

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.1706/Del/2012  
(Assessment Year: 2007-08)

ACIT, Central Circle-11, Room No. 364, ARA Centre, E-2, Jhandewalan Extn., New Delhi <b>(Appellant)</b>	Vs.	Jasjit Singh, 29/56, Punjabi Bagh (West) Road, New Delhi PAN:ABHPS1536P <b>(Respondent)</b>
---	-----	---

Cross Objection No.141/Del/2014  
(In ITA No.1706/Del/2012)  
(Assessment Year: 2007-08)

Jasjit Singh, 29/56, Punjabi Bagh (West) Road, New Delhi PAN:ABHPS1536P <b>(Appellant)</b>	Vs.	ACIT, Central Circle-11, Room No. 364, ARA Centre, E-2, Jhandewalan Extn., New Delhi <b>(Respondent)</b>
--	-----	--

Assessee by :	Sh. SS Rana, CIT DR
Revenue by:	Sh. Sachin Jain, CA
Date of Hearing	08/11/2016
Date of pronouncement	31/01/2017

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This is an appeal filed by the revenue against the order of the Id CIT(A)-I, New Delhi dated 09.04.2012 for the Assessment Year 2007-08 and in this appeal assessee has filed cross objection.
2. The revenue has raised the following grounds of appeal:-
  - "1. *The order of Id CIT(A) is not correct in law and on facts.*
  2. *On the facts and in the circumstances of the case, the Id CIT(A) has erred in law as well as facts in deleting the addition of Rs. 14200000/- made by the assessing officer u/s 68 of Act 1961 in respect of unsecured loans and advances as the assessee failed to prove the credit worthiness of the lender and genuineness of transaction.*
  3. *On the facts and in the circumstances of the case, the Id CIT(A) has erred in law as well as facts in deleting the disallowance of interest of Rs. 1372277/- made by the Assessing Officer as the advances given by the assessee was utilized for non business purpose.*

4. *The order of Id CIT(A) is perverse in law and facts.*
3. The assessee has raised the following grounds of appeal:-
  - “1. *That the assessment order is liable to be quashed since the same has been passed without recording the satisfaction u/s 153C of the Income Tax Act, 1961 by the Id AO.*
  2. *That the assessment order passed by the Id AO is invalid and deserves to be quashed since the same has not been signed in manuscript as required u/s 282 of the Income Tax Act, 1961.*
  3. *That the assessment order passed u/s 153C of the Act is liable to be quashed since the same has been passed by the Id AO on ad hoc basis. No incriminating documents in respect of assessee found from the possession of persons covered u/s 153A of the Act for the year under consideration.”*
4. We first take up the appeal for the revenue where effectively ground No. 2 against the deletion of addition of Rs. 1.42 crores made by the AO u/s 68 by Id CIT(A).
5. The ground No. 1 and 4 of the appeal of the revenue are general in nature and therefore they are dismissed.
6. The brief facts of the case is that the assessee is an individual who filed original return of income on 31.10.2011 and subsequently, search u/s 132 of the Income Tax Act on 19.02.2009 on Koutons Group wherein a MOU relating to transaction of sale and purchase of shares in SR Resource Pvt Ltd were seized and in the seller along with three others name of the assessee appeared. Therefore, notice u/s 153C was issued on 25.02.2010. in response to that the assessee requested to consider the original return of income as return filed in compliance with that notice. Based on that an assessment was framed on 29.12.2010 determining total taxable income of Rs. 16041427/- against the return income of Rs. 469150/-. The two additions were made in the assessment (i) Rs. 1.42 cores on account of unsecured loan and (ii) Rs. 1372277/- on account of disallowance of interest. The assessee being aggrieved by the order preferred an appeal before the Id CIT(A), who deleted the addition.
7. The Id AR submitted that the assessee has submitted the confirmation of sums received from M/s. Manikaran Buildcon Pvt. Ltd of Rs. 1.15 crores and a sum of Rs. 20 lakhs and Rs. 7 lakhs from M/s. Tonami Trading Co. and Mr. Amarjit Singh. The complete confirmation letters, copy of the

ITR and bank statement for the relevant period were submitted before the Id CIT(A) and therefore, the addition was deleted. With respect to the disallowance interest he further submitted that the funds were taken by the assessee were tied up in debtors and stock. He relied upon the finding given by the Id CIT(A). He further submitted that in the present case both the additions were made on account of material which was not found during the course of search and therefore as such the additions cannot be made.

8. The Id DR relied upon the order of the Id Assessing Officer.
9. We have carefully considered the rival contentions. The Id CIT(A) has deleted the addition with respect to Rs. 1.15 cores received from M/s. Manikaran Buildwell Pvt. Ltd whose confirmation were filed by the assessee along with copy of the return of income and bank statement. With respect to Rs. 20 lakhs received from M/s. Omani Trading Co. the assessee has furnished confirmation, copy of the bank statement along with permanent account no and for the purpose of Rs. 7 lakhs received from Mr. Amarjit Singh identical details were furnished before the Id CIT(A). On that basis the addition was deleted. The Id first appellate authority deleted the above addition holding as under:-

*"5. DETERMINATION:-*

*I have examined the assessment order and the submissions given by the appellant and it is held as under: -*

*5.1 Undisclosed Income u/s 68 of the I.T Act, 1961*

*5.1.1. The addition made by the AO is on the basis that no information was filed by the appellant during the course of the assessment proceedings, whereas the appellant has categorically mentioned that the details were provided at the time of the assessment proceedings. The examination of the assessment records reveals that the confirmation of M/s Manikaran Buildwell (P) Ltd is available on record. A substantial addition was made u/s 68 of the Act, 1961, by brushing aside the confirmations filed during the course of assessment proceedings. Before me vide letter dated 06-01-2012, the appellant filed copy of confirmations stated to be already filed during course of assessment proceeding and prayed for admission of additional evidence under rule 46A of the I. Tax Rules, 1962. The confirmation letters with PAN and the jurisdiction of assessment. Copy of the ITR for the A/Y:2007-08, Bank Statement for the relevant period, Copy of the PAN card etc. in case of M/s. Manikaran Buildwell Pvt. Ltd .*

MrAmrjeet Singh and M/s. Tonami Trading Co. for Rs.11500000/- , Rs.700000/- and Rs.2000000/- respectively were attached with the above letter. Though this was not a evidence given for the first time but as requested the said additional evidence was given to the A.O for his examination and comment vide this office letter dated 11/12-01-2012. In his first reply dt. 11-1-2012 the AO stated that "nowhere in the assessment order it is mentioned that no documentary evidence was filed in respect of persons mentioned in the letter dt 06/01/2011 When it was pointed out with reference to the assessment order he mentioned in his letter dated 12.1.2012 that the assessee filed only copy of account of M/s. Manikaran Buildwell (P) Ltd but no other supporting documents filed. A perusal of the reply of the A.O reveals that he has not given negative finding on the evidence adduced by the appellant. He stated that the furnishing of primary documents is not denied but the appellant did not give supporting document during the course of assessment proceedings.

5.1 2 For deciding the instant issue it is essential in the interest of justice to consider the evidences-produced and mentioned above. The AO has not raised any objections on the identity creditworthiness of the lender and genuiness of the transaction nor he has any observation or negative finding that the, documents adduced by the appellant are incorrect or contrary to the facts of the case . I have gone through the documents filed by the appellant and the submissions of the appellant. The addition made by the AO on the basis of non production of documents, whereas the confirmations were filed, identity proved and all the transactions were through the banking channel. I have found that one of the confirmations as mentioned above is also available on assessment record of the AO. The creditworthiness and genuiness of the transaction with the lenders were not doubted. I am of the considered opinion that the appellant has discharged his onus and proved with documents, the Identity. Creditworthiness and genuiness of the transactions with the lenders The A O is not justified in making the addition of Rs 1,42.00,000/- u/s 68 of the Act, 1961 as discuss supra hence addition is deleted. Thus, this ground of appeal is allowed.

10. The Id DR could not point out any infirmity in the order of the Id CIT(A), therefore in view of this we confirm the finding of the Id CIT(A) in deleting the addition u/s 68 of Rs. 1.42 crores after obtaining the proper details which proves the identity, creditworthiness and genuiness of the transactions. In the result ground No. 2 of the appeal of the revenue is dismissed.
11. Ground No. 3 of the appeal of the revenue is against deleting the disallowance of interest expenditure of Rs. 1372277/-. It was found by

the Id Assessing Officer that assessee has paid interest of Rs. 2744557/- and have made advance to different individual of Rs. 40022398/-. Therefore, he disallowed the proportionate interest equivalent to 50% u/s 36(1)(iii) of the Act. The Id CIT(A) deleted the addition holding that the total advance received during the year of Rs. 40323252/- which is far more in excess of advance of Rs. 40022398/-. Therefore, revenue is in appeal before us.

12. The Id DR relied upon the order of the Id Assessing Officer whereas the Id AR relied upon the order of the Id CIT(A).
13. We have carefully considered the rival contentions. Firstly, the Id Assessing Officer has disallowed 50% of interest expenditure without proving any nexus between advances given without interest and further the total advance received during the year without interest of Rs. 40323252/- was ignored by him. The first appellate authority has considered the above argument and has dealt with this issue as under:-

#### *5.2 Disallowance of Claim of Interest -:*

*5.2.1. I have considered the submissions and the argument of the counsel of the appellant. The view taken by the A.O. is that the borrowed funds were of Rs.19397329/- whereas the advance were amounting to Rs.40022398/-, so a significant amount was utilized for the non business purpose and on that basis the A.O. disallowed 50% of the claim of the interest. This is not a sufficient material to make the disallowance without considering other factors The appellant has categorically mention that the A.O. has not questioned the genuineness of the audited balance sheet as on 31-3-2007 and the funds induced by the appellant as advance from customers and unsecured loans.*

*5.2.2. On examination of the ledger account and the bank statement it appears that there was a direct nexus with the payment given as advance and its source Further the said source was out of the advance received from customers and the unsecured loans raised during the year The A.O has not established that the borrowed funds were not utilized for business purpose nor he brought on record any finding contrary to the submission of the Appellant. It is the duty and onus is on the AO and the same cannot be discharged, merely by doubts. Further, the submission of the appellant has a reasonable case that the borrowed funds were provided by the bank to the exporter as PCL and FOUBC limits to execute the export orders and bank provide the said limit against the book debts and stocks If the view of the A.O. is to be accepted then there should not be any stock or debtors but as apparent from the audited balance sheet*

there was in reality a stock of Rs.24039318/- and debtors of Rs.11751028/-.

5.2.3 The A.O. has taken the view that the appellant has not utilized the borrowed funds for the purpose of the business and the advance given was more than the borrowed funds. This cannot be a justified basis for disallowance of the interest claim in the light of the fresh advance received from the customers and the fresh unsecured loans. The total advance received and unsecured loans of Rs.40323252/- in itself is sufficient evidence to establish that the complete advance given of Rs. 40022398/- was financed through such advance and unsecured loan. Accordingly the contentions and the submission of the counsel of appellant has strong acceptance. If the borrowed funds are used by the appellant for giving advances then how it be possible to maintain the current ratio of stock and debtors. In that case there would be no stock or debtors but as apparent from the auditor's balance sheet the stock and debtor are there for Rs.35790346/-. The A.O. has not considered the advance from customer and unsecured loan received by the appellant during the year which financed the source of the advances given.

5.2.4 From the above observations the disallowance of the interest by the A.O. was against the facts and without cogent reasons and evidences. Hence the disallowance by A.O. cannot be sustained hence deleted and in result, this ground of appeal is allowed."

14. The Id DR could not point out any infirmity in the order of the Id CIT(A) and therefore, we confirm the finding of the Id CIT(A) in deleting the disallowance of interest of Rs. 1372277/-. In the result ground No. 3 of the appeal of the revenue is dismissed.
15. In the result the appeal filed by the revenue is dismissed.
16. Now we come to the cross objection of the assessee which was filed late by 671 days. Assessee has submitted an application for condonation of delay stating that the assessee could not file CO as the appeal of the assessee before the Id CIT(A) was allowed 100%. The Id DR objected for admission of the above appeal as no sufficient cause was shown.
17. We have carefully considered the rival contentions. The delay of 671 days was not explained by the assessee with cogent reason and therefore we do not incline to condone the same. In the result CO

filed by the assessee is dismissed on account of delay as barred by limitation.

18. in the result the appeal filed by the revenue and Cross objection filed by the assessee are dismissed.

**Order pronounced in the open court on 31/01/2017.**

**-Sd/-**

**(H.S.SIDHU)  
JUDICIAL MEMBER**

**-Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated: 31/01/2017

*A K Keot*

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi