HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

ITA No. 01/2014

Date of Order: 23rd of April, 2018.

M/s Kohinoor Enterprises

Vs.

Assistant Commissioner of Income Tax & Ors.

Coram:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.
Hon'ble Mr Justice M. K. Hanjura, Judge.

Appearance:

For the Appellant(s): *Mr Asif Ahmad Bhat, Advocate.*
For the Respondent(s): *Mr J. A. Kawoosa, Advocate.*

i) Whether approved for reporting? ***Yes/No***

Per Magrey: J {Oral};

01.) This appeal is filed, on behalf of the Assessee under Section 260A (1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), challenging the order dated 24th of February, 2014, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 458/ASR/2010 pertaining to the assessment year 2007-2008.

02.) The Assessee is a partnership firm having 3 partners, namely, Mr Syed Mohammad Iqbal, Mr Syed Mohammad Altaf and Mr Syed Mohamamd Tariq, constituted on the 1st day of April, 1992, under the name and style of M/s Kohinoor Enterprises. The Assessee's enterprises claims to be engaged in the business of trading of pesticides and fruit products like apple and pears from its head office at 7, Sheikh Bagh, Srinagar. The Assessee filed its return of income, on the 14th of November, 2007, for the assessment year 2007-2008 declaring income of Rs. 15,26,210/- (rupees fifteen lac, twenty-six thousand, two hundred and ten only), which was supported by audited balance sheet and, audited profit and loss account for the financial year 2006-07 relevant to assessment year 2007-08. During the course of the assessment proceedings, the Assessee claimed that a sum of Rs. 1,50, 00, 000/- (One crore, fifty lacs only) represented unsecured loan raised from M/s Himachal Futuristic Co. Ltd. (HFCL). This loan, as stated, was raised in the financial year 2001-02 relevant to assessment year 2002-03 and remained outstanding even at the close of the current assessment year. Moreover, it was also submitted that a sum of Rs. 18,30,000/- (eighteen lacs and thirty thousand only) was an advance received from a customer, namely, Ghulam Nabi in the financial year 2005-06 relevant to assessment year 2006-07 which was repaid during the current assessment year. The Assistant Commissioner of Income Tax-3, Srinagar, in terms of the order of assessment dated 18th of September, 2009, computed the income of the Assessee firm at Rs.48,56,210/- (rupees forty-eight lacs, fifty-six thousand, two hundred and ten only) under Section 143(3) of the Act. It is stated that the Assessing Officer made an addition of Rs. 15,00,000/- (rupees fifteen lacs only) on account of alleged unexplained unsecured loan under Section 68 of the Act and Rs. 18,30,000/- (rupees eighteen lacs and thirty thousand only) on account of the alleged unexplained expenditure under Section 69C of the Act.

03.) Aggrieved by the assessment order dated 18th of September, 2009, passed by the Assessing Officer, the Assessee preferred an appeal before the Commissioner Income Tax (Appeals), *inter alia*, on the ground that the Assessing Officer has erred in law and facts by making additions of Rs. 15,00,000/- (rupees fifteen lacs only) on account of unsecured loans and Rs. 18,30,000/- (rupees eighteen lacs and thirty thousand only) already added in the assessment year 2006-07.

04.) By order dated 28th of September, 2010, the Commissioner of Income Tax (Appeals), allowed the appeal of the Assessee and deleted the additions made by the Assessing Officer on account of addition of unexplained credit (Rs. 15,00,000/-/rupees fifteen lacs only) and unexplained expenditure (Rs. 18,30,000/-/ rupees eighteen lacs and thirty thousand only). In so far as the first item under the head 'unexplained credit' is concerned, it was held as under:

> *"The representative of assessee also filed the copies of balance sheets for both the years i.e. Assessment Year 2001-02 as well as Assessment Year 2007-08. There is no doubt that the loan from m/s Himachal Futuristic has been continuously been carried forward from Assessment Year 2001-02. In fact, the amount of such loan is not Rs.15,00,000/- (Rs.15 lacs) but Rs.1,50,00,000/- (Rs.1.5 Crores) which also escaped the attention of A.O. it is crystal clear that the said loan doesn't relate to the Assessment Year 2007-08 and in no case, it can be considered for addition in A.Y. 2007-08. It is curious to note that the A.O. has not at all made any effort to show this a fictitious loan. Even if it is the case, for discussion sake, it can in no way be added u/s 68 of the Income Tax Act, in the Assessment*

year 2007-08 when the Assessing Officer herself has accepted that it was being carried forward live since A.Y. 2001-02. The discussion made in assessment order in respect of such addition made is totally off the mark, ignoring the basic facts. It is also not a case where it is treated as cessation of the liability.

In view of this, the addition of Rs.15,00,000/- (In fact, the figure was Rs. 1.5 Crores) is deleted being baseless.

With regard to the second addition of Rs. 18,30,000/- (eighteen lacs and thirty thousand only) running under the caption, 'unexplained expenditure', the Commissioner of Income Tax (Appeals), observed as under:

"Here also it is undisputed that this addition was made in Assessment year 2006-07. The facts of the case are that the appellant had shown an amount of Rs. 18,30,000/- as unsecured loan in the name of Mr. Ghulam Nabi. During the stage of assessment it was contended on behalf of assessee that in fact the amount represented trade advances from various parties received through Mr. Ghulam Nabi and it was those advances which are claimed to be settled through sales made to them in the Assessment Year under reference. Anyway, the fact remains that such addition was already made in Assessment Year 2006-07 and was essentially a matter relating to the immediately preceding year and not this year in question. Merely by saying that this was a bogus liability for Assessment Year 2006-07 which is cleared in Assessment year 2007-08, so it must be repaid out on unrecorded sources is only a presumption without a shred of evidence brought on record. This addition of Rs.18,30,000/- deserves nothing but the deletion.

In view of the above, the addition of Rs.18,30,000/- stands deleted."

05.) Being aggrieved of the aforesaid order of the Commissioner of Income Tax (Appeals), Jammu, the Revenue preferred an appeal before the Tribunal, *inter alia*, challenging the confirmation of deletion of Rs. 15,00,000/-(rupees fifteen lacs only) and Rs. 18,30,000/- (eighteen lacs and thirty thousand only) by the Commissioner of Income Tax (Appeals). The Tribunal accepted the contention of the Revenue and, in terms of order dated 24th of February, 2014, that is impugned here in this appeal, held as under:

> *11.1 As regards to the issue involved in ground no. 1 regarding deletion of addition of Rs. 15,00,000/- {actually Rs. 1,50,00,000/-} as mentioned by the Revenue in the ground no. 1, we are of the view that the Assessing Officer after examining the return filed by the assessee along with other documentary evidence of the assessee called upon to the assessee to submit the details of sundry creditors/loans outstanding for more than three years. Vide reply dated 03.09.2009, it was submitted by the assessee that the credit balance of M/S Himachal Futuristic Com. Ltd. was lying as an outstanding liability under the head unsecured loans for more than three years. M/s Himachal Futuristic Com. Ltd. is not a related concern of the assessee firm. The assessee has not furnished any detail I.T.A. No. 458(Asr)/2010 Assessment year: 2007-08 about the relationship between the assessee and M/s Himachal Futuristic Co. Ltd. which requires according to Section 40A(2)(b) of the Act. The assessee has also not produced any evidence regarding any business transaction with M/s Himachal Futuristic Co. Ltd. No doubt, the assessee has pleaded that the loan had been raised in the Financial Year 2001-02. It is against the preponderance of probabilities that a business concern would keep such a huge amount outstanding with an unrelated concern and with which it does not have any normal business transactions, for a period of more than 3 years. The assessee has not established by filing any documentary evidence before the Assessing Officer as well as before the learned first appellate authority and even before this Bench regarding business relation/business transaction for the previous years as alleged by the assessee. Even as per record, it is admitted facts that the assessee has not paid any interest or credited to M/s Himachal Futuristic Co. Ltd. in respect of this credit balance. The Assessing Officer called the explanation from the assessee to explain the reasons for loan of M/s Himachal Futuristic Co. Ltd. being stagnant for 3 years and more and also asked mode of payment, terms of payment and repayment schedule. The assessee submitted its reply dated 14.09.2009, wherein it has I.T.A. No. 458(Asr)/2010*

Assessment year: 2007-08 submitted that non-payment of unsecured loan to M/s Himachal Futuristic Com. Ltd. is only a reason that they are very friendly with the assessee firm and due to the liquidity crunch being faced by the assessee firm for the last so many years, the assessee is not in a position to repay the said loan.

11.2 In our considered view, the reply filed by the assessee is totally baseless and illogical and without any cogent documentary evidence. The assessee has not submitted any documentary evidence on the query raised by the Assessing Officer dated 03.09.2009, as mentioned above. It is settled position in law that wherever there are credit entries in the books of the assessee the onus is upon the assessee to establish the identity and the creditworthiness of the donor and the genuineness of the transaction. In the present case, no documentary evidence has been filed by the assessee supporting its claim on the issue in dispute before the Assessing Officer as well as before the learned first appellate authority and even before us. We surprised to read the impugned order passed by learned first appellate authority on the issue in dispute in which he has deleted the addition in dispute only on the basis of copies of balance- sheet for the assessment year 2001-02 as well as the assessment year I.T.A. No. 458(Asr)/2010 Assessment year: 2007-08 2007-08 by holding that the loan in dispute has continuously been carried forward for the assessment year 2001-02 and the Assessing Officer has not made any effort to establish that the loan in dispute is a fictitious loan whereas the Assessing Officer herself has accepted that it was being carried forwarded since A.Y. 2001-02.

11.3 In our considered view, the finding of the learned first appellate authority is contrary to the law and facts on the record and we are of the view that as per provision of Section 69 of Act "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.

11.4 During the course of assessment proceedings, the Assessing Officer found that credit balance of M/S Himachal Futuristic Com. Ltd. was lying as an outstanding liability under the head unsecured loans for more than three years. In spite of the fact *that M/s Himachal Futuristic Com. Ltd. is not a related concern of the assessee firm within the meaning of section 40A(2)(b) of the Income Tax Act, 1961. The I.T.A. No. 458(Asr)/2010 Assessment year: 2007-08 Assessing Officer also found that the concern M/s Himachal Futuristic Com. Ltd. does not have any business transactions with the assessee firm in the normal course. The Assessing Officer had given opportunity to the assessee to establish the requirement of Section 68 of the Act but the assessee failed to establish with any documentary evidence that why the assessee has taken the loan from M/s Himachal Futuristic Co. Ltd. in the financial year 2001-02 and the huge amount is still outstanding without payment of any interest or crediting the interest in the account of M/s Himachal Futuristic Co. Ltd.. In respect of this credit balance, unsatisfactory explanation given by the assessee has been accepted by the learned first appellate authority while deleting the addition in dispute. In our considered view, the impugned order on the deletion of addition of Rs. 15,00,000/- is not as per law and record of the case. Therefore, we are unable to sustain the same. In our considered view, the Assessing Officer is within her power to call for explanation of the assessee on any sum which she has found credited in the books of the assessee maintained for any previous years. The Assessing Officer called the explanation which is not satisfactory and as per the provisions of law and without support of any documentary evidence. In our view, the Assessing Officer has rightly I.T.A. No. 458(Asr)/2010 Assessment year: 2007-08 rejected the explanation of the assessee on the issue in dispute and has rightly made the addition of Rs. 15,00,000/- as unexplained cash entry made by the assessee in its books of account under Section 69 of the Act because the assessee with mala fide intention has made the entry of this cash credit to avoid the tax liability.*

11.5 It is made clear that although the Assessing Officer in the previous year could not catch the wrongs done by the assessee with the motive to evade tax but it does not mean that if in the previous year, one wrong is continuously coming from the financial year 2001-02 as in the case of the assessee, and at one stage if the Assessing Officer doubted there is evasion of tax, then he/she can call the explanation of the assessee for the assessment year in his/her hand. Nothing is wrong, if the Assessing Officer stop to continue the wrongs committed by the assessee to watch the interest of the Revenue and the negligence of the previous Assessing Officer should not be continued and should be stopped at one stage as has *been stopped by the Assessing Officer in the present case. In our considered view, learned first appellate authority has wrongly deleted the addition of Rs. 15,00,000/- without appreciating the facts of the case on hand. Therefore, on this issue the impugned order is cancelled and ground no. 1 raised by the Revenue in the present appeal is allowed and we uphold the order of the Assessing Officer.*

12. As regards to the deletion of addition of Rs. 18,30,000/- under Section 69C of the Act by the learned first appellate authority, after hearing both the parties and considering the reply filed by both the parties, our findings is as under:-

12.1 The addition of Rs. 18,30,000/- made by the Assessing Officer is almost on the identical ground on which the Assessing Officer made the addition of Rs. 15,00,000/-, as stated in the aforesaid paragraphs. The assessee has almost filed similar reply to that without the support of any evidence for substantiating its claim. We are of the considered view that the assessee had declared an unsecured loan of Rs. 18,30,000/- from some Ghulam Nabi for the financial year 2005-06. This liability was stated to be repaid during the financial year 2006-07 and no credit balance was shown against Sri Ghulam Nabi for the financial year ending on 31.03.2007. The Assessing Officer asked the assessee to produce Sh. Ghulam Nabi and establish his identity but the assessee failed to produce Sh. Ghulam Nabi before the Assessing Officer. The Assessing Officer held that this liability shown by the assessee is bogus and the sum was nothing but assessee's own money introduced by the assessee in its books of account in the garb of unsecured loan. The averment of the assessee I.T.A. No. 458(Asr)/2010 Assessment year: 2007-08 regarding repayment of loan to Sh. Ghulam Nabi during the year in dispute has not been established by the assessee with the proof of any documentary evidence. Learned first appellant authority has wrongly deleted the addition in dispute without being any evidence that the assessee has repaid the amount in dispute to Sh. Ghulam Nabi in the assessment year in dispute.

12.2 In our considered view, the learned first appellate authority has wrongly deleted the addition in dispute merely on presumption and assumption and in the absence of any documentary evidence supporting the claim of the assessee. In the present case, the assessee is claiming the benefit of Rs. 18,30,000/- on account of unsecured loan in the name of Sh. Ghulam Nabi and the onus is upon *the assessee to establish the identity and creditworthiness of Sh. Ghulam Nabi as well as the genuineness of transactions for which the assessee has failed to establish before the Assessing Officer as well as before the learned first appellate authority and even before us. The assessee has not filed any valid explanation supporting any documentary evidence or filing confirmation from Sh. Ghulam Nabi for the payment of the loan in dispute. Before the Assessing Officer, the assessee has also failed to produce Sh. Ghulam I.T.A. No. 458(Asr)/2010 Assessment year: 2007-08 Nabi to corroborate its version and till date nothing has been brought on record that Sh. Ghulam Nabi is in existence or not. 12.3 In our considered, the unsecured loan of Rs. 18,30,000/- shown by the assessee in its balance sheet from some Sh. Ghlam Nabi for the financial year 2005-06 which the assessee has stated to be repaid during the financial year 2006-07 and no credit balance was shown against Sh. Ghulam Nabi for the financial year ending on 31.03.2007. For lack of documentary evidence establishing the identity of Sh. Ghulam Nabi, we hold that the assessee has shown this bogus liability with the intention to evade the tax and has introduced its own money in the books in the garb of unsecured loan. In our considered view, the order passed by the learned first appellate authority, wherein the addition of Rs. 18,30,000/- has been wrongly deleted, is against the law and facts on the file. Therefore, the impugned order deserves to be cancelled and accordingly we cancel the same by upholding the order passed by the Assessing Officer on the addition of Rs. 18,30,000/- as unexplained expenditure under Section 69C of the Act.*

13. With the foregoing discussion, we are of the view that the Assessing Officer passed a well reasoned assessment order on the issue I.T.A. No. 458(Asr)/2010 Assessment year: 2007-08 in dispute and accordingly we uphold the assessment order dated 18.09.2009 on the issues involved in the present appeal and cancel the impugned order dated 28.09.2010 passed by the learned first appellate authority by accepting the appeal filed by the Revenue.

14. In the result, the appeal filed by the Revenue is allowed."

06.) Aggrieved by the order passed by the Tribunal, the Assessee has preferred the present appeal. It is contended before us on behalf of the Assessee that the Tribunal has erred in setting aside the deletion made by the Commissioner of Income Tax (Appeals). It has been pleaded on behalf of the learned counsel for the appellant/ Assessee that the following questions arise for our consideration:

1. *"Whether on the facts and, circumstances of the appellant the Income Tax Appellate Tribunal has erred in sustaining an addition of Rs. 15,00,000/- (rupees fifteen lacs only) representing the loan received from M/s Himachal Futuristic Co. Ltd., during Assessment year 2002-03 and remaining outstanding at the close of the year?"*
2. *Whether on the facts and, circumstances of the appellant, and, on true and correct construction of the provisions contained in section 69C of the Act the Income Tax Appellate Tribunal has erred in sustaining an addition of Rs. 18,30,000/-(rupees eighteen lacs and thirty thousand only) representing the advance received from Gulam Nabi in Assessment year 2006-07 and repaid in the instant year?*
3. *Whether, the Income Tax Appellate Tribunal was justified in law, in reversing the action of the Commissioner of Income Tax (Appeals) in deleting the additions made by the Assessing Officer without giving due considerations to the reasoning/ findings given by the Commissioner of Income Tax (Appeals) and the submissions of the Assessee?*
4. *Whether the order of the Income Tax Appellate Tribunal is not vitiated in law for non-consideration of the relevant material and evidence placed on record and submissions made by the Assessee?*
5. *Whether the impugned order of the Income Tax Appellate Tribunal can be held to be unreasoned, arbitrary and, non-speaking order and as such the additions sustained of Rs. 33,30,000/- are not validly sustainable in law?"*

07.) Mr Asif Ahmad Bhat, the learned counsel, appearing on behalf of the appellant/ Assessee, submits that the Tribunal has, even though referred to Section 69 of the Act, but deleted the addition on the basis of the provisions contained in Section 68 of the Act and that, in fact, Section 68 of the Act only applies where any sum is found credited in the books of an

Assessee maintained for any previous year and the assesse offers no explanation about the nature and source thereof or the explanation offered is not, in the opinion of the Assessing Officer, satisfactory, then the sum so credited may be included in income of the assesse for that previous year. The learned counsel pleads that unless there is a fresh credit in the books of the assesse for the previous year, Section 68 of the Act has no application. It is stated that a carried forward amount of the previous year does not become an investment or cash credited during the next year. In this behalf, the learned counsel has invited the attention of the Court to the judgment of the Rajasthan High Court, rendered in the case of ***'CIT v. Prameshwar Bohra'*** reported in ***'301 ITR (Raj)'***. Paragraph Nos. 5 and 6, being relevant, are reproduced below, verbatim:

> *"5. On the merit, of the additions made in the income of the Assessee, there is a clear finding, and about which there is no dispute, that the amount added in the income of the assessee as unexplained investment or cash credit in the asst. yr. 1993-94 was the same amount which was credited in the books of account of the assessee for previous year ending on 31st March, 1992. The Tribunal has categorically come to a finding, and that finding is not under challenge, that this is not a case of cash credit entered in the books of account of the assessee during the year but it is a case in which the assessee has invested the capital in the business and this amount was shown as a closing capital as on 31st March, 1992 and on 1st April, 1992 it was an opening balance. Considering this aspect, the Tribunal has come to the conclusion that what was already credited in the books of accounts ending on 31st March, 1992 for financial year 1991-92 relevant to asst. yr. 1992-93 cannot be an unexplained cash credit or investment in the books of account maintained for the financial year 1992-93, the accounting period of which ends on 31st March, 1993 so as to warrant its consideration as unexplained investment or cash credit for its relevant asst. yr. 1993-94.*
>
> *6. It does not require any elaborate argument that a carried forward amount of the previous year does not become an investment*

or cash credit generated during the relevant year 1993-94. This alone is sufficient to sustain the order of the Tribunal in deleting the amount of Rs.1,55,316 from the assessment for asst. yr. 1993-94. Since the appeal succeeds on the merit of the assessee's case in respect of the additions made in the income computed on reassessment, the validity of notice dt. 17th June, 1997, need not be gone into.

7. Accordingly, this appeal fails and is hereby dismissed. No order as to costs."

08.) As regards the amount received of Rs. 18,30,000/- (eighteen lacs and thirty thousand only) from Gulam Nabi, the learned counsel for the appellant submits that the instant addition was also made in the financial year 2005-06 relevant to assessment year 2006-07 and, therefore, it is a case of double taxation which is not tenable. In order to substantiate this argument, the learned counsel has placed explicit reliance on the judgment of law rendered by the Supreme Court in case titled ***'State of UP v. Raja Buland Sugar Co. Ltd***.', reported in ***'118 ITR 50 (SC)'***, wherein it has been held as under:

"The principle that is applicable in tax is statues is that income is subject to tax in the hands of the same person only once. Thus, if an association or a firm is taxed in respect of its income the same income cannot be charged again in the hands of the members individually and vice versa. Trust income cannot be taxed in the hands of the settler and also in the hands of the trustee or beneficiary or in the hands of both the trustees as well as the beneficiary. These principles are of course subject to any special provision enabling double taxation in the statute."

09.) In so far as the finding of the Tribunal that the first appellate authority deleted the addition merely on presumptions and assumptions and in absence of any documentary evidence supporting the claim of the Assessee, it has been held that the burden was on the assesse to establish the identity and creditworthiness as well as the genuineness of the transactions which Assessee fails to establish so far as the sum of Rs. 18,30,000/- (eighteen lacs and thirty thousand only) is concerned, it has been stated that the Tribunal has fallen in error inasmuch as since there was no fresh credit of Rs. 18,30,000/- (eighteen lacs and thirteen lacs only), there was no obligation on the Assessee to establish the identity, creditworthiness and genuineness of transactions in the instant year and such burden has been examined and which is to be examined only in financial year 2005-06 relevant to assessment year 2006-07 and not in the instant assessment year. It is the significant case of the appellant/ Assessee that once there is no fresh credit of money in the instant year, such a finding is patently misconceived. This finding, as stated, has been made a basis for invoking Section 69C of the Act which is also inapplicable as Section 69C of the Act applies only when Assessee incurs an expenditure which has not been explained.

10.) Mr Kawoosa, the learned counsel for the respondents, while supporting the judgment rendered by the Tribunal, submits that the learned Commissioner of Income Tax (Appeals) was not justified in deleting the addition of Rs. 15,00,000/- (rupees fifteen lacs only) without appreciating the fact that the Assessee failed to justify the reasonableness as to how and why such huge interest free loan was outstanding for payment to a concern with which the Assessee was having neither any business transactions nor any relation. The learned counsel has further argued that the learned Commissioner of Income Tax (Appeals) was also not justified in deleting the addition made under Section 69 of the Act to the tune of Rs.18,30,000/- (rupees eighteen lacs and thirty lacs only), without appreciating the fact that the Assessee failed to give any explanation when confronted with the issue. Mr Kawoosa has referred to and relied upon the judgments rendered by the Supreme Court in the cases of ***'Commissioner of Income Tax v. P. Mohanakala***', reported in ***'(2007) 6 Supreme Court Cases 21***' and ***'Vijay Kumar Talwar v. Commissioner of Income Tax, Delhi'***, reported in '***(2011) Supreme Court Cases 673'***.

11.) We have heard the learned counsel for the parties, perused the record and considered the matter.

12.) This Court, in terms of order passed on 7th of March, 2017, admitted the appeal on the following substantial question of law:

> *"Whether on the facts and circumstances of the appeal, the tribunal erred in sustaining the addition of loss for the relevant assessment years without taking into consideration the true and correct construction of Sections 68 and 69 of the Income Tax Act?"*

To put in simple words, the moot question that requires to be answered herein in this appeal is as under:

> ***"Whether the learned Tribunal has fallen in error, while making the addition of the amount of Rs.15,00,000/- (rupees fifteen lacs only) on account of unsecured loans as also the amount of Rs. 18,30,000/- (rupees eighteen lac and thirty thousand only) already added in the assessment year 2006-07?"***

Let us deal with the two issues, set out in the aforesaid question, separately.

13.) With regard to the first plea, i.e. the addition of Rs.15,00,000/- (rupees fifteen lacs only) on account of unsecured loans, what transpires from the pleadings placed on record is that during the course of assessment proceedings, the Assessee was asked to explain the reasons for loan of M/s Himachal Futuristic Co. Ltd. being stagnant for three years. The Assessee vide his reply dated 14th of September, 2009, submitted that regarding non-payment of unsecured loan to M/s Himachal Futuristic Com. Ltd., the said company is a listed company and have very friendly relations with the Assessee firm and in view of the liquidity crunch being faced by the Assessee firm for last so many years, the Assessee firm was not in a position to repay the said loan. The Assessing Officer held that no details had been submitted by the Assessee regarding the repayment schedule, mode of payment and the terms of payment in respect of the said loan. It was also held by the Assessing Officer that the Assessee has not brought on record any confirmation or documentary evidence to substantiate that the concern M/s Himachal Futuristic Col. Ltd was indeed having a credit balance of Rs.15,00,000/- (rupees fifteen lacs only) lying with the Assessee since the financial year 2001-02. Finally, the Assessing Officer held that since the settlement of this liability had not reached even during the financial year under consideration, the said liability of Rs.15,00,000/- (rupees fifteen lacs only) remains unexplained and is, accordingly, added back to the total income of the Assessee under Section 68 of the Act.

13.1) The learned counsel for the appellant/ Assessee submitted that the Assessee, during the course of the appellate proceedings, raised this loan of Rs.15,00,000/- (rupees fifteen lacs only) from M/s Himachal Futuristic Co. Ltd. somewhere in the year 2001-02 and has been reflecting it in the balance sheet regularly. The learned counsel further submits that though, the assessments for preceding years were also under scrutiny, no adverse inference was drawn by any Assessing Officer in this regard.

13.2) Since the amount is regularly reflected in the Balance Sheet, it cannot be treated as an unexplained cash credit within the meaning of Section 68 of the Act. The representative of the Assessee also filed the copies of balance sheets for both the years, i.e. Assessment year 2001-02 as well as Assessment year 2007-08. Apparently, the loan from the M/s Himachal Futuristic has been continuously carried forward from Assessment Year 2001-02 and, in fact, the amount of such loan is not Rs.15,00,000/- (rupees fifteen lacs only), but Rs.1,50,00,000/- (rupees one crore and fifty lacs only), which fact escaped the attention of the Assessing Officer. It is clear beyond any shadow of doubt that the said loan does not relate to the Assessment Year 2007-08 and, in no case, it can be considered as an addition in the Assessment year 2007-08. No effort at all has been made on the part of the Assessing Officer to show this loan as a fictitious loan. Even for the sake of argument, if it is treated to be so, it can in no way be added as an income under Section 68 of the Act in the year 2007-08, when the Assessing Officer has accepted that it was being carried forward since the assessment year 2001-02. Section 68 of the Act lays down that if 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. In the instant case, the matter pertains to some six years back and it has been explained by the Assessee that the loan in question is outstanding due to the financial crunch being faced by the appellant firm. In this view of the matter, we find substance in the contentions of the learned counsel for the Assessee/appellant before us as the material/ reply placed by the Assessee before the Assessing Officer has not been considered and no opportunity has been given to him to explain his position, therefore, the view taken by the Tribunal is perverse, accordingly, this question is answered in favour of the Assessee/ appellant before us.

14. The second issue raised in this appeal relates to addition of Rs. 18,30,000/- (eighteen lacs and thirty thousand only) made by the Assessing Officer on account of unexplained expenditure. In so far as this issue is concerned, it was held by the Assessing Officer that during the course of assessment proceedings, the Assessee failed to furnish any ledger account of Shri Ghulam Nabi or specify the mode of payment made to him. When the identity of Shri Ghulam Nabi itself is not established, the issue of making payments to him against the stated liability is also out of question. However, a bogus liability created during the earlier financial year has been stated to be repaid during the financial year under consideration which is nothing but an expenditure which is also unexplained. Finally, the same was treated as unexplained expenditure under Section 69 of the Act and added back to the total income of the Assessee.

14.1) It has been pleaded by the learned counsel for the Assessee/ appellant before us that the addition aforesaid was already made in the assessment order for the assessment year 2006-07 as the matter pertained to that year and has been dealt with during the assessment proceedings of that year. The then Assessing Officer, it is stated, made an addition of this amount to the total income of the Assessee/ appellant for the assessment year 2006-07, after rejecting his explanation and that the matter in respect thereto stands decided in Appeal No.786/2008-09 vide order dated 2nd of August, 2017 in favour of the Assessee/ appellant herein by deleting the addition of Rs.18,30,000/-. However, the Assessing Officer, without considering this aspect of the matter, again made the addition while passing the assessment order for the assessment year under reference and, thus, the same amount has been taxed for two separate years.

14.2.) A perusal of the record reveals that this addition in question was made in the Assessment year 2006-07. The Assessee/ appellant had shown an amount of Rs.18,30,000/- (rupees eighteen lacs and thirty thousand) as unsecured loan in the name of Mr Ghulam Nabi. During the course of assessment proceedings, it was contended by the Assessee/ appellant that the amount represented trade advances from various parties received through Mr Ghulam Nabi and it was those advances which are claimed to be settled through sales made to them in the assessment year under reference. Such addition was already made in the assessment year 2006-07 and not the year in question. Simply by saying that this was a bogus liability for assessment year 2006-07 which is cleared in assessment year 2007-08, it must be repaid out of unrecorded sources is only a presumption without any evidence brought on record to that effect. In the upshot, this addition made by the Assessing Officer is held to be bad and needs to be deleted as, in terms of well settled law, the same amount cannot be taxed for two separate years.

15. For all that has been said and done above, the question, as framed herein above, is answered in favour of the Assessee/ appellant herein and against the revenue/ respondents herein. Consequently, the findings of the Commissioner of Income Tax (Appeals) vide its order dated 28th of September, 2010, are upheld and the order of the Income Tax Appellate Tribunal (ITAT), Amritsar Bench, Amritsar, dated 24th of February, 2014, is set aside. Consequently, the additions made in respect of the unsecured loans and unexplained expenditure to the tune of Rs.15,00,000/- (rupees fifteen lacs only) and Rs.18,30,000/- (rupees eighteen lacs and thirty thousand only) respectively, are liable to be deleted from the return income of the Assessee for the assessment year 2007-2008 and, as such, are deleted from the income of the Assessee for the relevant assessment year.

16. Appeal **allowed** in the aforementioned terms.

(M. K. Hanjura)
Judge

(Ali Mohammad Magrey)
Judge

Srinagar
23rd April, 2018
"TAHIR"