

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-3', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 2878/Del/2015 : Asstt. Year : 2010-11**

Sh. Krishna Charitable Trust, C/o-M/s RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	JCIT, Range-2, Ghaziabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAGTS8457F</b>		

**Assessee by : Dr. Rakesh Gupta &  
Sh. Somil Agarwal, Advs.  
Revenue by : Sh. Anil Sharma, Sr. DR**

<b>Date of Hearing : 02.11.2016</b>	<b>Date of Pronouncement : 01.02.2017</b>
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**ORDER**

This is an appeal by the assessee against the order dated 19.02.2015 of Id. CIT(A), Muzaffarnagar.

2. The grievance of the assessee in this appeal relates to the confirmation of addition of Rs.27,00,000/- made by the AO u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act) on account of unsecured loan received from Sh. Anil Kumar Agarwal and Smt. Kavita Agarwal by treating the same as unexplained cash credit.

3. Facts of the case in brief are that the assessee trust was incorporated vide trust deed dated 20.07.2007 and was granted

registration u/s 12AA of the Act vide order dated 30.10.2009 by the CIT, Ghaziabad. For the year under consideration the assessee filed the return of income on 12.11.2010 declaring Nil income. Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had received unsecured loans to the tune of Rs.2,33,50,000/- from the following parties:

<i>Sl. No.</i>	<i>Name of the lenders</i>	<i>Amount</i>
1.	<i>Adi Narayan Gupta</i>	<i>11,50,000/-</i>
2.	<i>Anil Kumar Agarwal</i>	<i>33,00,000/-</i>
3.	<i>Arun Goel</i>	<i>25,00,000/-</i>
4.	<i>Arya Fiscal Services (P) Ltd.</i>	<i>7,00,000/-</i>
5.	<i>Ashok Kumar Goel</i>	<i>25,00,000/-</i>
6.	<i>H. K. Chaudhary &amp; Sons</i>	<i>2,75,000/-</i>
7.	<i>Kanav Developers Pvt. Ltd.</i>	<i>15,00,000/-</i>
8.	<i>Kavita Agarwal</i>	<i>12,00,000/-</i>
9.	<i>Om Laxmi India Pvt. Ltd.</i>	<i>20,00,000/-</i>
10.	<i>Pick Up Suppliers (P) Ltd.</i>	<i>3,75,000/-</i>
11.	<i>Sagarmal Shimboo Nath Fin. Invest Co. (P) Ltd.</i>	<i>25,00,000/-</i>
12.	<i>Satyam Traders</i>	<i>50,00,000/-</i>
13.	<i>T. C. Chaudhary &amp; Bros.</i>	<i>3,50,000/-</i>
	<b><i>Total</i></b>	<b><i>2,33,50,000/-</i></b>

4. The AO asked the assessee to verify the identity, capacity, creditworthiness of the persons and genuineness of the transaction. In response, the assessee filed the details which were examined by the AO who found that most of the loans were old loans. However, he added Rs.27,00,000/- received from Sh. Anil Kumar Agarwal and Smt. Kavita Agarwal by observing as under:

*i) Mr. Anil Kumar Agarwal (Rs.15,00,000) :- In this case assessee has given unsecured loans to the tune of Rs.33,00,000/- out of which Rs.15,00,000/- has been given during the year. The assessee has filed copy of a/c, copy of acknowledgement of ITR for A.Y. 2010-11 and copy of incomplete bank statement. On perusal of bank statement it is found that the most of the entry are cash deposits Just prior to the amount of cheque advanced to the assessee. The assessee could not furnished any source of cash deposit of the entry in the bank a/c of the lender, moreover, assessee did not produced the lender namely Shri Anil Kumar Agarwal for personal examination. Thus the case is beyond the expectation of verdict of Hon'ble Supreme Court given in the case of CIT Vs. Sumati Dyal. Therefore, the capacity and creditworthiness could not prove, the so called unsecured loans of Rs.15,00,000/- is added to the total income of the assesses society. The information is issued to concerned AO for remedial action.*

*ii) Kavita Agarwal (Rs.12,00,000/-) :- In this case assessee has given unsecured loans to the tune of Rs.12,00,000/- during the year. The assessee has filed copy of a/c, copy of acknowledgement of ITR for A.Y. 2010-11 and copy of incomplete bank statement. On perusal of bank statement it is found that the most of the entry are cash deposits just prior to the amount of cheque advanced to the assessee. The assessee could not furnish any source of cash deposit of the entry in the bank a/c of the lender, moreover, assessee did not produce the lender namely Smt. Kavita Agarwal for personal examination. Thus the case is beyond the expectation of verdict of Hon'ble Supreme Court given in the case of CIT Vs. Sumati Dyal. Therefore, the capacity and creditworthiness could not prove, the so called unsecured loans of Rs.12,00,000/- is added to the total income of the assessee society. The information is issued*

*to concerned AO for remedial action. In view of the fact the loan are not genuine.”*

5. The reliance was placed on the following case laws:

- *Sumati Dayal Vs CIT 214 ITR 801 (SC)*
- *Nanak Chand Laaxman Das Vs CIT (1983) 140 ITR 151 (Alld.)*
- *Anraj Narain Das Vs CIT (1951) 20 ITR 562 (Punj.)*
- *A.D. Jayveerapandia Nadar Vs CIT (1964) 54 ITR 401 (Mad.)*
- *CIT Vs V. K. Mahim (1995) 213 ITR 820 (Ker.)*
- *Shankar Industries Vs CIT (1978) 114 ITR 689 (Cal.)*
- *Cochin State Power & Light Corporation Ltd. Vs State of Kerala AIR 1965 SC 1688, 1691*
- *Vinod Krishna Kaul Vs Union of India JT 1995 (9) SC 205, 208*

6. Being aggrieved the assessee carried the matter to the ld. CIT(A) who passed the *ex-parte* order and confirmed the addition by observing as under:

*“During appellate proceedings, the appellant was allowed more than sufficient opportunities to substantiate its claim by furnishing requisite details and evidences. But the appellant has utterly failed to discharge onus u/s 68 of the Act.*

*The fact on record is that the depositors are not creditworthy. Onus of proving the source of a sum of money found to have been received by an assessee is on him. When the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source. Reliance is placed on the*

*decisions of Hon'ble Supreme Court in the case of Roshan Di Hatti vs. CIT (SC) 107 ITR 938 and Kale Khan Mohammad Hanif vs. CIT (SC) 501TR 1.*

*Reliance is further placed on the decisions of the Hon'ble Courts as under:-*

- (i) Vasantibai N. Shah vs CIT (BOM) 213 ITR 805*
- (ii) Sreelekha Banerjee & Ors. Vs. CIT (SC) 49 ITR 112*
- (iii) CIT Vs Korlay Trading Co. Ltd. (Cal) 232 ITR 820*

*Thus in the light of the above facts, it is held that the AO was justified in making addition of Rs.27,00,000/- u/s 68 of the Act. The same is hereby confirmed. Grounds of appeal Nos. 1 to 4 are dismissed.”*

7. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the AO doubted the source of the source and made the impugned addition in spite of the fact that the assessee furnished all the relevant details in the form of confirmation from the depositor, copy of their income tax return and bank pass book alongwith the balance sheet wherein the amount given to the assessee was reflected. A reference was made to page nos. 43, 45, 51, 61 and 63 to 67 relating to the loan received from Sh. Anil Kumar Agarwal and page nos. 40 to 42, 48 and 51 relating to Smt. Kavita Agarwal. The reliance was placed on the following case laws:

- *S. Hastimal Vs CIT (1963) 49 ITR 273 (Mad.)*
- *CIT Vs Ram Narain Goel 244 ITR 180 (P&H)*

8. In his rival submissions the ld. DR supported the orders of the authorities below.

9. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the assessee had received loans amounting to Rs.2,33,50,000/- from various parties and the AO had accepted those loans as genuine except 27,00,000/- which included 15,00,000/- (out of Rs.33,00,000/-) received from Sh. Anil Kumar Agarwal and Rs.12,00,000/- received from Smt. Kavita Agarwal during the year under consideration. The assessee in support of its claim relating to the genuineness of the transaction, identity and creditworthiness of the depositor furnished confirmations received from those persons (copies of which are placed at page nos. 40 and 43 of the assessee's paper book). The assessee also filed copies of the acknowledgment of income tax returns received from the said persons which are placed at page nos. 41 and 44 respectively. The assessee also filed computation of their income and copies of their bank account reflecting the entries showing the amount given to the assessee by cheque, copies of the bank accounts are placed at page nos. 48 to 51 and 52 to 59 of the assessee's paper book relevant to Smt. Kavita Agarwal and Sh. Anil Kumar Agarwal. On perusal of those copies of the bank accounts, it is noticed that both the depositors were having the sufficient amount in their bank account and only a nominal amount was deposited in cash before issuing the cheques

to the assessee, so it cannot be said that amount was deposited before issuing of the cheques to the assessee. In the present case, identity of both the parties is not in dispute, their creditworthiness is also proved because there was sufficient balance in their bank accounts, the genuineness of the transaction is also proved since the transaction took place through banking channel and both the depositors are regularly assessed with the income tax department. Therefore, I am of the confirmed view that the assessee discharged the onus cast upon it for proving the identity and creditworthiness of the depositors along with the genuineness of the transaction. Therefore, the addition made by the AO and sustained by the ld. CIT(A) was not justified. Accordingly, the same is deleted.

10. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 01/02/2017)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 01/02/2017**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**