

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER

ITA no. 1285/Del/2015

Asstt. Yrs: 2009-10

Smt. Hemlata Mittal,
67, Nehru Nagar, Agra (UP)

Vs. DCIT, Central Circle-07,
New Delhi.

PAN: AUEPM 3904 B

(Appellant)

(Respondent)

Appellant by : Shri Rajiv Saxena Adv.
Ms. Sumangla Saxena &
Sh. Shashwat Bajpai Adv.
Respondent by : Shri S.K. Jain Addl. Commissioner (DR)

Date of hearing : 22/07/2015.
Date of order : 08/10/2015.

ORDER

PER S.V. MEHROTRA, A.M.:

This appeal, preferred by the assessee, is directed against the order dated 19-01-2015, passed by the Id. CIT(A)-24, New Delhi in appeal no. 566/14-15(old appeal no. 180/10-11), relating to A.Y. 2009-10.

2. Brief facts of the case are that search and seizure operation u/s 132 of the I.T. Act was carried out in Rajdarbar Group of cases on 31-7-2008 and in

the case of assessee on 26-8-2008 at Locker no. 488, Key no. 38, Federal Bank Ltd., 6, Raghunath Nagar, MG Road, Agra.

3. The assessee had filed her return of income declaring an income of Rs. 1,50,590/-. The AO observed that assessee was deriving salary income from M/s Geeta Pipal, Agra and interest income on loan given to M/s Ratan Diesels, Agra, Sh. Ankit Agarwal and Sh. Nishant Bansal and interest income on savings bank account. From the bank pass book of savings bank account in the Fedral Bank Ltd., Agra, the AO noticed that three high volume cheques were deposited. He required the assessee to explain the source and nature of such credits with supporting documents. No details were furnished before the AO. The AO completed the assessment after making addition of Rs. 5,50,000/- in respect of following unexplained credits in the bank account:

Date	Amounts (In Rs.)
10-07-2008	1,50,000/-
23-08-2008	2,00,000/-
11-02-2009	2,00,000/-
Total	5,50,000/-

4. Before Id. CIT(A) the assessee explained that it had a running balance in her deposit account with M/s Rattan Diesels, Agra. The copy of account of the assessee in the books of said firm of various years, starting from the year 1-4-2002 and ending on 31-3-2009 were filed before Id. CIT(A). The

assessee further pointed out that the credit balance of the assessee in the books of a/c of the said firm was Rs. 1,25,219/- as on 1-4-2002, which was increased every year on account of credit of interest earned on such deposit. The credit balance in the said a/c of the assessee in the books of account of the said firm grew up to Rs. 3,58,581/- as on 1-4-2008. Then the assessee had been issued cheque of Rs. 1,50,000/- on 9-07-2008 by the said firm, which was credited in the bank a/c of the assessee on 10-7-2008. Similarly, another cheque of Rs. 2,00,000/- was issued by the said firm in the name of the assessee on 22-8-2008, which was credited in the bank a/c of the assessee on 23-8-2008. It was pointed out that these transactions were appearing in the bank a/c of the assessee on the respective dates. The assessee further pointed out that it had paid the amount of Rs. 1,50,000/- to Mr. Nishant Bansal vide cheque no. 626932 cleared in bank on 14-7-2008. The other amount of Rs. 2,00,000/- was also paid to Mr. Nishant Bansal vide cheque no. 626933 cleared on 27-8-2008. The said Mr. Nishant Mittal, however, returned back to the assessee an amount of Rs. 2,00,000/- on 11-2-2009. However, the said amount of Rs. 2,00,000/- was then paid to Mr. Ankit Agarwal by the assessee vide cheque 626934, cleared on 13-2-2009. Copies of account of Nishant Bansal and Ankit Agarwal were also filed before Id. CIT(A).

5. Ld. CIT(A), however, did not accept the assessee's contention, inter alia, observing as under:

“...It is observed that Rattan Diesels is supposed to be (as per AR) proprietary concern of one Mr. Rajendra Mittal. However, the letter head does not mention anything about status of the entity. Further, the AR was unable to inform who this Raiendra Mittal was and what We S his relation to the assessee. The documents do not show any PAN 'No. of [his person named Rajendra Mittal who is supposed (0 be the proprietary of M/s Rattan Diesels. I also note here that in one of the photocopies one Mr. Rajendra Mittal has signed as proprietor of Rattan Diesels. But just below the same assessee has also put her signature. In the rarer book submitted during appeal proceedings (held simultaneously) against levy of penalty on the same addition, it is seen that the assessee has enclosed a bank account of M/s Rattan Diesels maintained with HDFC Bank. In the said page, there is no mention of Proprietor's name. It could be a partnership also as the name starts with 'M/s'.

4.2.9. The above facts show that the assessee did not want to get the so called creditor examined or his affairs scrutinized when the assessment proceedings were all. It is noted that Income Tax proceedings are time barring in the nature. Beyond 6 years the assessing officer has no power under the Act to assess/ reassess any income. The assessee, therefore, has ensured that the time period for scrutinizing the affairs of creditor and to take up reassessment proceedings (in case warranted) has got time barred. Therefore, I do not consider that it would be appropriate to admit additional evidences with regard to such cash credits at this stage. In any case there is no request made under Rule 46A for admitting additional evidences.

4.2.10. Further, it is also noticed that the documents submitted also do not establish the identity and genuineness of the transaction as a genuine loan transaction.”

6. Ld. counsel for the assessee referred to para 3 of the assessment order and pointed out that interest income on loan given to M/s Rattan Diesels, Ankit Aggarwal and Shri Nishant Bansal had been assessed to tax. He referred to page 41 of PB, wherein the bank a/c with the Federal Bank Ltd. of assessee is contained bearing account no. 12120100102799, wherein there are three impugned deposits of Rs. 1,50,000/- (instrument no. 926499) on 10-7-2008; Rs. 2,00,000/- (instrument no. 45669) on 23-8-2008; and Rs. 2,00,000/- (instrument no. 59) on 11-2-2009.

7. He further referred to page 34 of the PB, wherein the statement of a/c of assessee as on 31-3-2009 in the books of Rattan Diesel is contained to demonstrate that Rattan Diesels had issued the cheque of Rs. 1,50,000/- on 9-7-2008 and the cheque of Rs. 2,00,000/- on 22-8-2008 in favour of assessee.

8. Ld. counsel further referred to pages 22 & 23 of the PB, wherein the bank a/c in the HDFC Bank of M/s Rattan Diesels is contained being a/c no. 01218020000254 to demonstrate that cheque no. 926499 was issued on 9-7-2008 in favour of Hemlata Mittal, the assessee and on 22-8-2008 vide

instrument no. 45669 for Rs. 2,00,000/- in favour of Smt. Hemlata Mittal, the assessee.

9. With reference to these details, ld. counsel submitted that cheque details in both accounts viz. Rattan Diesels in HDFC bank and assessee Hemlata Mittal in the Federal Bank Ltd. tallied.

10. Ld. counsel further referred to pages 28 to 33 of the PB, wherein copy of a/c of assessee in the books of Rattan Diesels from FY 2003-04 to 2007-08 are contained to demonstrate that in each year the interest had been credited to the loan account of assessee given to Rattan Diesels. Therefore, the deposits of Rs. 3,50,000/- in the bank a/c of assessee stands fully explained.

11. As regards the deposit of Rs. 2,00,000/- on 11-2-2009, ld. counsel referred to page 24 of the PBH, wherein copy of bank account of Nishant Bansal being a/c no. 0143001000050 is contained to demonstrate that cheque of Rs. 2,00,000/- was issued in favour of assessee vide instrument no. 59 dated 10-2-2009.

12. Ld. counsel further referred to page 35 of the PB, wherein the assessee's account in the books of Nishant Bansal is contained to demonstrate that two cheques of Rs. 1,50,000/- and Rs. 2,00,000/- were received by Nishant Bansal from assessee, out of which Rs. 2,00,000/- was

returned on 10-2-2009, which amount was credited to the account of assessee.

13. In the backdrop of these evidences, ld. counsel submitted that the observation of ld. CIT(A) in para 4.2.8, as reproduced earlier, are not correct. Ld. counsel submitted that Rajendra Mittal was the proprietor of M/s Rattan Diesels and he had signed the statements.

14. Ld. DR relied on the CIT(A)'s order.

15. I have considered the submissions of both the parties and have perused the record of the case. As far as the bank statement of M/s Rattan Diesels in HDFC bank contained at pages 22 & 23 of the PB is concerned, I find that the said bank account is in the name of M/s Rattan Diesels. It is true that the said bank account does not contain the name of proprietor but that does not imply that merely because the name starts with 'M/s', therefore, it could be a partnership concern's account. This observation of ld. CIT(A) is purely on conjecture. He failed to notice that the instrument number in the bank a/c of M/s Rattan Diesels tallied with the instrument number in the bank account of assessee with Federal Bank. The dates, amounts, cheque

numbers, name of parties, all tally and, therefore, there was no reason to doubt the genuineness of these transactions. The assessee has filed the ledger account of assessee in the books of Rattan Diesels which clearly show that it is an old loan given by assessee to Rattan Diesels on which interest was regularly earned by assessee. Further, the AO has assessed the interest income received from Rattan Diesels in the hands of assessee and, therefore, the genuineness of the deposits in the accounts of assessee as refund of loan could not be doubted.

16. Similarly, in respect of Nishant Bansal, I find that all the details are tallying in respect of bank a/c of Nishant Bansal with the bank a/c of assessee including instrument number. However, from Page 24 of the PB, wherein bank a/c of Nishant Bansal is contained, it is not coming out very clearly from the said statement as to which bank it relates to though at the bottom it is referred to as "kotak". Therefore, for this limited purpose, verification by AO is required.

17. In view of above discussion the addition of Rs. 3,50,000/- in respect of loan received from Rattan Diesels is set aside and as regards the addition of Rs. 2,00,000/- in respect of refund of loan from Nishant Bansal, the

matter is restored back to the file of AO for verification of page no. 24 of PB and if the same is found to be correct, then no addition is called for.

18. Assessee's appeal stands allowed accordingly.

Order pronounced in open court on 08/10/2015.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 08/10/2015.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

-+		Date	<u>Initial</u>	
1.	Draft dictated on	-09.2015		PS
2.	Draft placed before author	.09.2015		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			