

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

[Coram : Bhavnesh Saini JM and Pramod Kumar AM]

I.T.A. No.144/Agra/2013
Assessment year: 2009-10

**Assistant Commissioner of Income Tax
Central Circle, Agra**

.....**Appellant**

Vs.

Praveen Kumar,
3/51 B, Bharatpur House,
Khandari, Agra
[PAN: ABXPS 7293 R]

.....**Respondent**

Appearances by:

Inderjit Singh, *for the appellant*

Deependra Mohan with Prarthana Jalan, *for the respondent*

Date of concluding the hearing : June 26, 2014
Date of pronouncing the order : July 04, 2014

O R D E R

Per Pramod Kumar:

1. This appeal is directed against the order dated 30th October 2012, passed by learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2009-10.

2. Grievances raised by the appellant Assessing Officer are as follows:

"1. That the Ld CIT(A) is not justified in deleting the addition of Rs.13,50,000/- on account of explained four unsecured loans u/s 68 of the I.T. Act, 1961 without realising the fact that the creditworthiness of the loan provider was not proved and granting relief only on the basis of AO's assessment without giving their own finding as appellate authority.

2. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.13,50,000/- u/s 68 of the I.T. Act, 1961.

3. That the CIT(A) erred in law and on facts in deleting the addition of Rs.1,94,000/- on account of interest paid on without verifying the facts & assigning any logical reason.

4. That the order of the Ld. CIT(A) being erroneous in law and on facts which needs to be vacated and the order of the A.O. be restored.

5. That the appellant craves leave to add or amend any one or more of the ground of the appeal as stated above as and when need for doing so may arise.”

3. Briefly stated, the relevant facts are like this. During the course of assessment proceedings the A.O. noted that the assessee has taken certain unsecured loans aggregating to Rs.13,50,000/-. The assessee was accordingly required to furnish complete details of the persons from whom the loans were taken and to explain his relationship with these creditors. The assessee furnished copy of account of the creditors along with acknowledgement of their income tax returns and bank statement. On a perusal of the bank statement the A.O. was of the view that these creditors did not have sufficient funds to justify their capacity of giving loans. The income tax returns filed by the creditors were also perceived to be on lower side and are thus not justified lending of monies to this extent. Summons were also issued for personal appearance of these persons but this remains to be complied with. It was in this backdrop the A.O. made an addition of Rs.13,50,000/- as unexplained credit. The A.O. has also disallowed interest amount of Rs.1,94,000/- in respect of the borrowing from these persons. Aggrieved by the stand so taken, the A.O. carried the matter in appeal before the Id. CIT(A). It was contended that all the necessary details including assessment details, confirmation letters, Permanent Account Numbers, copies of income tax returns, copies of bank statement were duly furnished to the A.O. It was also pointed out that all the transactions were through account payee cheques. The assessee further contended, during the first appellate proceedings, that the lenders are in existence and they can be very well examined by the A.O. for ascertaining the genuineness of the loans. The Id. CIT(A), in the alight of these arguments, directed the A.O to examine all the four lenders and submitted a remand report in respect of such an examination. Accordingly, the A.O. vide report dated 25.07.2012 submitted as follows:-

- “(i) Shri Gyan Prakash Mittal and Shri Hashish Mittal, trustees of Bhagwati Trust, who was given loan to Shri Praveen Kumar has paid the amount of Loan of Rs.3,00,000/- to the trust from their over draft account no.080653800000152- INR in IDBI Bank and Rs.4,00,000/- to the trust from their overdraft account no.080653800000170. Copy of the statement of account as furnished by the donor is enclosed or kind perusal.
- (ii) Shri Gyan Prakash Mittal and Shri Hashish Mittala, trustees of Rama Rani Trust, who has given loan to Shri Praveen Kumar has paid the amount of loan Rs.3,50,000/- to the trust from their overdraft account no.080653800000189-INR in IDBI Bank. Copy of the statement of account as furnished by the donor is enclosed for kind perusal.”

In view of the above facts and circumstances, loan taken by Shri Praveen Kumar from Bhagwati Trust and Rama Rani Trust appears to be genuine.”

4. On these facts and in the light of the remand report given by the A.O. the Id. CIT(A) deleted the addition of Rs.13,50,000/- by discussing merits or other demerits of the additions so made by the A.O., as follows :-

“5.5 In the above remand report, after examining of Shri Gyan Prakash Mittal who has given unsecured loan of Rs.3 lac in his personal capacity and also being trustee of other trusts in whose name the loans were given, it is submitted that the loans taken by the assessee (appellant) from all these trusts appears to be genuine. In this connection, I have gone through the statement of Shri Gyan Prakash Mittal recorded by the then AO, Shri K.D. Bhatt on 15.03.2012 and I have found that in this statement Shri Gyan Prakash Mittal has admitted to have given unsecured loan to the appellant from his overdraft account maintained with HDFC Bank. He has also given the details of loan given by other three trusts i.e. Bhagwati Trust, Bharat Trust and Rama Rani Trust and supporting bank statement from where these loans were given by these trusts were also submitted showing that the amount given as loan to the assessee (appellant) by these trusts were transferred from the overdraft account of Shri Gyan Prakash Mittal and Shri Ashish Mittal maintained with IDBI bank. In this statement, the AO also inquired as to why he has given unsecured loan to the assessee (appellant) from his OD account. In response to this

query of the AO, Shri Gyan Prakash Mittal has justified giving unsecured loan to the assessee stating that the rate of interest paid in the OD account is less than the rate of interest which he is charging from the assessee (appellant) on the loan given to him and the interest received from the assessee (appellant) has been shown in his return of income. During the course of recording of statement, Shri Gyan Prakash Mittal has also filed copy of trust deed of all the three trusts to establish the genuineness of all the three trusts. He also informed that Shri Ashish Mittal is his son. Asking about his relationship with the assessee (appellant), he replied to the AO that Shri Praveen Kumar, appellant is his old friend and whenever he needed fund, he has given loan to him on interest from his individual account as well as from his trust. The AO has also asked in this statement that why he did not appear during the course of assessment proceedings. In response to this query, he replied that at that time his health was not very good and, therefore, he could not appear in person but he furnished all the details called for. After considering the statement of Shri Gyan Prakash Mittal, the AO has stated in his remand report that these loans appears to be genuine. In response to the remand report furnished by the AO, the Id. AR has filed further written submission on 30.10.2012 justifying the genuineness of the loan and also pleading to delete the interest of Rs.1,94,400/- because the alleged loans have been found to be genuine loans.

5.6 I have considered all the facts available on record with regard to the alleged unsecured loans and further inquiry made by the AO during the course of appellate proceeding by recording the statement of Shri Gyan Prakash Mittal and submitting his remand report. As per the details available on record, I have found that the first loan of Rs.3 lac from M/s. Bhagwati Trust has been given on 05.08.2008 and this amount has been made available to M/s. Bhagwati Trust from the OD account no.080653800000152 maintained with IDBI Bank by Shri Gyan Prakash Mittal on 05.08.2008. Similarly, the second loan of Rs.4 lac from M/s.Bharat Trust has been provided after transferring of this amount from OD bank account no.080653800000170 maintained with IDBI Bank by Shri Ashish Mittal on 05.08.2008. The third unsecured loan of Rs.3 lac has been given by Shri Gyan Prakash Mittal from his OD bank account no.02972070000053 maintained with HDFC Bank on 05.08.2008. The fourth unsecured loan of Rs.3,50,000/- has been provided by M/s. Rama Rani Trust on 05.08.2008 after transfer of fund of Rs.3,50,000/- on 05.08.2008 from OD bank account

no.080653800000189 maintained with IDBI Bank by Shri Gyan Prakash Mittal. After examination of all the above details about the source of loan, I find that all the four loans are provided from overdraft bank accounts and before issuing of cheque for unsecured loan, no cash was deposited. All these bank accounts have been owned by the lenders and it has been confirmed during the recording of the statement by the person who was controlling all these four bank accounts. The AO in his remand report has not disputed the correctness of statement

*given by Shri Gyan Prakash Mittal admitting giving of loans and explaining the source of giving of loan and he has also submitted in his remand report that these unsecured loans may be considered as genuine. The examination of Shri Gyan Prakash Mittal was done by the earlier AO and the remand report was also prepared by him and the same remand report has been furnished by the present AO before me and it has been clearly stated by him in the hearing held on 13.10.2012 that he agrees with the remand report prepared by his predecessor. Therefore, considering the above facts as available in the record with respect to the source of loan and the remand report furnished by the AO, I find that identity and creditworthiness of the lenders in whose name these unsecured loans have been shown are established because the AO has not doubted the correctness of statement given by Shri Gyan Prakash Mittal who is trustee in all the three trust and have control over them and he himself has given a loan of Rs.3 lac to the appellant in his individual capacity. Therefore, genuineness of unsecured loans under consideration does not remain under dispute after submission of the remand report by the AO. **Since during appellate proceeding, after necessary inquiry and examination has been made by the AO, the identity, creditworthiness and genuineness of the unsecured loans has been established, these unsecured loans cannot be said to be unexplained as held by the AO in the assessment order and hence, the addition of Rs.13,50,000/- made by the AO in the assessment order cannot be sustained and, therefore, this addition is deleted.***

5. The A.O. is aggrieved and is in appeal before us.
6. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case in the light of the applicable legal position. We have noted that in the remand proceedings the A.O. himself has accepted that “loans taken by Praveen Kumar (i.e. assessee) appears to be genuine”. Thus, the A.O. himself has given a clean chit to the assessee and yet when the Id. CIT(A)

deletes the addition in respect of the same, the A.O. is in appeal before us. It is not possible to reconcile these two conflicting stand taken by the A.O. In any event, we find that the Id. CIT(A) in a very detailed and analytical order, deleted the impugned addition for good and sufficient reasons. The loans were given from the overdraft bank accounts and no cash deposits were made before issuance of cheques. Identity of the creditors stands proved and the credit worthiness of the creditors is also reasonably established. In view of the fact that the genuineness of the borrowing/credit itself is established, there cannot be any good reason to dispute the same with respect to payment of interest either. As the Id. CIT(A) has rightly observed, genuineness of the unsecured loans under consideration does not remain undisputed in the light of the remand report submitted by the A.O. himself. In view of these discussions and bearing in mind the entirety of the case, we see no merits in the grievances raised before us by the A.O. The well reasoned order of the Id. CIT(A) deserves to be confirmed on merits as well. In view of these discussions, we uphold the order of Id. CIT(A) and decline to interfere in the same.

7. In the result, appeal is dismissed.

(Order pronounced in the open Court on 04/07/2014)

Sd/-

Bhavnes Saini
(Judicial Member)

Sd/-

Pramod Kumar
(Accountant Member)

Agra, the 4th day of July, 2014.

Copies to : (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) The Departmental Representative
(6) Guard File

By order etc

*Senior Private Secretary
Income Tax Appellate Tribunal
Agra bench, Agra*