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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement delivered on: 28.05.2025

+ **ITA 546/2023**

SHEELA OVERSEAS PRIVATE LIMITED

..... APPELLANT

versus

**PR COMMISSIONER OF INCOME TAX
DELHI-08 DELHI & ANR.**

..... RESPONDENTS

Advocates who appeared in this case

For the Appellant : Mr Salil Kapoor, Mr Sumit Lalchandani, Mr Shivam Yadav, Ms Ananya Kapoor, Advocates.

For the Respondent : Mr Sunil Kumar Agarwal, SSC, Mr Shivansh B Pandya, Mr Viplav Acharya, JSCs and Mr Utkarsh Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant [**Assessee**] has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning the order dated 07.02.2023 [**impugned order**] passed by the learned Income



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Tax Appellate Tribunal [**Tribunal**] in ITA No.1430/Del/2020 in respect of Assessment Year [**AY**] 2015-16.

2. The Assessee had preferred the aforesaid appeal [ITA No.1430/Del/2020] impugning the order dated 31.01.2020 passed by the Commissioner of Income Tax (Appeals)-25 [**CIT(A)**] in an appeal preferred by the Assessee in respect of the assessment order dated 30.12.2017 passed by the Assessing Officer [**AO**] under Section 143(3) of the Act.

3. The present appeal was admitted on 24.11.2023 on the following questions of law: -

“(i) Whether the Income Tax Appellate Tribunal [in short “Tribunal”] misdirected itself in fact and law in holding that Rs.27,50,000/-, received by the appellant/assessee from its director i.e. Mr Hitesh Bhatia, in the form of a loan, constituted unexplained credit/entry in his books of accounts and hence, liable for addition under Section 68 of the Income-tax Act, 1961 [in short “Act”]?”

(ii) Whether, in the facts and circumstances of the case, the Tribunal’s conclusion that, Rs.27,50,000/- was required to be added to the income of the appellant/assessee, was perverse, having regard to the fact that the appellant/assessee had discharged its onus?”

PREFATORY FACTS

4. The Assessee is engaged in the business of readymade garments and leather goods and filed its return of income for AY 2015-16 on 29.09.2015, declaring a total income of ₹93,660/-. During the previous year relevant to AY 2015-16, the Assessee had received unsecured loans aggregating to



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₹83,00,000/- from its two directors namely, Mr. R.C. Bhatia and Mr. Hitesh Bhatia. The Assessee's return was selected for scrutiny and the assessment proceedings culminated in the assessment order dated 30.12.2017 under Section 143(3) of the Act. The Assessee produced the relevant material to establish that it had received a sum of ₹51,00,000/- through banking channels from its director and also provided the corresponding bank statement. The AO had also issued summons under Section 131 of the Act to Mr. Hitesh Bhatia, requiring him to appear on 13.11.2017. However, Mr. Hitesh Bhatia failed to respond to the said summons.

5. The AO treated the sum of ₹51,00,000/- received by the Assessee from its director, Mr. Hitesh Bhatia, as unexplained income and added it to the total income. Accordingly, the Assessee's total income was assessed at ₹51,93,660/-. The AO also directed the initiation of penalty proceedings under Section 271(1)(c) of the Act. The assessment order was accompanied by a notice of demand issued under Section 156 of the Act for a sum of ₹20,36,590/-.

6. Aggrieved by the assessment order, the Assessee preferred an appeal before the CIT(A). The Assessee explained that the amount received was sourced from an overdraft facility availed by Mr. Hitesh Bhatia from Lakshmi Vilas Bank. The Assessee claimed that Mr. Hitesh Bhatia had secured the said overdraft facility by pledging his fixed deposit receipts. The Assessee also furnished the bank certificate in support of the claim. In addition, the Assessee annexed copies of the income tax returns filed by Mr. Hitesh Bhatia for AY 2013-14 and AY 2014-15, whereby he had declared total incomes of ₹6,67,030/- and ₹8,61,790/-, respectively.



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7. The CIT(A) also called for a remand report from the AO in respect of the additions made to the income of the Assessee. In the report, the AO pointed out that there were cash deposits in the bank account of Mr. Hitesh Bhatia, which were found to be suspicious.

8. The CIT(A) observed that the overdraft facility secured by Mr. Hitesh Bhatia from Lakshmi Vilas Bank had been utilized in the previous year through cash deposits in his account. The CIT(A) found that cash deposits made in the bank account of Mr. Hitesh Bhatia from 13.09.2014 to 22.12.2014 were to the extent of ₹27,50,000/-, which remained unexplained. Accordingly, the CIT(A) sustained the addition of the said amount under Section 68 of the Act.

9. As noted above, the Assessee appealed the said decision of the CIT(A) before the Tribunal. The Tribunal concurred with the decision of the CIT(A) and accordingly, dismissed the Assessee's appeal.

REASONS AND CONCLUSION

10. At the outset, it would be relevant to refer to Section 68 of the Act. The said Section as original enacted reads as under:

“68. Cash credits. 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.”

11. The said Section was amended by the Finance Act, 2012 and a



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proviso was added. Section 68 of the Act, as amended and in force at the material time, is set out below:

“68. Cash credits.— 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 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 further that nothing contained in the first 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 (23-FB) of Section 10.”

12. As is apparent from the above, if certain sums are found credited in the books of the account of an assessee maintained for the previous year and the assessee offers no explanation regarding the nature and source of such sums so credited, the same may be charged to tax.

13. In the present case, the Assessee has clearly, offered an explanation regarding the nature as well as source of the funds. There is no dispute that the payments are reflected as unsecured loans. The Assessee has duly



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explained the source of the unsecured loan as being from its director, thus, there is no cavil regarding the identity of the creditor as well. There is also no dispute as to the nature of the credit entry.

14. The key issue to be addressed is whether the explanation provided by the Assessee satisfies the proviso to Section 68 of the Act.

15. It is clear from the plain language of the proviso that it is applicable only in cases where the amount credited in the assessee's books consists of share application money, share capital, share premium or any such amount. The expression "such amount" would necessarily take its colour from the terms share application money, share capital and share premium.

16. In our view, the rule of *noscitur a sociis* would clearly be applicable, as the share application money, share capital and share premium, all fall within the broad spectrum of share holders' fund, which are introduced as capital in a company. The amendment to Section 68 of the Act, introduced by virtue of the Finance Act, 2022 also makes it abundantly clear that Section 68 of the Act as was in force prior to 01.04.2023, did not require the assessee to explain the source of the source of funds other than share capital money, share capital, share premium or any amount of such nature. Thus, the enlargement of the assessee's onus to explain the source of the source of sums credited as unsecured loans necessitated the amendment to Section 68 of the Act to expressly provide for the same. Accordingly, the proviso to Section 68 of the Act, as amended by the Finance Act, 2022, reads as under:

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"Provided that where the sum so credited consists of



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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.”

17. It is seen from the above that the requirement of explaining the source of the source of funds credited as unsecured loans in the books of accounts was introduced by virtue of the Finance Act, 2022. The same was not applicable during the relevant assessment year – AY 2015-16. Thus, in our view, the Assessee cannot be burdened with the requirement to explain the source of funds of Mr. Hitesh Bhatia.



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18. Having stated the above, we also find that the Assessee had produced sufficient material in support of its explanation. As noted by the Tribunal, the Assessee was required to establish (a) the identity of the source; (b) capacity of such source; and (c) the genuineness of the transaction.

19. In the present case, it is clear that the Assessee had discharged the said burden. As noted above, there is no cavil as to the identity of the person who had extended the unsecured loan reflected as outstanding in the books of account of the Assessee. The Assessee had explained that the funds had been lent by its director – Mr. Hitesh Bhatia.

20. Additionally, the Assessee produced relevant documents to show that funds had been received through banking channels from the bank account of Mr. Hitesh Bhatia. Insofar as the genuineness of the transaction is concerned, there is material on record to indicate that the amount credited in the books of account, which has been reflected as loans from Mr. Hitesh Bhatia were unsecured loans. Mr. Bhatia had also confirmed the same. He is not a stranger to the Assessee and is vitally interested in the affairs of the Assessee. Therefore, the financial assistance extended by him cannot be doubted.

21. The only remaining issue in this regard is the capacity of Mr. Hitesh Bhatia to lend the funds to the Assessee. Here too, we find no ground to doubt the capacity of Mr. Hitesh Bhatia to extend the unsecured loan to the Assessee. There is no dispute that the amount received by the Assessee was provided from the overdraft facility extended by Lakshmi Vilas Bank. The Assessee also produced the certificate which established that Lakshmi Vilas



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Bank had extended the overdraft facility to Mr. Hitesh Bhatia. The said overdraft facility was provided against the fixed deposits maintained by Mr. Hitesh Bhatia and therefore, his capacity to pay the amount stands established. The overdraft facility extended by the Lakshmi Vilas Bank was secured by the assets of Mr. Hitesh Bhatia.

22. The additions made to the income of the Assessee are solely on account of certain cash deposits by Mr. Hitesh Bhatia in his bank account during the relevant period from 13.09.2014 to 22.12.2014. Any doubt as to the source of funds used by Mr. Hitesh Bhatia to discharge his liability to Lakshmi Vilas Bank cannot be a ground to make an addition of unexplained credit in the hands of the Assessee. The unsecured loan amount, as reflected by the Assessee in its books of account, has been duly explained. The source of the source of the funds has also been established as the overdraft from Lakshmi Vilas Bank. Any further explanation regarding the cash credited in the books of Mr. Hitesh Bhatia for neutralizing any part or whole of its overdraft facility from Lakshmi Vilas Bank, is a matter which is required to be examined in the assessment proceedings of Mr. Hitesh Bhatia and not that of the Assessee.

23. Having stated above, we find that Assessee also explained that Mr. Hitesh Bhatia had an opening balance of ₹26,50,637/- in his books; therefore, even the source of the cash deposited in the bank account was explainable. At this stage, it is also relevant to note that it was also pointed out that Mr. Hitesh Bhatia is a regular assessee and had filed its return of income for AY 2015-16 declaring the income of ₹9,05,220/-.



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24. It is also material to note that the Assessee had specifically disputed the finding that the overdraft facility extended to Mr. Hitesh Bhatia was extinguished by depositing the cash amount. The Assessee submits that the bank had disclosed that the overdraft facility was finally reduced by depositing the aggregating sum of ₹43,50,000/- from various entities through banking channels. The Assessee also produced confirmations regarding the source of those deposits. The tabular statement setting out the details of the entities is set out below: -

"S. No.	Date	Name of party	Amount deposited in the bank account	Relation with the Assessee	Remarks
1.	22.01.2015	Sheela Overseas	5,00,000	Director in the company	Confirmation and ledger account attached earlier
2.	05.02.2015	Munshee Overseas	5,00,000	Partner in this Firm	Confirmation and ledger account attached earlier
3.	14.02.2015	Sheela Overseas	4,00,000	Director in the company	Confirmation and ledger account attached earlier
4.	14.02.2015	Sheela Overseas	4,00,000	Director in the company	Confirmation and ledger account attached earlier
5.	16.02.2015	R.C Bhatia	9,00,000	Father of the assessee	Confirmation and ledger account attached earlier
6.	17.02.2015	R.C Bhatia	9,00,000	Father of	Confirmation



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				the assessee	and ledger account attached earlier
7.	20.02.2015	Sheela Overseas	5,00,000	Director in the company	Confirmation and ledger account attached earlier
8.	20.02.2015	Sheela Overseas	2,50,000	Director in the company	Confirmation and ledger account attached earlier
		Grand Total	43,50,000"		

25. It is not necessary for us to examine the above assertions as in any event, the amount credited in the books of account stands explained.

26. In view of the above, we find that the additions made as unexplained credit under Section 68 of the Act are unsustainable. The questions of law, as framed, are answered in the affirmative, that is, in favour of the Assessee and against the Revenue.

27. The appeal is, accordingly, allowed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 28, 2025

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