

आयकर अपीलीय अधिकरण, 'एक-सदस्य' न्यायपीठ, मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष
Before Shri Joginder Singh, Judicial Member,**

**ITA No.1286/Mum/2015
Assessment Year: 2005-06**

DCIT, CC-8(1), Room No.656, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	<u>बनाम/</u> Vs.	Shri Ramakant Gagar, 302, Gaurav Apart. Gokuldharm, Goregaon (East), Mumbai-400063
राजस्व / Revenue		निर्धारिती / Assessee
P.A. No.ABKPG9952C		

राजस्व की ओर से / Revenue by	Shri Om Prakash Meena-DR
निर्धारिती की ओर से / Assessee by	None

सुनवाई की तारीख / Date of Hearing	24/06/2016
आदेश की तारीख /Date of Order:	24/06/2016

आदेश / O R D E R

The Revenue is aggrieved by the impugned order dated 02/12/2014 of the Ld. First Appellate Authority, Mumbai. The only ground raised in the present appeal is with respect to deleting the addition made u/s 68 of the Income Tax Act, 1961 (hereinafter the Act) on account of loans claimed to have been accepted from Aarti Tanna (Rs. 74,000/-), Shri Deepak Tanna (Rs.2 lakh), Niranjana Tanna (Rs.10,80,000/-), Polygon Solutions Pvt. Ltd. (Rs.6 lakh) and M/s Surya Trading Company (Rs. 14,88,088/-).

2. During hearing, Shri O.P. Meena, ld. Sr. DR, strongly defended the addition by contending that the assessee has not established all the three ingredients i.e. genuineness of transactions, identity of the parties and their creditworthiness, therefore, the Ld. Commissioner of Income Tax (Appeal) unjustifiably deleted the addition. It was also contended that additional evidence was admitted by the Ld. Commissioner of Income Tax (Appeal) which is in violation of Rule-46A of the Income Tax Rules.

2.1. On the other hand, nobody was present for the assessee in spite of issuance of registered AD notice. The assessee neither presented himself nor moved any adjournment petition. It seems that the assessee is not interested to pursue its appeal, therefore, I have no option but to proceed ex-parte, qua the assessee, and tend to

dispose of this appeal on the basis of material available on record.

2.2. I have considered the submissions of ld. DR and perused the material available on record. The facts, in brief, are that a search and seizure operation was carried out on Gaggar Group on 06/10/2010 of which the assessee is one of the members. As per the Revenue, during search operation, certain incriminating documents were seized. However as per the assessee, nothing was unearthed except un-reconciled jewellery. The assessee declared income of Rs.1,18,240/- on 31st October, 2005 along with computation of total income, balance sheet, profit & loss account, TDS certificate and other supporting documents for claiming deductions. Subsequently, assessment proceedings were initiated with the issuance of notices along with questionnaire. The assessee was asked to furnish the details of loan/deposits received from various persons. As per para 6.2 of the assessment order, the assessee submitted the details vide letter dated 27/08/2012 including details of the parties from whom the loans/deposits/advances were received along with confirmation from the concerned parties. The details of loans have been reproduced in para 6.2 of the assessment order. The ld. Assessing Officer made addition u/s 68 of the Act.

2.3. On appeal, before the Ld. Commissioner of Income Tax (Appeal), the factual matrix was considered

along with the observation made in the assessment order. It is noted that the Ld. Commissioner of Income Tax (Appeal) has dealt with the each loan transaction and finally concluded that he verified the documents with respect to each loan and found that the assessee has discharged the onus cast upon him including genuineness of the transaction, identity of the parties and creditworthiness, etc. It has been also mentioned that the Assessing Officer never asked the assessee to explain the position and even proper opportunity of being heard was not provided to explain the genuineness of the loan transactions. As mentioned earlier, there is no dispute (as admitted in the assessment order also) to the fact that requisite details along with confirmation from the concerned parties were filed by the assessee. If the ld. Assessing Officer was apprehensive about the genuineness of the transaction, nothing prevented him to make necessary enquiry, whereas, there is categorical finding in the impugned order that necessary documents were verified by the ld. First Appellate Authority and the assessee discharged the onus.

2.4. I am aware that for making addition u/s 68 of the Act burden is upon the assessee to prove the source of the receipt as was held in *Roshan Di Hatti vs CIT 107 ITR 938 (SC)*. Where the assessee fail to prove satisfactorily the source and nature of the credit entries in his books, the assessee has to discharged the onus, however, I find

that the assessee not only disclosed the details of the parties but also filed confirmatory letters from them, thus, the addition made by the ld. Assessing Officer cannot be justified. The ratio laid down in Jalan Timbers vs CIT (223 ITR 11) (Guw.) supports my view. It is settled law that while considering the question, where the alleged loan were taken by the assessee was genuine transaction, the initial burden of proving the same is upon the assessee and once, it is discharged, the onus shifts upon the Revenue/Assessing Officer. The ratio laid down in S.K. Bothra & Sons HUF vs ITO (2011) 203 taxman 436 (Kol) supports my view. Since the assessee has discharged his onus, therefore, in the absence of any contrary material, I don't find any infirmity in the order of the Ld. Commissioner of Income Tax (Appeal). It is affirmed. Thus, the appeal of the Revenue is dismissed.

Finally, the appeal of the Revenue is dismissed.

This order was pronounced in the open in the presence of ld. DR at the conclusion of the hearing on 24/06/2016.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24/06/2016

Shekhar, P.S/निजी सचिव

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**