

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 777/DEL/2016
Assessment Year: 2011-12

SATLUJ SHIKSHA SAMITI,
VILLAGE BERLI KALAN,
PO-MOSEPUR,
DISTT. REWARI,
(PAN: AABAS8469H)
(APPELLANT)

VS. ACIT, CIRCLE-REWARI
AAYAKAR BHAWAN,
REWARI
HARYANA - 123401

(RESPONDENT)

Assessee by : Sh. V.M. Chaurasia, CA

Revenue by : Sh. Koushlendra Tiwari, Sr. DR

ORDER

PER H.S. SIDHU, JM

The Assessee has filed the Appeal against the Order dated 27.1.2016 of the Ld. CIT(A), Rohtak pertaining to assessment year 2012-13 on the following grounds:-

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
- 2(i) *On the facts and circumstances of the case, learned CIT(A) has erred both on facts & in law in*

confirming the addition of an amount of RS.67,75,000/- on account of unsecured loans, made by AO under Section 68 of the Act.

(ii) That the said addition has been made despite the assessee bringing on record all material and evidences to prove the identity and creditworthiness of the lenders and genuineness of the transaction.

3(i) On the facts and circumstances of the case, the learned CIT(A) has erred in confirming above said addition taking adverse view against the assessee, without conducting any independent investigation made by the AO.

(ii) On the facts and circumstances of the case, the addition made by the AO is arbitrary and against the facts on record.

(iii) That in absence of any adverse material having brought on record, the addition made by the AO invoking the provisions of section 68 is unsustainable.

4(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in upholding the action of the A.O in denying exemption U/s 10(23C)(iiiad) to the assessee amounting to Rs.7,89,745/- claimed by the assessee despite the assessee being eligible for the same.

(ii) That the exemption U/s 10(23C)(iiiad) was denied by wrongly interpreting the conditions laid down under the said section.

5. The respondent craves leave to add, amend or alter any of the grounds of appeal."

2. The brief facts of the case are that the assessee filed the return of income declaring NIL income on 15.10.2011 and the same was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act). Later on, the case was selected for scrutiny and notice u/s. 143(2) of the Act dated 26.9.2012 was issued and served upon the assessee on 29.9.2012. Further, statutory notices u/s. 142(1) & 143(2) of the Act alongwith questionnaire were issued, served and complied with. In response to these notices, the A.R. of the assessee attended the assessment proceedings and furnished the requisite details / information as called for from time to time as per order sheet entries. The books of accounts were produced and examined on test check basis. In the present case, the assessee-society is engaged in imparting education. During the year under consideration, the society was running a school namely "Satluj Senior Secondary School" situated at Village, Berli Kalan, PO Musepur, Distt. Rewari. During the year under consideration, the assessee has shown to have received unsecured loan of Rs. 76,25,000/-. The assessee was asked to furnish the complete details of unsecured loan. The assessee submitted that an amount of Rs. 45,50,000/- have been

received through account payee cheques and remaining amount of Rs. 29,75,000/- has been received from 177 various persons in cash. The list provided by the assessee of the so called 12 persons from whom loan received through banking channel has been mentioned at page no. 2 & 3 of the assessment order. Since the assessee-society has failed to discharge its onus in respect of unsecured loan amounting to Rs. 67,75,000/-, the same was treated as unexplained income of the assessee and was added u/s. 68 of the Act to the returned income of the assessee.

2.1 Further, AO observed that during the year under consideration, the society has shown gross receipts from fees and interest of Rs. 72,28,382/-. After debiting the expense under the various heads including depreciation of Rs. 64,38,637/-, the excess of income over expenditure has been shown at Rs. 7,89,745/- and the same has been claimed as exempt u/s. 10(23C)(iiiad) of the Income Tax Act, 1961. In view of above, the society has failed to discharge its onus in respect of so called unsecured loan, therefore, on adding the same with its receipts from fees and interest, the gross annual receipts comes at Rs. 1,40,03,382/- (67,75,000+72,28,382) which exceeds Rs. One crore. Keeping in view the above, a notice dated 24.03.2014 was issued and assessee society was asked to show cause as to why the exemption claimed u/s 10 23C)(iiiad) should not be withdrawn and excess of income over expenditure should not be taxed as per the provisions of Income Tax Act as the gross receipts

of the society are exceeding Rs. One crore and the society has not taken prior approval from the Ld. CCIT, Panchkula u/s 10(23C) (vi) of the Income Tax Act, 1961 which is mandatory for claiming exemption. In response, the society filed its written reply stating therein that receipt of our school should be kept at Rs. 72,28,383/- which is prescribed limit explained in section 10(23c)(iiiad) of the Income Tax Act, 1961. AO observed that the contention of the assessee is not genuine because, the gross annual receipts of the society exceeding Rs. One crore and society has not taken prior approval from the Ld. CCIT, Panchkula, Therefore, the society is not eligible for exemption u/s. 10(23C)(iiiad) of the Act. The same was withdrawn and the excess of income over expenditure shown at Rs.7,89,745/- was added to the returned income of the assessee. Accordingly, the income of the assessee was assessed at Rs. 75,64,750/- u/s. 143(3) of the Act vide order dated 28.3.2014. Against the assessment order dated 28.3.2014, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 27.1.2016 has dismissed the appeal of the assessee.

3. Aggrieved with impugned order dated 27.1.2016, assessee filed the appeal before the Tribunal.

4. At the time of hearing, Ld. A.R. of the assessee has reiterated the contentions raised in the grounds of appeal and also reiterated the contents of the Synopsis filed by him during the hearing and relied upon the case laws cited therein. For the sake of clarity, the

contents of the Synopsis filed by the assessee's A.R. are reproduced hereunder:-

"The Society M/s. Satluj Shiksha Samiti was formed in the year 1989 and is engaged in imparting education in rural village Berli Kalan, PO - Musepur, District Rewari, Haryana by the name of "Satluj Senior Secondary School".

During the year under consideration the Society has applied for the purchase of land from Haryana Urban Development Authority (HUDA), Government of Haryana under the auction to setup new school at Rewari. The society has accepted sum of Rs. 76,75,000/- as un-secured loans from various persons known to the management of the society on the goodwill (as no banking institution provide loan to purchase of land) and the same was utilized for purchase of land from auction conducted by HUDA, these loans were accounted in books of accounts of the society.

Ultimately the society returned the land to HUDA due to lot of difference in size, etc HUDA refunded the money through the High Court Order to the Society returned back money to the persons from loan were taken in subsequent year.

Out of the above loan an amount of :

1. *Rs. 46,50,000/- were received through account payee cheques from 12 persons list available at PB Pg 87, and*

2. *Remaining loan amount of Rs. 29,75,000/- received in cash from 177 persons list available at PB Pg 88-94 resident of the village or in surrounding area of the school on the reputation and goodwill to help in purchase of land for the school from HUDA. All cash loans were not exceeding Rs. 20,000/-.*

3. *The assessee filed application under Rule 46A with the CIT(A) during the appellate stage and the remand report was called for. During remand proceedings Ld AO issued the letter dated 6-8-2015 (PB Pg 107) to produce 6 persons, 5 persons appeared & confirmed about the transaction and their statement on oath uls 131 were recorded by the AO (PB Pg 109-131).*

4. *AO was not justified in calling upon the assessee to prove the source of source case laws relied upon are as under :-*

- *Orissa Corporation (P)ltd 159 ITR 78(SC)*
- *P.K. Noorjahan 273 ITR 570(SC)*

- *Nabadwip Chandra Roy v/s CIT (1962) 44 ITR 591 (Assam).*
 - *Tolaram Daga v/s CIT (1966) 59 ITR 632 (Assam).*
 - *Anand Prakash Agarwal vIs ACIT (2008) 6 DTR (All) (Trib) 191.*
 - *Radheshyam vIs Safiyabai Ibrahim AIR 1988 Born 361*
 - *Rohini Builders 182 CTR 373 (Guj)*
5. *The list of 177 persons PB Pg 88-94/1-350 by whom the loan were provided during the assessment proceedings with detailed confirmation with name of persons, father's name, addresses, date of amount received, amount, date of repayment and detail regarding their profession were provided alongwith their identification, address proof in the form of Ration Card/Adhar Card/PAN Card/Voter Card/Driving License, etc. were submitted to the Ld AO in support of identification and genuineness of such transactions by the President of the society.*

Without prejudice to above it is submitted that, the onus of proving cash credit in the books is rebuttable. The assessee has to discharge the initial

onus by proving the identity of the creditor by filing the confirmatory letter and other relevant details.

In the instant case no evidence has been brought on record by the AO to prove that the money emanated from the coffers of the applicant.

The AO has not carried out any investigation after the assessee has submitted details about the cash creditors.

It is now well settled that, there are two sets of judgments and cases, but these judgments and cases proceed on their own facts. In one set of cases, the assessee produced necessary documents/evidence to show and establish identity of the shareholders, bank account from which payment was made, the fact that payments were received thorough banking channels, filed necessary affidavits of the shareholders or confirmations of the directors of the shareholder companies, but thereafter no further inquiries were conducted.

The Assessing Officer does nothing with the evidences provided by the Assessee, and he does not carry out independent investigation or enquiry by summoning from the list of persons from whom un-secured loan taken by the assessee. He just

made addition of Rs. 76,25,000/- under section 68 of the Income Tax Act, 1961.

The issue is covered by the various orders of the Hon'ble Members in the cases of :

- ITO vs Godfather Finvest and Leasing Pvt Ltd ITA no 3432/0/2009 dated 22-02-2016*
- Vam-Hi-Fashion Garments Pvt Ltd vs ACIT ITA no 494/D/2016 dated 21-3-2016*
- ITO vs OPG Leasing & Finance Pvt Ltd ITA no 3982/2010 dated 25-1-2016*
- ITO vs Hira Realtors Pvt Ltd ITA no 117/0/2012 dated 8-3-2016*

By following judgments of the various High Courts and Supreme Court in the following cases whereby it has been held that in case the AO does not carry out independent investigation after the assessee has submitted the evidences addition cannot be made:-

1) CIT vs Gangeshwari Metal Pvt Ltd. ITA 597/2012 (Delhi)

"As can be seen from the above extract, two types of cases have been indicated. One in which the assessing officer carries out the exercise which is

required in law and the other in which the assessing officer "sits back with folded hands" till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the assessing officer, after noting the facts, merely rejected the same. This would be apparent from the observations of the assessing officer in the assessment order to the following effect: -

"Investigation made by the Investigation Wing of the Department clearly showed that this was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs. 1,11,50,000/- may not be added to its income. In response, the assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs. 55,50,000/- and not Rs. 1,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the

amount is found correct. As such the unexplained amount is to be taken at Rs. 55,50,000/-. The assessee has further tried to explain the source of this amount of Rs. 55,50,000/- by furnishing copies of share application money, balance sheet, etc. of the parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee' has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation wing of the Department. As such entries of Rs. 55,50,000/- received by the assessee are treated as an unexplained cash credit in the hands of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under section 271 (1)(c) are being initiated separately. "

The facts of Nova Promoters and Finlease (P) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case. However, the facts of the present case are clearly distinguishable and fall in the second category and are more in line with facts of Lovely

Exports (P) Ltd. (supra). There was a clear lack of inquiry on the part of the assessing officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition+ can be made under section 68 of the Act.

Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law.

The appeal is dismissed.

2) CJT vs Fair Finvest Ltd ITA 232/2012 (Delhi)

Para 8. "The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence in support of the share application monies, it is open to the assessing officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators; such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue.

We are therefore not to be understood to convey that in all cases of share capital added under section 68, the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material.

No substantial question of law arises.

The appeal is accordingly dismissed.

*3) CIT vs Expo Globe India Ltd ITA 1257/2011
(Delhi)*

Para 7. "This Court has carefully considered the submissions. The previous discussion, particularly the order of the CIT (A), would reveal that even though the Assessing Officer had initially concluded on the basis of the materials made available at that stage that service of the entry providers had been utilized to bring in capital, after remand the CIT (A) elaborately took into account considerable material furnished by the assessee. These included income tax returns, balance sheets, ROC particulars and bank account statements. On the basis of these, the CIT (A) held that the share application money or the source of the share application money had been satisfactorily explained. The ITAT was of the opinion that no interference was warranted having regard to the facts of this case. This Court is of the opinion

that the only sentence in paragraph-6 of the impugned order that amounts were refunded to the applicants itself should not be a ground to conclude that the findings recorded by the lower authorities are not on the basis of evidence. The entire controversy sought to be raised is purely factual.

8. The Court is not satisfied that the view of the Tribunal is so unreasonable as to warrant interference under Section 260A.

9. The Appeal is accordingly dismissed. "

4) CIT vs Goel Sons Golden Estate Pvt Ltd ITA 212/2012 (Delhi)

Para 3. "We have examined the said contention and find that the assessee during the course of assessment proceedings has filed confirmation letters from the companies, their PAN number, copy of bank statements, affidavits and balance sheet. Thereafter the Assessing Officer had asked the assessee to produce the said Directors/ parties. Assessee expressed its inability to produce them. The Assessing Officer did not consequent thereto conduct any inquiry and closed the proceedings. This is a case where the Assessing Officer has failed to conduct necessary inquiry, verification and deal

with the matter in depth specially after the affidavit/confirmation along with the bank statements etc. were filed. In case the Assessing Officer had conducted the said enquiries and investigation probably the challenge made by the Revenue would be justified. In the absence of these inquiries and non-verification of the details at the time of assessment proceedings, the factual findings recorded by the Assessing Officer were incomplete and sparse. The impugned order passed cannot be treated and regarded as perverse. The appeal is dismissed as no substantial question of law arises."

5) ACIT vs Panchanan International (P) Ltd (Delhi Bench) ITA 50/Del/2011

Para 8. "We have heard the rival submissions of both the parties and have gone through the material available on record. We find that the assessee had accepted share application money of Rs. 10,00,000/- through banking channel and had filed details/documents regarding the above said companies. The Assessing Officer without going into the documents and without conducting any enquiry rejected the details and made the addition. The Ld CIT(A) after going through the submissions made

by the Ld AR had rightly deleted the addition. The judgment of Hon'ble High Court in the case of Goel Sons Golden Estate Pvt Ltd. squarely fits in the facts and circumstances of the present case. In that case, the assessee had accepted Rs. 30 lakhs as share application money from five companies and had filed confirmations, PAN Numbers, bank statement, balance sheet etc. with the Assessing Officer. The Assessing Officer did not conduct any enquiries and made the addition. The relevant observation of Hon'ble High Court are reproduced below:-

"We have examined the said contention and find that the assessee during the course of assessment proceedings has filed confirmation letters from the companies, their PAN number, copy of bank statements, affidavits and balance sheet. Thereafter the Assessing Officer had asked the assessee to produce the said Directors/parties. Assessee expressed its inability to produce them. The Assessing Officer did not consequent thereto conduct any inquiry and closed the proceedings. This is a case where the Assessing Officer has failed to conduct necessary inquiry, verification and deal with the matter in depth specially after the

affidavit/confirmation along with the bank statements etc. were filed. In case, the Assessing Officer had conducted the said enquiries and investigation probably the challenge made by the revenue would be justified. In the absence of these inquiries and non verification of the details at the time of' assessment proceedings, the factual findings recorded by the Assessing Officer were incomplete and sparse. The impugned order passed cannot be treated and regarded as perverse. The appeal is dismissed as no substantial question of law arises."

9. Following the various judicial pronouncements including above, we are of the opinion that the case of the assessee is squarely covered by the above judgment and therefore the Ld CIT(A) had rightly deleted the addition. In view of the above, we do not find any reason to interfere in the order of Ld CIT(A).

10. In the result, the appeal filed by the revenue is dismissed."

5. On the contrary, Ld. DR relied upon the orders of the authorities below and he also filed the written submissions in support of his contention and relied upon the decisions mentioned therein.

For the sake of clarity, the contents of the Written Submissions filed by the Ld. DR are reproduced hereunder:-

"In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to addition made u/s 68 of I.T. Act:

1. *Suman Gupta Vs CIT (2013-LL-0122-69) (Supreme Court) where Hon'ble Supreme Court dismissed appeal of the assessee.*

Suman Gupta Vs ITO (ITA NO.680/12 vide judgement dated 07.08.2012) (Allahabad High Court) where Hon'ble Allahabad High Court held that where identical amounts were found to have been deposited in accounts of half a dozen lenders prior to lending, and assessee could only produce one lender for examination. addition is to be made as assessee failed to prove genuineness of loans.

2. *Blessing Construction Vs ITO [2013] 32 taxmann.com 366 (Gujarat)/[2013] 214 Taxman 645 (Gujarat) where Hon'ble Gujarat High Court held that where sizeable amounts were deposited in cash in account of depositors only before their withdrawal*

through cheques in favour of assessee, addition was justified.

3. *Toby Consultants (P.) Ltd. Vs CIT [2010] 324 ITR 338 (Delhi) where Hon'ble Delhi High Court held that where assessee-company had shown in books unsecured loans of Rs. 2.68 crores and Rs. 2.45 crores from its two directors and it was explained that money belonged to its own entity and was routed through directors and Tribunal found that directors who advanced loan were admittedly not at all men of means for advancing such huge amount of loan amounting to about Rs. 5 crores and secondly that assessee even for taking such huge amount of loan did not want to pay any interest for which creditors also agreed, Tribunal had rightly, arrived at a finding of fact, on analysis of all relevant material on record, that genuineness of transaction had not been established and assessee had failed to independently prove same application money, amount so received was liable to be taxed under section 68.*

4. *Sanraj Engineering Pvt. Ltd. Vs CIT (ITA 79/2016) (Delhi) where Hon'ble Delhi High Court held that addition made u/s 68 on account of unsecured loans was justified, where initial onus of proving the creditworthiness of the lenders was not discharged by the assessee.*

5. *Naresh Chandra Jain Vs CIT (ITA No.335 of 2009) (Allahabad) Where Hon'ble Allahabad High Court held that tribunal was justified in holding that amount of loan received by assessee was unexplained income u/s 68 in as much as identity, genuineness, creditworthiness of the transaction is not proved."*

6. We have heard both the parties and perused the records and gone through the orders of the authorities below, especially the contention raised in the grounds of appeal and the contentions raised in the Synopsis and case laws cited therein as well as the contentions raised in the written submissions filed by the Ld. DR and the case laws cited therein. We find that a sum of Rs. 67,65,000/- has been added on account of unsecured loan received. We further find that after perusing the assessment records, appellate order and the Remand Report, it is apparent that the lenders of funds have not,

at any stage, discharged their onus in furnishing documentary evidence in respect of cash deposits made in their accounts and against which loans were advanced to the assessee. We further note that in this case the creditworthiness of the lenders and the genuineness of the transaction is not clear. Moreover, the lenders who were summoned by the AO have not submitted their Income Tax Returns. In view of the above facts and circumstances, in our considered opinion, Ld. CIT(A) has rightly confirmed the addition in dispute made by the AO u/s. 68 of the Act, which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issue in dispute and reject the ground no. 2 raised by the assessee.

6.1 With regard to ground no. 3 relating to upholding the action of the AO in denying exemption u/s. 10(23C)(iiiad) to the assessee amounting to Rs. 7,89,745/- claimed by the assessee despite the assessee being eligible for the same is concerned, we note that the society has shown gross receipts from fees and interest of Rs. 72,28,382/-. After debiting the expense under the various heads including depreciation of Rs. 64,38,637/-, the excess of income over expenditure has been shown at Rs. 7,89,745/- and the same has been claimed as exempt u/s. 10(23C)(iiiad) of the Income Tax Act, 1961. In view of above, the society has failed to discharge its onus in respect of so called unsecured loan, therefore, on adding the same with its receipts from fees and interest, the gross annual

receipts comes at Rs. 1,40,03,382/- (67,75,000+72,28,382) which exceeds Rs. One crore. Keeping in view the above, a notice dated 24.03.2014 was issued and assessee society was asked to show cause as to why the exemption claimed u/s 10(23C)(iiiad) should not be withdrawn and excess of income over expenditure should not be taxed as per the provisions of Income Tax Act as the gross receipts of the society are exceeding Rs. One crore and the society has not taken prior approval from the Ld. CCIT, Panchkula u/s 10(23C) (vi) of the Income Tax Act, 1961 which is mandatory for claiming exemption. In response, the society filed its written reply stating therein that receipt of our school should be kept at Rs. 72,28,383/- which is prescribed limit explained in section 10(23c)(iiiad) of the Income Tax Act, 1961. This contention of the assessee is not genuine because, the gross annual receipts of the society exceeding Rs. One crore and society has not taken prior approval from the Ld. CCIT, Panchkula, Therefore, the society is not eligible for exemption u/s. 10(23C)(iiiad) of the Act, hence, the same was exemption was withdrawn and the excess of income over expenditure shown at Rs.7,89,745/- was added to the returned income of the assessee and the same was rightly confirmed by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issue in dispute

6.2 As regards the case laws cited by the Ld. A.R. of the assessee in the written Synopsis, we are of the considered view that the facts

and circumstances of the present case are distinguished to the facts and circumstances of the case of the case laws cited by the Ld. A.R. of the assessee, hence, the said decisions are not applicable in the present case.

7. In the result, Assessee's appeal is dismissed.

Order pronounced in Open Court on this 29/09/2017.

Sd/-

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

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

Dated :29/09/2017

Copy forwarded to:

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

AR, ITAT
NEW DELHI.