

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

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

ITA No. 6155/DEL/2015 (A.Y 2010-11)

ITO Ward 1(3), Ghabiabad (APPELLANT)	Vs	Habitat Infrastructure Ltd., KC-41, Kavi Nagar Ghabizbad AABCH5237N (RESPONDENT)
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Appellant by	Sh. Surender Pal, Sr. DR
Respondent by	Dr. Rakesh Gupta, Sh. Somil Aggarwal, Sh. Deepesh Garg, & Sh. Shubham Sobti, Advs

Date of Hearing	07.02.2019
Date of Pronouncement	11.02.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 14/08/2014 passed by CIT(A)-, Muzaffarnagar for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

"1. The Ld.CIT(A) has erred in law as well as on facts in law deleting the addition of Rs. 3,19,50,000/- made on account of unverifiable unsecured loans, as the creditworthiness/capacity to the lender could not be proved.

2. The Ld.CIT(A) has erred in law as well as on facts in law deleting the addition of Rs. 3,19,50,000/- made on account of unverifiable unsecured loans as the assessee failed to prove the genuineness of transaction."

3. The assessee is a Private Limited Company deriving income from business. Return declaring income at Rs. 4,21,980/- was filed on 02/10/2010. During the assessment proceedings the Assessing Officer observed that the assessee has raised unsecured loans amounting to Rs. 3,70,08,454/- from different Companies. Therefore, the Assessing Officer sought information u/s 133(6) of the Act from the aforesaid companies at the address furnished by the assessee. The assessee made written submission before the Assessing Officer. However, the Assessing Officer after considering written submissions held that the unsecured loans as anonymous/bogus/non genius loans in the hands of the assessee company and made addition of Rs. 3,19,50,000/- to the income of the assessee as unexplained cash credit u/s 68 of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in deleting the assessee addition as the credit worthiness/capacity to the lender could not be proved by the assessee. Thus, the Ld. DR relied upon the order of the Assessing Officer. The Ld. DR further submitted that the assessee failed to prove the genuineness of the transaction.

6. The Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

“The facts of the case, submissions made by the appellant, remand reports of the AO and rejoinders of the appellant have been carefully considered. It is observed that the appellant during the year had received unsecured loans from 11 different corporate entities aggregating to Rs.3,19,50,000/-. During

the assessment proceedings, the AO examined and verified various documentary evidences viz. confirmation letters from aforesaid corporate entities, its acknowledgement of returns of income up to AY. 2012-13, PANs, copies of audited balance sheets, written replies furnished in compliance to notices issued u/s 133(6) of the Act, copies of their bank statements from whom the loans were advanced to the appellant which established the identity and creditworthiness of the lender companies and also genuineness of transaction. The appellant at the appellate stage has also furnished copies of the aforesaid documents in support of its claim.

However, the aforesaid evidences were rejected by the AO and it was held that the unsecured loans were not genuine and the identity and creditworthiness of the lender companies could not be proved on the following grounds:-

- (i) That the replies submitted by the depositor companies in response to notice u/s 133(6) were posted from Ghaziabad,*
- (ii) That the inspector reported in some cases that no company exists on the given address,*
- (iii) That the signature on the Balance-sheet of the depositor companies does not match with the signature on the confirmation letters,*
- (iv) That the opening & closing balance in the bank account of the depositor companies were low and thus there is no real generation of income,*
- (v) That the depositor companies have maintained their bank accounts for establishing their existence on paper only,*
- (vi) That no actual business is carried out by the depositor companies and they exist on paper only,*
- (vii) That mere filing of return does not prove the existence, of the*

depositor companies, and

(viii) *That the amount credited in the bank account of the depositor companies is siphoned out in a day or two.*

However, such adverse inference drawn by the AO has no force due to the following reasons:-

Regarding replies submitted in response to notice u/s 133(6) of the Act, the submission of the appellant along with evidences shows that in some cases the directors of the depositor companies were the residents of Ghaziabad and in other cases, the auditors were from Ghaziabad. The AO's observation that in some cases enquiries were conducted by the ITI who reported that company does exist on the given address has no force in as much as the notices u/s 133(6) as well as the summons u/s 131 of the Act were served to the lender companies. As regards the difference in signatures on the replies filed in response to notice u/s 133(6) and confirmations letters, it is observed that confirmations letters have been signed authorized representative whereas the balance sheets and replies to notice u/s 133(6) of the Act have been signed by the Directors of the lender companies. The observation of the AO in regard to the low balances in their bank account has no force these are the current bank accounts of the lender companies and no interest is accrued on the balances in the current accounts. The observation in regard to maintenance of the bank account for establishing the existence on paper only has no legs as it is a mandatory requirement of law to actual business of the lender companies the evidences furnished by the appellant clearly establishes that six of the depositor companies are non-banking finance companies registered with the Reserve Bank of India and two are registered with SEBI and MCX carrying on their business activities. As regards the filing of return of income tax returns by the lender companies to prove their existence has also no meaning as it is a mandatory requirement of the I.T. Act, 1961 to file the return of income by every corporate entity.

On the basis of details, evidences and arguments of the appellant, the adverse inference drawn by the AO' in the assessment order as discussed above, is held as baseless and accordingly rejected.

From the perusal of the details and evidences placed on record, it is gathered that the unsecured loans were raised from 11 corporate entities through account payee cheques and the advances to the appellant were duly reflected in their audited balance sheets by the respective corporate entities. It is also a matter of fact on record that all the aforesaid companies are assessed to tax and evidence of filing their returns of income was made to the AO.

From the order of the AO and remand reports, it is observed that the AO has not brought any adverse material evidence on record to suggest that the details and evidences furnished by the appellant were not genuine. Further, nothing adverse has been brought on record by the AO to establish that the unsecured loans received from 11 corporate entities, part of which was repaid in the subsequent year and interest was also paid to some of the depositors after deducting 1JJS, represented appellant's undisclosed income.

The AO has not brought any adverse material on record to establish that the confirmation letters filed by the lender companies in response to notices issued u/s 133(6) of the Act were not genuine.

From the perusal of the remand report of the AO dated 10-06-2015 and the copies of statements recorded by the AO on oath, it is observed that all the 11 corporate entities have deposed that their respective companies had advanced loans to the appellant through account payee cheques and such advance had been reflected in their respective balance sheets, filed with the various agencies including the Income Tax Department along with their return of income.

The AO's observation' that the aforesaid lenders companies were paper

entities is not backed by adverse material evidence on record. Further, there is nothing on record to suggest that the transactions of the appellant with the 11 corporate entities were not genuine and the impugned amount represented appellant's own undisclosed income routed in its books of account in the garb of unsecured loans. Reliance is placed .on the decision of Hon'ble Allahabad High Court in the case of CIT vs. Kapoor Chand Magnesh Chand (2013) 218 Taxman 157 (Allahabad) in appeal No.309 of 2009 and CIT vs. S. Kamaljeet Singh reported in [2005] 147 Taxman 18 (All) besides other proceedings.

it is observed that the AO's inference that the lenders companies were not creditworthy on the ground that such companies had shown low profit has no force in as much as the capacity to invest funds by an investor depends upon the availability of funds with the investors and not on the tax paid/annual income of the investor. The appellant has furnished copies balance sheets of the lender companies to establish the creditworthiness of the lender companies which highlights their net worth to advance loans to the appellant From the perusal of the respective balance sheets of the investor companies, it is clear that such companies are having substantial finances at their command and as such these companies are entities of means. Reliance is placed on the decision of Hon'ble Allahabad High Court in the case of CIT Meerut vs. Nav Bharat Duplex Ltd. dated 04-01-2013 in ITA No.279/2010.

The intention of law is that unaccounted money should be brought to tax. As per provisions of section 68 of the Act onus is on the person in whose books of account such money is surfaced. If an amount is surfaced in the books of an assessee either in the shape of share application money or a deposit/loan; it is presumed that such money belongs to the person in whose name it has been shown. However, as per provisions of section 68 of the Act, deeming provisions postulates that it is possible that the assessee may circulate its own unaccounted money in the shape of bogus persons and therefore legal onus has been created.. What is relevant is the identity,

creditworthiness of the depositor and genuineness of the transaction. All these three conditions have beyond doubt been established and onus of the assessee/appellant has been discharged u/s 68 of the Act. The appellant has amply proved and discharged its burden by filing the necessary relevant documentary evidences in support of unsecured loans raised during the year.

Thus in the light of the above facts and following the ratio decidende of the Hon'ble Courts (supra), it is held that the AO was not justified in making addition of Rs.3,19,50,000/-. The same is directed to be deleted. Grounds of appeal Nos. 1 to 9 are allowed.

4. In result, the appeal is allowed.”

The CIT(A) has given detailed finding and taken into consideration of the submissions made by the assessee as well as the remand report of the Assessing Officer called during Appellate Proceedings. In-fact, from the records it emerges that the unaccounted money as alleged by the Assessing Officer was the loan which was repaid subsequently by the assessee. Therefore, there is no need to interfere with the findings of the CIT(A). The appeal of the Revenue is dismissed.

9. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 11th FEBRUARY, 2019.

(R. K. PANDA)
ACCOUNTANT MEMBER

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 11/02/2019
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	08.02.2019
Date on which the typed draft is placed before the dictating Member	08.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	11.02.2019
Date on which the final order is uploaded on the website of ITAT	11.02.2019
Date on which the file goes to the Bench Clerk	11.02.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

