**(2016) 04 P&H CK 0243**

**In the Punjab And Haryana At Chandigarh**

**Case No :** ITA No.24 of 2016 (O&M)

Sanjeev Kumar — APPELLANT

Vs

Commissioner of Income Tax - I and another — RESPONDENT

**Date of Decision :** 26-04-2016

**Acts Referred:**
Income Tax Act, 1961 — Section 68

**Citation :** (2016) 385 ITR 493

**Hon'ble Judges :** Ajay Kumar Mittal and Raj Rahul Garg, JJ.

**Bench :** Division Bench

**Advocate :** Mr. M.R. Sharma, Advocate, for the Appellant;

**Final Decision :** Dismissed

## Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the revenue under section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 27.8.2015, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh in ITA No.40/Chd/2013, for the assessment year 2009-10, claiming following substantial questions of law:-

"(i) Whether in the facts and in the circumstances of the case, the orders partly (Annexure A.1), partly (Annexure A.2) and partly (Annexure A.3) are legally sustainable?

(ii) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal is right in law in upholding the order of the Assessing Officer and CIT(A) Chandigarh with regard to the addition of Rs. 25,00,000/- under section 68 of the Income Tax Act. The appellant filed requisite details with regard to the unsecured loan before the ITAT through a paper book for consideration during appellate proceedings but the same have not been taken into consideration while passing the order by the Hon''ble ITAT?

(iii) That the appellant assessee craves leave to alter, amend, delete or add to any of the above substantial questions of law during the pendency of the present appeal?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is engaged in the business of trading of steel at Morinda in Ropar district in the State of Punjab under the name and style of M/s Shree Neelkanth Enterprises, Kurali Road, Morinda, District Ropar. The appellant filed his return of Income on 30.9.2009 along with audit reports and audited annual accounts as per the provisions of section 44AB of the Act declaring net taxable income at Rs. 3,01,6320/-. The case of the appellant was processed under the provisions of section 143(1) of the Act on 7.9.2010 which was accepted. Subsequently, notice under section 143(2) of the Act was issued on 30.8.2010 as the case of the appellant was selected for scrutiny assessment. A questionnaire along with statutory notice was issued to the appellant on 23.6.2011, 3.8.2011 and 21.12.2011. The Assessing Officer in her order dated 29.12.2011, Annexure A.1 had specifically stated that since the assessee did not furnish any reply, there was no other alternative left with her but to complete the assessment on merits. It was further stated in the order that it was either Shri Sanjeev Garg, ITP or the brother of the appellant, Shri Bhushan Kumar who attended the proceedings before the Assessing Officer. The appellant never attended the proceedings as he was not well. No reply was filed by the assessee. While completing the assessment, the Assessing Officer made various additions and disallowances. According to the appellant, the additions made other than the addition of Rs. 25,00,000/- under Section 68 of the Act are not under challenge before this Court. Aggrieved by the order dated 29.12.2011, Annexure A.1 passed by the Assessing Officer, the assessee filed appeal before the Commissioner of Income tax (Appeals) [CIT(A)]. Vide order dated 29.10.2012, Annexure A.2, it was held that since the assessee had not been able to prove the source of cash credit of Rs. 25 lacs which was ostensibly received from Shri Ashok Bansal, the addition of the amount under section 68 of the Act was held to be justified. Not satisfied with the order, the assessee filed appeal before the Tribunal. The Tribunal vide order dated 27.8.2015, Annexure A.3 partly allowed the appeal. However, on the issue qua addition of the amount under section 68 of the Act, the findings recorded by the CIT(A) were upheld by the Tribunal. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the appellant.

4. It has been inter alia recorded by the Tribunal after appreciation of entire material on record that the assessee could not produce any evidence regarding source of deposit of Rs. 25 lacs by Shri Ashok Bansal with him. Under Section 68 of the Act, onus was upon the assessee to prove the identity of the creditor, his credit worthiness and genuineness of the transaction in the matter. Since the assessee failed to produce any documentary evidence regarding the source of the deposit of the amount, the addition was held to be justified. The relevant findings recorded by the Tribunal read thus:-

"12. On ground No.4, assessee challenged the addition of Rs. 25,00,000/- on account of cash credit under section 68 of the Act. The brief facts are that assessee had shown unsecured loan of Rs. 25 lacs in the name of Shri Ashok Bansal. The Assessing Officer requested the assessee to furnish confirmation along with PAN of Shri Ashok Bansal and proof of his filing income tax return. The Assessing Officer asked the assessee to furnish documentary evidence regarding source of credit in the hands of Shri Ashok Bansal and also to explain whether he is assessed to tax. The assessee did not furnish any evidence regarding source of the deposit of this amount. Therefore, Assessing Officer made addition under section 68 of the Income Tax Act. Since no submissions have been made before learned CIT(Appeals), therefore, addition was confirmed and this ground of appeal of the assessee was dismissed.

13. We have heard learned representatives of both the parties. The learned counsel for the assessee has shown his inability to produce any evidence regarding source of deposit of Rs. 25 lacs by Shri Ashok Bansal with the assessee. It is well settled law that for explaining the cash credit under section 68 of the Act, burden is upon assessee to prove identity of the creditor, his credit worthiness and genuineness of the transaction in the matter. Since the assessee has failed to furnish any evidence on source of the deposit and credit worthiness of the creditor, therefore, assessee has failed to prove the credit worthiness of the creditor and genuineness of the transaction in the matter. No submissions were made before learned CIT (Appeals) and even no evidence has been produced before us to explain the above issue, therefore, we do not find any error in the orders of the authorities below in making and confirming the addition. This ground of appeal of the assessee is accordingly, dismissed."

5. The concurrent findings recorded by the authorities below on the limited issue qua addition of Rs. 25 lacs on account of cash credit under section 68 of the Act have not been shown to be illegal or perverse in any manner by the learned counsel for the appellant-assessee. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.