

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE: Sh.SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA No. 747/Chd/2016
निर्धारण वर्ष / Assessment Year : 2011-12

The ITO Ward 3(3), Ludhiana	बनाम	Sh. Surender Kumar, Prop. M/s BBS Exports, 1175/1-A, Kalyan Nagar, Circular Road Ludhiana
स्थायी लेखा सं./PAN No: ACCPK4304K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Cross Objection No. 2/Chd/2017
(आयकर अपील सं./ ITA No. 747/Chd/2016)
निर्धारण वर्ष / Assessment Year : 2011-12

Sh. Surender Kumar, Prop. M/s BBS Exports, 1175/1-A, Kalyan Nagar, Circular Road Ludhiana	बनाम	The ITO Ward 3(3), Ludhiana
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 475/Chd/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Sh. Surender Kumar, Prop. M/s BBS Exports, 1175/1-A, Kalyan Nagar, Circular Road Ludhiana	बनाम	The DCIT-III Ludhiana
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None

राजस्व की ओर से/ Revenue by : Shri Manjit Singh

सुनवाई की तारीख/Date of Hearing: 14/11/2018

उद्घोषणा की तारीख/Date of Pronouncement : 11/02/2019

आदेश/Order

PER DR. B.R.R. KUMAR, A.M:

We shall first deal with appeal of the Revenue filed against the order of the Ld. CIT(A)-I, Ludhiana dt. 28/03/2016

ITA 747/CHD/2016 for A.Y. 2011-12

2. According to Circular No. 03/2018 dated 11/07/2018, the CBDT in supersession of earlier instructions has directed that department's appeals

before ITAT shall not be filed in cases where the tax effect does not exceed the monetary limit of Rs. 20 lacs. The tax will not include any interest thereon. It is further clarified that if in the case of an assessee, disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of disputed issues exceeds the monetary limit so specified.

3. Admittedly, in the departmental appeal, the tax effect is less than Rs. 20 lacs, therefore, departmental appeal is not maintainable. The Ld. DR could not bring to our notice any exceptions mentioned in the said Circular.

4. In view of the above, the appeal of the Revenue is dismissed.

C.O. No. 2 in ITA NO. 747/CHD/2016

5. The grounds taken up by the assessee in the C.O are in support of the order of the Ld. CIT(A). Since no issue has been raised against the order of the Ld. CIT(A) the C.O. is hereby dismissed as not maintainable.

ITA No. 475/CHD/2016

6. Now we shall deal with appeal of the Assessee filed against the order of the Ld. CIT(A)-1, Ludhiana dt. 28/03/2016, wherein Assessee has raised following grounds :

i) *That the Ld. CIT(A) has erred in Law & Facts being unjustifiably holding that certain additions made by A.O. were partly or fully correct.*

ii) *That on account of addition initially made by A.O. relating to cash credits of Rs. 49.00 Lacs, the CIT(A) has given a relief of Rs. 32.00 lacs whereas the remaining addition of Rs. 17.00 lacs being unjustified is also liable to be removed on merit.*

iii) *That all the cash credits being genuine, therefore interest of Rs. 88,000/- partly disallowed by respected CIT(A) on all these so called unexplained cash credits be considered as fully allowable.*

iv) *That entire car expenses has wrongly been disallowed by the Hon'ble CIT(A).*

v) *That telephone expenses of Rs. 21,450/- has wrongly been disallowed by Ld. A.O. and confirmed by Hon'ble CIT(A).*

vi) *That the addition on account of disallowance of depreciation amounting to Rs. 2,900/- on computer printers may be allowable @ 60% instead of @10% as confirmed by Hon'ble CIT(A).*

vii) That addition amounting to Rs. 54,536/- on account of purchase of foreign currency has also wrongly been disallowed by learned A.O. and CIT(A).

viii) That commission of Rs. 9.74 lacs has also been wrongly disallowed.

7. Regarding the confirming the addition of Rs. 17,00,000/- out of Rs. 49,00,000/-.

7.1 Brief facts of the case are that the Assessing Officer made an addition of Rs.49,00,000/- on account of unexplained cash credits. During the course of the assessment proceedings, the Assessing Officer observed that there were a number of unsecured loans, some of which were squared up during the year and some were still outstanding. The assessee was asked to get these credits verified by furnishing the details of identity, credit worthiness, capacity and the actual sources of these credits. The details of the Creditors is as under:

Ms. Supriti Jain	Rs. 1,00,000/-
Sh. Randeep Kumar Jain (HUF)	Rs.2,00,000/-
Sh. Rakesh Kumar Dhaneja(HUF)	Rs. 12,00,000/-
Ms. Poonam Jain	Rs.7,00,000/-.
Ms. Gurnek Kaur	Rs.5,00,000/-
Ms. Anita Tandon	Rs.2,00,000/-
Master Krishnam Khurana	Rs. 10,00,000/-
Rajeash Khurana	Rs.5,00,000/-
Sh. Ram Ji Das Khurana	Rs.5,00,000/-
Total	Rs.49,00,000/-

7.2 The assessee furnished the copies of account in respect of the persons whose accounts had been squared up during the year. No further information such as Address, PAN, Confirmation and Evidence of sources were furnished. From time to time, the assessee was asked to furnish these details and furnish evidence regarding the sources of these creditors. In response, the assessee furnished confirmed copies of account of these persons giving their addresses and PAN's numbers. The copy of bank account of the assessee in which the credits from these persons were received was also furnished. However, the evidence of source was not furnished the assessee was asked to do the same.

7.3 In response, it was stated that the bank statements and ITR's of unsecured lenders cannot be submitted as they were reluctant to provide these details. After considering the replies of the assessee and all the judgments of Hon'ble

Courts which were produced by the assessee, the Assessing Officer placed reliance on some judgments i.e the Hon'ble Delhi High Court in CIT Vs. Nipun Builders P. Ltd.(350 ITR 407), the Hon'ble P&H High Court in the case of Gurmani Ram Siri Ram vs. CIT (98 ITR 337) and in the case of CIT vs. MAF Academy Pvt. Ltd. ITA No.341/2012, in which the Hon'ble Courts have held that mere furnishing of PAN and confirmation is not enough and the onus to establish the identity, capacity and creditworthiness is upon the assessee. It was held that just because the transaction has been routed through banking channels, it does not mean that the same is genuine and explained.

7.4 According to the Assessing Officer, from the perusal and analysis of the above judgments of the Hon'ble Courts it was clear that the onus to prove the identity, capacity, creditworthiness and sources of unsecured loan is upon the assessee. Further, the Assessing Officer held that it was also clear that mere furnishing of PAN and confirmed copy of account does not amount to discharging of this onus.

8. In view of the above facts, the Assessing Officer held that the loans have remained unverified and unexplained. Therefore, these were treated as income of the assessee u/s 68 of the Income Tax Act, 1961. Thus, the Assessing Officer has disallowed the amount of Rs.49,00,000/- and added back the same to the income of the assessee.

9. During the course of the appellate proceedings, the AR of the appellant submitted his vide his reply dated 09.09.2015 as under:-

"1. Unexplained Cash Credits : - That the assessee has submitted copy of confirmations, PAN details, addresses of the creditors and copy of Bank Accounts showing that the said transactions were made through proper banking channels & as such the creditworthiness of the creditors and genuineness of the transactions proved. It is further stated that all the creditors are Income Tax Assesses. The copies of their ITRs are submitted herewith.

It is well settled law as well as Hon'ble Supreme Courts, various High Courts & Tribunals have also held in so many following cases that when complete address of creditors, the detail of their GIR/ PAN as well as copy of confirmations were submitted, these are sufficient evidences to prove the genuineness of credits.

CIT vs. Lovely Exports (P) Ltd. (Supreme Court) (2008) 6 DTR 0308 (2008), 216 CTR 0195 .

In the above said case, the Hon'ble Supreme Court has held that If the share application money is received by the assessee company from allged bogus

shareholders, whose names are given to the AO, then the Deptt. is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee company. (Copy of Judgement enclosed herewith).

DCIT vs Rohini Builders (2003) 182 CTR 0373, (2002) 256 ITR 0360 (High Court of Gujrat)

In the above said case, Hon'ble High Court has held that where the "Assessee furnished complete addresses of all the creditors alongwith GIR/PAN as well as confirmations along with copies of assessment orders passed in the case of individual creditors wherever available, and copy of returns filed by the creditors in their remaining cases- All loans were received and repaid by the assessee by account payee cheques alongwith interest-Tribunal deleted the addition.

Hindustan Inks & Resins Ltd. Vs DCIT (2011) 60 DTR 18 (Gujrat High Court)

In the above said case, the Hon'ble High Court has held that where the assessee having established the identity of shareholders, additions u/s 68 could not be made on the ground that the assessee failed to explain the source of creditor.

Further the assessee vide his reply dated 19.02.2014 and 10.03.2014 requested the AO to issue notice u/s 133 (6) / 131 for summoning the record as well as the creditors, but on the one pretext or the other the A.O. did not agree for the same.

However, the Hon'ble Supreme Court has held in the case of

"CIT vs Orissa Corporation Pvt. Ltd. (1986) 52 CTR 0138, (1986) 159 ITR"

that where the Revenue at the instance of the assessee for issuing notice u/s 131 did not pursue the matter further-Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the allowed loans, the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence.

As such assessee discharged it's burden of proving credit worthiness of depositors by submitting a request letter to summon creditors by issuing notice u/s 133(6)/131 of the Income Tax Act 1961.

DCIT vs. VKA Finance & Investment Co. (Ahd. Tribunal) (2015)45 CCH 0014

In the above said case, the Ahmedabad Tribunal has held that "once the assessee had submitted all the assessment details of it's creditors, it was not supposed to do anything further and the primary onus of proving identity, genuineness and creditor worthiness stood discharged- That it was Revenue's job thereafter to rebut the same-Assessee had successfully proved genuineness/creditworthiness of all the impugned unsecured loans."

10. The Ld. CIT(A) obtained remand report from the Assessing Officer which is as under:

"At the time of assessment proceeding the assessee had not given name and PAN of the creditors. As per records only following Six out of Nine creditors PAN/Address is given to whom verification letters have been issued-

a) Sh. Randeep Kumar Jain (HUF)- Verification letter sent vide this office letter no. 760/02.12.2015. Reply not received yet. His return of Income is available in this file which shows that his gross income for the A.Y. 2011-12 is 835891/-, but computation is not given.

b) Rakesh Kumar Dhamija(HUF)- Verification letter sent vide this office letter no. 766/02.12.2015. Reply received on 16.12.2015. His return of Income shows that his gross income for the A.Y. 2011-12 is 160042. His computation shows interest from BBS Hosiery-Rs.27945 and BBS Exports-Rs.48132/-.

c) Ms. Poonam Jain- Verification letter sent vide this office letter no. 765/02.12.2015.letter received back from the postal authority intimated "not known". Summon u/s 131 also issued to the above assessee through Notice server and reported that she had left the house.

d) Master Krishnam Khurana- Verification letter sent vide this office letter no. 765/02.12.2015. Reply received on 17.12.2015. Son of Sh. Rajesh Khurana, being minor not filling income tax return.

e) Rajesh Khurana- Verification letter sent vide this office letter no. 761/02.12.2015. Returned by the post authority intimated "left". But his return of income and computation is available with this record. His return of Income shows that his gross income for the A. Y. 2011-12 is 835891.

His computation shows that Interest from BBS Hosiery - Rs. 120000/- and BBS Exports - Rs. 242000/-

Minor Son's(Master Krishnam Khurana) income is added in the income of his father.

Interest from BBS Hosiery - Rs.85151/- and BBS Export - Rs.85151/-

f) Ramji Das Khurana- Verification letter sent vide this office letter no. 762/02.12.2015. Reply received on 17.12.2015. His return of Income shows that his gross income for the A.Y. 2011-12 is 1095006. Interest income 295000/-from BBS Hosiery Works and Rs. 120000/- from BBS exports.

g) Gurnek Kaur- Address/PAN No. is not given in the record.

h) Supriti Jain- Address/PAN No. is not given in the record.

i) Anita Tandon- Address/PAN No. is not given in the record."

11. The AR submitted his reply to the remand report requesting the deletion of the addition made which is as under:

1. Randeep Kumar Jain Huf : As per point no. (a) of Remand Report, the copy of Income Tax Return is already on record of the A. O and the same has already been submitted to your goodself during appellate proceedings. It is further stated that the copy of confirmation certificate alongwith copy of bank statement is attached herewith for your kind consideration. In view of above, the assessee has discharged the burden of proof regarding the genuineness, creditworthiness and identity of the said creditor.

2. Rakesh Kumar Dhamija Huf: As per point no. (b) of Remand Report, the copy of Income Tax Return and Computation Chart has been received by the A.O. during remand process. It is further stated that the same has already been submitted to your goodself and copy of confirmation certificate is attached herewith for your kind consideration.

3. Poonam Jain : In response to point no. (c) of Remand Reprot it is submitted that the copy of Income Tax Return, Computation chart, Bank statement alongwith confirmation certificate are attached herewith for your kind consideration.

4. Master Krishnam Khurana Minor & Rajesh Khurana : In response to point no. d) & e) it is stated that the creditor Master Krishnam Khurana is minor hence he is not liable to file ITR. His income is clubbed in his Gaurdian's return i.e. Mr. Rajesh Khurana. The copy of Income Tax Return, Computation chart of Mr. Rajesh Khurana and confirmation certificate of Mr. Rajesh Khurana as well as of Krishnam Khurana has already been submitted to your goodself. The copy of bank pass of both the creditors are attached herewith.

5. *Ramji Dass Khurana* : In response to point no. f) of the remand report, the copy of Income Tax Return, Computation Chart which shows gross income to the tune of Rs. 1095006/- has been received by the A.O., the copy of the same has already submitted to your goodself. The bank statement is attached herewith. Hence in this regard the assessee also proves the creditworthiness, genuineness and identity of the creditor.

6. *Gurnek Kaur*: In response to point no. g), it is stated that the Bank Statement and confirmation certificate has already submitted to your goodself. The PA No. of the of the creditor is ACFPK9611C.

7. *Supriti Jain* :- As per point no. h) of the remand report, the address/Pan no. of the creditor is not in the record. The copy of Income Tax Return has already been submitted to your goodself and confirmation from the party is attached herewith.

8. *Anita Tandon* : Copy of confirmation is attached herewith of the said creditor.

It was argued before Ld. CIT(A) that in view of above, the assessee has discharged his onus to prove the identity, creditworthiness and genuineness of above said transactions.

12. The Ld. CIT(A) after considering the facts of the case, the basis of the disallowance made by the Assessing Officer and the arguments of the AR during the course of the assessment as well as the appellate proceedings held that, reply had been received by the A.O. to the verification letters issued to

Sh. Rakesh Kumar Dhaneja(HUF),

Master Krishnam Khurana (minor),

Sh. Ramji Das khurana,

Sh. Rajesh Khurana

and hence deleted the addition on account of the said loans.

13. The Ld. CIT(A) however held that , the evidence of the source thereof was not furnished before the A.O. during the assessment proceedings regarding the rest of the loans. It may be mentioned that no formal application for admission of additional evidence explaining the reasonable cause that prevented the appellant from filing it before the Assessing Officer, in this regard under rule 46A was filed during the appellate proceedings. Therefore, the further evidence in the shape of the ITR's Bank statements cannot be admitted. It was held that in the case of Gurnek Kaur, Supriti jain and Anita Tandon the A.O. reported in the

remand report that address and PAN number are not available on record. Income tax returns along with computation of income are also not available in the case of these three parties; therefore the A.O. was justified in disallowing these loans. Further, regarding the loans from Sh. Randeep Kumar Jain and Ms. Poonam Jain, no reply was received in response to the A.O.'s verification letter and summons under section 131 could not be served on Ms. Poonam Jain. Their income tax returns along with computation of income are not available on record according to the A.O. Mere furnishing of PAN and confirmed copy of account does not amount to discharging of onus. Just because a transaction is routed through banking channels, it cannot be held to be genuine. As held in *Roshan Di Hatti Vs. CIT(SC) 107 ITR 938* and in *Kale Khan Mohammad Hanif Vs. CIT(SC) 50 ITR 1*, the onus of proving the source of a sum of money found to have been received by an assessee is on him and when the nature and source of the receipt cannot be satisfactorily explained by the assessee, it is open to the revenue that it is the income of the assessee and no further burden lies on the revenue. Thus, in the case of these loans, the original burden cast on the assessee was not discharged. Hence, the said loans i.e. from Sh. Randeep Kumar Jain(Huf), Ms. Poonam Jain, Gurnek Kaur, Supriti Jain and Anita Tandon cannot be accepted as genuine and the addition made on the said account is confirmed, in view of the same.

14. The assessee has filed written submissions vide letter dt. 11/10/2018, which have been duly perused and taken into consideration while adjudication. We find that the submissions are in toto similar to the submissions placed before the authorities below. While the Ld. DR vehemently supported the orders of the Ld. CIT(A) in this regard.

15. We have gone through the material available on record and find that the assessee has not discharged his onus of proving the identity, genuinity and creditworthiness of the parties. Replies have also not been received by the Assessing Officer for the letters issued and the assessee has not discharged his onus on the plea that the creditors were reluctant to provide these details. At the same time we find that Ld. CIT(A) has not admitted the new evidences filed before under Rule 46A. In this backdrop we feel that the ends of the justice would be met if the matter is remitted back to the file of the Assessing Officer to examine the matter afresh pertaining to identity, genuinity and

credit worthiness and to arrive at the conclusion in accordance with the provisions of the Income Tax Act,1961.

16. Ground No. 3 relates to disallowance of Rs. 88,000/- which is a corollary of the above ground. The Assessing Officer would allow / disallow the interest at the conclusion of the above verification proceedings as per provisions of the Income Tax Act,1961.

17. Ground No. 4 relates to disallowance of 12.5% on account of Car Expenses of Rs. 12,24,674/-. The Assessing Officer has disallowed 20% which was brought down to 12.5% by the Ld. CIT(A). The Assessee vide his written submissions pleaded that the assessee owns three cars which have been duly capitalized in the balance sheet out of which two cars were used solely for the business purpose by the staff and the third car is used by him for business purpose and submitted that 10% may be disallowed. Since the disallowance is on estimate basis only the plea of the assessee is hereby accepted.

18. Ground No. 5 relates to disallowance of 10% of Telephone expenses of Rs.2,14,500/-

19. During the course of the assessment proceedings, the Assessing Officer observed that the telephones were not used purely for the business purposes. Thus, the Assessing Officer disallowed 10% of the above expenses, which comes to Rs.21,450/-, and added back to the income of the assessee.

20. The Ld. AR vide his written submission argues, that 3 to 4 landline telephone connections are installed at factory and office premises of the assessee firm. Apart from these, other mobile connections are also owned by the assessee firm which are being distributed to staff members/employees of the assessee for smooth functioning and communication among each other and for the purpose to contact with suppliers and debtors. That all the telephone expenses may be allowable since these were used solely for business purpose. However, only one telephone connection which was used by the proprietor were rarely used for personal purpose. Hence, the A.O. is not justified in disallowing the 1/10th of all the telephone expenses of owned by the assessee.

21. We find that the Assessing Officer has not brought anything on record about the personal usage of the Telephones warranting 10% of disallowance of

Rs. 21,450/-With the lower call rates at most Rs. 399/- per month may be treated as personal usage and accordingly the same is hereby confirmed.

22. Ground No.6 relates to disallowance of depreciation on printer. During the assessment proceedings, the Assessing Officer noticed that the assessee has claimed @60% depreciation on computer and @60% on printer and allowed depreciation @ 10% on the printers. The printers are an integral part of computer hence the Assessing Officer is directed to allow depreciation @60%.

23. Ground No. 7:- During the course of scrutiny of Foreign Tour Expenses, the Assessing Officer found that the assessee had made two payments of Rs.27,268/-each for purchase of Dollars in cash and disallowed this amount under section 40A(3) on the grounds that it amounts to cash purchase. The purchase of dollars can only be treated as conversion of currency hence cannot attract provisions of 40A(3). Hence the addition made by the Assessing Officer is hereby directed to be deleted.

24. Ground No. 8 :- Disallowance out of Commission: The Assessing Officer has disallowed the commission paid to two persons Sh. Jatinder Kumar & Sh. Puneet Manocha on the grounds that the payment of commission from sale of yarn and knitted cloth is unwarranted.

The sales affected by Sh. Jatinder Kumar have been claimed at Rs. 272.23 Lac, the amount in respect of Sh. Puneet Manocha is Rs. 227.59 Lac. On total sales of Rs.499.81 Lac, commission @ 1.5% Rs. 749720/- has been paid by the Assessee.

25. The Ld. CIT(A) has confirmed the addition on the grounds that the assessee is merely trading and the yarn is cheap and low priced variety and on the grounds that no details of purchasing parties have been given.

26. We find that cheap and low priced variety of the goods or payment to relatives cannot be a reason for disallowance of the commission paid. What needs to be examine is whether the persons to whom the commission was paid have indeed provided the services or not. Neither the assessee has provided the details nor the Revenue has brought out anything on record to prove contra. Hence in the fitness of the justice we remand this issue back to the file of the Assessing Officer to examine the services provided and take decision in accordance with the provision of the Income Tax Act,1961, with directions to

the assessee, to comply with the details sought by the Assessing Officer in examining the issue. This ground may be treated as allowed for statistical purposes.

27. As a result the appeal of the Assessee is partly allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
संजय गर्ग / (SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Date: 11/02/2019
AG

Sd/-
डा. बी.आर.आर, कुमार / (DR. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Copy of the order forwarded to :

1. The Appellant,
2. The Respondent
3. CIT,
4. DR, ITAT, CHANDIGARH,
5. Guard File