

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गराव, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.463/Vizag/2016  
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT, Circle-2(1),  
Vijayawada

(अपीलार्थी / Appellant)

M/s. Usha Cardiac Centre Limited  
Vijayawada

(PAN No.AACU2711R)

(प्रत्यार्थी / Respondent)

**C.O. No.28/Vizag/2017**

आयकर अपील सं./I.T.A.No.463/Vizag/2016  
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Usha Cardiac Centre Limited  
Vijayawada

(अपीलार्थी / Appellant)

DCIT, Circle-2(1),  
Vijayawada

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri D.J.P. Anand, DR

प्रत्यार्थी की ओर से / Respondent by

: Shri G.V.N. Hari, AR

सुनवाई की तारीख / Date of hearing

: 04.04.2018

घोषणा की तारीख / Date of Pronouncement

: 06.04.2018

## आदेश / ORDER

### **PER V. DURGA RAO, Judicial Member:**

This appeal filed by the revenue is directed against order of the CIT(A) vide ITA No.50/CIT(A)/VJA/2015-16 dated 30.8.2016 for the assessment year 2012-13. The revenue has raised followings grounds of appeal:

1. *The Ld. CIT(A) erred both in law and on the facts of the case.*
2. *The Ld. CIT(A) erred in deleting the addition of ₹ 1,16,50,000/- made towards unproved cash credits u/s 68 of the Act without appreciating the fact that the assessee failed to prove the cash credits as genuine.*
3. *The Ld. CIT(A) ought to have appreciated the fact that the loan creditors have made cash deposits in their bank accounts just before the date of the loans advanced to the assessee company and the assessee did not cooperate with the Department at the time of assessment proceedings in such investigation.*
4. *The Ld. CIT(A) ought not to have allowed the fresh evidence without calling for the remand report from the A.O. under Rule 46A of the IT Rules.*
5. *Any other ground that may be urged at the time of hearing.*

2. Ground Nos.1 & 2 are general in nature. The same are not pressed, therefore, dismissed as not pressed. The facts are in brief that the assessee is a company filed its return of income admitting total income of ₹ 23,57,250/-. The return filed by the assessee was selected for scrutiny, assessment is completed after following the due procedure u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act').

During the course of assessment proceedings, the A.O. has noted in respect of unexplained unsecured loans as under:

4.1 During the course of case-hearing on 20.2.2015, the A.R. of the assessee was required to furnish sources for the cash deposits into their respective bank accounts, exactly before the dates on which the unsecured loans were extended to the assessee company of the following persons towards their unsecured loans to the assessee-company during the year under consideration.

Sl.No.	Name of the alleged unsecured creditor	Amount Rs.
1.	Smt. Posani Seshamma	13,00,000
2.	Smt. Madala Padmavathi	1,03,50,000
	Total	<b>1,16,50,000</b>

4.2 The AR could not furnish any details/material in support of the above alleged unsecured loans, during the course of hearing on 20.2.2015, it was proposed to treat the unsecured loans in the names of both the above persons totaling to ₹ 1,16,50,000/- as unexplained cash credits and to bring them to tax in the hands of the assessee company. However, the AR did not have any objections for the said proposal. Thus, the assessee has grossly failed to stand the test of (1) identity (2) creditworthiness and (3) genuineness of the transactions in respect of the above two unsecured loans as it did not file any material whatsoever to stand the test of the above three parameters. This manifests the fact that these two alleged unsecured loans for a value totaling to ₹ 1,16,50,000/- are squared up ones sourced out of the unaccounted funds of the assessee company. Hence, the entire unproved cash credits (alleged unsecured loans) in the names of the above two persons totaling to ₹ 1,16,50,000/- are hereby disallowed u/s 68 of the Income Tax Act, 1961 and brought to tax as the assessee's income from 'other sources'. The AR was communicated this and was given an opportunity to file objections of any. However, no objections were filed."

3. On appeal before the Ld. CIT(A), the assessee has filed the assessment orders for the assessment years 2010-11, 2011-12 & 2012-13 in the case of Smt. Posani Seshamma and also in the case of Smt. Madala Padmavathi and submitted that the assessee has proved identity of the creditors and creditworthiness and genuineness of the

transactions. The Ld. CIT(A) after considering the explanation of the assessee and also the returns filed by the creditors dated 19.12.2015 subsequent to the completion of the assessment in the case of the assessee dated 30.3.2015, deleted the addition made by the A.O.

4. On being aggrieved, revenue carried matter in appeal before the Tribunal. The Ld. D.R. has submitted that before the A.O., the assessee has not filed details such as identity of the parties and creditworthiness and genuineness of the transactions and therefore urged that the Ld. CIT(A) is not justified in deleting the addition made by the A.O. based on the returns filed by the creditors dated 19.12.2015 subsequent to the completion of the assessment is not correct and the very same details are not available with the assessing officer. The action of the Ld. CIT(A) is a clear violation of Rule 46A of the Act. It is further submitted that the A.O. has pointed out in the assessment order that before advancing amounts to the assessee, there are cash deposits in the accounts of the loan creditors i.e. Smt. P. Seshamma and Smt. M. Padmavathi. This aspect was not addressed by the CIT(A) at all. It is also submitted that the returns filed by the loan creditors subsequent to the assessment is only after thought and it cannot be accepted. He prayed that addition made by the A.O. may be sustained.

5. On the other hand, the Ld. Counsel for the assessee has submitted that the assessee has proved the identity, creditworthiness and genuineness of the parties and therefore, the A.O. is not justified in making the addition. The Ld. CIT(A) by considering the returns filed by the loan creditors addition was deleted. Therefore, the order passed by the CIT(A) may be upheld.

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, during the course of assessment proceedings, the A.O. has noticed that the assessee has borrowed amounts from Smt. P. Seshamma of ₹ 13 lakhs and from Smt. M. Padmavathi of ₹ 1,03,50,000/-. The A.O. asked the counsel for the assessee to produce the details of Smt. P. Seshamma and Smt. M. Padmavathi. The assessee's counsel has not filed any details before the A.O. The A.O. has also asked the assessee to furnish the sources of cash deposits in respect of bank accounts of the unsecured creditors before the date on which loans were extended to assessee company. Before the A.O., assessee has not filed any details and also not explained the sources for the unsecured loans given to the assessee company. Therefore, the A.O. has treated the amount of ₹ 1,16,15,000/- as unaccounted funds of the assessee company received through alleged unsecured creditors namely Smt. P. Seshamma

and Smt. M. Padmavathi, accordingly, addition was made u/s 68 of the Act by treating it as income from other sources.

7. On appeal, the Ld. CIT(A) has considered the returns filed by the loan creditors namely Smt. P. Seshamma and Smt. M. Padmavathi dated 19.12.2015 subsequent to the completion of the assessment order and the Ld. CIT(A) came to the conclusion that identity, creditworthiness and genuineness of the parties is proved. When the assessee is having sufficient source of funds and its creditworthiness is not doubted and transaction is also genuine, what prevented the assessee to produce the details before details before the A.O. is neither explained before the CIT(A) nor before us. The A.O. during the course of assessment proceedings has given ample time from 24.11.2014 to 26.3.2015 i.e. near about 4 months time available to the assessee to produce the details. The assessee neither produced the details before the A.O. nor explained before the A.O. that these transactions are genuine transactions. When the A.O. has asked the assessee to produce these relevant details, he has not given any explanation and simply kept silent. Even before CIT(A) also why he was not able to file the details has not been explained. Under these facts and circumstances of the case, the Ld. CIT(A) is not justified in considering the returns filed by the creditors subsequent to the completion of assessment order. That apart, the Ld.

CIT(A) without calling for the remand report simply accepted the explanation given by the assessee and deleted the addition is clear violation of rule 46A of the Act. Further, the CIT(A) gave a finding that the assessee has received payment through bank to bank method of RTGS. Therefore, he is of the opinion that the existence of both the creditors is beyond doubt and he is also of the opinion that the assessee has discharged the burden of proof. We find that when the A.O. has asked the assessee's counsel to file the details of the loan creditors and bank statements, particularly before the date of extending loan to the assessee, no such details were filed before the A.O. Simply because amount received through banking channels cannot be said that the transaction is genuine transaction unless identity and creditworthiness of the parties and genuineness of the transaction is proved. In this case, the assessee has not proved the identity, creditworthiness of the creditors and even genuineness of the transactions. In our opinion, the assessee failed to discharge burden cast upon him by filing necessary evidence before the assessing officer. Therefore, under these facts and circumstances of the case, in view of our discussion above, the A.O. rightly disallowed amounts borrowed from the loan creditors u/s 68 of the Act and the same is added in the hands of the assessee as an income from other sources. In view of the above, we reverse the order

passed by the Ld. CIT(A) and this ground of appeal raised by the revenue is allowed.

8. Hence, the appeal filed by the revenue is allowed.

9. In view of our decision above, Ground No.3 is merely academic and no adjudication is required and ground No.4 which is already considered and therefore, no separate adjudication is required.

10. In the result, the appeal filed by the revenue is allowed.

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11. There is a delay in filing the cross objection but no condonation petition is filed by the assessee. Therefore, the cross objection filed by the assessee is dismissed.

The above order was pronounced in the open court on 6<sup>th</sup> Apr'18.

Sd/-  
(डि.एस. सुन्दर सिंह)  
**(D.S. SUNDER SINGH)**

Sd/-  
(वी. दुर्गराव)  
**(V. DURGA RAO)**

**लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 06.04.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The DCIT, Circle-2(1), Vijayawada
2. प्रत्यार्थी / The Respondent – M/s. Usha Cardiac Centre Limited, D.No.39-2-11, Pitchaiah St., Labbipet, Vijayawada
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary  
ITAT, VISAKHAPATNAM

