

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4345/Del./2016
(ASSESSMENT YEAR : 2012-13)**

DCIT, Circle 2, Meerut.	vs.	M/s. Sarup Chand & Sons, Sadar Bazaar Sarrafa, Meerut. (PAN : AACFS8757N)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri R.P. Narang, Advocate
REVENUE BY : Shri Yogesh Sharma, Senior DR

Date of Hearing : 07.01.2019
Date of Order : 21.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, DCIT, Circle 2, Meerut (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 31.05.2016 passed by Ld. CIT (Appeals), Meerut qua the Assessment Year 2012-13 on the grounds inter alia that :-

"1. Whether in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) has erred in law and fact in deleting the addition of Rs.87,93,022/- made by the Assessing Officer u/s 68 of the I.T. Act, 1961 ignoring the fact that the assessee failed to tile documentary evidences in support of the these deposits taken by it and thus did not charge the onus cast upon it to prove the creditworthiness and genuineness of the said transactions.

2. *Whether in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) has erred in law and fact in deleting the addition of Rs.9,99,898/- made by the A.O. due to disallowance of proportionate interest on unsecured loans that were taken by the assessee from partners and relatives.*

3. *Whether in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) has erred in law and fact in deleting the addition of Rs.12,21,630/- made by the A.O. due to disallowance of payment made towards labour charges without taking into consideration the fact that in spite of being granted reasonable opportunity, the assessee failed to produce the said parties before the Assessing Officer during the course of assessment proceedings.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer made addition of Rs.87,93,022/- under section 68 of the Income-tax Act, 1961 (for short ‘the Act’) on failure of the assessee to explain unsecured loan, deposits taken from Smt. Meenakshi Jain, M/s. Shivan Jeweller, Rohit Jain, Neha Bansal and Soubrabh Goel. AO also made addition of Rs.9,99,898/- by way of disallowance for paying higher rate of interest by the assessee @ 13% to 18%. AO also made addition of Rs.12,21,630/- claimed to have been paid by the assessee as labour charges, on the ground that the said payment has been made to the related parties and the nature of business requires highly skilled labour which cannot be in the case of relatives of the assessee.

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has deleted the addition by partly allowing the

appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

5. Undisputedly, the assessee has taken unsecured loans from different persons on account of which addition of Rs.87,93,002/- has been made u/s 68 of the Act which is detailed as under :-

<i>S.NO.</i>	<i>NAME</i>	<i>AMOUNT (Rs.)</i>
<i>1.</i>	<i>Mahender Kumar Jain (HUF)</i>	<i>8,00,000/-</i>
<i>2.</i>	<i>Shanti Devi Jain – Estate</i>	<i>9,34,000/-</i>
<i>3.</i>	<i>Menakshi Jain</i>	<i>19,64,022/-</i>
<i>4.</i>	<i>Rohit Jain</i>	<i>8,95,000/-</i>
<i>5.</i>	<i>Shivam Jewellers</i>	<i>19.50,000/-</i>
<i>6.</i>	<i>Neha Bansal</i>	<i>12,00,000/-</i>
<i>7.</i>	<i>Saurabh Goel</i>	<i>10,50,000/-</i>
	<i>Total :</i>	<i>87,93,002/-</i>

6. Assessee in order to prove the identity and creditworthiness of Mahender Kumar Jain (HUF) from whom a loan of Rs.8,00,000/- was taken by the assessee brought on record his ledger account with PAN who is an old creditor with operating loan of Rs.29,37,047/- having been accepted in the earlier years. Moreover, it is proved on record that Rs.8,00,000/- was received

during the year under assessment by way of cheque no.234137 dated 06.04.2011 drawn at Punjab National Bank, as has been reflected in the bank statement. Moreover, from the Income-tax return and computation of income of cash creditor for AY 2012-13, an amount of Rs.7,33,466/- has been declared in the return. From the ledger account, it is also proved that during the year under assessment, two more loans of Rs.13,28,000/- and Rs.43,000/- has been received by the assessee which has already been accepted by the AO. So, the Id. CIT (A) has rightly reached the conclusion that source of cash credit of Rs.8,00,000/- is out of the opening balance of cash creditor and the source does not relate to the year under assessment, hence no addition can be made.

7. So far as case of Smt. Shanti Devi Jain is concerned, it is admitted case of the assessee that Shanti Devi Jain had sold some jewellery to the assessee for Rs.9,34,000/- and some amount has been lent to the assessee. Shanti Devi Jain is also proved to be old cash creditor having operating cash credit of Rs.41,32,385/- in the in the books of the assessee which has been accepted in the earlier years by the Revenue. Sale of ornaments of Rs.9,34,000/- by the cash creditor to the assessee has also been verified by the Id. CIT (A) from purchase voucher no.124 dated 29.03.2011 from Book No.3 issued by assessee. Jewellery of Rs.3,90,000/- is proved to be

sold by the cash creditor and the payment of which was made by the assessee to the cash creditor vide cheque drawn at Punjab National Bank which is proved from the bank's statement.

8. Similarly, jewellery of Rs.5,44,000/- was again sold on 22.09.2011 to the assessee by cash creditor by invoice no.123 from Book No.3 and the payment of which was also made through cheque dated 22.04.2011 drawn at Punjab National Bank. Ld. CIT (A) also examined ITR acknowledgement and computation of income of the cash creditor of AY 2012-13 wherein sale of jewellery and capital gain thereof has been duly declared. So, the Ld. CIT (A) has rightly held that the source of cash creditor, identity, genuineness and creditworthiness has been duly proved.

9. In case of an amount of Rs.19,64,022/- claimed to be credited by Meenakshi Jain to the assessee, the Ld. CIT (A) has examined copy of ledger account of cash creditor containing PAN showing opening credit balance with the party at Rs.28,48,963/- as on 01.04.2011 and total transaction in the credit side including operating balance of Rs.28,48,962/- is Rs.48,12,984/-. So, the difference of Rs.19,64,022/- which includes interest of Rs.5,82,692/- has been added. So, the exact loan received during the year is only Rs.13,81,330/-. The Ld. CIT (A) has duly examined the source of various loan cheques issued by the cash

creditor to the assessee from the bank statement, D-mat account and found the same to have been duly explained. So, Id. CIT (A) has rightly deleted the addition in case of Meenakshi Jain.

10. In case of addition of Rs.8,95,000/- credited by Rohit Jain, AO has made the addition on the ground that the assessee has failed to furnish cash flow and fund flow statement of the cash creditor. However, the Id. CIT (A) after examining the confirmed copy of ledger account of cash creditor containing PAN noticed that the amount of Rs.8,95,000/- was received by the assessee through banking channel/cheques. It is also proved on record that interest of Rs.82,494/- has been allowed by the assessee @ 15% on which TDS was also deducted which fact is proved from Income-tax return of creditor for AY 2012-13. From the bank statement of the creditor issued by Punjab National Bank and Indian overseas bank duly examined by Id. CIT A), the Id. CIT (A) was satisfied as to the identity, genuineness and creditworthiness of the creditor. So, we are of the considered view that Id. CIT (A) has rightly deleted the addition.

11. So far as addition of Rs.19,50,000/- in case of Shivam Jewellers is concerned, the same is also made by the AO on account of non-furnishing of cash flow and fund flow statement of the cash creditor. However, again Id. CIT (A) got himself satisfied

by perusing the confirmed ledger account of Shivam Jewellers in the books of assessee containing PAN, who is an old cash creditor wherein opening credit balance of assessee is Rs.2,628/-.

12. Assessee has also paid the interest of Rs.1,61,831/- @ 15% per annum after deducting TDS which amount has been duly shown by cash creditor in his audited books of account. Ld. CIT (A) has also duly verified the source of this loan duly shown in the Punjab & National Bank account of the cash creditor showing amount of Rs.8,50,000/- taken as loan by Shivam Jewellers from Rohit Jain & Sons (HUF) on 07.04.2011 through cheque. Similarly, source of Rs.8,00,000/- is also explained having been received by way of cheque credited in the Punjab National Bank. Cash credit of Rs.5,00,000/- has also been received from Mati Prasad Ram Prasad Saraf in running sales account by way of cheque credited in the Punjab National Bank. So, Ld. CIT (A) has rightly deleted the addition by satisfying himself as to the source of cash creditor who has credited the loan to the assessee.

13. So far as addition of Rs.12,00,000/- being the loan taken by the assessee from Neha Bansal is concerned, this addition has also been made by the AO on account of non-furnishing of cash flow and fund flow statement of the cash creditor by the assessee. Ld. CIT (A) again got himself satisfied by perusing confirmed copy of

ledger account with PAN showing the amount advanced, in her account received by way of cheques credited in the Indian Overseas Bank. Cash creditor has also duly disclosed the loan as well as income arising therefrom in her return of income. So, when identity, genuineness and creditworthiness of the cash creditor is proved, the Id. CIT (A) has rightly deleted the addition.

14. So far as cash credit loan of Rs.10,50,000/- advanced by Saurabh Goel is concerned, the same is also added by the AO for want of cash flow and fund flow statement which was duly verified by the assessee. In this case also, Id. CIT (A) got himself satisfied from the perusal of confirmed ledger account of Saurabh Goel with PAN. Assessee has taken two loans from Saurabh Goel for Rs.11,00,000/- (Rs.7,50,000/- on 14.07.2011 and Rs.3,50,000/- on 09.09.2011) and interest on which to the tune of Rs.87,450/- @ 15% per annum has been allowed by the assessee with TDS deducted. Out of the said amount, amount of Rs.78,705/- has been returned by the assessee through cheque which has been accepted by the AO. From the bank statement of cash creditor that a loan of Rs.1,00,000/- has been given out to SBI Bank account by way of cheques. So, when the source of loan availed of by the assessee from Saurabh Goel is proved whose identity is not in dispute, the Id. CIT (A) has rightly deleted the addition.

15. So, in view of the above, we are of the considered view that there is no illegality or perversity in the deletion of addition of Rs.87,93,002/- made by the AO. Consequently, ground No.1 is determined against the Revenue.

GROUND NO.2

16. AO made addition of Rs.9,99,898/- on account of disallowance of proportionate interest on unsecured loans availed of by the assessee from the partners or relatives which has been deleted by the Id. CIT (A). It is the case of the AO that the assessee has paid interest of Rs.78,16,065/- on unsecured loan including interest paid to relatives and partners @ 13% to 18% and held the same to be excessive one beyond 12% per annum. However, Id. CIT (A), following the decision rendered in *Appeal No.508/2013-14 of Akshat Automobiles and Appeal No.292/2013-14 of Rakesh Kumar Garg*, held the payment of interest @ 15% as reasonable. Moreover, in assessee's own case for AY 2010-11, AO has accepted rate of interest @ 15%. So, no new facts have been brought on record to depart from the stand taken by the Revenue in the earlier years. So, we are of the considered view that Id. CIT (A) has rightly deleted the addition made on account of disallowance of proportionate interest on unsecured loans taken by

the assessee from partners and relatives. So, ground no.2 is also determined against the Revenue.

GROUND NO.3

16. AO made addition of Rs.12,21,630/- on account of disallowance of payment made towards labour charges. It is the case of the assessee that he being a jeweler got the jewellery manufactured on labour/jobwork basis. It is also the case of the AO that the assessee has failed to produce the labourers. Assessee filed one letter dated 23.03.2015 before AO that no labour charges have been paid to the relatives, family members, partners, HUF and to the related parties. From the material brought on record before the Id. CIT (A), it is proved on record that the AO has only called upon the assessee to produce Sunil Kumar & HUF, Vikas Jain & HUF, Smt. Ratti Jain and Smt. Priyanka Jain to whom the labour charges of Rs.3,50,127/- has been made. However, the AO has not called upon the assessee to produce the remaining 10 parties to whom the labour charges were paid. When the assessee has duly filed copy of income-tax return with computation of income for AY 2012-13 of all the four parties called upon by the AO along with their affidavits admitting that they have carried out the jobwork of the assessee and also received the labour charges. TDS

on the payment made has also been deducted. So, the AO after satisfying himself about the genuineness of these payments and by taking into account the fact that similar expenses have been allowed by the Revenue in the earlier years, the Id. CIT (A) has rightly deleted the addition. So, ground no.3 is also determined against the Revenue.

17. Resultantly, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 21st day of January, 2019.

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 21st day of January, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.