

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI G.D.AGARWAL, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5690/del/2015
Assessment Year: 2012-13**

Amit Tyagi, K.No.59, Village Yusuf Pur, Delhi Meerut Road, Modinagar. Ghaziabad. PAN: AFUPT2060A	Dy. Commissioner of Income-tax, Circle -1, Ghaziabad.
---	--

Assessee by	Shri S.K. Tandon, FCA
Revenue by	Ms Rinku Singh, Sr. DR

Date of Hearing	13/12/2018
Date of Pronouncement	18/12/2018

ORDER

PER K NARASIMHA CHARY, JM

Aggrieved by the order dated 21st August, 2015 in Appeal No. 56/331/2014-15/GZB, passed by the learned Commissioner of Income Tax (Appeals), Gaziabad(for short "Ld. CIT(A)") sustaining the addition of Rs. 18 Lacs and 5 lakhs under section 68 of the Income Tax Act, 1961 (for short "the Act"), assessee preferred this appeal.

2. Brief facts to the extent of the relevancy for the disposal of this appeal are that the assessee is an individual and filed his return of income on 25th of September 2012 declaring an income of Rs.45,65,330/-. Assessment was

complete by order dated 29/01/2015 at the income of the assessee as Rs.99,03, 453/-. In the process of concluding the assessment learned Assessing Officer, inter alia, made an addition of Rs. 48 lakhs under section 68 of the Income-tax Act, 1961 ("the Act") in respect of the credits, namely, cash transaction relating to Shreshth commercial private limited, Rs. 18 Lacs relating to Uttam Tyagi, and Rs. 5 lakhs relating to Satender Tyagi. When the assessee preferred appeal, Ld. CIT(A) deleted the addition of Rs. 25 lakhs attributable to Shreshth commercial private limited but sustained the other two additions namely Rs. 18 Lacs relating to Uttam Tyagi and Rs. 5 lakhs relating to Satender Tyagi.

3. The assessee is, therefore, before us in this appeal against the order of the Ld. CIT(A).

4. It is the argument of the Ld. AR that Mr Uttam Tyagi and Satender Tyagi are brother and father of the assessee and there is no dispute as to the identity of these two persons. He further submitted that the amount was received from Uttam Tyagi on 07/09/2011 as is evidenced by the confirmation, bank passbook, passport, PAN card, Ledger account copy and the for the assessment year 2012-13. According to him, learned Assessing Officer made the addition on the basis of suspicion and imaginary consideration by rejecting the explanation of the creditor in his reply to section 133(6) wherein he had accepted that the loan was given to the assessee enterprise and resource of loan was also duly explained. He further submitted that there is no basis for the learned Assessing Officer to say that the cash flow statement relating to Uttam Tyagi and submitted by the assessee is an afterthought. He submits that when the creditor has stated that the amount was given by him as loan and the source of deposit was explained, it is always open for the learned assessing

officer to conduct any enquiry in the assessment of Mr Uttam Tyagi instead of making any addition in the hands of the assessee.

5. It is further submitted by the Ld. AR that the amount of Rs. 5 lakhs was received by the assessee for his father Satender Tyagi on 14/09/2011 and to prove the genuineness of the transaction, identity of the creditor and his creditworthiness, assessee produced the confirmation, Ledger account, PAN card copy, income tax return for the assessment years 2010-11 to 2012-13, bank statement, passport, reply to 133 (6) notice, form 16 A for tax deduction and the cash flow statement. However, the learned assessing officer had taken a very myopic view of the facts available with him and wrongly rejected the evidence without considering the fact that when the creditor himself was admitting the transaction and there is no other evidence to disprove the statement of the creditor merely by basing on the suspicion learned Assessing Officer made the addition. He submitted that the reasoning adopted by the Ld. CIT(A) is also incorrect in respect of these two creditors, adopting the same reasoning as that of the learned Assessing Officer.

6. Per contra, learned DR placed reliance on the orders of the authorities below in respect of these two creditors. She placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of PCIT vs. Bikram Singh (2017) 85 taxmann.com 104 (Delhi) for the principle that where the Assessing Officer made addition to assessee's income under section 68 in respect of loan taken from various parties, since assessee failed to prove that any of these creditors had financial strength to lend such huge sums of money to assessee, that too without any collateral security, without interest and without a loan agreement, impugned addition deserves to be confirmed. She, therefore, prayed to dismiss the appeal.

7. We have gone through the record in the light of the submissions made on either side. There is no dispute that the two creditors, namely, Uttam Tyagi and Satender Tyagi are brother and father of the assessee. Learned Assessing Officer added Rs. 25 lakhs in the hands of the assessee relating to the loan said to have been advanced by ShreshthCommercial Private limited, the Director of which is none other than Mr Satender Tyagi.

8. Case of the assessee is that Uttam Tyagi deposited the amounts on his account out of the sale proceeds of the land which was sold on 29/07/2010 at a consideration of Rs.7,06,000/-and another land that was sold on the same day for a consideration of Rs.50,42,000/-. Learned Assessing Officer did not believe the statement of the creditor and the assessee to this effect on the ground that there is a difference of more than 30 months between the sale of land and the deposit of cash in the bank account of Sh. Uttam Tyagi. Uttam Tyagi is also an income tax assessee and it is always open for the learned Assessing Officer to enquire into this aspect in the assessment proceedings of Uttam Tyagi. So also, in respect of the loan advanced by Sh. Satender Tyagi, the father of the assessee learned Assessing Officer held that the cash was deposited in the account of Satender Tyagi only for giving loan to the assessee. Learned Assessing Officer, however, accepted the explanation to the extent of Rs. 5 lakhs realised on the sale of Tata Safari.

9. Having accepted the loan advanced by M/s ShreshthCommercials Private Limited belonging to the father of the assessee to an extent of Rs.25lakhs and having accepted the capacity of the father of the assessee to the extent of Rs.5 lakhs realised out of sale of Tata Safari, we fail to understand how the authorities below failed to make an investigation into the income tax returns of the brother and father of the assessee who admitted before the learned

Assessing Officer that they advanced the loans. After going through the the paper book including the statement of bank account and the income tax returns of Uttam Tyagi and Satender Tyagi, we are of the considered opinion that the identity and creditworthiness of these two persons stands proved and there is nothing suspicious about the genuineness of the transaction.

10. We, therefore, accept the explanation of the assessee that the identity and creditworthiness of these two creditors, who are his own brother and father, is proved and the genuineness of the transaction is also proved. Consequently, we find it difficult to sustain the addition in the hands of the assessee. We therefore direct the learned Assessing Officer to delete the addition in respect of these two creditors.

11. Appeal of the assessee is, accordingly, allowed.

Order pronounced in the Open Court on 18th December, 2018.

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 18th December, 2018

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Draft dictated on	17.12.2018
Draft placed before author	18.12.2018
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	