

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”, BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI PAWAN SINGH, JM**

**ITA No.5103/Mum/2015**  
**(Assessment Year :2007-08)**

M/s. Shree Krishna Hindu Merchants Club, “Belle Vue”, 44, Chowpatty Road, Girgaum, Mumbai – 400 007	Vs.	ITO 16(2)(4), Mumbai
<b>PAN/GIR No.</b>		<b>AABAS6742D</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Firoz Andhyarajina
Revenue by	Shri K.C.Kanojia
<b>Date of Hearing</b>	<b>19/10/2016</b>
<b>Date of Pronouncement</b>	<b>23/12/2016</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A) for the assessment year 2007-08 in the matter of order passed u/s.143(3) r.w.s. 147.

2. Assessee has taken the following grounds.

*1. Whether on the facts and circumstances of the case and the entire assessment / proceedings are bad in law and void ab initio since no notice u/s 143(2) was issued or served on the assessee club.*

*2. Whether on the facts and circumstances of the case and in law the CIT (A) grossly erred in adding loans received from 3 members amounting to Rs 15 lakhs as unexplained cash credit u/s 68 of the IT Act, without appreciating the fact that the loan was received in the earlier year and paid during the subsequent year.*

3. The CIT(A) failed to appreciate that the 3 loans from the members of Rs 5 lakhs each added u/s 68 as unexplained cash credit were loans taken from members, loans were bona fide and genuine and reflected in the bank statement and in the Balance Sheet of the Appellant.

4. That the CIT (A) grossly erred in confirming the addition of 3 loans given by members out of 7 loans and making an addition u/s 68, when section 68 has no application where the doctrine of mutuality applies.

5. Whether on the facts and circumstances of the case and in law the CIT (A) erred in adding members' subscription amounting to Rs. 1,07,650 ignoring the settled law and the principles of mutuality

6. The CIT (A) erred in levying interest u/s 234A, 234B and 234C

3. Rival contentions have been heard and record perused.

4. Facts in brief are that assessee is an association of person declaring the income of Rs.6,65,966/-. The assessee received Notice dated 28th March, 2012 u/s 148 of the Income Tax Act, 1961. The assessee filed the return of income on 18<sup>th</sup> October, 2012 pursuant to the Notice U/s 148 of the Act.. This return of income was filed declaring the same income of Rs. 6,65,966/- which was declared in the return of income earlier filed.

5. During the course of assessment AO observed that the assessee has taken following loans in the earlier year ended 31<sup>st</sup> March, 2006:

Name of the Party	Amount (Rs.)
Bhagwan G. Punwani	5,00,000/-
P.K.Khurana	5,00,000/-
Ravi Kiran Agarwal	5,00,000/-
<b>Total</b>	<b>15,00,000/-</b>

6. The loan amounts have been carried forward during the year ended 31<sup>st</sup> March, 2007 and were outstanding as on 31st March, 2007. The Assessing Officer has added the above amount of Rs. 15,00,000/- to the total income on the ground that the assessee has not furnished the loan confirmation from the above parties. The same is treated as unexplained cash credit u/s 68 of the Income Tax Act, 1961 and added back to the total income.

7. By the impugned order CIT(A) confirmed the addition against which assessee is in further appeal before us.

8. As per learned AR, the details of unsecured loan as on 31st March, 2007 and as on 31<sup>st</sup> March, 2006 were furnished in Schedule A to the Audited Statement of Account. The copy of the Audited Statement of Account was filed with the Assessing Officer vide letter dated 22nd October, 2012. As per learned AR, no loan confirmation was asked during the assessment proceedings. Learned AR relied on the decision of Patna High Court in the case of Bahri Brothers Pvt. Ltd., 154 ITR 244 in support of the proposition that assessee has discharged primary onus, therefore, burden is shifted to the revenue to disapprove the contention of assessee with regard to genuineness of credits.

9. We have considered rival contentions and found from record that the assessee has taken certain unsecured loans in the earlier years from seven parties, totaling to Rs. 17,50,000/-. The same amount in respect of

the same parties as was outstanding as on 31<sup>st</sup> March, 2006 was also outstanding as at 31<sup>st</sup> March, 2007. Out of this in the assessment order, the addition has been made in respect of following three loans:

<b>Name of the Party</b>	<b>Amount (Rs.)</b>
Bhagwan G. Punwani	5,00,000/-
P.K.Khurana	5,00,000/-
Ravi Kiran Agarwal	5,00,000/-
<b>Total</b>	<b>15,00,000/-</b>

10. The above loans from above parties were taken in the earlier year ended 31<sup>st</sup> March, 2006. The loans were taken in November and December 2005. The loan amounts have been carried forward during the year ended 31<sup>st</sup> March, 2007 and were outstanding as on 31<sup>st</sup> March, 2007. The Assessing Officer has added the above amount of Rs. 15,00,000/- to the total income merely on the ground that the assessee has not furnished the loan confirmation from the above parties, whereas as per learned AR, no such confirmation was asked by AO during assessment proceedings.

11. We found that these loans have been repaid in subsequent accounting year 2007-08. The details of repayment is as under:

<b>Date</b>	<b>Name of the Party</b>	<b>Amount (Rs.)</b>	<b>Cheque No. and Bank</b>
21/06/2007	Ravi Kiran Agarwal	2,50,000/-	979740- ICICI Bank
22/06/2007	Bhagwan G. Punwani	2,50,000/-	979739- ICICI Bank
26/06/2007	P.K. Khurana	2,50,000/-	979738- ICICI Bank
19/07/2007	Bhagwan G. Punwani	2,50,000/-	979769- ICICI Bank
19/07/2007	Ravi Kiran Agarwal	2,50,000/-	979770- ICICI Bank
20/07/2007	P.K.Khurana	2,50,000/-	979768- ICICI Bank

12. The assessee has also filed copies of ledger account of above three parties. The assessee has also filed the copies of bank statements of the assessee wherein these loans are received, the copies of bank statements of assessee's account in ICICI Bank wherein these payments are reflected and a statement of name and address of these parties. By filing all these documentary evidences, the assessee had discharged its primary onus. However, even after furnishing all these details, the AO failed to issue notice to above parties u/s.133(6).

13. Keeping in view the totality in facts and circumstances of the case, we restore the matter back to the file of the AO with a direction to the AO to issue 133(6) to the concerned creditor to find out their genuineness and for obtaining their confirmation. Accordingly, AO is to decide the issue afresh after giving due opportunity to the assessee.

**14. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on this 23/12/2016

**Sd/-**  
**(PAWAN SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 23/12/2016  
Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai