

**(2014) 12 MAD CK 0372**

**Madras High Court**

**Case No:** Tax Case (Appeal) No. 1002 of 2014

G. Malini

APPELLANT

Vs

The Assistant Commissioner of  
Income Tax

RESPONDENT

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**Date of Decision:** Dec. 1, 2014

**Acts Referred:**

- Income Tax Act, 1961 - Section 68

**Hon'ble Judges:** R. Sudhakar, J; R. Karuppiah, J

**Bench:** Division Bench

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### **Judgement**

R. Sudhakar, J.

1. This Tax Case (Appeal) is filed by the assessee as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in confirming the addition of Rs.1,00,000/- towards estimated inflation of the labour charges?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the appellant had accepted to the said additions at the time of assessment, even though a specific ground was raised before the CIT (Appeals) that only concession was granted?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in confirming the addition of Rs.3,14,800/- under Section 68 of the Act, even though the appellant has discharged her burden by proving the details of the persons from whom she had taken loans?"

2. The assessment in this case relates to the assessment year 2006-07. The assessee is engaged in the business of manufacture of bitumen products and felts. The assessee is also engaged in the business of contracts for purchase of materials,

wherein she incurs labour expenses. The assessee filed her return of income for the assessment year in question declaring her income as Rs.4,73,836/- and agricultural income at Rs.5,99,400/-. On a perusal of the records, the Assessing Officer was of the view that the assessee had inflated the labour expenses and hence, added a sum of Rs.1.00 lakh. The Assessing Officer also found that the assessee had shown in her balance sheet unsecured loans from friends and relatives to the tune of Rs.11,76,342/-. The loans were ranging between Rs.15,000/- to Rs.19,000/-. Hence, the assessee was asked to submit the list of loan creditors along with the addresses. The parties from whom loans were taken had submitted confirmation letters stating that the loan has been given for business purposes. The assessee was asked to prove the creditworthiness of the parties and the assessee was able to prove the creditworthiness of majority of the lenders except 19 persons and that amounted to Rs.3,14,800/-. Hence, the Assessing Officer made addition of the same under Section 68 of the Income Tax Act. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who confirmed the findings of the Assessing Officer. Aggrieved by the same, the assessee preferred further appeal before the Income Tax Appellate Tribunal. The Tribunal dismissed the appeal holding that the assessee has not shown any material to controvert the findings of the Assessing Officer. As against the said order of the Tribunal, the assessee is before this Court.

3. Learned counsel appearing for the appellant submits that the Tribunal has not considered the fact that as per Section 68 of the Income Tax Act, the burden of the assessee shall stand discharged the moment the assessee proves the identity of their creditors. Hence, the order of the Tribunal may be set aside.

4. Heard learned counsel appearing for the appellant and perused the materials placed before this Court.

5. We find no merits in this appeal. The issue involved in this appeal is in respect of the additions made towards inflated labour charges and unproved cash credits. With regard to the labour charges is concerned, the assessee had met the entire expenditure towards labour charges in cash and the assessee had not produced any vouchers to prove the genuineness of the expenditure claimed. Hence, the Assessing Officer made addition of Rs.1.00 lakh out of Rs.17,28,696/- claimed by the assessee. It is seen from the assessment order that the assessee had also accepted the same at the time of assessment. Hence, the Tribunal is correct in confirming the addition made by the Assessing Officer.

6. With regard to the addition made under Section 68 of the Income Tax Act in respect of unsecured loans, it is seen from the order of the Assessing Officer that the assessee had proved the creditworthiness of majority of lenders except 19 persons, from whom the assessee had borrowed funds. The Assessing Officer allowed the claim in part and denied the rest, as the assessee did not prove the creditworthiness of the 19 persons. Even though the assessee had shown the

identity of 19 persons, the Assessing Officer held that they are not income tax assesseees and they are only name lenders. The assessee is able to prove the creditworthiness of majority of lenders, but there is no material to prove the creditworthiness of the remaining persons. We find that after considering the explanation submitted by various lenders enclosing the cash book indicating the date of lending, the Assessing Officer allowed the claim in part. In respect of the persons who have not shown any material to prove the genuineness of the loan given, the Assessing Officer declined to grant the benefit. Hence, the Tribunal confirmed the order of the Assessing Officer. We find no infirmity in the order of the Tribunal, which is based on facts not rebutted.

7. We hold that the issue raised is a pure question of fact. We find no question of law much less any substantial question of law arises for consideration in this appeal. Accordingly, this Tax Case (Appeal) stands dismissed.