IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

INCOME TAX TRIBUNAL APPEAL No.73 of 2023

DATE: 22.07.2026

Between:
M/s. Agarwal Industries Pvt. Ltd.

…Appellant

AND

DCIT, Circle-1(1), Hyderabad.

…Respondent

JUDGMENT: *(per Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. Vedula Srinivas, learned Senior counsel representing Ms. Vedula Chitralekha, learned counsel for the appellant; and Ms. B. Sapna Reddy, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the respondent.

2. The instant appeal under Section 260A of the Income Tax Act, 1961 (for short the 'Act') has been filed by the appellant challenging the order passed by the Income Tax Appellate Tribunal, Hyderabad

Bench 'A', Hyderabad (for short the 'ITAT') in ITA.No.60/Hyd/2018, decided on 19.01.2023.

3. *Vide* the impugned order; the ITAT dismissed the appeal preferred by appellant who appealed against the unwarranted addition of unexplained cash credits received by appellant under Section 68 of the Act, for the assessment year 2010-11.

4. The brief facts of the case are that the appellant is a company which filed its return of income on 03.02.2011, admitting an income of Rs.43,10,278/- under regular provisions of the Act and income of Rs.3,47,58,664/ under the provisions of section 115JB of the Act. The return was processed under Section 143(1) of the Act. Subsequently, the case was converted to scrutiny through Computer-Assisted Scrutiny Selection (for short, 'CASS'). In response to the notices issued under Section 143(2) and 142(1) of the Act, the authorized representatives of the appellant appeared from time to time and furnished the information called for. After hearing the authorized representatives and after verifying the information filed, the Assessing Officer completed the assessment order by making various additions and passed an order under Section 143(3) of the Act, dated 28.03.2013.

5. Being aggrieved by the order passed by the Assessing Officer, the appellant filed an appeal before the Commissioner of Income Tax (Appeals) (for short 'CIT(A)') vide Appeal No.0078/CIT(A)-1, Hyd/2013-14/2017-18. However, the CIT(A) also did not grant the relief sought for by the appellant. The reasons and the findings of the CIT(A) while disposing of the appeal was based on the three observations which are enumerated below:

a) First addition of Rs.5,25,00,000/- under Section 68 of the Act towards unexplained cash credits to the appellant by one, Smt. Hema Kedia by way of cheque, which was categorically instructed not to cash-in owing to the fact that Smt. Kedia was not having adequate amount in her bank.

b) Second addition of Rs.10,00,000/- under Section 68 of the Act towards unexplained cash credits which was a return of payback amount to the appellant for an unsecured loan by a borrower namely, Smt. Ranjana Agarwal.

c) Third addition of Rs. 23,18,298/- under Section 68 of the Act towards difference in interest as per Form 26AS, whereas during the assessment proceedings, the Assessing Officer had noticed that there is a difference of interest receipts held by the appellant and the amounts mentioned did not tally and led to a difference to the tune of Rs.23,18,298/- which was added by the CIT(A).

6. On appeal before the ITAT, it was held that the arguments submitted by the appellant were not satisfactory and the reasons put forth were also devoid of merit, and hence, the ITAT did not interfere with the findings and order of the CIT(A) and dismissed the appeal preferred by the appellant.

7. It is this impugned order of the ITAT which is under challenge in this instant appeal.

8. Learned Senior Counsel for the appellant submitted that the sums received from Smt. Hema Kedia and Smt. Ranjana Agarwal, amounting to Rs.5,25,00,000/- and Rs.10,00,000/- respectively, were duly verified and that there was no dispute raised against the fact that the funds belonged to the above-named persons. The credit worthiness of the two persons was duly accepted by the assessing authorities. Despite tracing and declaring the origin of the amounts received by the appellants, the assessing authorities made the addition against the appellant under Section 68 of the Act, which is an unwarranted and unreasonable action by the respondent.

9. Learned Senior Counsel for the appellant further contended that the invocation of 'doctrine of real income' by the ITAT was unwarranted, since the appellant proved that the funds belonged to Smt. Hema Kedia which was also held confirmed by the statement given by Smt. Hema Kedia before the authority concerned during the assessment proceedings, that the ITAT went into the 'approbate and reprobate theory' against the appellant which did not apply to facts of the case at hand.

10. *Au contraire*, learned Senior Standing Counsel for Income Tax Department contended that the sums received by the appellant i.e. Rs.5,25,00,000/- and Rs.10,00,000/- were nothing but bogus entries to infuse its own funds into its company. During the assessment proceedings, the respondent did not find any share application money in the balance sheet of the appellant which further raised doubts of its origin and legality. Further, upon summons by the respondent, Smt. Hema Kedia refused to appear and depose as to the creditworthiness and genuineness of the transactions made by her against the appellant. Based on the above findings, the respondent made the above mentioned amounts under addition under Section 68 of the Act.

11. Learned Senior Standing Counsel for Income Tax Department placed reliance on the case of **CIT vs. P. Mohanakala**[1] wherein the conditions which are necessary for a transaction to fall within Section 68 of the Act were extensively discussed. The relevant paragraphs are reproduced hereunder for ready reference, viz.,

> ***"A bare reading of section 68 of the Income-tax Act, 1961, suggests that (i) there has to be credit of amounts in the books maintained by the assessee;(ii) such credit has to be a Sum of money during the previous year; and (iii) either (a) the assessee offers no explanation about the nature and source of such credits found in the books or (b) the explanation offered by the assessee, in the opinion ofthe Assessing Officer, is not, satisfactory. It is only then that-the sum so credited may be charged to income tax as the income of the assessee***

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[1] 291 ITR 278 (SC) / [2007] 210 CTR 20 (SC)

> ***of that previous year. The expression "the assessee offers no explanation" means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee.”***

12. Having heard the contentions put forth on either side and on perusal of records, the question of law that falls for consideration in the instant appeal is “whether the appellant had discharged the burden cast upon it under Section 68 of the Act with respect to the three additions in issue, and if so, whether the CIT(A) and the ITAT were justified in nonetheless sustaining the said additions?”

13. It would be relevant at this juncture to take note of the provisions of Section 68 of the Act which deals ‘Cash Credit’. For ready reference, Section 68 of the Act is reproduced hereunder:

> *“**Cash credits.***
> ***68.** Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:*

Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—
(a)the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and
(b)such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:
Provided further that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—
(a)the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
(b)such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:
Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

A plain reading of the aforesaid provision discloses that it casts a burden on the assessee, once a credit entry appears in its books of account, to satisfactorily explain three cumulative facets, namely (i) the identity of the creditor / investor (ii) the creditworthiness or financial capacity of such creditor to advance the sum in question and (iii) the genuineness of the transaction itself. It is only when the assessee fails to discharge this initial onus, or where the explanation furnished is found unsatisfactory by the Assessing Officer on cogent material, that the credited sum may be treated as unexplained income and brought to tax. The provision does not clothe the Assessing Officer with an unfettered discretion to reject an explanation merely on suspicion, surmise or conjecture; the rejection must be founded on objective material and must survive scrutiny on the touchstone of the three-fold test noticed above, as has also been amplified by the Hon'ble Supreme Court in the case of **P. Mohanakala** (supra).

14. In so far as the addition of Rs.5,25,00,000/- received from Smt. Hema Kedia is concerned, the record shows that the appellant had furnished the confirmation letter of the creditor, her permanent account number, her bank statement reflecting the source of funds, and her income-tax returns demonstrating her financial standing. The amount was admittedly received by way of an account-payee cheque, a mode of transaction which is itself a recognised indicator of genuineness and which leaves a clear trail capable of verification. The mere fact that the appellant, out of abundant caution and on the specific instructions of Smt. Kedia who candidly informed the appellant that she did not have sufficient clear balance in her account at that point of time did not present the cheque for encashment immediately, cannot by itself be elevated into a ground for doubting the genuineness of the transaction or the *bona fides* of the appellant and its endeavour to ensure that the transaction remained visible.

15. It is no doubt true that Smt. Kedia did not personally appear before the Assessing Officer in response to the summons issued to her. However, non-appearance of a creditor cannot be treated as fatal to the assessee's case once the assessee has placed on record cogent documentary material establishing the identity of the creditor, her creditworthiness, and the genuineness of the transaction. The obligation of the assessee under Section 68 of the Act is to satisfactorily explain the credit through material that is available to and within the power of the assessee to produce. It does not extend to compelling the physical presence of an independent third party over whom the assessee has no control. Whereas, in the present case, the creditor has independently confirmed the transaction in writing and the transaction is duly reflected in her disclosed bank account and tax filings. The failure of the creditor to personally depose, for reasons entirely her own, cannot be attributed to the assessee so as to convert an otherwise explained credit into unexplained income.

16. We are also unable to sustain the reasoning of the ITAT insofar as it proceeded to invoke the doctrine of real income and the theory of approbate and reprobate against the appellant. The doctrine of real income has no application whatsoever to a fact situation such as the present, where the dispute is confined to whether a credit entry has been satisfactorily explained under Section 68 of the Act. Equally, the principle that a party cannot approbate and reprobate presupposes that the assessee has taken inconsistent stands at different points in the proceedings so as to take advantage of one position while disowning the other. No such inconsistency has been demonstrated by the Revenue against the appellant in the present case. The appellant has from the stage of assessment, right up to the instant appeal under Section 260A of the Act, maintained a consistent stand that the sum was received from Smt. Hema Kedia and belonged to her. The invocation of these two doctrines by the ITAT was misconceived and has resulted in a perverse appreciation of an otherwise straightforward factual matrix.

17. As regards the addition of Rs.10,00,000/- concerning Smt. Ranjana Agarwal, the material on record also discloses that this amount represented nothing more than the repayment of an unsecured loan earlier advanced by the appellant to her. Once it is shown, and it is not seriously disputed that the amount in question was originally advanced by the appellant to the borrower and merely came back into the appellant's books as a repayment, the character of the receipt is self-evident and cannot be treated as an unexplained cash credit within the meaning of Section 68 of the Act. To subject the very same amount to tax for the second time, once as a loan advanced out of already taxed or explained funds, and again as an unexplained credit upon its repayment, would result in an incongruous and unintended consequence that the provision was never designed to bring about. The addition on this count, in our view, proceeds on a misapprehension of the true nature of the entry and cannot be sustained.

18. It requires to be reiterated that the burden under Section 68 of the Act, though lies upon the assessee in the first instance, is not an unlimited or unending one. Once the assessee places on record material sufficient to establish identity, creditworthiness and genuineness, *prima facie* the onus shifts on the Assessing Officer to dislodge that material by bringing independent and cogent evidence on record. It is not open to the Assessing Officer, much less to the appellate authorities, to reject such material on mere suspicion, however strong, or on the basis of surmise unsupported by any positive finding. In the present case, we find that the appellant did place on record confirmations, bank statements, income-tax particulars of the creditors, and books of account reflecting the underlying transactions, thereby discharging the initial burden cast upon it. The Revenue, on the other hand, has not brought on record any material to independently establish that the sums in question represented the appellant's own unaccounted income routed back into its books in the guise of credits.

19. The observation that no share application money was reflected in the balance sheet does not by itself establish that the funds were bogus, particularly when the transactions in question were admittedly not share application money but unsecured loans and their repayment.

20. For all the reasons aforesaid, the substantial question of law involved in this appeal is answered in favour of the appellant and against the Revenue and it is held that the appellant had duly and satisfactorily discharged the burden of proof cast upon it under Section 68 of the Act with respect to all the three additions in issue, and the approach adopted by the CIT(A) as well as the ITAT in sustaining the said additions without properly appreciating the material placed on record and by importing considerations extraneous to Section 68 of the Act, was erroneous both on facts and in law. The findings of the ITAT, being founded on a misapplication of the doctrine of real income and the principle of approbate and reprobate, and being rendered without due regard to the documentary evidence establishing the *bona fides* of the appellant, cannot be sustained and are accordingly set aside.

21. In the result, the instant appeal stands allowed. The order passed by the ITAT, dated 19.01.2023, to the extent that sustains the additions of Rs.5,25,00,000/-, Rs.10,00,000/- and Rs.23,18,298/- under Section 68 of the Act is set aside.

22. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P. SAM KOSHY, J

NARSING RAO NANDIKONDA, J

Date: 22.07.2026
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