

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1592/Del/2016
Assessment Year: 2012-13

Umashakti Steels Pvt. Ltd.,
D-288-289, 165, Wadhwa Complex,
Laxmi Nagar,
New Delhi.

Vs.

DCIT,
Circle 27(1),
New Delhi.

PAN: AAACU7064M

(Appellant)

(Respondent)

Assessee by : Shri R.K. Sehgal, CA
Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 19.12.2018
Date of Pronouncement : .01.2019

ORDER

PER R.K. PANDA, AM:

This appeal by the assessee is directed against the order dated 15th January, 2016 of the CIT(A)-9, New Delhi, relating to Assessment Year 2012-13.

2. The facts of the case, in brief, are that the assessee is a company engaged in the business of production of steels (MS Ingots). It filed its return of income on 14th September, 2012 declaring total income of Rs.70,18,180/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee has taken unsecured loans of Rs.5 lakh each from two parties, namely, Kailash Agarwal and

Bishwanath Agarwal. He asked the assessee to furnish documentary evidence for identity and credit worthiness of the parties and genuineness of the transaction. The assessee furnished the confirmation of accounts, copies of ITRs and bank statements of the above parties. From the bank account of the above parties, the Assessing Officer noted that there are cash deposits immediately prior to issuance of cheques to the assessee company. He further noted that Shri Kailash Agarwal has declared income of Rs.1,86,432/- and Shri Bishwanath Agarwal has declared income of Rs.1,86,451/- during the assessment year 2012-13. On being further questioned by the Assessing Officer, the assessee submitted that the source of deposit of amount in bank accounts was out of their source of income earned during the year and out of past savings. However, the Assessing Officer rejected the above contention of the assessee on the ground that after considering the household expenses and for their business needs, the above two persons are not in a position to extend a loan of Rs.5 lakhs each in a year. He, therefore, accepted Rs.1 lakh each on estimate basis as genuine and made addition of the balance Rs.8 lakhs u/s 68 of the IT Act.

2.1. The Assessing Officer, similarly, noted that the assessee has shown an increase in its share capital. From the details furnished by the assessee, he observed that the assessee has received an amount of Rs.11 lakhs from three persons, the details of which are as under:-

S.No.	Name of the Parties	Amount of Investment
1.	Ms Anita Devi Ginodia	2,00,000
2.	Ms Namita Ginodia	5,00,000
3.	Ms Vandana Singh	4,00,000

3. From the details filed by the assessee such as confirmation of accounts, copies of IT returns and copies of bank accounts of the above persons, the Assessing Officer observed that they are income-tax payees for the last so many years. However, he observed from the bank accounts that there are cash deposits prior to issuance of cheques to the assessee company. Further, the income declared by them do not justify such huge investment by them and, their credit worthiness is doubtful. After analyzing their return of income and bank account, etc., the Assessing Officer accepted the amount of Rs.4 lakh as reasonable in case of Ms Namita Ginodia and treated the balance amount of Rs.1 lakh as investment made from undisclosed source. Similarly, in the case of Ms Vandana Singh, the Assessing Officer accepted an amount of Rs.2,50,000/- as reasonably explained and the balance Rs.1.5 lakhs as income from other sources. Similarly, in the case of Ms Anita Devi Ginodia, the Assessing Officer accepted Rs.50,000/- as reasonably explained and the balance Rs.1.50 lakhs as income from other sources. Thus, out of the total increase in share capital of Rs.11 lakhs, the Assessing Officer accepted Rs.7 lakh as explained and added the balance amount of Rs.4 lakhs u/s 68 read with section 69A of the IT Act.

3.1. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer by observing as under:-

“3.2 I have considered the submission of the appellant and order of the AO and the issue involved is that the appellant has shown increase in share capital. The share capital were received from the Ms Anita Devi Ginodia debited Rs.2,00,000/-, Ms Namita Ginodia Rs 5,00,000/- and Ms. Vandana Singh Rs 4,00,000/- The AO verified the bank accounts and noted that there were cash deposits prior to the issuance of cheques to the assessee company. So, the AO held that the assessee had failed to discharge its primary onus to prove the

creditworthiness of the above said persons. Therefore amounts of Rs. 1,50,000/-, Rs.1,00,000/- and Rs.1,60,000 from the accounts of Ms. Anita Devi Ginodia, Ms Namita Gmodia and Ms. Vandana Singh respectively were treated as assessee's income from undisclosed sources and added back to the total income of the assessed u/s 68 r.w.s 69A of the I.T Act, 1961.

The appellant has submitted that the copy of the ITR and PAN card of the shareholders has been filed as proof of identity. The copy of the bank accounts has been furnished which proves the genuineness and copy of the return was filed which prove the creditworthiness but the appellant has failed to give explanation regarding the cash deposit in the shareholders bank accounts. The source of the amount was not explained and creditworthiness was not proved. The appellant has submitted that the amount was deposited before five months but what is important fact is whether the source was explained by the appellant. In this case, the appellants argument is only that amount was deposited before five months but the assesses has not explained the source of the deposit. The fact is also not denied that amount was deposited in cash. The appellant has also argued that AO has not produced any material that amount of Rs 1 lakh deposited in bank but u/s 68 the onus lies on the assesses to prove the identity genuineness and creditworthiness. In this regard the Hon'ble Supreme Court has held in the case of Roshan Di Hatti vs. CIT (1977) 107 ITR 938 (SC)/Kale Khan Mohammad Hanif vs. CIT (1963) 50 ITR 1 (SC) "The law is well settled that the onus of proving the source of a sum of money found to have been received *by an assessee is on him Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assesses, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source*.. Further the Hon'ble Supreme Court has also held in the case of Sumiti Dayal v. CIT (1995) 80 Taxman 89/214 ITR 801 (SC) "If the explanation offered by the assessee about the nature and source thereof is in the opinion of the assessing officer, not satisfactory, there is prima facie evidence against the assessee, viz. the receipt of money and if he fails to rebut the same, the said evidence being un rebutted can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably".

So, the appellant's argument is not acceptable. The appellant has also relied the decision of Hon'ble Supreme Court in the case of Lovely exports. However, subsequently the law has also been changed and the appellant is required to explain the source of the capital and credit worthiness of the person from whom share capital was received. Further in various decisions the Hon'ble Delhi High Court has held that as regards the share application money share capital the

identity genuineness and creditworthiness is required to be proved. Since the source of the capital introduced was not explained. Therefore, the addition made by the AO is hereby confirmed. Hence, the grounds of appeal is dismissed.”

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. “The addition of Rs.4,00,000/- u/s 68 out of loan received from Mr. Kailash Agarwal of Rs.5,00,000/- and confirmation of the same by the Commissioner of Income Tax (Appeals) is contrary to facts and law.
2. The addition of of Rs.4,00,000/- u/s 68 out of loan received from Mr. Bishwanath Agarwal of Rs.5,00,000/- and confirmation of the same by the Commissioner of Income Tax (Appeals) is contrary to facts and law.
3. The addition of of Rs.1,50,000/- u/s 68 out of share capital received from Ms. Anita Devi Ginodia of Rs.2,00,000/- and confirmation of the same by the Commissioner of Income Tax (Appeals) is contrary to facts and law.
4. The addition of of Rs.1,00,000/- u/s 68 out of share capital from Ms. Namita Ginodia of Rs.4,00,000/- and confirmation of the same by the Commissioner of Income Tax (Appeals) is contrary to facts and law.
5. The addition of of Rs.1,50,000/- u/s 68 out of share capital received from Ms. Vandana Singh of Rs.4,00,000/- and confirmation of the same by the Commissioner of Income Tax (Appeals) is contrary to facts and law.
6. The appellant craves leave to add or amend any of the grounds of appeal.”

5. The ld. counsel for the assessee strongly challenged the order of the CIT(A) in confirming the action of the Assessing Officer. Referring to page 4 of the paper book, he drew the attention of the Bench to the computation of income for the year ended 31st March, 2011 and statement of affairs as on 31st March, 2011 of Shri Bishwanath Agarwal and submitted that he had cash in hand of Rs.5,14,603/- as on 31st March, 2011. Referring to page 6 and 7 of the paper book, he drew the attention of the Bench to the bank statement of Shri Bishwanath Agarwal. Referring to page 8 of the paper book, he drew the attention of the Bench to the submission made to the DCIT on 27th December, 2014. Referring to page 10 of the paper book, he submitted that the loan has been repaid to Shri Bishwanath Agarwal on 11th March, 2015. Referring to page

11 of the paper book, he drew the confirmation of accounts of Shri Kailash Agarwal. Referring to page 13 of the paper book, he drew the attention of the Bench to the statement of affairs as on 31st March, 2012. Referring to page 14 of the paper book, he drew the attention of the Bench to the statement of affairs of Shri Kailash Agarwal as on 31st March, 2011 wherein the cash in hand has been shown at Rs.5,66,714/-. Referring to the bank statement of Shri Kailash Agarwal, he submitted that the entire amounts were paid by cheque and the deposit of cash was not immediately prior to the issuance of cheques, but, much earlier. So far as the addition on account of share application is concerned, the Id. counsel for the assessee drew the attention of the Bench to the various pages of the paper book and submitted that the above persons have adequate source to invest in the shares of the assessee company. He submitted that Ms Namita Ginodia had given the money out of maturity of fixed deposits with SBI amounting to Rs.3,83,951/- and out of balance in her Axis Bank account of Rs.1,65,814/-. He submitted that the Assessing Officer has never asked the assessee to produce the above parties. Relying on various decisions including the decision of Hon'ble Calcutta High Court in the case of *CIT vs. Dataware Private Limited, vide ITA No.263 of 2011, order dated 21st September, 2011* and the decision of the ITAT, Delhi, SMC Bench, in the case of *Ajay Kumar Mamgain vs. ITO, ITA No.903/Del/2018, order dated 31st October, 2018*, he submitted that when the assessee has filed all the details explaining the source of deposits and the Assessing Officer has not made any further enquiry and the addition has been made purely on the basis of presumptions and surmises, the assessee is said to have discharged its onus to prove

the identity and credit worthiness of the loan creditors and the genuineness of the transaction and no addition can be made. He accordingly submitted that the addition made by the Assessing Officer and sustained by the CIT(A) should be deleted.

6. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). Referring to the findings given by the CIT(A) , he submitted that the Id.CIT(A) has given a finding that although the amounts were deposited before five months, but, the assessee has not explained the source of the deposits. He submitted that the Assessing Officer, under the facts and circumstances of the case, has reasonably given credit to a part of the investments/loan. He submitted that the Id.CIT(A), under the facts and circumstances of the case, has sustained the addition made by the Assessing Officer which is proper and has to be upheld.

7. We have considered the rival arguments made by both the sides and perused the material available on record. We have also considered various decisions cited before us. We find the assessee, in the instant case, has accepted loans of Rs.10 lakhs: Rs.5 lakhs from Shri Kailash Agarwal and Rs.5 lakhs from Shri Bishwanath Agarwal. The Assessing Officer, after considering the various details filed by the above two persons, has accepted Rs.1 lakh each as reasonably explained by the two loan creditors and accordingly made addition of Rs.8 lakhs u/s 68 of the IT Act in the hands of the assessee treating the same as assessee's undisclosed income. Similarly, out of the investment in share capital/share application of Rs.11 lakhs made by three parties, namely, Ms Anita Devi Ginodia (Rs.2,00,000/-), Ms Namita Ginodia (Rs 5,00,000/-)

and Ms. Vandana Singh (Rs 4,00,000/-), the Assessing Officer accepted a part of the amount as reasonably explained by them on the basis of the various documents filed by the assessee and made addition of Rs.4 lakhs to the total income of the assessee u/s 68 r.w.s. 69A of the IT Act on account of investment made by Ms Anita Devi Ginodia (Rs.1,50,000/-), Ms Namita Ginodia (Rs 1,00,000/-) and Ms. Vandana Singh (Rs 1,50,000/-) treating the same as assessee's undisclosed income. We find the Id.CIT(A) upheld the action of the Assessing Officer and his findings have already been reproduced in the preceding paragraphs. It is the submission of the Id. counsel for the assessee that Shri Kailash Agarwal and Shri Bishwanath Agarwal had opening cash balance of Rs.5,66,724/- and Rs.5,14,603/- respectively as on 31st March, 2011 and, therefore, no addition should have been made by the Assessing Officer and upheld by the CIT(A) out of the unsecured loan account. Similarly, it is also his submission that the share applicants have sufficient source of income towards investment in the share capital of the assessee company. It is his submission that Ms Namita Ginodia had encashed her fixed deposits of Rs.3,83,951/- with SBI on 18th July, 2011 and she had Rs.1,65,814/- as balance in her SB account maintained with Axis bank. It is also his submission that the other two loan creditors have sufficient financial capacity to explain the loan amount. It is the submission of the Id. DR that the assessee could not explain the source of such cash deposits made by the persons prior to issuance of the cheques. In our considered opinion, the matter requires a revisit to the file of the Assessing Officer. The lower authorities have not considered the opening cash balance in the case of Shri Kailash Agarwal and Shri Bishwanath Agarwal which is

discernible from their statement of affairs as on 31st March, 2011 filed in the paper book. There is absolutely no comments by the Assessing Officer or CIT(A) on this issue. Similarly, there is no mention about the maturity proceeds of fixed deposits with SBI on 18th July, 2011 amounting to Rs.3,83,951/- in the case of Ms Namita Ginodia. Her bank balance with Axis Bank account of Rs.1,65,814/- as on 01.04.2011 was also the opening balance which has not been considered by the lower authorities. So far as the other two loan creditors are concerned, it is the submission of the Id. counsel for the assessee that they had also sufficient credit to invest in the share capital of the assessee company. Considering the totality of the facts of the case and interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate the availability of funds with the above persons so as to invest in the share capital of the assessee company and to extend loan to the assessee company. The Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 08.01.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 8th January, 2019

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi