

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA.No.3800/Del./2017
Assessment Year 2010-2011

M/s. Hindon Forge (P) Ltd., Ghaziabad. PAN AAACH4606E C/o. M/s. Malik & Co., Advocates, 305/7, Thapar Nagar, Meerut City.	vs	The DCIT, Circle-1, Aayakar Bhawan, C.G.O. Complex-1, Hapur Road, Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Ms. Parul Singh, Sr. D.R.

Date of Hearing :	17.11.2020
Date of Pronouncement :	03.12.2020

ORDER

PER BHAVNESH SAINI, J.M. :

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Muzaffarnagar, Dated 26.03.2017, for the A.Y. 2010-2011, challenging the additions made under section 68 of the I.T. Act, 1961, on

account of unsecured loans in a sum of Rs.4,10,000/- [M/s. Satyam Shivam Sundaram Trust], Rs.12,75,000/- [M/s. Pragati Real Estate Developers Pvt. Ltd.], Rs.26,40,350/- [Smt. Urmil Agarwal].

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that assessee is a case of Pvt. Ltd. Co. filed its return of income declaring income of Rs.1,42,88,440/-. The A.O. noted that assessee has shown unsecured loans to the extent of Rs.2,79,96,163/-. The assessee was required to verify the identity, capacity, creditworthiness of the personas and genuineness of the transaction. The A.O. however disallowed Rs.43,25,350/- in respect of the above three parties. The disallowances are as under :

(1) M/s. Satyam Shivam Sundaram Trust

3.1. This party has given unsecured loans to the tune of Rs.8,10,000/- against which Rs.4,00,000/- have been repaid in assessment year under appeal and balance was of Rs.4,10,000/- The assessee has filed copy of ledger a/c and copy of bank statement of the lender. However, copy of ITR was not filed by the assessee. On perusal of bank statement it has been found that the most of the deposit entry and entry are the same date just prior to cheques advanced to the assessee. The A.O. noted that assessee did not explain to these deposits entry in the bank a/c of the lender and assessee did not produced the lender also. Therefore, Rs.4,10,000/- was added.

(2) M/s. Pragati Real Estate Developers Pvt. Ltd.,

3.2. This lender has given unsecured loans of Rs.12,75,000/- during the assessment year under appeal. The assessee has filed copy of acknowledgement of the ITR for A.Y. 2009-10, and relevant part of the bank statement of the lender. The A.O. noted that its income was of Rs.3,912/-

only. The bank statement shows from deposits through RTGS from Mumbai and then cheque was given to the assessee as loan, source of which is not explained, therefore, the A.O. added a sum of Rs.12,75,000/-.

(3) Smt. Urmil Agarwal :

3.3. This party has given unsecured loans to the tune of Rs.26,40,350/- to the assessee. The assessee filed copy of a/c and bank statement which reveal that there are similar deposits through RTGS and cheques have been given, therefore, A.O. made the addition against the assessee.

4. The assessee challenged all the additions before the Ld. CIT(A) and filed written submissions in which it is explained that assessee filed confirmation, bank statements, ITR and all the documents of these parties. All the loans are given through banking channel. Therefore, assessee proved identity, creditworthiness and genuineness of the transaction in the matter. In the case of M/s. Satyam Shivam Sundaram, the A.O. made addition of the balance

outstanding amount only. Thus, part of the transaction is accepted by the A.O. Thus, the assessee proved the conditions of Section 68 of the I.T. Act, 1961. The assessee has filed balance-sheet of all the three parties to show that they are financially sound and they have sufficient funds with them to give loans to the assessee. However, the Ld. CIT(A) also confirmed the addition and dismissed the appeal of assessee.

5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that in the case of all the three lenders assessee filed confirmations, copy of acknowledgment of filing of the returns supported by balance-sheet and ledger account and bank statements. All the creditors have confirmed giving loan to the assessee and their balance-sheet shows that they are man of means and have sufficient capital with them. Their capital and assets are sufficient to give small loan to the assessee. He has submitted that A.O. did not make any enquiry on the documentary evidences filed by the assessee and merely because assessee failed to prove

source of the source and did not explain RTGS entry in the accounts of the creditors, made the additions. He has submitted that on identical facts the ITAT G-Bench, Delhi in the case of M/s. Thirubala Chemicals Pvt. Ltd., New Delhi vs., ITO, Ward 25(2), New Delhi in ITA.No.7130/Del./2019 Dated 06.10.2020 has deleted the addition. The findings of the Tribunal in paras 7 and 8 are reproduced as under :

“7. We have considered the rival submissions and perused the material available on record. In this case the A.O. noted that in assessment year under appeal, assessee has received unsecured loans from three creditors as reproduced above in a sum of Rs.1.16 crores. Initially the letters sent under section 133(6) of the I.T. Act to these three creditors were not served upon two parties. The A.O, in such circumstances, issued Commission under section 131 of the Income Tax Act, 1961 to the Kolkata A.Os. because all the three creditors were situated in Kolkata. The A.O. requested the concerned A.Os. of Kolkata to examine the

genuineness of the transaction, identity of the creditors and their creditworthiness. It was also requested to make local enquiry by examining the Directors of the creditor companies. The concerned A.Os. of the Kolkata submitted the report before the A.O. based on the report of the Inspector, in which, it was intimated that the summons under section 131 of the I.T. Act, 1961, could not be served upon the two creditors and in case of one creditor though they have filed submissions and documents, but, the Director of the Investor Company did not appear for examination. The assessee-company, in its reply before the A.O, sought for copy of the report of the Inspector and report of the concerned A.Os. of Kolkata for making further submissions and also asked for cross-examination of the Inspector who has reported against the assessee-company. The A.O, however, did not provide any material collected at the back of the assessee-company by the Inspector of the Kolkata to the assessee and did not allow any cross examination to the assessee-company. The A.O. in the assessment

order held that assessee has no absolute right to ask for the cross-examination or to seek report of the Inspector and A.Os. of Kolkata. The Ld. CIT(A) confirmed this finding of A.O. by holding that the assessee has no absolute right to ask for the material collected at the back of the assessee and to ask for cross-examination of such material and Inspector on behalf of the assessee. Thus, it is established on record that whatever material was collected by the Inspector and concerned A.Os. at Kolkata on the basis of summons issued to them under section 131 of the Income-Tax Act, were never supplied to the assessee and assessee was not allowed to cross-examine the Inspector or the material collected at his back at any stage. It is also established that no right of cross-examination have been given to the assessee to cross-examine the Inspector or to rebut the evidence collected at the back of assessee at Kolkata. Therefore, such material collected at the back of the assessee cannot be read in evidence against the assessee. We rely upon decision of

the Hon'ble Supreme Court in the case of Kishanchand Chellaram vs., CIT 125 ITR 713 (SC) wherein the Hon'ble Supreme Court held that "any material collected at the back of the assessee and not confronted and no opportunity given to cross-examine, such material cannot be relied upon against the assessee." The same view have been taken by the Hon'ble Supreme Court in its subsequent decision in the case of M/s Andaman Timber Industries 281 CTR 214 (SC). Thus, whatever material have been collected by the concerned A.Os. at Kolkata or the Inspector at Kolkata, which has made the basis to doubt the documentary evidences placed before A.O, could not be read in evidence against the assessee. It is also violation of principles of natural justice and could not be treated as any adverse material against the assessee and such evidence shall have to be excluded from consideration. Thus, the material now available on record for consideration is whether burden upon the assessee under section 68 of the Income Tax Act, 1961 have been discharged for proving the identity

of the creditors, their creditworthiness and genuineness of the transaction in the matter shall have to be considered. It is not in dispute that assessee filed documentary evidences before A.O. in respect of the genuine credits which consists of copy of the ITR of the creditors along with their assessment orders under section 143(3) of the I.T. Act, 1961, their audited balance-sheet, their confirmations to confirm the receipt of the loan, bank statement, bank statement and confirmation of subsequent year to show loans have been repaid. The assessee paid interest on these loans and deducted TDS. All these documentary evidences have not been doubted by the A.O. Thus, the documentary evidences on record clearly established that all the creditors are assessed to tax and are existing assesseees. Thus their identity have been established. All the creditors have confirmed giving loan to the assessee which is repaid in subsequent year and were subjected to interest. The A.O. did not disallow the interest paid on these loans in assessment year

under appeal as well as in subsequent assessment year. The bank statements of the creditors show that no cash have been found deposited in their bank account before giving loan to the assessee. There were sufficient balances available in the bank accounts of the Creditors to give loan to the assessee. The A.O. in the assessment order also noted that the worth of the creditors is in several crores. Thus, as against loan amount in lakhs, the creditors have their worth in crores. Therefore, there were no justification to doubt the creditworthiness of the creditors and genuineness of the transaction in the matter. Thus, the initial burden upon the assessee to prove the identity of the creditors, genuineness of the transactions and creditworthiness of the creditors has been discharged by the assessee. The A.O. did not make any effort to make adequate enquiry on the documentary evidences submitted by the assessee. Thus, the A.O. failed to make any enquiry on the same. Thus, there was no justification to the authorities below to treat the loan amount of Rs.1.16 crores as an

unexplained income of the assessee. We rely upon the following decisions.

7.1. *Decision of the Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd., (2011) 330 ITR 298 (Del.) in which it was held that assessee need not to prove "source of the source".*

7.2. *Judgment of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation (P.) Ltd., (1986) 159 ITR 78 (SC) in which it was held as under :*

"In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were

such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.

The High Court was, therefore, right in refusing to refer the questions sought for.”

7.3. *Decision of Hon’ble Gauhati High Court in the case of CIT vs. Nemi Chand Kothari reported at (2003) 264 ITR 254 (Gauhati.) in which it has been held as under :*

“Under section 68 of Income Tax Act creditor’s creditworthiness has to be judged vis-à-vis

transactions, which have taken place between assessee and creditor, and it is not business of assessee to find out source of money of his creditor or genuineness of transactions, which took place between creditor and sub-creditor and/or creditworthiness of sub-creditors for these aspects may not be within special knowledge of assessee.”

7.4. *Decision of Hon’ble Gujrat High Court in the case of DCIT vs. Rohini Builders (2002) 256 ITR 360 (Gujrat) in which it was held as under :*

“Assessee had discharged initial onus by providing identity of the creditors by giving their complete address, GIR numbers/permanent account numbers and copies of assessment orders wherever readily available. Assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques drawn from bank accounts of creditors. Repayment of loans and interest thereon was also made by account payee cheques by assessee and

tax also had been deducted at source on interest payments and remitted.”

7.4.1. *In this case, SLP filed by the Department have been dismissed.*

7.5. *Decision of Hon’ble Delhi High Court in the case of CIT vs. Mod Creations Pvt. Ltd., (2013) 354 ITR 282 (Del.) in which it was held as under :*

“The Tribunal has adopted an erroneous approach on the aspects of genuineness of the transactions in issue and the creditworthiness of the persons/creditors who lent money to the assessee. The first aspect, i.e., identity of the creditors was established before any of the authorities below. It will have to be kept in mind that section 68 only sets up a presumption against the assessee whenever unexplained credits are found in the books of account of the assessee. It cannot but be again said that the presumption is rebuttable. In refuting the presumption raised, the initial burden

is on the assessee. This burden, which is placed on the assessee, shifts as soon as the assessee establishes the authenticity of transactions as executed between the assessee and its creditors. It is no part of the assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the assessee to prove the creditworthiness of the sub-creditor."

7.6. *Decision of Hon'ble Delhi High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.) in which it was held as under :*

"Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has "created" evidence, the Revenue

is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable.”

7.7. *Decision of Hon’ble jurisdictional High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12th August, 2015 (Del.), in which it was held as under :*

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High Court.

7.8. *Decision of Hon'ble jurisdictional High Court in the case of Divine Leasing & Finance Ltd., 299 ITR 268, in which it was held as under :*

“No adverse inference should be drawn if shareholders failed to respond to the notice by A.O.”

7.9. *Decision of Hon'ble Delhi High Court in the case of CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603, in which it was held as under :*

“Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account

payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee.”

7.10. *Decision of Hon’ble Jurisdictional Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) (HC), in which it was held as under :*

“Dismissing the appeal, that the additional burden was on the Department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose.”

7.11. *Considering the facts of the case in the light of documentary evidences available on record and the fact that A.O. did not make any adequate enquiry on the documentary evidences filed by the assessee-company clearly established that assessee-company proved identity of the creditors, their creditworthiness and the genuineness of the transaction in the matter. Merely low income declared in the return of income by the creditors is no ground to reject the explanation of the assessee-company because their creditworthiness is in several crores as is already admitted by the A.O. in the assessment order. In view of the above discussion, we set aside the orders of the authorities below and delete the entire addition.*

8. *In the result appeal of the assessee allowed.”*

6. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below and submitted that though the identity of the lenders are not in dispute, but, they have meager income and assessee failed to explain the source of

the deposits in their bank account. Therefore, the addition was rightly made.

7. We have considered the rival submissions. It is not in dispute that assessee filed confirmation of all the creditors supported by their computation of income, acknowledgment of filing of the returns, copy of the balance-sheet, copy of the ledger account of the assessee in their books and bank statements. Copies of the same are also filed in the paper book which reveal that all the creditors are assessed to tax and have given loans to the assessee through banking channel. The name of the assessee appears in their balance-sheet as giving loans to the assessee. their capital and assets are sufficient to give small loan to the assessee. There are no cash deposits found in the bank accounts of the creditor. All entries are through banking channel. The assessee has also furnished details of their capital and assets before the Ld. CIT(A) which have not been disputed by the authorities below. Thus, all the evidences on record clearly indicates that assessee has received genuine loans from all the three parties and in case

of one party even amount have been returned in assessment year under appeal which have not been doubted by the A.O. Thus, the initial burden upon the assessee to prove identity of the creditors, genuineness of the transaction and creditworthiness of the creditors have been discharged by the assessee. It is well settled Law that assessee need not to prove source of the source. We rely upon the Judgment of the Hon'ble Delhi High Court in the case of CIT vs., Dwarkadhish Investment Pvt. Ltd., [2011] 330 ITR 298 (Del.) and Judgment of Hon'ble Gujrat High Court in the case of DCIT vs., Rohini Builders [2002] 256 ITR 360 (Guj.). The A.O. has also accepted that entries in the account of the creditors are through RTGS. Therefore, there should not be any doubt on the explanation of the assessee. The A.O. noted that in assessment year under appeal assessee has shown unsecured loans to the tune of Rs.2.79 crores but made only small addition. The return of income declared by assessee is also of Rs.1.42 crores. Therefore, the explanation of assessee should not have been doubted by the authorities below. All facts were explained. Since the

A.O. did not conduct any enquiry on the documentary evidences filed by the assessee and merely disbelieved the entries in the bank accounts of the creditor without any justification, therefore, there were no justification for the authorities below to make or confirm the additions. Merely low income declared in the return of income by the creditors is no ground to reject the explanation of assessee because their creditworthiness is proved by the assessee beyond doubt. In view of the above, we are of the view that the issue is covered by the Order of the ITAT, Delhi G-Bench, Delhi in the case of M/s. Thirubala Chemicals Pvt. Ltd., New Delhi vs., ITO, Ward-25(2), New Delhi (supra). In view of the above, we set aside the Orders of the authorities below and delete the entire addition.

8. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Delhi, Dated 03rd December, 2020
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.