

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4499/Del./2011
(ASSESSMENT YEAR : 2007-08)**

ITO, Ward 47 (1),
New Delhi.

vs.

Mrs. Manju Devi,
478, Baba Faridpuri,
West Patel Nagar,
New Delhi – 110 008.

(PAN : AGKPD1150A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri D.R. Anthwal, Advocate
REVENUE BY : Shri P. Dam Kanunjna, Senior DR

Date of Hearing : 19.05.2016

Date of Order : 26.05.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Income Tax Officer, Ward 47 (1), New Delhi (hereinafter referred to as 'the revenue'), by filing the present appeal sought to set aside the impugned order dated 21.07.2011 passed by the Commissioner of Income-tax (Appeals)-XXX, New Delhi qua the assessment year 2007-08 on the grounds inter alia that :-

“On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in

(i) deleting the addition of Rs 34,76,500/- rightly made by the Assessing Officer on account of deposit made in bank account of the assessee by cash and cheques when the essential ingredients in the case of unsecured loans i.e. identity, creditworthiness and genuineness of the loan givers could not be established.

(ii) Ignoring the facts that (a) the loan confirmation letters does not bear any date, (b) the language of the confirmation letter is same and even the hand writing in some of the letters, produced during appellate proceedings, from different loan givers are same, (c) as per assessment order para 2, the AR of the assessee on 23-10-2009 submitted that the assessee had neither obtained any loan nor repaid during the year, (d) as per the same para above, the assessee stated that loans were raised from relatives and her villagers for the treatment of her mother In law who was suffering from Piles & Heart ailment and in the appellate proceedings, the assessee stated that her mother in law suffered from cancer, (e) the cash flow produced by the assessee is not supported by any evidence.

(iii) not considering that in view of vague and stereotyped confirmations from the said loan givers and in view of facts mentioned in para (ii) above, the assessee has only made attempts to cover up the cash and cheque deposits by making a concocted story of raising loans for the treatment of her mother in law.

the appellant craves the right to alter, amend, add or substitute the grounds of appeal.”

2. Briefly stated the facts of the case are : during the scrutiny proceedings, information under AIR was received regarding the deposit of cash amounting to Rs.27,96,500/- on various dates in the bank account of the assessee maintained with Standard Chartered Bank during the financial year 2006-07. In response to the notices under section 143(2) and 142(1) of the Income-tax Act, 1961

(hereinafter 'the Act'), Shri Sunil Purohit appeared and pleaded in writing in reply to the questionnaire dated 31.08.2009 that the assessee had neither obtained any loans nor paid during the year, but assessee filed undated confirmation from 24 persons vide covering letter dated 29.11.2009 by concocting a story that loans have been raised in cash and cash entries in the bank account is a cover up. The assessee stated to have raised loans of Rs.27,96,500/- purportedly for small operation and illness but having no capacity to return the loan from her income from the salary from a private Dental Laboratory. Necessary details were called for 14.12.2009 viz. details of the treatment of mother-in-law with expenses made thereof, copy of bank account of lenders whose affidavits have been filed, affidavits and copy of bank account of ITR of the remaining persons, details of property purchased by assessee, if any, etc. But none appeared on behalf of the assessee on 14.12.2009 and on the basis of material on record, AO computed the income of the assessee at Rs.39,17,940/- for the year under assessment.

3. Assessee carried the matter before the Id. CIT (A) who has partly allowed the appeal by deleting the addition of Rs.25,96,500/- of cash amount and Rs.8,80,000/- of cheque amounts. Feeling

aggrieved, the revenue has come up in appeal before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. DR challenging the impugned order contended inter alia that despite failure of the assessee to prove source of amount of Rs.34,76,500/-, CIT (A) has erred in deleting the addition; that there are numerous discrepancies in the confirmations given by the assessee on the basis of which addition has been deleted; that assessee being a salaried person working in a private dental laboratory cannot be expected to return the huge loan which is undisclosed income. On the other hand, Id. AR for the assessee relied upon the order passed by the CIT (A) and further contended that the assessee was a salaried person and was having rental income; that the entire borrowed amount in question has been spent by the assessee on the treatment of cancer of her mother-in-law; that during the appellate proceedings, the Id. CIT (A) has called the remand report which has explained the source and genuineness of the transactions.

6. Undisputedly, there are cash deposit entry to the tune of Rs.14,37,000/-, cheque deposit entry of Rs.8,80,000/- (out of which entry of two cheques of Rs.1,00,000/- each are returned cheques) in the account of assessee during the financial year 2006-07 maintained with Standard Chartered Bank. Assessee stated to have borrowed the amount in question from her relatives and friends for treatment of her mother-in-law, who was suffering from cancer, in Satyam Hospital, Exhibition Road, Pune.

7. Ld. CIT (A) called the remand report qua the submissions made by the assessee during the appellate proceedings. The AO vide letter dated 03.05.2011 submitted the remand report which is reproduced as under for ready reference :-

“Notice U/s 133 (6) of the income tax act has been issued to all the 15 creditors. The reply in this regard has been received from all the creditors confirming the loan has been given in cash out of agriculture income and has been received back from Smt Manju Devi and further stated that loan has been given for treatment of assessee's mother-in-law. The details of the same are given below:-

S.No.	Name & Address of the loan giver	Amount with date	Amount / received back date
1.	Vaijdev Choudhary, Village and Post - Manhar Distt- Vaishali, Bihar	45000/- 17.10.2006 35000/- 19.10.2006	80000 / 6.11.2006
2.	Kailash Choudhary, Village and Post - Manhar Distt- Vaishali, Bihar	45000/- 17.10.2006	45000/- 6.11.2006
3.	Devikant Mandai, Village and post Badhara, Distt Supol, Bihar	45000/- 17.10.2006	45000/- 6.11.2006

4.	Kalicharan Mandal, Village and post - Badhara, Distt Supol, Bihar	50000/- 17.10.2006	50000/- 18.11.2006
5.	Rajandev Mandal, Village and post - Badhara, Distt Supol, Bihar	45000/- 13.10.2006	45000/- 13.11.2006
6.	Jhona Mandal, Village and post - Badhara, Distt Supol, Bihar	65000/- 17.10.2006	65000/- 6.11.2006
7.	Bashist Kumar, Village and post - Badhara, Distt Supol, Bihar	45000/- 16.10.2006	45000/- 18.11.2006
8.	Rajesh Gupta, Village and post - Badhara, Distt Supol, Bihar	50000/- 17.10.2006 45000/- 07.11.2006	45000/- 6.11.2006 45000/- 7.11.2006
9.	Ved Kumar, Village and post - Badhara, Distt Supol, Bihar	45000/- 16.10.2006 45000/- 19.10.2006	45000/- 6.11.2006 45000/- 7.11.2006
10.	Birendra Gupta, Village and post - Badhara, Distt Supol, Bihar	45000/- 17.10.2006	45000/- 18.11.2006
11.	Bhola Prasad, Village and post - Badhara, Distt Supol, Bihar	45000/- 17.10.2006 40000/- 19.10.2006	85000/- 18.11.2006
12.	Bharat Mandal, Village and post - Badhara, Distt Supol, Bihar	48000/- 6.11.2006	45000/- 16.11.2006
13.	Surendra Mandal, Village and post - Badhara, Distt Supol, Bihar	47000/- 17.10.2006	47000/- 18.11.2006
14.	Dashrath Prasad, Village and post - Badhara, Distt Supol, Bihar	35000/- 16.10.2006 40000/- 17.10.2006	75000/- 6.11.2006
15.	Rajiv Mandal, Village and post - Badhara, Distt Supol, Bihar	45000/- 17.10.2006	45000/- 6.11.2006

The assessing officer has given the names and address of 15 loan givers who have confirmed the fact that loan was given by them and that they have received back the amount given by them.

Out of total cash deposited by the assessee in her bank account of Rs.27,96,500/- the source is as given here under:-

Rs.13, 18,000/- out of cash withdrawn by the assessee from her bank account for which the detail of cash in the shape of cash transaction has been produced before me. The detail of cash available with the assessee during the course of deposit in bank is as under :-

Rs. 16,000/-	Opening balance
Rs. 1,54,200/-	Rent received during the period
Rs. 1,30,000/-	Salary received by the assessee
Rs.12,08,000/-	Out of cash withdrawal from bank which was re-deposited in the bank
Rs. 14,73,000/-	Help/Loan from relatives and friends for which necessary Confirmations have been filed

The fund flow of cash shown by the a se see is as under :-

I.	Cash deposit upto 19.10.2006 in the bank	Rs.2875500	
	Deposited on 28.3.2007	<u>Rs. 11000</u>	2796500
II.	Cash Withdrawal upto 19.10.2008	Rs.1208000	
	Opening Cash	Rs. 16000	
	Out of current income, salary and rent	<u>Rs. 94000</u>	1318000
	Loan from relatives and friends in cash	<u>1473000</u>	
		2791000	
	Less: Cash Deposit upto 19.10.2006 into bank	<u>2785000</u>	
		6000	
	Add: Cash withdrawn on 12.12.2006	<u>27000</u>	
		33000	
	Less: Cash deposit into bank on 28.3.2007	<u>11000</u>	
	Amount utilized for household expenses	<u>22000</u>	

That as regards the addition of Rs.8,80,000/- being the cheque deposited in the bank by the assessee, it is stated that out of cheque deposited two cheques amounting of Rs.1.00 lacs each on 3/7/2006 and 8/8/2006 are the returned cheque and it is evident from the bank statement whereas the Assessing Officer also considered these two cheques being deposited in the bank. The

bank statement showing the return of these cheques has been submitted to me.

Thus, the deposit in bank is not Rs.8,80,000/- but is Rs.6,80,000/- and are received from the following persons by cheques as loan for treatment of mother-in-law:

Rs.2,50,000/- by cheque No. 679866, dated 2.4.2006 from Sanjay Jain
 Rs.60,000/- by cheque No.075827, dated 2.7.2006 from Mr. Jitendra Sehgal
 Rs.2,50,000/- vide cheque No.679867, dated 2.4.2006 from Mr. Sanjay Jain
 Rs.1,20,000/- vide cheque No.556575, dated 7.6.2006 from Mr. Kuldeep Mandal

 Rs.6,80,000/- and the loan taken has also been refunded during the period and the detail of the same has been shown.

The confirmations from the creditors who helped the assessee and gave the amount for treatment of her mother-in-law by cheques were submitted during the course of proceedings and photo copies of the same were submitted to me which have been examined.”

8. During the appellate proceedings, assessee also brought on record copies of estimate given by the Satyam Hospital, Exhibition Road, Pune for the treatment of Smt. Kushma Devi in two parts and also given the rough idea about the expenses.

9. From the perusal of remand report dated 03.05.2011 filed by the AO and cash flow statement, it is proved that ld. CIT (A) has rightly deleted the addition made by the AO for the following reasons :-

(i) that the assessee has duly proved during the remand proceedings that Rs.14,73,000/- was borrowed by her as loan from relatives and friends, which have

undisputedly been confirmed by the lenders and remaining amount of Rs.13,23,500/- was already lying in the bank account being the salary received by the assessee, rent received during the period under assessment and out of cash withdrawn from the bank which was re-deposited in the bank;

- (ii) that 15 lenders who have lent the loan in cash to the assessee during the year under assessment have made the confirmation in response to the notice u/s 133(6) that they had lent the loan which has been repaid back to them;
- (iii) that during the remand proceedings, the AO has scanned the entire transactions as to the availability of the funds amount of Rs.1,31,000/- being her salary amount; Rs.1,54,200/- received as rent; Rs.12,08,000/- being the amount re-deposited out of cash withdrawal from bank; and Rs.14,73,000/- being the loan availed from relatives and friends with the assessee in her bank account, the detail of which is given at para 6 of the impugned order passed by Id. CIT (A) which is otherwise factually undisputed;

- (iv) that during the remand proceedings, the assessee has duly proved the fund flow of the cash amount in question having been deposited during the period 19.10.2006 and 28.03.2007;
- (v) that so far as addition of Rs.8,80,000/- on account of cheque deposited in the bank by the assessee is concerned, two cheques amounting to Rs.1,00,000/- each dated 03.07.2006 and 08.08.2006 are returned cheque, which fact is proved from the bank statement but the AO has considered both the cheques having been deposited in the bank, so the total amount deposited in the bank by the assessee by way of cheque was Rs.6,80,000/- and not Rs.8,80,000/-;
- (vi) that the amount of Rs.6,80,000/- received by the assessee by way of cheque as friendly loan has been duly confirmed by the lenders whose creditworthiness and genuineness has not been disputed by the revenue department. Moreover, the lenders have already stated that the said loans amount have already been repaid to them;
- (vii) that from the cash flow statement, it is proved that out of cash deposited of Rs.27,96,500/-, the amount of

Rs.14,73,000/- was part of the cash available with the assessee which stood already proved and remaining amount is proved to be out of the loan availed of by the assessee;

- (viii) that since the AO has made ex-parte assessment when none appeared on behalf of the assessee on 14.12.2009, as recorded at page 3 of the assessment order, all findings returned against the assessee that genuineness of the transaction remained unestablished are not sustainable in the eyes of law;
- (ix) that the findings of the AO that assessee has concocted the story of ailment of her mother-in-law are apparently based upon conjectures and surmises as assessee was not allowed to provide documents during assessment proceeding;
- (x) that when the assessee has been provided with adequate opportunity of being heard by the Id. CIT (A) during appellate proceedings by calling the remand report from the AO, the assessee has explained the genuineness of the transactions and creditworthiness of the creditors;

(xi) that AO recorded in para 2 of the assessment order that Id. AR of the assessee submitted in writing dated 23.10.2009 in response to the questionnaire dated 31.08.2009 that the assessee had neither obtained any loan nor repaid during the year under assessment, cannot be taken as a gospel truth and assessment cannot be based on the same which may be due to negligence or inadvertence on the part of the AR of the assessee, particularly in the face of the fact that during remand proceedings, the assessee has duly proved the genuineness of the transaction and creditworthiness of the creditor as required under the law.

10. In view of what has been discussed above, we find no merit in the appeal filed by the revenue, hence, the same is hereby dismissed.

Order pronounced in open court on this 26TH day of May, 2016.

**SD/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 26TH day of May, 2016
TS**

3Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT-XXXIII, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.