

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D + SMC": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 506/Del/2018  
Asstt. Year: 2013-14

Shri Mahavir Goel Flat No. 209, Vardan House, 7/28, Ansari Road, Daryaganj, New Delhi – 110 002	Vs.	ACIT Circle-36(1) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri K.P. Gaunguli, Advocate
Department by :	Shri Koushlendra Tiwari, Sr. DR
Date of Hearing	13/08/2018
Date of pronouncement	24/10/2018

**ORDER**

**PER L.P. SAHU, A.M**

This appeal has been filed by the assessee against the order of the Ld. CIT(A)-12, New Delhi dated 18.10.2017 for the assessment year 2013-14 on the following grounds of appeal :-

*"1. That on the facts and in the circumstances of the case and in law the Commissioner of Income Tax (Appeals) - 12 New Delhi has erred in confirming addition of Rs.27,00,000/- representing loan received by the assessee and, held to be unexplained cash credit u/s 68 of the Income Tax Act 1961(For short the Act).*

*2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that unsecured loan amounting to Rs.27,00,000/-had been*

*received by account payee cheques identifiable party who had duly confirmed in his' statement that loan had been advanced to the appellant and as such, addition so sustained is invalid and untenable.*

*3. That the learned Commissioner of Income Tax (Appeals) has overlooked relevant evidence placed on record and, drawn factually incorrect and legally unsustainable inferences based on irrelevant and extraneous consideration and thus, addition sustained is wholly unwarranted and not in accordance with law.*

*4. That the learned CIT(A) erred in confirming AD's stand that reply to notice u/s 133(6) of the Income Tax Act, 1961 from M/s Metro Graphics Private Limited was filed before the A.O. by the AR of the appellant. However the copy of the documents submitted by the loan creditor to the A.D. directly and a copy whereof was provided to the appellant was given to the A.O by the A.R. of the appellant.*

*5. That the learned CIT(A) erred in confirming AD's stand that summons u/s 131 of the Income Tax Act, 1961 to be issued to the loan creditor on the request of your appellant to depose the genuineness of the transaction.*

*6. That the appellant craves leave to add, alter and amend the above grounds of appeal any time before the order is passed by the Tribunal “*

2. Brief facts of the case are that the assessee filed its return on 8.3.2014 declaring income of Rs. 20,03,970/-. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee is deriving income from trading business of sheets and coils and income from other sources during the year under consideration. During the course of scrutiny proceedings the AO observed that the assessee has taken huge loan from such persons who did not file their return of income. The assessee was asked to justify the unsecured loan. In this regard the assessee submitted details and the Ld. AO

noted that the assessee has taken loan on 4.10.2012 amounting to Rs. 27,00,000/- from M/s. Metrographics Pvt. Ltd. The AO observed that the creditworthiness is not proved of M/s. Metrographics Pvt. Ltd. and his income tax return has shown income of Rs. 20,03,970/- and the bank statement was also submitted by the assessee of M/s. Metro Graphics Pvt. Ltd. which is as under :-

S.No.	Date	Debit	Credit	Balance
1.	31/03/2012		27,00,00,00	27,04,642
2.	04/04/2012	27,00,00,00		4,642
3.	12/07/3012		5,00,000	5,04,642
4.	13/07/2012		2,50,000	7,54,642
5.	13/07/2012	5,00,000		2,54,642
6.	20/07/2012		2,00,000	4,54,642
7.	20/07/2012		10,00,000	14,54,642
8.	21/07/2012	14,50,000		4,642
9.	03/10/2012		27,00,000	27,04,642
10.	04/10/2012	27,00,000		4,642

3. Ld. AO issued notice u/s 136(6) to M/s. Metro Graphics Private Limited ,asking for bank statement and balance sheet. The reply of these notice u/s 133(6) has been submitted by the AR of the assessee himself vide letter dated 25.2.2016 and in the reply it was submitted that the source of loan was deposite from M/s. Vishesh Enterprises received on 3.10.2012. The show cause notice was issue on 29.2.2016 for proving the identity, creditworthiness of creditor and genuineness of transactions with M/s. Metrographics Pvt. Ltd. Against this show cause notice, assessee submitted reply on 7.3.2016. Ld. AO noted that notice u/s 133(6) was sent to M/s. Metro Graphics Private Limited by

India post. The reply of this notice was never received by post instead the AR of the assessee brought the reply to this notice and filed before him. He doubted identity of the lender and accordingly submission of the balance sheet does not prove the identify and creditworthiness of the lender. Relying on various judicial pronouncements, the AO observed that the onus of establishing the identity creditworthiness and genuineness of the transactions, lies solely on the assessee to explain the cash credits made in the books of account. Accordingly after analysing the bank statement submitted by M/s. Metro Graphics Private Limited, he observed that the assessee could not prove the identity creditworthiness and genuineness of transaction and made addition u/s 68 of the Income Tax Act. Feeling aggrieved from the addition made by the AO, the assessee appealed before the Ld. CIT(A) and Ld. CIT(A) after considering all the submission of the assessee and order of the AO and relying many case laws, upheld the order of the AO. Aggrieved from the order of the Ld. CIT(A) the assessee appealed before the ITAT.

4. Ld. AR filed a paper book containing page No. 1 to 34 and he submitted that the AO has not accepted the submissions of the assessee despite all the documents as required by him were produced before him. He has doubted the identity creditworthiness and genuineness of the transaction. He also drew our attention to the

balance sheet showing loans and advances and he also referred to page 21 schedule IX of the profit and loss account and he further referred to page No. 32, reply of notice u/s 133(6) by Metro Graphics Pvt. Ltd. vide letter dated 25.2.2016. The reply was submitted by the lenders on 26.2.2016 and the letter has been duly acknowledged by the office of the Assistant Commissioner of Income Tax, Circle 36(1), New Delhi on 26.2.2016. Therefore doubting on the letter submitted by the Metro Graphics Private Limited is not correct. He also submitted that the only Rs.27 lakhs taken from Metrographics Pvt. Ltd. has been doubted by the Assessing Officer.

5. On the other hand Ld. DR relied upon the order of the lower authorities and he further submitted that it is not clear from the letter which is at page 32 of the paper book, there is no signatures on the stamp. Therefore who has received the letter is not clear. This requires further verification whether the letter was actually submitted to the revenue by M/s. Metro Graphics Private Limited or by the assessee and the creditworthiness of the lender does not stand proved. He also referred to the bank statements placed at page No. 31 of the paper book, wherein amount of Rs.27 lakhs are appearing at credit and debit sides two times.

6. After hearing both the sides and perusing the material on the record we observe that assessee has contented that the letter which is

on page 32 of the paper book has been directly submitted by M/s. Metro Graphics Private Limited on 25.2.2016 to ACIT, Circle – 36(1) New Delhi but we also observe that there is no any signature of the concerned person who has received the letter. The Ld. AO has stated in the assessment order that this letter has been directly submitted by the assessee. Ld. DR has requested for the verification as to who has submitted it and to whom. The request of the ld. DR is accepted and the matter is restored to the file of AO for verification of the fact as to who filed this letter and who received it in the office of AO. We have gone through the bank statement of the lender filed by the assessee in the paper book and we find that Rs.27 lakhs is appearing to have been deposited as on 31.03.2012 showing closing balance at Rs.27,04,642/- on this date. We, however, find that in the balance sheet of the lender, the closing balance has been shown at Rs.4,642/- only, meaning thereby balance sheet of the lender does not reflect the receipt of Rs.27 lakh in the bank account as on 31.03.2012. No bank reconciliation is attached with the balance sheet. The bank account further shows that the same amount of Rs.27 lakhs has been debited on 04.04.2012. Again, the same amount was credited on 03.10.2012 and again debited on 04.10.2012. These debit and credit entries time and again are shown to have been made through banking channel. The debit entry dated 04.04.2012 and credit entry dated 03.10.2012 are reflecting the name of some **VISHESH**. Though the assessee as

filed before us balance sheet as on 31.03.2013, but the assessee has not filed any bank statement upto 31.03.2013 so as to verify the closing balances. In view of above facts, such as ambiguity in balance sheet vis-a-vis bank statement as on 31.03.2012 and multiplicity of credit and debit entries of the same amount in the bank statement, we think it appropriate to set aside the matter to the AO for proper verification and probe into the entire facts prevailing over the impugned transaction and creditworthiness of the lender as narrated above. The AO is, therefore, directed to decide the issue afresh in the light of our above observations after giving reasonable opportunity of hearing to the assessee.

7. In the result appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 24/10/2018

sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 24/10/2018

***Veena***

Copy forwarded to

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

sd/-

**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, New Delhi