

**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
BEFORE: SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

ITA No.350/RPR/2014
(Assessment Year :2010-2011)

DCIT-1, Raipur (CG)	vs	Amarchand Agrawal, Prop. Of M/s Bansal Borewells Punjab Oil Mill Gali, Bhainsthan Road, Raipur(CG)
PAN No. : ACIPA 4438 N		
(Appellant)	..	Respondent

Revenue by : Mrs. Shital Verma, DR
Assessee by : Shri Veekaas S.Sharma, AR

Date of Hearing : 15/01/2018
Date of Pronouncement 17/01/2018

आदेश / O R D E R

Per Shri N.S.Saini, AM:

This is an appeal filed by the Revenue against the order of the CIT(A), Raipur, dated 25.08.2014 for the assessment year 2010-2011.

2. The Revenue has taken the following grounds of appeal :-

1. *Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in not allowing the AO an opportunity to examine material gathered by the Hon'ble CIT(A) u/s.133(6) as it was being used against the additions made by the A.O.*
2. *Whether in law and on facts & circumstances of the case, the learned CIT(A) has erred in deleting the addition of Rs.57,20,000/- made by the AO on account of unexplained cash credits u/s.68A of the IT Act, 1961?*

3. Brief facts of the case are that the AO observed that the assessee has shown capital introduced Rs.57.02 lakhs. On a query of the AO for the unsecured loan in the balance sheet the assessee filed list of 10 persons from whom the assessee had taken unsecured loan. According to the AO, the creditworthiness of the loan creditors was not proved and, therefore, he added Rs.57,20,000/- u/s.68 of the Act as unexplained cash credit.

4. On appeal, the CIT(A) deleted the addition by observing as under :-

“7. I have carefully gone through the assessment order and submissions of the appellant. It is seen that the unsecured loan of Rs.57 Lakhs which is the subject of addition and against which appeal is preferred was taken by the appellant in his personal capacity and the loan funds were introduced as Capital in the proprietorship concern. Apart from said loan of Rs.57 Lakhs, the proprietorship concern of the appellant had also taken fresh loan of Rs.22.25 lakhs from 15 parties whose list has been reproduced by the A.O in the assessment order. From the perusal of assessment order, it is gathered that the appellant had furnished the confirmation of account from the said 15 parties and the A.O has accepted the creditworthiness of the said lenders inasmuch as no addition has been made by the A.O in respect of loan of Rs.22.25 lakhs taken from 15 parties by the proprietorship concern of the appellant. The A.O has made the addition in respect of loan of Rs. 57 Lakhs taken by the appellant in his personal capacity from 10 lenders. It is seen that out of the said 10 lenders, the appellant had furnished the Confirmation of Account in case of 7 lenders from whom aggregate loan of Rs.42 Lakhs was taken by the appellant in his personal capacity.

7.2 It is seen that the specific enquiry regarding genuineness of the unsecured loan taken by the appellant in his personal capacity was initiated by the A.O on 11.03.2013. It is seen that the appellant did furnish the list of 10 lenders containing details of name, address and PAN of the lenders reproduced in Para 6 above. It is seen that the A.O completed the assessment without making any enquiry from the said lenders whose complete addresses were provided by the appellant. It is seen that the assessment order was passed by the A.O on 20.3.2013, thus, it cannot be denied that the appellant was debarred proper opportunity to dispel the doubts of the A.O. I find that the A.O has taken two different views on same set of facts inasmuch as the A.O accepted the identity and creditworthiness of the lenders and genuineness of loan taken by the proprietorship

concern of the appellant based on the Confirmation of Account submitted by the appellant from lenders, however, the A.O disbelieved the creditworthiness of the lenders who lent money to the appellant in his personal name even though the Confirmation of Account from 7 lenders out of 10 lenders were on record of the A.O before completing the assessment. I am convinced that the A.O has applied two different benchmarks and action of the A.O is vitiated from discrimination. I find no reason for the A.O to take a contrary view in respect of 7 lenders whose confirmation of account were duly on record. In **KHANDELWAL CONSTRUCTIONS vs. CIT: (1997) 227 ITR 900 (Gau)** it was held that “The AO surely had the jurisdiction to look into the cash credit and make necessary enquiry and come to a finding on such an enquiry in a proper and fair manner. As indicated above, the enquiry was not properly made. On the basis of this, the AO could not come to a conclusion holding that the creditors were fictitious. The Tribunal also totally overlooked the matter on the grounds that the amount was received from R.D., that aspect was also not considered. Therefore, the Tribunal was not justified in law in upholding that the cash credit appearing in the name of the three cash creditors in the books of account of the **assessee** were correctly treated as the **assessee’s** income from undisclosed sources by the Revenue within the meaning of s. 68.”

7.3 With a view to ascertain the facts and make independent enquiry, notices were issued and information was called u/s 133(6) from the following 10 lenders at the addresses provided by the appellant

S.No.	NAME	Amount (Rs.)	ADDRESS	Confirmatory Letter received on	Loan Repaid i.e. loan got squared up in the F.Y
1	NIHARIKA SHARMA	5,00,000.00	H.NO. 11, 14 BLOCK, SECTOR-3, SHIVANAND NAGAR, RAIPUR (C.G.)	13.08.2014	---
2	SATYAM DWIVADI	5,00,000.00	FLAT NO. 402, ANUVRAT RESIDENCY, NEW SHANTI NAGAR, RAIPUR (C.G.)	11.08.2014	---

3	DHIRAJ AGRAWAL	6,00,000.00	ROAD NO. 3, AT/PO. KANTABANJI, DIST. BALANGIR (ORISSA)	13.08.2014	F.Y 2012-13
4	VIKASH SHARMA	5,00,000.00	H.NO. 11, 14 BLOCK, SECTOR-3, SHIVANAND NAGAR, RAIPUR (C.G.)	13.08.2014	---
5	RAKHI SINGH	2,00,000.00	FLAT NO. 402, ANUVRATI RESIDENCY, NEW SHANTI NAGAR, RAIPUR (C.G.)	11.08.2014	---
6	KAMAL KISHOR AGRAWAL	5,00,000.00	BAJAR PARA, AT/PO. KANTABANJI, DIST. BALANGIR (ORISSA)	13.08.2014	F.Y 2011-12
7	INDRAMANI SHARMA	10,00,000.00	H.NO. 11, 14 BLOCK, SECTOR-3, SHIVANAND NAGAR, RAIPUR (C.G.)	13.08.2014	---
8	RAJESH KUMAR AGRAWAL	4,00,000.00	BAJAR PARA, AT/PO. KANTABANJI, DIST. BALANGIR (ORISSA)	13.08.2014	F.Y 2012-13
9	LALIT KUMAR MOTE	7,75,000.00	NEAR GIRLS HIGH SCHOOL, AT/PO. KANTABANJI, DIST. BALANGIR (ORISSA)	13.08.2014	F.Y 2011-12
10	GOPAL KUMAR MOTE	7,25,000.00	NEAR GIRLS HIGH SCHOOL, AT/PO. KANTABANJI, DIST. BALANGIR (ORISSA)	13.08.2014	F.Y 2011-12

7.4 In response to the said notices issued to the lenders who had lent aggregate amount of Rs.57 Lakhs to the appellant in his personal capacity, Confirmatory letters were received from all the lenders, all the lenders confirmed the fact of having lent money to the appellant, the lenders have furnished the copies of their ITRs of several years along with the copy of bank account statement/passbook containing relevant entries of loan, copy of PAN card, Capital Position and Balance Sheet in most of the cases. It is gathered that the loan was given to the appellant through banking channel. The lenders have also explained their source of income and source of loan, in some cases the immediate source of loan given to the appellant was also explained viz.:

a) the lender namely Smt. Niharika Sharma explained in her reply that she had given loan of Rs.4 Lakhs in the F.Y 2007-08 to Mr. Yamuna Prasad Goyal and the same was repaid to her in the F.Y 2009-10 by Mr. Yamuna Prasad Goyal

and the said sum repaid to her was used by her for lending money to the appellant.

b) the lender namely Smt. Indramani Sharma explained in her reply that she had given loan of Rs.4 Lakhs in the F.Y 2007-08 to Mr. Manoj Kumar Goyal and the same was repaid to her in the F.Y 2009-10 by Mr. Manoj Kumar Goyal and the said sum repaid to her was used by her for lending money to the appellant.

c) the lender namely Mr. Vikash Sharma explained in his reply that he had given loan of Rs.3 Lakhs in the F.Y 2007-08 to Mr. Manoj Kumar Goyal and the same was repaid to him in the F.Y 2009-10 by Mr. Manoj Kumar Goyal and the said sum repaid to him was used by him for lending money to the appellant.

7.5 It is gathered from the Balance Sheet of Smt. Indramani Sharma that she had accumulated capital of Rs.17.64 Lakhs as on 31.3.2010 and loan from her daughter in law and son amounting to Rs. 2.25 Lakhs and Rs.1.50 Lakhs respectively, in this way, the aggregate funds available with her was Rs.21.39 Lakhs, in my considered view, the said lender had sufficient funds to give loan of Rs.10 Lakhs to the appellant.

7.6 It is gathered that out of the total loan of Rs. 57 Lakhs from the 10 lenders, the appellant had already repaid loan of Rs.30 Lakhs to the different lenders in different years, the lenders had given the complete details of repayment and the same was verified with the bank statement of the appellant for the subsequent years(s) and the details of repayment given by the lenders was found to be correct. In my considered view, as the aggregate loan of Rs. 30 Lakhs stood repaid, there was no occasion to hold the same as unexplained income of the appellant. The case of the appellant finds support from the decision in Commissioner of Income-tax, Rajkot-I v. Ayachi Chandrashekhhar Narsangji. [2014] 42 taxmann.com 251 (Gujarat) wherein it was held that "The Commissioner (Appeals) was satisfied with respect to genuineness

of transaction and creditworthiness of 'IA' and, therefore, deleted the addition of Rs. 1,45,00,000 made by the Assessing Officer. It is required to note that as such an amount of Rs.1,00,00,000 vide cheque No. 102110 and an amount of Rs. 60 lakhs vide cheque No. 102111 was given to the assessee and out of the total loan of Rs. 1.60 crores, Rs. 15 lakhs vide cheque no. 196107 was repaid and therefore, an amount of Rs. 1,45,00,000 remained outstanding to be paid to IA. It has also come on record that the said loan amount has been repaid by the assessee to 'IA' in the immediately next year and the Department had accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible, there was no reason to interfere with the impugned order passed by the Tribunal. [Para 6]"

7.7 The case of the appellant also finds support from the following decisions of jurisdictional High Court:

- a) ACIT vs. VENKATESHWAR ISPAT (P) LTD. (2009) 319 ITR 393;
- b) CIT vs. Abdul Aziz, (2012) 82 CCH 248 ChattHC, (2012) 72 DTR (Chhattisgarh) 216 : (2012) 251 CTR (Chhattisgarh) 58 it was held that "The Commissioner (Appeals) has examined all the statements and depositions made by the creditors including their source of income and it was found that the Assessing Officer without having any material on record, contrary to the statements and affidavits filed by the creditors, has taken a stand that the creditors have failed to prove their creditworthiness and, as such, the transaction was not genuine. The Assessing Officer has not made any other independent enquiry to disprove the creditworthiness of the creditors, as established by the affidavits, statements of the creditors disclosing source of income. Thus, the finding of the Commissioner (Appeals) that the observation of the Assessing Officer with regard to dissatisfaction was on the basis of surmises and conjectures, is just and proper. The Tribunal has affirmed the finding recorded by the Commissioner (Appeals) and, as such, there is no occasion for the High Court to interfere with the finding of facts, which is based on proper appraisal of evidence and on the basis of sufficient records. [Para 19]"

In view of the foregoing, that the findings recorded by the Commissioner (Appeals) and affirmed by the Tribunal are based on proper appreciation of facts and are not perverse being correlated with each and every transaction. Thus, the issue is purely question of facts. No question of law, more so substantial question of law, arises in the facts of the case. [Para 20]"

7.8 On independent appreciation of documents on record pertaining to the lenders obtained vide notices calling for information and documents u/s 133(6), in my considered view, the lenders had sufficient funds to lend money to the appellant as emerging from the copies of ITRs for the year under consideration and preceding years, capital position and Balance Sheet and funds lying in the bank account of the lenders before lending money to the appellant, thus, the creditworthiness of the lenders is found to be satisfactory. The identity of the lenders is getting established from the PAN of lenders and genuineness of the loan transaction is getting established from the fact of repayment of loan and also from the confirmatory letters/bank statements. As the information and documents were called u/s 133(6), hence, there was no occasion to confront the appellant or the A.O with the results of enquiry, particularly, when the material gathered is not adversely affecting the submissions of the appellant.

7.9 I am in agreement with the submissions of the appellant that the decision of the Hon'ble Supreme Court in Sumati Dayal's case is not applicable in the facts of the present case as the facts are entirely different. In view of above, I am convinced that the identity and creditworthiness of the lenders is proved as also the genuineness of the loan. Looking to the facts and circumstances of the case as also decisions cited above, the addition made by the A.O u/s 68 cannot be sustained. **Hence, the addition is deleted."**

5. The DR relied on the order of Assessing Officer. He could not point out any specific error in the order of CIT(A).

6. On going through the order of CIT(A), we find that the CIT(A) made independent enquiry by issuing notice u/s.133(6) of the Act from the 10 lenders at the addresses provided by the assessee. Thereafter examining the replies of all 10 loan creditors and taking into consideration their explanation and a holistic view of the entire facts and circumstances of the case, the CIT(A) arrived at the conclusion that the identity, creditworthiness and genuineness of the loan creditors was proved in case of the assessee and, hence, he deleted the addition of Rs.57,20,000/- u/s.68 of the Act. In view of the above facts and circumstances of the case, we find no good reason to interfere with the order of CIT(A), which is confirmed and the grounds of appeal of the Revenue are dismissed.

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Court on Wednesday, the 17th Day of January, 2018 at Raipur.

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Raipur; दिनांक Dated 17/01/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
Income Tax Appellate Tribunal, Raipur