not a relative cannot be a ground to suggest that burden of the assessee stood discharged particularly when Shri Joginder had taken loan from PNB whereas he has not charged any interest on the loan given to the appellant. It was further submitted that loan in respect of mother is also not explained as there are cash deposits in the bank account which are not explained. It was stated that she is a senior citizen and is earning a meagre income and therefore, mere filing of return and showing in balance sheet cannot be said to be conclusive to establish creditworthiness of the creditor. The case laws relied upon were said to be distinguishable on facts and since in the instant case, the assessee has failed to discharge the onus cast on him of proving the genuineness and creditworthiness of the creditors, the addition made of Rs.12,50,000/- and sustained by the CIT(A) be upheld.

9. We have considered the rival submissions, perused the material on record. So far as the instant year is concerned, the appellant has raised loan from Shri Faquir Chand Godara of Rs.5,00,000/-, Shri Joginder Mongia of Rs.6,00,000/- and Smt. Satyawanti of Rs.1,50,000/-. All these loans have been raised by account payee cheques. The bank statements of each of the creditors have been placed on record by the appellant in support of the credits raised by the appellant. Further, each of the creditors have appeared and accepted the factum of advancing loans to the appellant. In such circumstances, the issue therefore, emerges is whether authorities below were justified in holding that

the burden of the appellant remained un-discharged under section 68 of the Act on the ground that there is inconsistency and contradiction in the statement of the creditors as to the sources of the funds raised by them for giving advance to the appellant.

10. The Hon'ble Gauhati High Court in the case of Nemi Chand Kothari vs. CIT (supra) has held as under:-

“The Revenue/Assessing Officer, however, remains free to show that the amount, which has come to the hands of the assessee by way of loan from the creditor actually belonged to the assessee, but this conclusion cannot be reached by mere failure on the part of the sub-creditor to show his creditworthiness and/or the genuineness of the transaction between the creditor and sub-creditor, for, the creditor may receive any amount from sources known to the creditor only and if he fails to show how he has received the amount, in question, or if he fails to show the creditworthiness of his sub-creditor, such an amount may be treated as the income from undisclosed source of the creditor or of the sub-creditor, as the case may be, but such failure, on the part of the creditor cannot, in the absence of any clinching evidence, be treated as the income of the assessee derived from undisclosed source.

17. Since it is not the business of the assessee to find out the source(s) from where the creditor has accumulated the amount, which he has advanced, in form of the loan, to the assessee, section 68 cannot be read to show that in the case of failure of the sub-creditors to prove their creditworthiness, the amount advanced as loan to the assessee by the creditor shall have to be read, as a corollary, as the income from undisclosed source of the assessee himself.

18. If sections 106 and 68 have to survive together, the logical interpretation will be that while the assessee has to prove only his special knowledge, i.e., the source from where he has received the credit and once he discloses the source from which he has received the money, he must also establish that so far as his transaction with his creditor is concerned, the same is genuine and his creditor had the creditworthiness to advance the loan, which the assessee had received. When the assessee discharges the burden so placed on him, the onus, then, shifts to the Assessing Officer if the Assessing Officer wishes to assess the said loan as the income of the assessee from undisclosed source, to prove either by direct evidence or indirect/ circumstantial evidence that the money, which the assessee received from the creditor actually belonged to, and was owned by, the assessee himself. If there is direct evidence to show that the loan received by the assessee actually belonged to the assessee, there will be no difficulty in assessing such amount as the income of the assessee from undisclosed source ; but if there is no

direct evidence in this regard, then, the indirect or circumstantial evidence has to be conclusive in nature and must in such circumstances, unerringly point to the assessee as the person from whom the money had actually flown to the hands of the sub-creditor and, then, routed through the hands of the sub-creditor to the hands of the creditor. For this purpose, the circumstantial evidence has to be not only consistent with the hypothesis that the money belonged to the assessee, but that this hypothesis must also be inconsistent with the hypothesis that none other than the assessee owned the said money. If the conclusion be that the money received, as loan, by the assessee may or may not belong to him or if the possibility exists that the money received, as loan, by the assessee may not belong to him, then, in none of such two cases, the loan amount can be conclusively treated as income from undisclosed source of the assessee inasmuch as for assessing the money as income of the assessee from undisclosed source, there must be clinching evidence to show that the money actually belonged to none but the assessee himself. If no such clinching evidence is available, the money may be treated as the income from disclosed source of the creditor or of the sub-creditor, as the case may be. If the inquiry under section 68 reveals that though the creditor had the creditworthiness, on the day on which he had advanced the loan to the assessee, yet the source of the creditor is not genuine, that is to say, though the transaction between the assessee and the creditor is genuine, the transaction between the creditor and the sub-creditor is not genuine, then, in such a situation, it cannot be read as a corollary nor can it lead to the lone and only conclusion, in the absence of any other material, that the money that has changed hands from the sub-creditor to the creditor was received by the sub-creditor from none other than the assessee himself.”

11. Also Hon’ble Gujarat High Court in the case of DCIT vs. Rohini Builders

(supra) has held as under:-

“It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of Orient Trading Co. Ltd. vs. CIT [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques.”

12. The Hon’ble Madhya Pradesh High Court in the case of CIT vs

Metachem Industries (supra) has held as under:

“Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee is over. Whether that person is an income-tax payer or not and where he had



brought this money from, is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax.”

13. Further, the Hon’ble Rajasthan High Court in the case of CIT vs. Jai Kumar Bakliwal (supra) has held as under :-

“9. If there is direct evidence to show that the loan received by the assessee actually belong to the assessee, there will be no difficulty in assessing such amount as the income of the assessee from undisclosed source but if there is no direct evidence in this regard, then the indirect or circumstantial evidence has to be conclusive in nature and should point to the assessee as the person from whom the money has actually flown to the hands of the creditor and then from the hands of the creditor to the hands of the creditor.

20. When we peruse the facts herein above, it is an admitted position that all the cash creditors have affirmed in their examination that they had advanced money to the assessee from their own respective bank accounts. Therefore, when there is categorical finding even by the AO that the money came from the respective bank accounts of the creditors, which did not flow in the shape of the money, then, in our view, such an addition cannot be sustained and has been rightly deleted by both the two appellate authorities. There is no clinching evidence in the present case nor the AO has been able to prove that the money actually belonged to none but the assessee himself. The action of the AO appears to be based on mere suspicion.

21. Accordingly, in our view, the ITAT, after appreciation of evidence has rightly come to the aforesaid conclusion and when there is appreciation of evidence, then it is purely a finding of fact and no question much less substantial question of law can be said to emerge out of the said order of the Tribunal and we do not find any infirmity or perversity in the order of the ITAT so as to call for any interference of this Court. In our view, no substantial question of law arises out of the order passed by the ITAT.”

14. Having regard to the above judicial pronouncements, it is to be seen whether the authorities below were justified to sustain the addition under section 68 of the Act on the ground of inability of the creditors to explain the source of source.

15. We find that the assessee is a part time accountant and in business of trading of shares during the relevant assessment year. During the relevant year under consideration, the assessee had shown unsecured loan of Rs.21,55,000/- out of which the AO made an addition of Rs.12,50,000/- in respect of three unsecured creditors i.e. Faquir Chand Godara – Rs.5 lakhs, Joginder Mongia – Rs.6 lakhs and Satyawanti – Rs.1,50,000/-. We find that there is no doubt about the identity of all these three creditors. The only dispute before the authorities below is that these creditors are not creditworthy and the transaction in question is not genuine and source of source is not proved. It is well settled position of law and as stated above that appellant is not obliged to prove source of source of the credits. The burden of the assessee is to restrict himself to prove and explain the source of the credit; and once creditor has appeared and accepted that he has provided loan and, there is nothing to prove that money received by the appellant is his own money. Furthermore, we take note that Faquir Chand is an old man and was of 79 years. In order to discredit Faquir Chand, the statement given by Faquir Chand before the AO that he sold the produces to firm – M/s. Girdhari Lal Ramesh Chand was found to be wrong. However, the agricultural produce was sold by Faquir Chand to M/s. Shyam Traders which fact is corroborated by Form-J issued by the said Shyam Traders. Our attention was taken to pages 49 – 65 of the PB in order to substantiate the said argument. Our attention was also taken to the confirmation from M/s. Shyam Traders which is placed at pages 40 to 42 of the PB. Further, the books

of accounts maintained by M/s. Shyam Traders were also produced before the AO. The AO in order to discredit Faquir Chand, the old person on a mistaken statement that he has sold agricultural produce to M/s. Girdhari Lal Ramesh Chander was on an incorrect basis to come to a conclusion that the transactions are bogus. It was brought to our knowledge that the said Faquir Chand owns land measuring 39 acres and in this regard, our attention was taken to pages 110 of PB. Our attention was drawn to page 42 of the PB to show his annual agricultural income of Rs.10.19 lakhs. Copy of the bank statement of Faquir Chand has also been filed and has been placed at page 41 of the PB. Copy of his statement is found recorded at pages 43 & 44 of the PB. Thus, we find that the assessee has discharged the primary onus on him to prove the identity, creditworthiness and genuineness of the transaction. Thereafter, it was the duty of the AO to investigate and found fault with the aforesaid documents that was produced before him. Without doing so, simply by taking one statement of an old man of 79 years that he has sold the agricultural produce to one firm – M/s. Girdhari Lal Ramesh Chander cannot be a sole ground that entire statement of Faquir Chand and documents which have corroborated the statement of Faquir Chand, cannot be countenanced. Therefore, we find force in the submission of Id. AR that the AO has failed to bring on record any deficiency or could challenge the veracity of the documents filed before him. We find that Faquir Chand had enough creditworthiness and the transactions being through account

payee need to be taken as genuine in the absence of any other evidences which is not on record. Therefore, we delete the disallowance of Rs.5 lakhs.

16. Now, we deal with Joginder Mongia. In order to establish the identity, creditworthiness and genuineness of the transaction of Joginder Mongia, the assessee has produced before the AO the confirmation of the loan from the creditor, the fact that the loan was duly repaid within one year and the transaction was through account payee cheque and the creditor was having land measuring 35 acres and his annual income was Rs.20 lakhs. Ld. AR took our attention to the statement of account of the firm to whom crop has been sold (pages 75 to 77 of the PB), the bank statement of the creditor filed before the AO (pages 67 to 70 of the PB); and the firm to whom the agricultural produce has been sold has also confirmed the said fact which is evident from page 116 of the PB. Ld. AR further took our attention to the fact that loan was repaid and took our attention to pages 115 & 78 of the PB. Thus, we find that in the case of Joginder Mongia also, the assessee had brought the creditor before the AO and has also produced the aforesaid documents to discharge its primary onus. We find that the authorities below have not been able to point out any discrepancy or defect in any of these documents produced by the assessee. In the absence of same, simply disallowing and making an assertion by just saying that it is bogus transaction, is legally untenable, therefore, we are inclined to delete the addition of Rs.6 lakhs. We order accordingly.

17. In respect of Satyawanti, we find that she is the mother of the assessee and she deposed before the AO that she is receiving money from M/s. Shree Gian Chand, a commission agent. However, during assessment proceedings, we find that the partner / proprietor of M/s. Shree Gian Chand denied to have any transaction with the said Satyawanti. Further, we find that Satyawanti's contention is that the amount of Rs.1,50,000/- has accumulated from her past savings and also she earns Rs.25,000/- per annum from stitching works. The AO has also taken note of the fact that cash was deposited on the same date before issuance of cheque by Satyawanti to assessee. Taking into consideration the entire facts and circumstances of the case, we do not find any infirmity in the order passed by the authorities below with regard to this creditor. Therefore, we confirm the addition of Rs.1,50,000/-u/s 68 of the Act. We order accordingly.

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

**Order pronounced in open court on this day of 15<sup>th</sup> January, 2016.**

**Sd/-  
(J.S. REDDY)  
ACCOUNTANT MEMBER**

**sd/-  
(A.T. VARKEY)  
JUDICIAL MEMBER**

**Dated the 15<sup>th</sup> day of January, 2016  
TS**

Copy forwarded to:  
1.Appellant  
2.Respondent  
3.CIT

- 4.CIT(A), Rohtak.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.