

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

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND GEORGE GEORGE K, JUDICIAL MEMBER**

**ITA No.130/Rpr/2013**  
Assessment Year :2009-2010

Amit Kumar Bansal, Prop. M/s. Shri Krishna Minerals,	Vs.	ITO, Ward-1, Raigarh
PAN/GIR No. AMIPB 2391 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri R.B.Doshi, AR

Revenue by : Shri O.P.Choudhary, DR

**Date of Hearing : 1/05/ 2017**

**Date of Pronouncement : 02/05/ 2017**

**ORDER**

**Per N.S.Saini, AM**

This is an appeal filed by the assessee against the order of CIT(A)-Raipur, dated 26.7.2013, for the assessment year 2009-2010.

2. The first issue involved in this appeal is that the Id CIT(A) erred in confirming the addition of Rs.12,00,000/- made by the Assessing Officer u/s.68 of the Act on account of loan taken by the assessee from three lenders.

3. The brief facts of the case are that the Assessing Officer observed that the assessee had taken unsecured loan of Rs.12,00,000/- from the following three persons:

Name of the person	Amount (Rs.)
Lata Devi Agarwal, Shakti	5,02,301
Sharvan Kumar Mittal, Lailunga	3,01,381
Usha Devi Agrawal, Shakti	4,01,578

4. He observed that all the three loan creditors had made cash deposit in their bank account prior to issue of cheques of the same amount to the assessee as loan. Therefore, he held that the unsecured loan shown by the assessee is not genuine and the loan creditors did not have the capacity to advance the loan to the assessee.

5. On appeal, the CIT(A) confirmed the action of the Assessing Officer by observing that Id AO has stated that the income tax returns of the lenders together with the profit and loss account and balance sheet of the loan creditors were filed voluntarily at the fag end of the assessment year without any capital account/balance sheet.

6. Before us, Id Authorised Representative of the assessee argued that the Assessing Officer has examined the loan creditors by recording their statement on 27.12.2011 in case of Shnavan Kumar Mittal and on 28.12.2011 in case of Smt. Usha Devi Agrawal and Smt. Lata Devi Agrawal,

wherein, they had admitted of advancing loan to the assessee on interest @ 12% per month. Thus, the loan creditors have confirmed the fact of advancing loan to the assessee. He relied on the decision of Hon'ble Gujarat High Court in the case of DCIT vs. Rohini Builders 256 ITR 360 (Guj), wherein it has been held that the assessee was not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source. Ld A.R. also relied on the decision of Hon'ble Gauhati High Court in the case of Nemchand Kothari vs CIT & another, 264 ITR 254 (Gau), wherein, it was held that the burden of the assessee to prove the genuineness of the transactions as well as creditworthiness of the creditor is confined to transactions which have taken place between the assessee and creditors, and it is not the burden of the assessee to show the source(s) of his creditor or to prove the creditworthiness of the source(s) *of the sub-creditors*. *He also relied on the decision of* Hon'ble M.P. High Court in the case of CIT vs. Metachem Industries, 245 ITR 160 (MP), wherein, it has been held that where a borrowing or a credit is shown to have come from the person other than the assessee, there is no further responsibility for the assessee to show that it has come from the accounted source of the lender.

7. He further placed reliance on the decision of Hon'ble Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls & Investment in ITA No.429/2003

order dated 21.12.2015, wherein, it has been held that where the assessee has discharged its onus to prove the creditworthiness and genuineness of the lender, there was no requirement in law for the assessee to prove the genuineness and creditworthiness of the sub-creditor. Ld A.R. submitted that since the assessee has proved the identity of the loan creditors, genuineness of transaction and creditworthiness of the loan creditors, therefore, the addition deserves to be deleted.

8. On the other hand, Id D.R. supported the orders of lower authorities.

9. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts of the case are that the assessee received loan of Rs.12,00,000/- from three persons, namely; Lata Devi Agarwal of Rs.5,02,301/-, Sharvan Kuamr Mittal of Rs.3,01.381 and Smt. Usha Devi Agrawal of Rs.4,01,578/-. It is not in dispute that the above loans were received by cheque. Further, it is also not in dispute that in their statement, the loans creditors admitted to the fact of having advanced the loan to the assessee.

10. We find that the argument of Id A.R. of the assessee is that the loan from all the loan creditors has been received by cheque through banking channel. All the three loan creditors are income tax assessee. They have filed their income tax returns, profit and loss account and balance sheet

before the Assessing Officer. The Assessing Officer has doubted the creditworthiness of the loan creditors on the ground that they have deposited cash prior to issue of cheque to the assessee. The submission of Id A.R. is that as per the provisions of section 68 of the Act, the assessee has to prove the identity of the loan creditors, genuineness of transaction and the creditworthiness of the loan creditors. The argument is that in law, the assessee is required to prove the source of the credit in his books of account and not the source of source i.e. the source of the credit in the account of the sub-creditor. All the moneys were received by cheque. Therefore, we find that the assessee has discharged his initial burden which established the identity of the loan creditors beyond any shadow of doubt. Thereafter, the department could not bring any positive material on record to show that the either the loan creditors have not actually advanced the money in question or they could not have advanced the same. The Assessing Officer as well as CIT(A) has drawn adverse inference regarding creditworthiness of the loan creditors merely on the basis of suspicion alone. It is not the case of the assessee that the loan creditors had advanced the money out of the income of the year alone and no positive material has been brought on record to show that loan creditors could not have any other source like his capital i.e. saving of earlier years or receipt from any other person from which the loan creditors could not have advanced the loan. *The Assessing Officer observed that* the loan creditors have deposited the

amount in cash before issuing cheque to the assessee. In our view where a borrowing or a credit is shown to have come from the person other than the assessee, there is no further responsibility for the assessee to show that it has come from the accounted source of the lender. Our view finds support from the decision of Hon'ble M.P. High Court in the case of CIT vs. Metachem Industries (supra). Further, the Hon'ble Gujarat High Court in the case of CIT vs. Rohini Builders(supra) has held that mere identification of the source of the creditors even without evidence as to the nature of income could justify acceptance, where the assessee has given GIR No/PAN No. of the creditors and also shows that the amounts were received by account payee cheques. The Hon'ble High Court in this case endorsed the findings of the Tribunal that it is not necessary that there should be an explanation as to the source of the money on the part of the creditors in every case. *The Hon'ble Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls & Investment in ITA No.429/2003 order dated 21.12.2015, has held that where the assessee has discharged its onus to prove the creditworthiness and genuineness of the lender, there was no requirement in law for the assessee to prove the genuineness and creditworthiness of the sub-creditor.*

11. In view of above discussion, we set aside the orders of lower authorities and delete the addition of Rs.12,00,000/- made by the Assessing Officer u/s.68 of the Act as unexplained cash credit. Thus, the ground of appeal of the assessee is allowed.

12. In Ground No.2 of the appeal, the grievance of the assessee is that the CIT(A) erred in denying deduction u/s.54F claimed by the assessee out of long term capital gain on sale of land.

13. The brief facts of the case are that during the year, the assessee claimed to have sold a piece of land measuring 0.64 acres of Khasra No.98/7 of Jagatpur, Raigarh to Shri Naveen Bansal for Rs.13,15,000/- on 17.9.2008. The assessee had neither shown the capital gain in the return of income nor claimed exemption of capital gain in the return of income. On being show caused by the Assessing Officer, it was explained by the assessee that the said land was purchased for Rs.40,000/- on 9.6.1994 and was sold for Rs.13,15,000/- and profit on land of Rs.12,75,000/- was credited to the capital account. The assessee enclosed copy of sale deed. It was submitted that the assessee had incurred expenses of Rs.11,50,059/- on construction of new residential house and assumed that the capital gain was exempt u/s.54B after taking benefits of indexed cost of land and had no tax liability of such gain. On the above bonafide belief, the assessee had inadvertently missed the disclosure on computation of sale of said land which on the other hand had no tax liability.

14. The Assessing Officer observed that it has been gathered that there was dispute between the assessee and Shri Leela Ram Soni regarding sale of land. Summons u/s.131 of the Act was issued to Shri Leela Ram Soni, who

issued power of attorney in favour of his son Shri Sanjay Soni to appear on his behalf before the Assessing Officer, who in his statement recorded stated that the land was purchased by his father Shri Leela Ram Soni from Smt. Krishna Devi, W/o Shri Suresh Agrawal on 9.2.1996 for Rs.41,000/-. The land was purchased by Smt. Krishna Devi in 1994 in the name of her minor son Shri Amit Kumar Agrawal. The transaction of purchase and sale of piece of land had been disclosed in the books of account of Smt. Krishna Devi. He furnished copy of her balance sheet as on 31.3.1995 and 31.3.1996 and details of land account from 1988-89 to 1997-98 in support of his claim. On perusal of these details, the Assessing Officer found that though the piece of land was purchased in the name of her minor son Shri Amit Kumar Agrawal , Smt. Krishna Devi had shown it in her books of account, which showed that the fund used to purchase the said piece of land was of Smt Krishna Devi and not that of Amit Agrawal. The Assessing Officer further observed that as per the provisions of Income tax Act, even if any asset was purchased in the name of any family members, the same will be held to be the property of the person, with whose fund, the property was purchased and all profit and loss accrued from that property in coming years would be considered to be the profit and loss of the same person. Therefore, the assessee was required to explain as to why the property in question be deemed not to be the property of the assessee and income so received to be as income from other sources.. The assessee submitted that the purchase was made from



the fund available with him out of small gifts received from his relatives. However, no such evidence regarding gifts had been furnished before the Assessing Officer. The Assessing Officer observed that the assessee was merely 10 years old in 1994 when the said property was purchased in his name by Smt. Krishna Devi. Therefore, the above submission of the assessee that he had received small gifts of Rs.40,000/- till that age was not acceptable by the Assessing Officer. The Assessing Officer further observed that had the property in question been purchased with the help of gifts of the assessee, it would not have been shown by Smt. Krishna Devi in her books of account. The assessee had no dispute with his mother and if had there been any dispute, he would have approached any authority with the help of any person. However, he had not done so. Further, Smt Krishna Devi had sold the said land in the year 1996 to Shri Lilaram Soni for Rs.41,000/- and duly shown in her books of account and, therefore, in the absence of any evidence to support the claim of the assessee, the Assessing Officer held that the fund used to purchase the property in the name of the assessee did not belong to the assessee. Consequently, when the property was not considered to be the property of the assessee for the purpose of Income Tax Act, 1961, the amount received from Shri Naveen Bansal, who is the father of the assessee on the pretext of sale of this property cannot be considered as sale consideration but deemed to be the income from other sources. Further, the assessee has not shown either capital gain or

exemption in his computation of income, therefore, the amount of Rs.13,15,000/- received from Shri Naveen Bansal was held to be the income of the assessee and added the same to the income of the assessee.

15. On appeal, the CIT(A) held that the assessee had filed return of income on 31.3.2010 by showing profit and gains of business or profession at Rs.1,46,316/-, income from other source i.e. interest income from banks and other interest income, director's remuneration at Rs.87,782/-. The return of income was filed in ITR-4 and the capital gain and deduction U/S.54F had been shown as Nil. There was no declaration of long term capital gain or investment of the gain for purchase of house property and claim of exemption of long term capital gain u/s.54F of the Act either in the return of income or in the computation of income filed along with return. The fact regarding the sale of the impugned piece of land at Rs.13,15,000/-, the long term capital thereon at Rs.12,75,000/- and investment of Rs.11,50,059/- out of sale proceeds for construction of new residential house came to the knowledge of the Assessing Officer at the time of assessment proceedings. He further observed that in the present case, the assessee has failed to disclose the amount of long term capital gain in his return and, therefore, there is plainly and manifestly a breach of the obligation imposed by section 139 of the Act. The form of return prescribed by Rule was in force during the relevant assessment year and contains separate column for showing income from long term capital gain and claim

of deduction u/s.54F. Thus, the assessee had not disclosed the facts in the specified column simply by contending that the assessee assumed that the capital gain was exempt u/s.54F and thus, inadvertently, missed the disclosure of computation of sale of land which on the other hand has no tax liability. It is difficult to appreciate the submission since it would render the clear specification of head of income column-wise made in ITR -4 meaningless and futile and turn it into dead letter and that would be contrary to all recognized cannons of construction. There can be no doubt that the assessee is bound to show in his return of income the long term capital gain and deduction claimed thereon and in failing to do so, the deduction is not available. He relied on the decision of Hon'ble Rajsthan High Court in the case of Usha Gupta vs CIT(2005) 296 ITR 287 (Raj), wherein, the Assessing Officer denied the benefit u/s.54F for want of material evidence on record and there was no evidence annexed with the return on exemption claimed u/s.54F. He further observed that the Hon'ble Rajsthan High Court observed that if the view is taken without any evidence or documents annexed with the return, the claim of any deduction was to be allowed, there was no purpose of even filing the return or sending the intimation u/s.143(1) of the Act. Hence, he confirmed the action of the Assessing Officer.

16. Before us, it was argued by the Id A.R. of the assessee that the CIT(A) and the Assessing Officer has disallowed deduction u/s. 54F of the Act

merely on the ground that the assessee in the return of income has not claimed the same. He argued that even if the deduction was not claimed in the return of income, but the claim was made during the course of assessment proceedings before the Assessing Officer, the Assessing Officer is bound to accept the same and allow the benefit of the same to the assessee if all the evidence and details are made available to the Assessing officer. He submitted that Hon'ble Supreme Court in the case of Goetze (India) Ltd vs CIT (2006) 284 ITR 323 (SC) has held that the deduction not claimed in the return of income cannot be allowed by the Assessing Officer but does not impinge upon the power of the appellate authority. Ld A.R. relied on the CBDT Circular No.014(XL)-35 dated 11.4.1955, wherein, it has been stated that Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would in the long run benefit the department for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law officers should allow the mandatory relief about exemption from tax whether claimed or not. He,

therefore, prayed that when the deduction was claimed before the CIT(A) and the relevant details was filed before him, the CIT(A) ought to have examined the case of the assessee and if he found eligible for deduction u/s.54F, should have allowed deduction u/s.54F of the Act. Therefore, he prayed that the Assessing Officer as well as the CIT(A) were not justified in not allowing deduction u/s.54F to the assessee.

17. Ld D.R. relied on the orders of the lower authorities.

18. After considering the rival submissions and perusing the orders of lower authorities, we find that as found from the facts stated in the preceding paragraphs of this order that the Assessing Officer as well as CIT(A) have denied the benefit of section 54F deduction to the assessee on the ground that same was not claimed in the return of income filed by the assessee. We are of the considered view that if during the course of assessment proceedings, the assessee filed details of claim of exemption of the same u/s.54F of the Act, the Assessing Officer is duty bound to entertain those details and verify the same and if the assessee is found eligible otherwise as per the conditions u/s.54F of the Act, he is bound to allow deduction to the assessee. Our view finds support from the circular of CBDT No.014(XL)-35) dated 11.4.1955. Further, we find that the assessee has filed all details for claim of deduction u/s.54F before the CIT(A), who held against the assessee on the ground that the assessee had not claimed

deduction in the return of income. We find that Hon'ble Supreme Court in the case of Goetz (India) Ltd (supra) has categorically held that the decision does not impinge upon the power of the appellate authority. In view of the above findings of Hon'ble Supreme Court, we feel it would be just and fair to remand back the issue of allowability of deduction u/s.54F to the file of the Assessing Officer for adjudication afresh as per law after considering all the details and evidence filed by the assessee in support of the claim. We, therefore, set aside the orders of lower authorities and remand the matter back to the file of the Assessing Officer for adjudication afresh of the same after allowing reasonable and adequate opportunity of hearing to the assessee. Therefore, this ground of appeal is allowed for statistical purposes.

19. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 02 / 05/20 17.

Sd/-

(George George K)  
**JUDICIAL MEMBER**

Raipur; Dated 02/05/2017  
B.K.Parida, SPS

sd/-

(N.S Saini)  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant : Amit Kumar Bansal, Prop.  
M/s. Shri Krishna Minerals, Kotra Road,  
Raigarh
2. The Respondent. ITO, Ward-1, Raigarh
3. The CIT(A), Bilaspur
4. CIT, Bilasour
5. DR, ITAT, Raipur
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY