

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A. No. 3645/DEL/2017	
	A.Y. 2010-11	
YASHPAL VATS, C/O RAJ KUMAR & ASSOCIATES, CHARTERED ACCOUNTANTS, L-7A (LGF), SOUTH EXTN., PART-2, NEW DELHI - 49 (PAN: ABFPV9647Q)	VS.	ITO, WARD 47(2), NEW DELHI
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by : Ms. Ashna Paul, Sr. DR  
Assessee by : Sh. Raj Kumar & Sh. Sumit  
Goel, Advs.

**ORDER**

This appeal by the Assessee is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-28, New Delhi dated 16.3.2017 pertaining to Assessment Year 2010-11 on the following ground:-

*"That under the facts and circumstances, the addition of Rs. 10 lacs u/s. 68 for the amount received from Sh. Kripa Shankar as advance for sale of property, is unjustified and unsustainable in law as well as on merits."*

2. The brief facts of the case are that Assessee filed return of income declaring income of Rs. 1,51,400/- on 30.7.2010. In this

case assessment was completed u/s. 143(3) of the Income Tax Act, 1961 on 26.3.2013 at total income of Rs. 13,98,695/- making addition of Rs. 12,00,000/- on account of unexplained cash credits/cheques. Aggrieved with the assessment order, assessee filed the appeal before the Ld. CIT(A) who vide his impugned order dated 16.3.2017 has restricted the addition to Rs. 10 lacs from Rs. 12 lacs and partly allowed the appeal the appeal of the assessee.

3. Aggrieved with the impugned order of the Ld. CIT(A), the Assessee is in appeal before the Tribunal.

4. Ld. A.R. of the assessee stated that assessee has received Rs. 10 lacs as advance against sale of property, which was later returned back. He further stated that to prove the genuineness of the transaction he filed the copy of the agreement to sell and purchase dated 06.5.2009; acknowledgement receipt issued by the assessee to Kripa Ram; Ration card of Kripa Ram; DL of Kripa Ram; Copy of relevant OBC Bank statement of assessee showing cash deposit of Rs. 10 lacs on 8.5.2009; copy of relevant OBC bank statement of assessee showing return of Rs. 10 lacs clearing cheque on 13.3.2013; copy of relevant SBI Bank statement of Kripa Ram showing credit of Rs. 10 lacs on 13.3.201 and copy of confirmation

dated 12.3.2013 from Kripa Ram furnished to AO. He further stated that due to noncompliance of summon issued to Sh. Kripa Ram by the AO, the AO made the addition, which is not sustainable in the eyes of law, because source of the source are not required to be proved as per the settled position of law and relied upon the case of CIT vs. Shiv Dhooti Pearls & Investment Ltd. 237 Taxman 104 (Del) and ACIT vs. Prem Anand (ITA No. 3514/Del/2014), ITAT, Delhi order dated 13.4.2017. In view of the above, he requested that addition in dispute may be deleted and appeal of the assessee may be allowed.

5. Ld. DR relied upon the orders of the authorities below and strongly opposed the request of the Ld. A.R. of the assessee.

6. I have heard both the parties and perused the relevant records, especially the order of the Ld. CIT(A). Assessee entered into sell and purchase agreement dated 6.5.2009 with one Sh. Kripa Ram for sale of property No. 67/2, Munirka Village, Delhi for Rs. 50 lacs and assessee received Rs. 10 lacs from Sh. Kripa Ram as advance against the sale of the said property. Since Sh. Kripa Ram has not been able to make the balance payment of Rs. 40 lacs, this transaction agreed to be cancelled and as a result thereof, assessee returned back Rs. 10 lacs to Kripa Ram through cheque on 13.3.2013. Accordingly, the AO has made the addition due to the

reasons that assessee has not filed any evidence regarding ownership of the aforesaid property; genuineness of the transaction not proved and Sh. Kripa Ram not appeared in response to summons u/s. 131 of the Act. I find that the aforesaid property is inherited by the assessee from his father, who was died on 10.8.2008 and after his death, assessee becomes the owner of this property. The house tax receipt attached at page 23&24 shows that the property belongs to the father of assessee (Sh. Deep Chand). I further note that to prove the genuineness of the transaction the assessee has filed the copy of the agreement to sell and purchase dated 06.5.2009; acknowledgement receipt issued by the assessee to Kripa Ram; Ration card of Kripa Ram; DL of Kripa Ram; Copy of relevant OBC Bank statement of assessee showing cash deposit of Rs. 10 lacs on 8.5.2009; copy of relevant OBC bank statement of assessee showing return of Rs. 10 lacs clearing cheque on 13.3.2013; copy of relevant SBI Bank statement of Kripa Ram showing credit of Rs. 10 lacs on 13.3.201 and copy of confirmation dated 12.3.2013 from Kripa Ram furnished to AO. I further note that Sh. Kripa Ram did not comply with the summon issued to him u/s. 131 of the Act by the AO and assessee did not have any control on Sh. Kripa Ram. In view of the above, I am of the considered view that assessee has proved his burden and as per settled position of

law, the assessee need not to be proved the source of source, hence, the addition made on the assessee is not sustainable in the eyes of law, therefore, I delete the addition in dispute and allow the appeal of the assessee. My aforesaid view is fortified by the following case laws:-

-CIT vs. Shiv Dhooti Pearls & Investment Ltd. 237  
Taxman 104 (Del)

*Section 68 of the Income Tax Act, 1961 – Cash credit (Burden of proof) – Assessment year 1994-95 – whether in terms of section 68, assessee is liable to disclose only source(s) from where he has himself received credit and it is not burden of assessee to show source(s) of his creditor nor is it burden of assessee to prove creditworthiness of source(s) of sub-creditors – Held, yes – Whether, however, AO has ample ‘freedom’ to make inquiry ‘not only into source(s) of creditors, but also of his (creditor’s) sub-creditors and prove as a result of such inquiry, that money received by assessee, in form of loan from creditor, though routed through sub*

*creditors, actually belongs to, or was of, assessee himself – Held yes.*

- ACIT vs. Prem Anand (ITA No. 3514/Del/2014), ITAT, Delhi order dated 13.4.2017.

*"7.1 With regard to ground no. 2 relating to deletion of addition of Rs. 38,50,000/- is concerned, we find that the AO has admitted the identity of the three persons from whom the assessee has taken loan. She has doubted the credit worthiness of these persons and consequentially genuineness of transactions. Definitely; only submission of the ITR and balance sheet will not only explain the credit worthiness of any person. The appellant has given copies of the Income Tax Return (ITR) of two persons; namely, Mr. Shailender Kumar and Ms. Sujata Sachdeva as mentioned above. However, these persons are not engaged in business; therefore, they are not preparing their balance sheets as the same is not legally required. Definitely, the taxable income is not*

*only the criteria to explain the credit worthiness of any person; though it is an indicator. We have perused all three bank accounts of the above mentioned persons and find that the loan of Rs.22,00,000/- has advanced by Shri Parkhi Sigh out of a credit in his bank account through cheque clearing of Rs.23,41,500/- on 08.06.2007 and the loan has not been given to the appellant out of any cash deposit in his bank account. Similar facts are in respect of Shri Shailendra Kumar; wherein a credit of Rs.10,01,128/- through cheque is appearing in his bank account on 05.10.2007 and the loan has been advanced thereafter. There is no cash deposit in his bank account before advancing loan. Similar facts are in respect of Smt. Sujata Sachdeva. Her bank account is showing consistent credit and debits having substantial credit balance throughout year. From the above, it is evident that the assessee has discharged her onus of proving identity, the source of loan and the*

*genuineness of transactions in accordance with the provisions of section 68. It is a settled law that the assessee is not answerable to explain source of source of the fund. In light of the fact that there is no cash deposit in the bank accounts of the three persons for advancing loan and their categorical admission confirming loan during the remand proceedings, we are of the considered view that the loans aggregating to Rs.38,50,000/- cannot be charged to tax in the Assessee's hands u/s 68 particularly in absence of any contrary evidence brought on the record by the AO. Hence, we find that Ld. CIT(A) has rightly observed that the assessee is not required to explain source of source of the fund gets buttressed by the amendment made in section 68 with effect from 01.04.2013, which empowers the AO to examine source of source in case of share application money from 01.04.2013 and no other cases prior to that. This amendment*

*further does not give power to the AO to examine source of source of non-share capital cases and that too prior to 01.04.2013. Undisputedly; the assessee has given complete addresses and credit worthiness of the persons from whom she has taken loans. Further, Ld. CIT(A) has also analyzed the facts of this case with that of the case of the CIT Vs Nova Promoters & Finlease (P) Ltd.,[2012] 342 ITR 169 (Del) and find that these two cases are distinguishable on facts and thus, he rightly held that the decision of Nova Promoters & Finlease (P) Ltd. (supra) is not applicable in the assessee's case. After examining the materials available on the records, Ld. CIT(A) observed that there is no material which may even raise doubt about the genuineness of the loans. Therefore, it was rightly held that the AO has erred in taxing above mentioned loans aggregating to Rs.38,50,000/- u/s 68 in the hands of the appellant. Therefore, the addition was rightly*

*deleted, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the ground no. 2 raised by the Revenue."*

7. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 27/11/2017.

Sd/-

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

*Date 27/11/2017*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

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

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By Order,

Assistant Registrar,  
ITAT, Delhi Benches