

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष) Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम.बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 198/Kol/2017
Assessment Year: 2013-14

Shri C. R. S. Pillai (PAN: ATJPP1456H)	Vs.	Deputy Commissioner of Income-tax, Circle-2, Durgapur.
Appellant		Respondent

Date of Hearing	19.11.2018
Date of Pronouncement	28.11.2018
For the Appellant	Shri Sumit Ghosh, Advocate
For the Respondent	Shri Saurabh Kumar, Addl. CIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-Durgapur dated 17.11.2016 for AY 2013-14.

2. The revised grounds of appeal of the assessee reveals that the main grievance of the assessee is against the action of the Ld. CIT(A) in confirming the action of AO treating Rs.54 lakhs which the assessee claimed to be the unsecured loan as undisclosed cash credit and added to the income of the assessee.

3. Brief facts of the case are that the assessee an individual is a contractor and during the year had received unsecured loan of Rs. 54 lakhs. The AO noted that the assessee had received the amount from seven persons/companies, so he issued notice u/s. 131 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) to the creditors to appear and produce documents necessary to prove their identity, creditworthiness and genuineness of the unsecured loan transaction with the assessee. However, the AO notes that out of seven creditors the notice could be served only to six persons except that of M/s. Metrocity

Supplier Pvt. Ltd. which notice has been received back. According to AO, none of the creditors appeared before him, therefore, he deputed an Inspector to conduct a field enquiry of the creditors [lenders of loan]. According to AO, the ITO found the addresses given for the three companies do not exist on the given addresses. According to AO, the documents provided by the assessee of the companies to prove the identity of the loan creditors like PAN, ITR, ROC documents etc. are those documents which a typical entry operator creates without doing any actual business (paper companies). So, he formed an opinion that the creditors who have given the loans were bogus and, therefore, he treated the entire sum of Rs. 54 lakhs which the assessee claimed as loan as bogus and added to the income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein the assessee claimed that the aforesaid amount of Rs. 54 lakhs was received from seven persons which, inter alia, were three private limited companies and the other four were individual creditors. It was explained to the Ld. CIT(A) that the said amount was necessary for the assessee for providing bank guarantee to the contractee and that all the creditors were income tax assesseees. However, the Ld. CIT(A) was not satisfied with the documents and explanation given by the assessee and was pleased to confirm the order of the AO. Aggrieved, the assessee is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that from page 3 of the order of Ld. CIT(A) that the assessee, a contractor has claimed to have obtained loan from seven persons namely, three private limited companies and four individuals. The details of which are given below:

Sl. No.	PAN	Name	Loan Amount Rs.
1.	BNZPK8255L	Deepak Kedia	3,00,000
2.	AJIPP3902D	Rina Patwari	2,00,000
3.	AJIPP3887D	Parmanand Patwari	2,00,000
4.	BGBPP6443A	Ankit Patwari	5,00,000
5.	AACCI7934G	Intercity Ventures Pvt. Ltd.	12,00,000
6.	AABCL9088K	Lohargal Properties Pvt. Ltd.	20,00,000
7.	AAHCM2162R	Metrocity Supplier Pvt. Ltd.	10,00,000

We note that the assessee being a contractor had to furnish a bank guarantee to the contractee and for that he has taken the loan from the aforesaid creditors. Before us, the assessee has filed the supplementary paper book. From a perusal of the same, we note that

in order to prove the identity of the creditors the assessee has filed the intimation u/s. 143(1) of the Act by the Income Tax Department to the following creditors namely –

- (i) Deepak Kedia, who had lent an amount of Rs. 3 lacs which is available at page 3 of supplementary paper book (hereinafter SPB);
- (ii) Rina Patwari has lent an amount of Rs. 2 lacs, (page 8 of SPB);
- (iii) Parmanand Patwari, has lent an amount of Rs. 2 lacs (page 13 of SPB);
- (iv) Ankt Patwari, has lent an amount of Rs. 5 lacs, (page 18 of SPB).

We also note that the following creditors i.e. Private Limited Companies scrutiny assessment u/s 143(3) of the Act was framed by their respective AOs.

In respect of creditors namely –

- (v) M/s. Intercity Ventures Pvt. Ltd., lent an amount of Rs. 12 lacs, which is placed at page 21 of SPB section 143(3) order dated 29.01.2016 for AY 2013-14;
- (vi) M/s. Lohargal Properties Pvt. Ltd. lent an amount of Rs. 20 lacs, which is placed at page 26 of SPB section 143(3) order dated 23.01.2016;
- (vii) M/s. Metrocity Supplier Pvt. Ltd., lent an amount of Rs. 10 lacs, which is placed at page 31 of SPB section 143(3) order dated 21.03.2016.

From the aforesaid documents i.e. in respect to the individual creditors (four in numbers), Sec. 143(1) of the Act intimation from the Department is available and is found placed on record [supra] and in the case of the three Pvt. Limited Companies which has lent money to assessee, we note that their assessment has been completed by AOs by scrutiny under section 143(3) of the Act for the AY under consideration i.e. AY 2013-14, therefore, the question of identity of the assessee cannot be doubted.

5. Coming to the creditworthiness of the lenders/creditors in question, we rely on the decision of Hon'ble jurisdictional High in the case of Dataware Pvt. Ltd. Vs. CIT (ITAT No. 263/2011, GA No. 2856/2011, dated 21.09.2011), wherein the Hon'ble High Court has held that in case the AO doubts the creditworthiness of the creditors then he has to seek

information about the creditworthiness from the AO of the creditors. Thus, after doing the said exercise and getting information from the AO of the creditors then only the AO can draw adverse inference against the creditworthiness of those creditors. The Hon'ble High Court has held as under:

“Both the CIT(A) and the Tribunal below have in details considered the fact that the share application money was paid by account payee cheque, the creditor appeared before AO, disclosed its PAN and also other details of the accounts but in spite of that the AO didn't enquire further from the AO of the Creditor but instead, himself proceeded to consider the P/L A/C of the creditor and opined that he had some doubt about the genuineness of such account. In our opinion, in such circumstances, the AO of the assessee can't take the burden of assessing the P/L A/C of the creditor when admittedly the creditor himself is an IT Assessee. After getting the PAN and getting the Information that the creditor is assessed under the Act, the AO should enquire from the AO of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the AO of the creditor, but instead of adopting such course, the AO himself could not enter into the return of the creditor and brand the same as unworthy of credence. So long it is not established that the return submitted by the creditor has been rejected by its AO, the AO of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of the transaction through account payee cheque has been established. We find that both the CIT(A) and the Tribunal below followed the well accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities. The appeal is thus devoid of any substance and is summarily dismissed.” (emphasis given by us)

We note that all the loan creditors were income tax assessee and all the details were furnished before the AO, however, the AO has not bothered to do any such exercise as needed to have been done as prescribed by the Hon'ble High Court (supra), so in the absence of any such exercise being carried out by the AO before drawing adverse inference against the creditworthiness of the creditors we are of the opinion that the AO erred in drawing adverse inference against the assessee.

6. Further the Ld. AR drew our attention to the fact that though the AO treated the unsecured loan as bogus, however, has allowed the interest given by the assessee to these creditors which comes to Rs.2,66,600/-. We note that on one hand the AO treats the unsecured loan as bogus whereas on the other hand, he treats the interest paid by the assessee to the lenders as genuine and has allowed it which action also exposes the contradiction in the stand of the AO. We also note that the TDS to the tune of Rs.25,830/- was deducted and thus the net interest comes to Rs.2,40,770/-. We also note that the

assessee has repaid the loan amount in August, 2013. We note that the assessee has repaid the loan amount to lenders/creditors by RTGS from its ICICI account. We note that the assessee has received the loan through RTGS (paper book pages 30 and 31) and repaid it also through the RTGS which is evident from page 34 of the paper book. In such a scenario, the assessee has discharged the onus of proving the nature and source of the credit entries in its books of account, and therefore, the addition u/s. 68 of the Act was not warranted in the facts and circumstances of the case as discussed above. Therefore, we find merit in the appeal of the assessee and the same is allowed and we direct the deletion of addition of Rs. 54 lacs.

7. In the result, the appeal by the assessee is allowed.

Order pronounced in the open court on 28th November, 2018.

Sd/-

(M. Balaganesh)
Accountant Member

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 28th November, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – Shri C. R. S. Pillai, Salarpuria Gardenia, Bidhan Nagar, Durgapur-7133212.
- 2 Respondent – DCIT, Circle-2, Durgapur
- 3 CIT(A)-Durgapur. (sent through e-mail)
- 4 CIT , Durgapur.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary