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

Date of decision: 01st OCTOBER, 2026

IN THE MATTER OF:

CNR No. DLHC010590772005

+ **ITA 1215/2005 & CM APPL. 44560/2026**

RAJ PAL KATYAL

.....Appellant

Through: Mr. Rahul Agrawal, Mr. Rajesh
Agrawal and Mr. Sunil Dhamija,
Advocates.

versus

THE COMMISSIONER OF INCOME TAX

.....Respondent

Through: Mr. Shlok Chandra, Sr. Standing
Counsel with Ms. Naincy Jain, Jr.
Standing Counsel, Mr. Udit Dad and
Mr. Ujjwal Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT (ORAL)

1. The challenge in the present Appeal is to the Order dated 02.03.2005 passed by the Ld. Income Tax Appellate Tribunal ['ITAT'] in ITA No.4580/DEL/2000 for the Assessment Year 1997-98.
2. Vide Order dated 16.05.2006, the following substantial question of law was formulated for determination:

“1. Whether the finding recorded by the ITAT that the appellate assessee had not proved creditworthiness of its creditors is perverse?”

3. Shorn of unnecessary details, the facts leading to the filing of the



present Appeal are that the Assessee is an individual and Proprietor of M/s Kailash Engineers, which is engaged in the business of trading, servicing and installation of Generators and Generators parts.

4. The Assessee filed his return on 31.10.1997 declaring income of Rs.2,02,320/- which, according to the Assessee, was processed on 18.12.1997 under the provisions of Section 143(1) of the Income Tax Act, 1961 ['IT Act'].

5. It is stated that a Notice under Section 143(2) of the IT Act was issued to the Assessee by the Assessing Officer on 20.10.1998 and an Assessment Order was framed by the Assessing Officer under Section 143(3) of the IT Act on 30.03.2000, in which the Assessing Officer made additions of Rs.9,00,400/- treating unsecured loans as undisclosed income under Section 68 of the IT Act.

6. Thereafter, an Appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)'] was filed by the Assessee, whereby the Ld. CIT(A) vide Order dated 17.08.2000 deleted a sum of Rs.2,00,400/- out of Rs.9,00,400/-. The said Order dated 17.08.2000 was further challenged by the Assessee before the Ld. ITAT wherein the following ground was raised by the Assessee:

"The ld AO and ld CIT(A) have erred in law and facts in making and confirming the addition of Rs.7,00,000=00 out of unsecured loans whereby they have not passed their orders in respect of the above items after careful consideration of all legal points and relevant facts and circumstances of the case as brought out by the documents and evidences filed and statements on oath of the loan creditors and other persons recorded before the ld AO".

7. The Ld. ITAT, by the Impugned Order dated 02.03.2005, rejected the



Appeal filed by the Assessee and confirmed the Order dated 17.08.2000 passed by the Ld. CIT(A).

8. It is this Order dated 02.03.2005 passed by the Ld. ITAT, which is under challenge in the present Appeal.

9. Before proceeding further with the case, it is first necessary to refer to the Order dated 30.03.2000 passed by the Assessing Officer. The Assessing Officer, in order to ascertain as to whether the amounts could be treated as undisclosed income or not, asked the Assessee to prove the creditworthiness of the persons from whom loans have been secured. The Assessing Officer examined five persons, namely, Sh. Surender Katyal, Sh. Pawan Kumar, Ms. Vimla Arora, Sh. S. L. Magoo and Ms. Santosh Rani produced by the Assessee. On analysing the evidence led by these persons, the Assessing Officer came to the conclusion that the Assessee has failed to discharge his onus of creditworthiness to secure loans.

10. The Ld. CIT(A) once again, vide Order dated 17.08.2000 examined the creditworthiness of these persons and came to the conclusion that out of total addition of Rs.9,00,400/-, a sum of Rs.7,00,000/- is sustained and the balance of Rs.2,00,400/- is to be deleted. The relevant portion of the Order dated 17.08.2000 passed by the Ld. CIT(A) is reproduced as under:

“9th ground is on addition of Rs.9,00,400/- out of unsecured loans. During the year under consideration the appellant disclosed loans from friends and relatives of an amount of Rs.9,00,400/- which was added back on the ground that the credit worthiness of the creditors were not proved. The Assessing officer required the appellant to produce the creditor along with their confirmation to establish the genuineness of the loan. From the evidence filed it was noted that although the credits were mostly by cheques, many of



them were no income tax assesses. In the case of some of the creditors even confirmations were not filed, affidavits were, however filed in the case of majority of the cash creditors. Some of the creditors namely Sh.Surinder Katyal, Pawan Kumar ,Vimla Arora, S.L.Magoo and Santosh Rani were interrogated. Details and relevant portion of their statements have been noted on pages 4 to 7 of the assessment order.

As per the noting in the assessment order the persons concerned either denied having advanced any loan or having advanced the loan were not very sure of where the money came from. The bank a/c of these persons also had cash entries which could not be explained by the account holder. On the basis of submission filed the A.Officer held that the onus of establishing the creditorworthiness of the loan were not fully discharged as the creditors were either not produced at all or that those produced did not offer a satisfactory explanation to the amounts advanced out of the list of creditors the amount advanced by only Sandeep Arora and Sh.J.M.Arora were considered genuine as they were income tax assesses and the balance amount of Rs.9,00400/-was deemed as income of the assessee.

The A.R. explained that in the case of the following creditors involving a total amount of Rs.7,18,000/- all of them had replied having advanced loan to M/s Kailash Engineers the proprietary concern of the appellant

Pawan Kumar	50,000.00
Santosh Rani	4,50,000.00
Surinder Katyal	18,000.00
Vimla Arora	1,00,000.00
S.L. Magoo	1,00,000.00
Total	7,18,000.00

It was explained that the confirmation and affidavits were filed and the advances having been made by



Account Payee cheque the loans received from these parties should be accepted. It was argued that having established the source the assessee can not be presumed to have special knowledge about the source of the source. As decided by judicial authorities like Tolaram daga (1966) 59 ITR 632 (Assam) and Daulat Ram Rawatmull, 87 ITR 349 (SC) etc.

All the above creditors were stated to have admitted to having advanced loans and therefore there was no reason to disallow the loan advanced by these parties. Regarding Narinder Kumar who advanced an amount of Rs.50,000/- it was stated that Sh. Kumar was produced for interrogation but the A.Officer did not record his statement .The identity and genuinity of the aforementioned parties were stated to have been duly established and it was for the department to show why the explanation can not be accepted and why the credit should be taken as income of the assesses from suppressed sources. Regarding Loan of Rs.1,32,400/- which was received from the following parties it was stated that the amount were received in the year prior to the relevant previous year.

Narinder kumar	50,000
Anil Sikka	22,000
Jagan Nath	14,000
Naresh kumar	20,500
Parveen Katyal	27,500
P.C. Jain & Co.	25,000
R.K. Pandey	23,400
Total	1,32,400

It was argued that the amount not having been received in the relevant year no addition could be made in this year as held by various courts including Delhi High Court in the case of O.P. Mahajan & Sons 152 ITR 503. It was also pointed out that the A. officer was requested to summon the parties u/s 131 but no such efforts was made. In view of the above



explanation it was requested that the credits were genuine as established on the basis of the evidences and therefore no addition should have been made in this regard.

The appellant's claim relating to the loan of Rs.7,18,000/- received from the parties mentioned above is not found to be acceptable as the explanation offered is not satisfactory.

The only loan amount of Rs.18,000/- received from Sh. Surinder Katyal a Government servant is found to be acceptable as being in service it is not difficult for him to advance a small amount of Rs.18,000/-. In the case of Sh Pawan Kumar, he has denied having advanced any loan at all to the appellant. Therefore the addition of Rs.50,000/- in this account is correct .

Smt. Santosh Rani admitted to having advanced an amount of Rs.4,50,000/- but could not explain how the money was raised or even the cash credit in her account preceding the advancing of the loan. Smt Vimla Arora's case was also similar while Sh S.L.Magoo denied having advanced any loan at all. Therefore out of the total credit of Rs.718,000/- only Rs.18,000/- is found to be acceptable and the addition of Rs.7,00,000/- is confirmed.

Regarding Rs.50,000/- advanced by Sh. Narinder Kumar, the Assessing officer does not however have any direct evidence as Sh. N.Kumar's statement was not recorded and as there is nothing to prove to the contrary the benefit of doubt should be allowed to the appellant and the addition of Rs.50,000/- is deleted. The loan of Rs.1,32,400/- raised in the year earlier to the previous year under consideration can not also be added to the current year income as the loan were not raised during the current year. Even if the assessing



officer rejected these credit entries it should be considered only in those years when the loans were raised and it can not be treated as income of the current year .The addition of Rs.1,32,000/- is also therefore deleted. Out of the total addition of Rs.9,00,400/- addition of Rs.7,00,000/- is sustained and the balance of Rs.2,00,400/- is deleted.....”

11. The Ld. ITAT once again vide the Impugned Order dated 02.03.2005 analysed the statements given by four persons, namely, Pawan Kumar, Santosh Rani, Vimla Arora and S.L. Magoo, who according to the Assessee had advanced cash loans of Rs.50,000/-, Rs.4,50,000/-, 1,00,000/- and Rs.1,00,000/- respectively, totalling to Rs.7,00,000/-, and came to the conclusion that the Ld. CIT(A) was justified in holding that the creditworthiness of these persons has not been established by the Assessee.

12. This Court has perused the examination of the witnesses produced by the Assessee and the also the analysis of the witnesses by the three authorities below. This Court is satisfied that the inference drawn by the three authorities below regarding the creditworthiness of the witnesses has not been proved.

13. Section 68 of the IT Act reads as under:

“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.

14. The parameters that have to be established by an Assessee under Section 68 of the IT Act has been succinctly explained by the Apex Court in CIT v. NRA Iron & Steel (P) Ltd., (2019) 15 SCC 529, which read as under:



“9. We have heard the learned counsel for the Revenue, and examined the material on record.

9.1. The issue which arises for determination is whether the respondent assessee had discharged the primary onus to establish the genuineness of the transaction required under Section 68 of the said Act.

9.2. Section 68 of the IT Act (prior to the Finance Act, 2012) read as follows:

“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.”

(emphasis supplied)

The use of the words “any sum found credited in the books” in Section 68 of the Act indicates that the section is widely worded, and includes investments made by the introduction of share capital or share premium.

9.3. As per settled law, the initial onus is on the assessee to establish by cogent evidence the genuineness of the transaction, and creditworthiness of the investors under Section 68 of the Act. The assessee is expected to establish to the satisfaction of the assessing officer [CIT v. Precision Finance (P) Ltd., 1993 SCC OnLine Cal 384 : (1994) 208 ITR 465] :

- Proof of identity of the creditors;
- Capacity of creditors to advance money; and
- Genuineness of transaction

This Court in the landmark case of Kale Khan Mohd. Hanif v. CIT [Kale Khan Mohd. Hanif v. CIT, (1963)



50 ITR 1] and, *Roshan Di Hatti v. CIT* [*Roshan Di Hatti v. CIT*, (1977) 2 SCC 378 : 1977 SCC (Tax) 292 : (1977) 107 ITR 938] laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the Revenue to show that the income is from any particular source.

9.4. With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge.

9.5. The Delhi High Court in *CIT v. Oasis Hospitalities (P) Ltd.* [*CIT v. Oasis Hospitalities (P) Ltd.*, 2011 SCC OnLine Del 506 : (2011) 333 ITR 119], held that: (SCC OnLine Del para 43)

“43. ... the initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68 of the Act. These are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established *prima facie*, the department is required to undertake further exercise....”

9.6. It has been held that merely proving the identity of the investors does not discharge the onus of the assessee, if the capacity or creditworthiness has not been established. In *Shankar Ghosh v. CIT* [*Shankar*



Ghosh v. CIT, 1985 Tax Pub (DT) 1012 : (1985) 13 ITD 440 : (1985) 23 TTJ 20] , the assessee failed to prove the financial capacity of the person from whom he had allegedly taken the loan. The loan amount was rightly held to be the assessee's own undisclosed income.

9.7. *Reliance was also placed on CIT v. Kamdhenu Steel & Alloys Ltd. [CIT v. Kamdhenu Steel & Alloys Ltd., 2011 SCC OnLine Del 5581] wherein the Court held that: (SCC OnLine Del para 38)*

“38. Even in that instant case, it is projected by the Revenue that the Directorate of Income Tax (Investigation) had purportedly found such a racket of floating bogus companies with sole purpose of lending entries. But, it is unfortunate that all this exercise is going in vain as few more steps which should have been taken by the Revenue in order to find out causal connection between the cash deposited in the bank accounts of the applicant banks and the assessee were not taken. It is necessary to link the assessee with the source when that link is missing, it is difficult to fasten the assessee with such a liability.”

10. *The judgments cited hold that the assessing officer ought to conduct an independent enquiry to verify the genuineness of the credit entries.”*

15. Applying the dictum laid down by the Apex Court in the aforesaid Judgment to the facts of the present case, it cannot be said that the appreciation of material by the three authorities below i.e., Assessing Officer, Ld. CIT(A) and Ld. ITAT, is perverse and that the Assessee has been able to prove the creditworthiness of his creditors.

16. Reliance placed by the learned Counsel for the Appellant on a Judgment passed by a Division Bench of this Court in Principal



Commissioner of Income-Tax v. KRBL Infrastructure Ltd., (2026) 486 ITR 88 cannot be accepted. In the said Judgment, the Assessing Officer, on the basis of material, had accepted the creditworthiness of the creditors and the Assessment Order was upheld by the Ld. CIT(A) and the Ld. ITAT and this Court rejected the Appeal preferred by the Appellant/Principal Commissioner of Income-Tax. The observations made by the Division Bench of this Court in Paragraph Nos.35 & 36 of the said Judgment have to be appreciated in the context of the facts of that case. In fact, the Division Bench of this Court, taking into account the facts of that case, held that the genuineness of the transactions has been confirmed by two authorities below and, therefore, the same is a pure question of fact, unlike in the present case where all three authorities below are of the opinion that the Assessee has not discharged his initial onus to prove the creditworthiness of the persons from whom the loan has been secured.

17. In view of the above, the question of law formulated in the present Appeal is answered in favour of the Respondent/Department and against the Assessee.

18. Resultantly, the Appeal is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AMIT SHARMA, J

OCTOBER 01, 2026

S. Zakir