

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.757/Del/2017
Assessment Year: 2010-11

Amit Tyagi,
K.No.59, Village Yusuf Pur,
Delhi Meerut Road,
Modi Nagar,
Ghaziabad.

Vs. DCIT,
Circle-1,
Ghaziabad.

PAN: AFUPT2060A

(Appellant)

(Respondent)

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| Assessee by | : | Shri P.C. Yadav, Advocate & Shri Morh Mukut Yadav, Advocate |
| Revenue by | : | Shri Kanav Bali, Sr. DR |
| Date of Hearing | : | 09.02.2023 |
| Date of Pronouncement | : | 05.04.2023 |

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 18.11.2016 of the CIT(A), Muzaffarnagar, relating to Assessment Year 2010-11.

2. The grounds of appeal raised by the assessee read as under:-

"1. The CIT(A) has passed the order which is bad in law and against the facts of the case.

2. The CIT[A] has erred to confirm the order of AO by adding loan amount u/s 68 amounting to Rs. 4500000 based on utter suspicion and conjectures, not based on evidences on record.

3. The CIT [A] has erred to ignore that Inspectors report procured by AO during assessment was not confronted to the assessee the aspect which was of vital importance, therefore, it was an inadmissible evidence.

4. Both AO and CIT[A] erred to exercise their onus to disprove the evidences put forth by assessee and the addition were sustained without any proof that money involved belonged to the Assessee AND NOT TO THE CREDITOR.

5. CIT[A] erred to ignore the provisions of section 131 of income tax act which was not applied to call any person for disposition before AO who wanted to enforce the attendance of director only.

6. The CIT[A] erred to take adverse inference from the remand report of AO in which AO did not rebut the submission of assessee.

7. That by any reckoning, the impugned order of Id. CIT(A) being contrary to , law and the facts of the case, deserves not to be sustained, having being ignored the jurisdictional high court decisions.

The above grounds are without prejudice to each other.

The appellant craves leave to add, amend ,modify or delete any of the grounds at the time of hearing.”

3. The Id. Counsel of the assessee submitted that the Id.CIT(A) has passed order which is bad in law and against the facts of the case as he has erred to confirmed the assessment order by adding loan amount of Rs. 4500000 u/s 68 of the Income-tax Act, 1961 (for short, 'the Act') based on utter suspicion and conjectures, which has not been based on any cogent, positive or adverse material against the assessee on record. The Id. Counsel vehemently pointed out that the Id. CIT [A] has erred to ignore the very relevant aspects of the Inspectors report procured by AO during assessment proceedings, which was not confronted to the assessee, the aspect which was of vital importance, which cannot be used on the back of the assessee, hence, the same was an inadmissible evidence which cannot be relied upon. The Id. Counsel of the assessee also submitted that the Id. First appellate authority has not discharged the onus lay on him to disprove the evidences put forth by assessee and the addition

has been sustained without any sustainable relevant evidence and without establishing that the impugned amount belonged to the Assessee and not to the respective creditor. The Id. Counsel also submitted that the AO as well as the Id.CIT(A) has ignored the provisions of section 131 of Act which was not applied to call any person for deposition before AO who wanted to enforce the attendance of director only. The Id. Counsel also submitted that the CIT[A] has also erred in taking adverse inference from the remand report of AO in which AO has failed to rebut the submission and explanation of the assessee which has clearly established the identity, credit worthiness and capacity of the creditors and genuineness of the transactions routed through banking channels. Therefore, the impugned addition may kindly be deleted. The Id. AR has also placed reliance on the various judgements and orders including the decision of the Hon'ble jurisdictional High Court of Delhi in the case of *CIT vs. S.V.P. Builders India P. Ltd., 238 Taxman 653 (Del)* and another judgement in the case of *CIT vs. Winstral Petrochemicals Ltd., 330 ITR 603 (Del)*. The Id. Counsel, placing reliance on the judgement of the Hon'ble Supreme Court in the case of *Dhananjaya Reddy vs. State of Karnataka, 2001 (4) SCC 9* and the judgement in the case *Kishan Chand Chela Ram vs. CIT, 125 ITR 713 (SC)* submitted that where there is no material to destroy the identity and credit worthiness of the creditor and genuineness of the transaction and the creditors are being regularly assessed to income-tax and had produced their bank statements before the AO, then, it has to be held that the assessee has discharged its primary onus of proving the identity and credit worthiness of the creditor and genuineness of the transaction. Therefore, the addition made by the AO may kindly be deleted. The Id. Counsel also submitted that the assessee is categorically and consistently submitting before the authorities below

that the assessee has received loan through banking channel, paid interest thereon after deducting TDS and the amount of loan was also repaid to the respective creditor during subsequent financial period through banking channel, therefore, the transaction of unsecured loan cannot be doubted or disputed in any manner. The Id. Counsel submitted that the assessee submitted all documentary evidences before the authorities below, but the authorities below has ignored the same and did not consider a very relevant documentary evidence for the reasons best known to them.

4. Placing reliance on the judgement of the Hon'ble High Court of Allahabad in the case of *CIT vs. Kapoor Chand Mangesh Chand (2013) 38 taxmann.com 239 (Allahabad)*, the Id. Counsel submitted that in a case of addition u/s 68 of the Act on account of cash credit, the burden of proof lay on the assessee has to be held as discharged when the assessee, by way of submitting sufficient documentary evidence in the form of PAN, bank account details and other relevant financial statements have been furnished which shows that the lenders had sufficient funds in their bank accounts and cash was not deposited on the date preceding to or at the time when the cheques were issued by the lenders to the assessee and the unsecured loan amount was advanced and repaid through account payee cheques. The Id. Counsel submitted that in such a situation, when the assessee has discharged the onus lay on his shoulders as per the requirement of section 68, then, the onus shifts on to the shoulders of the AO to rebut the documentary evidences filed by the assessee and, thereafter only the assessee may be expected to file further evidence to substantiate its claim of genuineness of unsecured loan. The Id. Counsel submitted that the assessee has submitted voluminous documentary evidence before the authorities below which has also been placed in the paper book pages 23-97 pertaining to all four

lenders and has also submitted copy of the return of income tax, audit report, balance sheet, etc., pertaining to the assessee at pages 98-128 of the assessee's paper book which cannot be ignored and kept aside for making addition in the hands of the assessee and such an act would, certainly, amount to violation of principles of natural justice.

5. Lastly, the Id. Counsel of the assessee submitted that the orders of the authorities below may kindly be set aside and the AO may kindly be directed to delete the addition.

6. Replying to the above, the Id. CIT-DR placed vehement support on the orders of the authorities below and submitted that the orders of the authorities below clearly reveal that the impugned transactions were nothing, but, accommodation entries taken by the assessee and the transaction was a colourable device and arrangement to convert unaccounted money of the assessee under the garb of unsecured loan. The Id.CIT-DR submitted that all four creditor companies were not verifiable on the given addresses and the assessee failed to establish and prove the identity, credit worthiness of the creditors and the genuineness of the transactions. Therefore, he submitted that the AO was right in making addition in the hands of the assessee u/s 68 of the Act and the Id.CIT(A) was also justified in upholding the same.

7. Placing rejoinder to the above, the Id. Counsel of the assessee submitted that the vital documentary evidences filed by the assessee and detailed submissions substantiating the claim of the assessee have not been considered by the authorities below in right perspective, therefore, the addition in the hands of the assessee cannot be made as the assessee had discharged the initial onus lay on his shoulders as per

the requirement of section 68 of the Act and, therefore, as per the various judgements of Hon'ble Supreme Court and the Hon'ble High Courts including the High Court of Delhi and the jurisdictional High Court of Allahabad, no addition can be made in the hands of the assessee.

8. On careful consideration of the above rival submissions, first of all, we find it appropriate to take cognizance of some relevant facts. The assessee obtained unsecured loan from four companies and the assessee filed PAN, certificate of incorporation, copies of returns for AY 2009-10 and other relevant assessment years, financial statements & copy of accounts with the assessee, copy of TDS certificates pertaining to interest payment to the creditors, bank statements and confirmation pertaining to all four creditors which are private limited companies. In such a situation, when all creditors are legal entities incorporated under Companies Act having PAN and filing return of income, the identity of creditors cannot be disputed. From the orders of the authorities below, we are unable to see any findings to dislodge the contention of the assessee that all transactions of receipt of loan payment on interest after deduction of TDS and repayment of loan has been made through banking channels. Therefore, the genuineness of transaction cannot be doubted in any manner. So far as net worth of unsecured creditors is concerned, placing rejoinder to the remand report filed by the AO during first appellate proceedings, the assessee has submitted a table at page 3 of the rejoinder wherein the assessee has submitted all factual figures pertaining to net worth of all four companies during financial year 2008-09 and 2009-10 and payment of interest to the respective loan creditors which was made after deduction of TDS through banking channels.

9. At this juncture, we take respectful cognizance of the proposition rendered by the jurisdictional High Court of Allahabad in the case of *CIT vs. Kapoor Chand Mangesh Chand (supra)* wherein their Lordships held that the burden of proof u/s 68 of the Act lay on the shoulders of the assessee, explanation of cash credit has to be held as discharged when the assessee furnished PANs of the lenders, lenders have sufficient funds in their bank account and cash was not deposited on the date preceding to or at the time when the cheque was issued by the lenders. The Hon'ble High Court also noted that when the loan was advanced and repaid through account payee cheques, then, the transaction cannot be doubted and the genuineness of transaction cannot be disbelieved.

10. From the orders of the authorities below, especially paras 16-18.3 of first appellate order, we note that the Id.CIT(A) noted that one Shri Vinod Kumar who have appeared before the AO on behalf of the depositors/creditors without producing the directors, therefore, the real identity of companies has to be held as not proved. The Id.CIT(A) alleged that these companies have been found existing only on papers and also noted that mere filing of documents like ITR, balance sheet, P&L Account, bank statements are not adequate to support the case as per the requirement of section 68 of the Act. Merely because the directors of the company could not be produced and the companies appeared before the AO during remand proceedings through authorized representative, the other relevant documentary evidences filed by the assessee establishing the identity, capacity and credit worthiness of creditors and genuineness of transactions which were undertaken through banking channels cannot be disregarded or dismissed. It is the peculiar facts and circumstances of the present case that the authorities below have not dislodged or disputed the fact that the

assessee had paid interest after deducting TDS through banking channels and has also repaid the entire amount of unsecured loan to the respective creditors during subsequent financial period and, in such a situation, the genuineness of transaction routed through banking channel cannot be doubted on the basis of surmises and conjectures based on suspicion and doubts. In our humble understanding, the assessee has successfully established by way of submission of very important and relevant documentary evidence, the identity, capacity and credit worthiness of lenders/creditors and genuineness of transaction routed through banking channel. At the cost of repetition, we may point out that the assessee has successfully demonstrated by way of sufficient documentary evidence that he has also repaid the loan amount to the respective creditors during subsequent financial periods and this fact has also not been disputed or controverted by the authorities below. Therefore, respectfully following the ratio laid down by the Hon'ble jurisdictional High Court of Allahabad in the case of *CIT vs. Kapoor Chand Mangesh Chand (supra)*, we hold that the addition made by the AO and upheld by the Id.CIT(A) cannot be held as valid and sustainable in view of the provisions of section 68 of the Act. Therefore, the grounds of the assessee are allowed and the AO is directed to delete the addition.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 05.04.2023.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 05th April, 2023.

dk

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi