

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 2372/Del/2016
Assessment Year: 2011-12**

Samco Alloys (India) Pvt. Ltd. Rithani, Delhi Road, Meerut. AABCS9387E	vs	ACIT Circle-2, Bhisali Ground, Meerut.
APPELLANT		RESPONDENT

Assessee by	Shri Kapil Goel, Adv.
Revenue by	Shri Amit Katoch, Sr. DR

Date of Hearing	06.02.2019
Date of Pronouncement	12.02.2019

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-Meerut dated 30/03/2016 for AY 2011-12, challenging the addition of Rs. 58,50,000/- u/s 68 of the I.T. Act on account of unsecured loans received from seven parties and disallowance of interest of Rs. 7,02,000/- on the aforesaid loan amount.

2. Briefly the facts of the case are that assessee company filed its return of income of Rs. 82,92,990/-. The assessee company is

engaged in the business of manufacturing and sale of automobile bushes and washers. The AO noted that assessee has shown unsecured loan of Rs. 3,07,01,788/-. The assessee was asked to furnish details of unsecured loans along with confirmation, transaction details and source of the funds. The AO issued notices u/s 133(6) of the Act to the unsecured loan depositors. The AO after examining the information received from the depositors observed that their deposit amount was much higher than their return of income and in some cases they were having very low average bank balances and before issuing cheque, cash deposits were made in the bank accounts. The assessee was asked to file further details to prove the genuine credits. The AO after careful observation of the submissions filed by the assessee considered the unexplained credits as under:

S.No.	Name of Depositor	Loan taken during the year	Observation
1.	Smt. Sashi Lata Bhargav	7,00,000/-	Return Income-Rs. 1,88,792/-. Source of credit entry dated 17.06.2010 of Rs. 7,08,870/- (before 2/3 days of cheque issued) was not explained.
2.	Smt. Kamini Ahluwalia	9,00,000/-	Return Income- Rs. 1,83,983/- Source of credit entry dated 27.08.2010 of rs. 1,60,000/-, dated 28.08.2010 of Rs. 1,00,000/- and dated 30.08.2010 (before 2/3 days of cheque issued) were not explained.
3.	Shri Prateek Ahluwalia	5,50,000/-	Return Income- Rs. 69,112/- Source of credit entry dated 20.10.2010 (before 2/3 days of cheque issued) was not explained.
4.	Shri Sarin Kumar	8,00,000/-	Return Income- Rs. 1,59,103/- Source of credit entry dated 20.10.2010 of Rs. 8,10,000/- (before 2/3 days of cheque issued) was not explained.

5.	M/s T.S. Sethi & Sons	9,50,000/-	Return Income- Rs. 9,31,040/- Source of credit entry dated 12.04.2010 of Rs. 4,00,000/- (before 2/3 days of cheque issued) was not explained.
6.	M/s C.S. Sethi & Sons	9,50,000/-	Return Income- Rs. 9,31,000/- Source of credit entry dated 12.04.2010 of Rs. 4,00,000/- (before 2/3 days of cheque issued) was not explained.
7.	M/s G.S. Sethi & Sons	10,00,000/-	Return Income- Rs. 11,24,130/- Source of credit entry dated 03.06.2010 of Rs. 5,00,000/- (before 2/3 days of cheque issued) was not explained.
	Total	58,50,000	

3. The AO, accordingly, noted that creditworthiness of the creditors and genuineness of the loan transaction have not been satisfactorily explained. The AO, therefore, added Rs. 58,50,000/- on account of unexplained cash credits u/s 68 of the Act. The interest paid on these loans @12% was also disallowed which worked out to Rs. 7,02,000/- which was also added.

4. The assessee challenged the addition before Ld. CIT(A). The written submission of the assessee is reproduced in the Appellate Order. The assessee as regards Smt. Shashi Lata Bhargav submitted that she is assessed to tax and confirmed the loan transaction, copy of acknowledgement of filing of the return of income was filed and copy of the bank statement was also filed. The credit amounts have been received in her bank account through her banking channel. In the case of Smt. Kamini Ahluwalia it was explained that she is assessed to tax and filed confirmation of the loan amount. Acknowledgement of filing of the return of income was also filed, copy of the bank statement was

also filed. In the case of Prateek Ahluwalia it was submitted that he is assessed to tax and filed confirmation and acknowledgment of filing of the return of income. Fresh credit was received in his account through banking channel, copy of the bank statement is also filed. In the case of Shri Sarin Kumar, it was explained that he is assessed to tax and filed confirmation along with copy of acknowledgement of the ITR. Fresh credit is received in his account through account payee cheque which is supported by the bank statement. In the case of M/s T.S. Sethi & Sons, it was explained that it is assessed to tax and filed confirmation with copy of the account with acknowledgement of return. There is a fresh credit received through banking channel which is supported by bank statement. In the case of M/s C.S. Sethi & Sons, it was explained that it is assessed to tax and filed confirmation along with acknowledgement of return of income. The creditor has opening credit balance of Rs. 18,41,912/- and has sufficient balance in the account which is supported by bank statement. In the case of M/s G.S. Sethi & Sons, it was explained that it is assessed to tax and filed confirmation along with acknowledgement of return of income. The creditor has opening credit balance of Rs. 34,72,705/- and credit is received through banking channel which is supported by bank statement. Assessee, therefore, submitted that assessee proved identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. Assessee relied upon several decisions to prove that genuine credits have been received. The assessee

also relied upon decision of the Gujarat High Court in the case of DCIT vs. Rohini Builders 256 ITR 360 in which it was held that assessee cannot be asked to prove source of the source. As regards, the interest paid to the creditors it was submitted that addition is wholly unjustified.

5. The Ld. CIT(A) after considering the issue in detail similarly noted that in the cases of the creditors there is a low income declared and that except in the case of Smt. Kamini Ahluwalia there are clearance of cheques and thereafter, amounts have been transferred to assessee. In the case of Smt. Kamini Ahluwalia there is a deposit of the cash of Rs. 9 lakhs before giving loan to the assessee. In the cases of M/s T.S. Sethi & Sons, M/s G.S. Sethi & Sons & M/s C.S. Sethi & Sons, they have declared income from other sources for which there is no explanation. Ld. CIT(A) also noted that the creditors did not appear before AO, therefore, both the additions were confirmed.

6. The assessee is in appeal on the above grounds.

7. Ld. Counsel for assessee reiterated the submissions made before authorities below and submitted that assessee filed confirmation from all the creditors, copy of the ITR and bank statements. The creditors have confirmed the transaction with the assessee. Except in the case of Kamini Ahluwalia, there is no cash deposit in any of the bank account of the creditors. The AO cannot ask for the source of the source. The assessee proved identity of the creditors, their creditworthiness and genuineness of

the transaction in the matter. In the case of three persons i.e. Sethis & Sons, they have declared income from other sources and paid taxes thereon, therefore, AO cannot question about their source of income. He has submitted that five creditors have also responded directly to the AO in response to the summons u/s 131 of the I.T. Act and confirmed the transaction with the assessee which are M/s T.S. Sethi & Sons, M/s G.S. Sethi & Sons, Shri Sarin Kumar, Shri Prateek Ahluwalia and Smt. Shashi Lata Bhargav, copies of reply are filed in the Paper Book. He has submitted that parties exists at their address. The AO did not make further enquiry directly from them and relied upon the decision of the Supreme Court in the case of Orissa Corporation Pvt. Ltd. 159 ITR 78. He has relied upon decision of Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls and Investment Ltd. 64 taxmann.com 329, judgment of Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd. 307 ITR 334, judgment of Gujarat High Court in the case of DCIT vs. Rohini Builders 256 ITR 360. He has submitted that mere low returned income of the creditor is no ground to doubt the transaction with the assessee. He has relied upon order of ITAT Delhi 'G' Bench in the case of M/s Topline Buildtech Pvt. Ltd. vs. DCIT, ITA No. 6507/Del/2017 dated 13.04.2018. He has relied upon order of ITAT Delhi 'E' Bench in the case of ACIT vs. Smt. Meenu Chauhan, ITA No. 1886/Del/2010 dated 29.10.2010 and order of ITAT Delhi 'D' Bench in the case of DCIT vs. Landmark Exim Pvt. Ltd., ITA No. 3773/Del/2011 dated 23.05.2014. He has submitted that

there is no evidence on record that the amount in question came from the coffer of the assessee. He has, therefore, submitted that additions may be deleted.

8. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that none of the creditor appeared before AO. No source of income have been filed. Both the Sethis are connected with the assessee but failed to appear before the AO, therefore, additions may be confirmed.

9. We have considered the rival submissions and perused the material available on record.

9.1. ITAT Delhi 'G' Bench in the case of M/s Topline Buildtech Pvt. Ltd. vs. DCIT (supra) held in para 13 to 15 as under:

“13. We have considered the rival submissions. The A.O. found that there are fresh credits received by assessee-company from two creditors mentioned above. The assessee-company furnished copy of the ledger account, copies of their bank statements. The A.O. then issued notice under section 133(6) of the I.T. Act to both the creditors and both the creditors in their replies filed before A.O. confirmed giving of loans to the assessee-company which is supported by confirmed copies of their accounts, bank statements, ITR and balance-sheet. The A.O. however, noted that the creditors do not have any fixed assets or trade debtors/trade creditors and there were no revenue from the operation. The A.O. therefore, in order to verify the transactions, issued summons under section 131 to both the creditors and their common Director Shri Hitesh Garg who appeared before the A.O. in

response to summon and confirmed the giving of loans to the assessee-company in his statement recorded under section 131 of the I.T. Act. The A.O. however, did not believe statement of this person because copy of the agreement was not filed. These facts and material on record clearly prove that identity of both the creditors are not in dispute because both the creditors are assessed to tax and have filed confirmation directly to the A.O. in response to notice issued under section 133(6) of the I.T. Act and also confirmed transaction with the assessee-company in the statement recorded under section 131 of the I.T. Act. The parties have been filed confirmed copies of their ledger account, bank statements, ITR and audited balance sheet in which the giving of loan to the assessee-company has been mentioned. All the transactions are routed through banking channel. Copies of the ledger account, income tax return, balance sheet and bank statement are filed on record. In the bank statements of the creditors, no cash was found deposited before giving loans to the assessee-company. If in the case of M/s. Maple Technologies Ltd., there were transactions conducted of Rs.10 crore would support the explanation of assessee-company that such creditor was having capacity to give loan of Rs.3.70 crores to the assessee-company. The assessee-company paid interest on these loans to the creditor, on which, TDS have been deducted. The A.O. accepted the claim of assessee-company and did not disallow interest paid on such loans. Both the creditors are unrelated and independent parties. In the case of M/s. Marry Gold Overseas Limited the amount have been returned in subsequent year and in the case of other creditor M/s. Maple Technologies Ltd., the assessee-company written back the amount in subsequent year and shown its income. Therefore, it would amount to double addition in assessment year under appeal. It is well settled law that assessee-company cannot be asked to prove source of the source. Even then the Director of both the companies in his statement confirmed that source of giving loans to the assessee-company was advanced

return by M/s. Divine Infracon Pvt. Ltd. However, the A.O. did not believe the explanation of the creditor because copy of the Rent Agreement was not filed. The A.O. has summoned both the creditors under section 131 of the I.T. Act in order to verify the genuineness of the transaction in the matter. The A.O. may ask the creditor to explain the source but assessee-company cannot be asked to explain the source of the source. Since Shri Hitesh Garg was summoned as witness of the Department and in case, he did not produce the Rent Agreement subsequently, A.O. should explain as to what steps have been taken by the him against this witness of the Department for production of the Rent Agreement as per law. Therefore, if the A.O. has not taken any steps against his own witness, no adverse inference should be drawn against the assessee-company. Thus, the sole basis left for consideration is that Revenue doubted the creditworthiness of the creditors because of the low income reflected in their return of income and that they have no fixed assets or debtors or creditors. However, A.O. has not undertaken any investigation of the veracity of the documents submitted by the assessee-company. The bank statement of the creditors show that both creditors were having sufficient amounts in their bank accounts for giving loans to the assessee-company. The A.O. have not made any investigation and nothing has been brought on record if the amount of loan given by both the creditors actually received from the coffers of the assessee-company so as to enable it to be treated as undisclosed income of the assessee-company.

14. *The Hon'ble Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls and Investment Ltd., (Del.) (2015) 64 taxmann.com 329 (Del.) in which it was held as under :*

“In terms of Section 68, assessee is liable to disclose only source(s) from where he has himself received credit and it is not burden of assessee to show source(s) of his creditor nor is it burden of assessee to prove creditworthiness of source(s) of sub creditors.”

14.1. *The Hon'ble Delhi High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., ITA.No.71/2015 dated 12th August, 2015 (Del), in which it was held as under :*

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High Court.”

14.2. *The Hon'ble Gauhati High Court in the case of Nemi Chand Kothari vs. CIT and Another (2003) 264 ITR 254 (Gau.) in which it was held as under:*

Held, (i) that the assessee had established the identity of the creditors. The assessee had also shown, in accordance with the burden, which rested on him under section 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors which was not in dispute. Once the assessee had established these, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter, the burden had shifted to the Assessing Officer to prove the contrary. The failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee, could not, under the law be treated as the income from undisclosed sources of the assessee himself when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. The Assessing Officer failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. Therefore, the Assessing Officer have treated the said amounts as income derived by the assessee from undisclosed

sources.”

14.3. *The Hon’ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) in which it was held as under:*

“Dismissing the appeal, that the additional burden was on the Department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose.”

14.4. *The Hon’ble Gujarat High Court in the case of DCIT vs. Rohini Builders (2002) 256 ITR 360 (Guj.) held as under :*

“The assessee was a firm, engaged in the business of dealings in land. During the assessment year under consideration the assessee had taken loans from various parties and during the course of assessment proceedings, the assessee had furnished the loan confirmations giving full addresses, GIR numbers/permanent account numbers, etc., of all the depositors. The Assessing Officer however issued summons to some of the creditors and also conducted inquiries into the genuineness or otherwise of the loans taken by the assessee. After considering the evidence, the Assessing Officer made an addition of Rs.12,85,000 to the returned income of the assessee. This was confirmed by the Commissioner of Income-tax (Appeals). On further appeal to the Tribunal the Tribunal held that the phraseology of section 68 of the Income-tax Act, 1961, was clear, that the Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year, that the legislative mandate is not in terms of the words “shall be

charged to income tax as the income of the assessee of that previous year", that the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as income of the assessee. The Tribunal found that the assessee had discharged the initial onus which lay on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/permanent account numbers and the copies of assessment orders wherever readily available, that it had also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee was not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source. Thus taking into consideration the totality of the facts and circumstances of the case, and, in particular the fact that the Assessing Officer had not disallowed the interest claimed/paid in relation to these credits in the assessment year under consideration or even in the subsequent years and tax had been deducted at source out of the interest paid/credited to the creditors, the Tribunal held that the Departmental authorities were not making the addition of Rs.12,85,000. On appeal to the High Court :

Held, that considering the facts and circumstances of the case narrated by the Tribunal and the law explained by it, the appeal was liable to be dismissed."

14.5. *The Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the Revenue against this Judgment reported in (2002) 254 itr (St.) 275.*

15. *The decisions relied upon by the Learned Counsel for the Assessee squarely apply to the facts and circumstances of the case. Thus, the assessee-company proved the identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. The decisions relied upon by the Ld. D.R. do not support the case of the Revenue. In view of the above discussion and evidence and material on record, we do not find any justification to sustain the addition. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs.5 crores. This issue is decided in favour of the assessee-company.”*

10. In this case, it was considered that low income of the creditor would not be a ground to doubt the creditworthiness of the creditors. Similar views have been taken by ITAT Delhi ‘E’ Bench in the case of ACIT vs. Smt. Meenu Chauhan (supra) in which also it was held that “the majority of the creditors are Income tax assesseees, but they have not returned substantial income that does not mean that they are not creditworthy. The Departmental appeal was dismissed”. In the case of DCIT vs. M/s Landmark Exim Pvt. Ltd. (supra) similar views have been taken in favour of the assessee.

11. Considering the facts of the case in the light of the above decisions, it is clear that assessee filed confirmation from all the creditors before A.O. All the credits are taken through banking channel. The assessee filed their ledger account with their bank statements. Five of the creditors have also responded directly to the AO in response to the summons u/s 131 of the Act and have confirmed the transaction with the assessee, supported by the

affidavits and the documentary evidences. It is well settled law that Department cannot ask the assessee to prove source of the source. In the cases of three creditors at Sl. No. 1, 3, 4, there were cheques cleared through banking channel before giving loan to the assessee. In the case of creditors mentioned at Sl. No. 5, 6 & 7, they have declared income from other sources and paid the taxes. Therefore, all these creditors were having sufficient bank balances in their bank accounts for giving credit to the assessee. Thus, there were no reasons for the AO to doubt the creditworthiness of the creditors except creditor mentioned at sl. No. 2. The AO has not made further investigation on the veracity of the documents submitted by the assessee. The issue is, therefore, squarely covered in favour of the assessee by order of the Tribunal in the case of M/s Topline Buildtech Pvt. Ltd. (supra). The AO has nowhere mentioned in the order, if assessee was asked to produce the creditors for examination on oath. No evidence has been brought on record, if the amount in question came from the coffer of the assessee. There is no dispute that AO accepted the identity of the creditors. These facts, therefore, show that assessee has been able to prove the creditworthiness and genuineness of the transaction in the cases of the creditors namely Smt. Shashi Lata Bhargav, Shri Prateek Ahluwalia, Shri Sarin Kumar, M/s T.S. Sethi & Sons, M/s C.S. Sethi & Sons and M/s G.S. Sethi & Sons. Thus, additions in their cases cannot be made in the hands of the assessee. We, accordingly, set aside the orders of the authorities below and delete the addition in the cases of these creditors

mentioned at sl. No. 1,3,4, 5,6 & 7. The disallowance of interest is also deleted.

12. However, in the case of Smt. Kamini Ahluwalia-(2), it is not in dispute that prior to giving loan to the assessee there were cash deposits of the equivalent amount of the credit in her bank account. There were insufficient bank balances in her account for giving loan to the assessee. In case of credit entry of Rs. 3 lakhs on 12.11.2010 cash was deposited for clearance of the cheque on 15.11.2010. These facts clearly support the findings of the authorities below that transaction of the assessee with Smt. Kamini Ahluwalia was not genuine. In the cases of Smt. Suman Gupta vs. ITO 138 ITD 153, ITAT Agra Bench took the adverse view in the similar circumstances because the equivalent amount of the credits were deposited in cash in the bank account of the creditor and explanation of the assessee has been rejected. The order of the Tribunal has been confirmed by dismissing the appeal of assessee by the Hon'ble Allahabad High Court in ITA No. 680/2012 dated 07.08.2012. The Hon'ble Gujarat High Court in the case of M/s Blessing Construction vs. ITO 32 taxmann.com 366 held that "where sizeable amounts were deposited in cash in account of depositors only before their withdrawal through cheques in favour of the assessee, addition was justified".

12.1 In view of the above, we confirm the addition of Rs. 9 lakhs on account of unexplained credit in case of Smt. Kamini

Ahluwalia. The proportionate disallowance of interest in this case is also confirmed. AO is directed to pass the consequential order.

13. In the result, appeal of assessee is partly allowed.

Order pronounced in the open court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Dated: 12.02.2019

*Kavita Arora

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy forwarded to:

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

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