

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.: -5018/Del/2015: Assessment Year: 2010-11

Income Tax Officer, Ward-38(1), Room No. 1008, Block E-2, SPM Civic Centre, New Delhi – 110 002	Vs.	Shri Yogesh Kumar Jain, E-58, Sector -1, Avantika Rohini, Delhi 110 085 PAN AAKPJ4824F
(Appellant)		(Respondent)

CO No. 455/DEL-2015
(Arising in ITA No. 5018/Del-2015)
Assessment Year: 2010-11

Shri Yogesh Kumar Jain, E-58, Sector -1, Avantika Rohini, Delhi 110 085 PAN AAKPJ4824F	Vs.	Income Tax Officer, Ward-38(1), Room No.1008, Block E-2, SPM Civic Centre, New Delhi – 110 002
(Appellant)		(Respondent)

Department by:	Shri Ravi Kant Gupta, Sr.DR
Assessee by :	Shri Ved Jain, Adv. Shri Ashish Chadha, CA
Date of Hearing	02/08/2018
Date of pronouncement	12/10/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the revenue and Cross Objection by the assessee against the impugned order dated

21.5.2015, passed by Ld. CIT(Appeals) -13 New Delhi for the quantum of assessment u/s 143(3) for the assessment year 2010-11. In the grounds of appeal the revenue has challenged the deletion of addition of Rs.1,34,45,398/- made u/s 69A on account of unexplained unsecured loans.

2. The facts in brief are that the assessee is engaged in the business of manufacturing and trading of stainless steel and steel utensils in the name and style of M/s. Ashish International. During the year under consideration the assessee has accepted and repaid unsecured loan from various parties, details of which are as under: -

S. No.	Name	Opening Balance	Addition during the year			Repayment during the year	Balance
			Total Addition During the year	Net Cheque cleared during the year	Amount under Reconciliation		
1.	Ajay Goel (HUF)	-	220,000	-	220,000	-	220,000
2.	Ankur Jain	20,000	1,000,000	-	1,000,000	20,000	1,000,000
3.	Babita Gupta	-	1,300,000	1,300,000	-	-	1,300,000
4.	Dinesh Jain (HUF)	138,200	1,245,000	245,000	1,000,000	138,200	1,245,000
5.	Dinesh Jain (HUF)	-	1,000,000	-	1,000,000	-	1,000,000
6.	Kundan Lal Goyal (HUF)	-	500,000	-	500,000	-	500,000
7.	Paras Iron Traders	170,000	-	-	-	-	170,000
8.	Promila Jain	-	1,000,000	-	1,000,000	-	1,000,000
9.	Raj Overseas	-	14,242,898	14,242,898	-	12,192,898	2,050,000

10.	Santosh Jain	(2,751,000)	3,861,000	1,638,500	2,222,500	110,000	1,000,000
11.	Sonu Jain	319,000	1,254,000	254,000	1,000,000	319,000	1,254,000
12.	Yogesh Jain (HUF)	175,000	1,000,000	-	1,000,000	-	1,175,000
	Total	(1,928,800)	26,622,898	17,680,398	8,942,500	12,780,098	11,914,000

3. In response to the show cause notice by the AO, the assessee produced bank statements of the parties, confirmation and the respective income tax returns. The AO issued notices u/s 133(6) to various parties in response to which replies were filed by these parties. However, the AO held that these replies were not proper and were not sent alongwith reliable documentary evidences. He then summoned the parties u/s 131, but as observed by him, again none of them furnished any reliable evidences like bank pass book to substantiate their claim. Accordingly, he held that unsecured loan aggregating to Rs. 1,34,45,398/- us 69A as not genuine and is bogus shown as liability during the year.

4. Before the Ld. CIT(A) the assessee submitted that, out of the addition of Rs. 1,34,45,398/- made on account of ten parties, sums amounting to Rs. 89,42,500/-were by the loans where cheques were not realised during the year under consideration and were received only on 31.3.2010 and have been returned back to the lenders uncleared in subsequent financial year. The remaining addition of Rs. 45,02,898/- was relating to purchases made from M/s. Raj Overseas

which has wrongly been treated as unsecured loans. It was submitted these facts were duly explained before the AO vide letter dated 26.3.2013, however, there was no rebuttal on this point by the AO. Ld. CIT(A) after considering the entire facts and material on record and the submissions made by the assessee held that, as per the balance sheet as on 31.3.2010, unsecured loans stood at Rs. 1,19,14,000/-, then how addition of Rs. 1,34,45,398/- has been made. In his order, AO has also mentioned at page 4 that unsecured loan was Rs. 26,622,898/- then how he has made the addition for a lesser amount is not known. After noting down the following documents submitted by the assessee: -

- i. Financial Statement of M/s Ashish International as on 31.03.2010 and Financial statement of Ashish Foils Private Limited (after takeover of Ashish International) as on 31.03.2011.
- ii. Detail chart of Unsecured Loan stating Name, PAN, Address, Opening Balance, Total Addition during the year, Net cheque cleared during the year, Amount under reconciliation, Repayment and closing balance for the FY 2010-11. Further Detail chart for the FY 2011-12 stating name, PAN, address, Opening, Addition, and Interest accrued, Cheque reversed during the year, repayment and closing balance.
- iii. Affidavits and bank statement of the following lenders: -

- a. Ajay Goel (HUF);
- b. Ankur Jain;
- c. Dinesh Jain HUF;
- d. Dinesh Jain;
- e. Kundan Lal Goyal (HUF);
- f. Promila Jain;
- g. Santosh Jain;
- h. Sonu Jain; and
- i. Yogesh Jain HUF;

The Ld. CIT(A) noted that cheques aggregating to Rs. 89,42,500/- was not even encashed during the year and the balance amount of Rs. 45,02,898/- relates to purchases made from other concern. Even otherwise also, he held that all these persons are family members and associated persons who have provided their bank statements, income tax details and were regular income tax assessee and transactions were through banking channels, therefore, he held assessee has discharged his onus and there is no material to prove contrary and accordingly deleted the addition.

5. After hearing both the parties and on perusal of the relevant finding given in the impugned orders, we find that AO has made the addition of Rs. 1,34,45,398/- as unexplained credit in the form of unsecured loan received from ten parties. However, there is a material on record and finding of fact by the Ld. CIT(A) which has not been rebutted by the department that out of the said amount added by the AO, sums aggregating to Rs. 89,42,500/- were in fact cheques given to

the assessee on 31.3.2010 which were not presented to the bank before the end of the year and once the amount has not been received during the year nor credited in the bank account of the assessee or in the books, then no addition for amount of Rs. 89,42,500/- could have been made. The remaining balance amount of Rs. 45,02,898/- relates to purchases made from M/s. Raj Overseas, where regular running ledger account and other documents like purchase bills, etc., were produced before the authorities below to show that it is a genuine purchase transaction and how this amount has been treated as unsecured loan by the AO is not clear. Apart from these facts, it is also noted that these parties in response to the notices u/s 133(6) have clearly confirmed this aspect, but AO without applying his mind on the material available on record has made the addition simply because these persons could have furnished their replies along with documentary evidences. Such observation *de hors* any material facts or evidences, we do not find any reasons for such an addition, therefore it has rightly been deleted by the Ld. CIT(A).

6. Since the grounds raised in cross objection relates to the same addition, therefore, the same is treated as infructuous as we have already deleted the addition.

7. In the result appeal of the revenue and CO is dismissed.

Order pronounced in the Open Court on 12/10/2018.

sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 12/10/2018

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Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi