

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 4087/Del/2018
Assessment Year 2013-14

Gazanand Bazpur S/o Shri Hari Chand, Main Road, Udham Singh Nagar, Uttarakhand Pin : 262401	Vs.	ITO, Ward-2(4) Bazpur PAN AASPN8020H
(Appellant)		(Respondent)

Assessee by:	Shri B.L. Gupta, ITP
Department by :	Shri S.L. Anuragi, Sr. DR
Date of Hearing	08/01/2019
Date of pronouncement	25/03/2019

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 28.3.2018, passed by Ld. CIT (Appeals) Haldwani for the quantum of assessment passed u/s 147/144. In various grounds of appeal assessee has challenged various additions made u/s 68 which was received by the assessee by way of loans from various persons. The details of which are given in the grounds of appeal itself which are reproduced as under: -

1. *"On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the loan of Rs 2,25,000/- taken from Faiyyaj Ali was not genuine and liable to be assessed as income of the assessee even though Faiyyaj Ali personally attended the office of the AO and*

admitted to have advanced a loan of Rs 2,25,000/- to the assessee during the course of his statements and also filed an Affidavit confirming the amount of loan.

- 2. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the loan of Rs 2,00,000/- taken from Shamashad was not genuine and liable to be assessed as income of the assessee even though Shamashad personally attended the office of the AO and admitted to have advanced a loan of Rs 2,00,000/- to the assessee during the course of his statements and also filed an Affidavit confirming the amount of loan.*
- 3. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the loan of Rs 2,00,000/- taken from Ramesh Kumar was not genuine and liable to be assessed as income of the assessee even though Ramesh Kumar personally attended the office of the AO and admitted to have advanced a loan of Rs 2,00,000/- to the assessee during the course of his statements and also filed an Affidavit confirming the amount of loan.*
- 4. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the loan of Rs 2,00,000/- taken from Pawan Kumar was not genuine and liable to be assessed as income of the assessee even though Pawan Kumar personally attended the office of the AO and admitted to have advanced a loan of Rs 2,00,000/- to the assessee during the course of his statements and also filed an Affidavit confirming the amount of loan.*
- 5. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the loan*

of Rs 2,25,000/- taken from Daljeet Singh was not genuine and liable to be assessed as income of the assessee even though Daljeet Singh personally attended the office of the AO and admitted to have advanced a loan of Rs 2,25,000/- to the assessee during the course of his statements and also filed an Affidavit confirming the amount of loan.

6. *On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the loan of Rs 1,84,000/- taken from Mandeep Singh was not genuine and liable to be assessed as income of the assessee even though Mandeep Singh personally attended the office of the AO and admitted to have advanced a loan of Rs 1,84,000/- to the assessee during the course of his statements and also filed an Affidavit confirming the amount of loan.*

7. *On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the loan of Rs 2,66,000/- taken from Prabjot Singh was not genuine and liable to be assessed as income of the assessee even though Prabjot Singh personally attended the office of the AO and admitted to have advanced a loan of Rs 2,66,000/- to the assessee during the course of his statements and also filed an Affidavit confirming the amount of loan.*

8. *On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the amount of Rs 6,00,000/- taken from Hari Chand was not genuine and liable to be assessed as income of the assessee.”*

2. The facts in brief are that the Ld. AO on the basis of information received from Sub Registrar u/s 133(6) that assessee has purchased four agriculture lands during the year alongwith his co-purchasers for

sums aggregating to Rs. 34,56,533/- and in absence of any explanation regarding investment same has been added u/s 69 by the AO. While making the addition AO noted that assessee had deposited sum of Rs. 26 lacs in cash and given the entire amount to the sellers and since assessee did not attend during the assessment proceedings, therefore entire cash deposits were treated as unexplained.

3. Before the Ld. CIT(A) assessee submitted that he has made payment of Rs. 26 lacs during the financial year 2012-13 and rest of the payment was made in the earlier year. The funds deposited were by way of own savings and also received from relatives and close friends. Assessee also gave genuine and bonafide reasons as to why he could not comply with various notices issued by the AO; and accordingly filed additional evidences, like cash flow statement and bank statement to justify the movement of the funds and also filed various submissions showing that the source of deposits in the bank account were by way of unsecured loans from various friends. Ld. CIT(A) forwarded the entire evidences and details to the AO for further inquiry and verification. In response, the Ld. AO had issued summons to all the creditors / depositors of unsecured loans and their statement were also recorded. The discussion about all the persons in were given in the remand report which has been incorporated in the impugned appellate order from pages 7 to 19. Ld. CIT(A) on perusal of material on record has accepted the genuineness of transaction in the case of some of the persons which were in fact accepted by the AO and thus deleted some of the credits. However, in the case of 7 persons Ld. CIT(A) held that these depositors could not prove the creditworthiness inspite of the fact that all have confirmed the giving of the loan to the assessee. The reason given by the AO in the remand report and by the Ld. CIT(A) in respect of these 7 persons were as under: -

1. **Faiyaj Ali (Rs 2,25,000/-)** is said to have been engaged in the business of transport during the F.Y. 2012-13. He was maintaining Bank Account with Kashipur Urban Cooperative Bank Ltd, Bazpur. But this person had very few deposits (Total of Rs. 2,00,000/-) and withdrawals (Total of Rs. 2,00,000/-) throughout the F.Y. 2012-13, with maximum peak credit of Rs.2,02,747/- on date 11/10/2012. Further, he owned only one truck during the F.Y. 2012-13 and he could only furnish copy of any registration certificate. It is contrary to his statement as he claimed owning of two trucks. However, he did not file the return of income for the A.Y. 2013-14 against income from one or two truck, what so ever, and had meagre agricultural land and limited to bank balance.

2. **Shri Shamashad Ali (Rs 2,00,000/-)** is said to be engaged in the business of transport during the F.Y. 2012-13. His bank revealed that very few deposits (Total of Rs.93,043/-) and withdrawals (Total of Rs. 93,8421/-) throughout the F.Y. 2012- 13, with maximum peak credit or Rs. 69,654/- only on date 03/09/2012. Shri Shamashad Ali neither submitted before the AO, copy of Registration Certificate for possession of Truck, nor the bank balance of Axis bank reflect sufficient credit to advance loan. He also did not file the return of Income for the A.Y. 2013-14. He was only' 18 years old as on 01/01/2012 (ADHAR CARD). Thus, the creditworthiness & source of income of the depositor could not be verified from the documents provided to the AO.

3. **Ramesh Kumar (Rs 2,00,000/-)** is said to be engaged in the business of transport through Truck Union, Bazpur, during the F.Y. 2012-13. He had Bank Account with Kashipur Urban Cooperative Bank Ltd, Bazpur. Which had few deposits i.e., only one transaction of cash deposit (Total of Rs. 5000/-) and

withdrawals (Total of Rs. 6000/-) throughout the F.Y. 2012-13, with maximum peak credit of Rs. 7,062/- on date 09/05/2012. Further, he owned only one truck during the F.Y. 2012-13 thus, from the perusal of the documents, the creditworthiness of the depositor regarding giving the loan could not be verified by the AO.

*4. **Shri Pawan Kumar (Rs 2,00,000/-)** is said to be engaged in the business of transport through Truck Union, Bazpur, during the F.Y. 2012-13. He had Bank Account with Kashipur Urban Cooperative Bank Ltd, Bazpur. However, the bank account does not reflect any transaction for the FY 2012-13. Further, the documents submitted by Shri Pawan Kumar docs not substantiate his statement during the FY 2012-13 he was running truck. owned by Shri Vinod Kumar in partnership as no documentary proof submitted. Thus, the creditworthiness & source of income regarding unsecured loan given to the assessee could not be substantiated by the depositor before the AO.*

*5. **Shri Daljeet Singh (Rs 2,25,0001-)** is also said to be engaged in the business of transport through Truck Union, Bazpur, during the F.Y. 2012-13. He had Account with Bank of Baroda, Bazpur, however, he has submitted the back account for the period FY. 2012)3. He also not submitted the copy of registration certificate not in his name of the truck which he claimed was operating during FY 2012-13. Thus, the creditworthiness & source of income of the depositor regarding giving the said loan could not be verified by the AO.*

*6. **Shri Mandeep Singh (Rs 1,84,000/-)** claims that he is a farmer and doing agricultural operation with his father Shri Prabhjot Singh and In the possession of 15 Acre of agricultural*

land. The depositor was not maintaining Bank Account with any bank during the year under consideration. Since, the depositor neither furnished the copy of Khatauni in support of holding of agricultural land nor copy of 6R for sale of agriculture produce bank account for the relevant financial year, the depositor's creditworthiness could not be substantiated before the AO.

***7. Shri Prabhjot Singh (Rs 2,66,000/-)** is a farmer it is claimed that he is in the possession or 15 Acres of agricultural land which is not registered 'in land revenue department. However, no documents have been submitted by Shri Prabhjot Singh. Even a single copy or 6R to substantiate the sell of agriculture produces in Mandi Samiti could not be produced by him. He had Bank Account with Nainital Bank Ltd. Bazpur which reflects only three transaction during the FY 2012-13 with the total deposit of Rs. 38,411/- and total withdrawal of Rs. 16,000/- only therefore his credit worthiness was not proved.”*

4. After considering rival submissions and on perusal of the relevant finding given in the impugned order, it is seen that during the course of the appellate proceedings the assessee had filed affidavits of all the 10 creditors from whom the assessee has claimed to have received loans. All these affidavits were forwarded to the AO to make necessary inquiry. Ld. AO has summoned all the 10 persons and all of them had duly appeared before the AO and their statements were recorded. After examining, he has accepted the genuineness of the loan to the extent of Rs. 2 lacs received from 3 persons. However, he has drawn adverse inference regarding 7 creditors in his remand report on the ground that their creditworthiness was lacking. From the perusal of statement of 5 out of 7 persons, one common fact which is permeating that, all of them have admitted to have advanced loan to

the assessee and have stated that they were engaged in the business of transport. Two of the creditors were agriculturist and were in possession of agricultural land around 15 to 16 acres. Apart from that, they have also stated that they have received back the loan from the assessee. From the perusal of the reasoning given by the Ld. CIT(A), it is seen that in most of the cases, these persons have made few deposits and did not have sufficient credit in their bank account to advance loan to the assessee. Though the assessee has produced all the creditors who have admitted to have given loan to the assessee and also admitted that same has been received back by them, but all the transaction has been in cash. The creditors have though tried to justify the source of the money given to the assessee by telling their occupation, but none of them could prove how the money given to the assessee was arranged when all of them were having very meagre income nor could they substantiate the source of money given to the assessee. Assessee has to explain the nature and source of credit and merely by establishing the identity and producing the persons, genuineness and creditworthiness cannot be proved when transaction is in cash. In a cash transaction onus is very upon the assessee to prove the creditworthiness and genuineness. Here as found by the CIT(A) the creditors could not prove the source of money given but also could not even substantiate the extent of their occupational activities carried out by them. Here in this case, assessee has deposited huge cash in his bank account and source of such cash deposits has been stated to be out of cash loan taken from various persons, which as found by the authorities below, after examination of the creditors that assessee could not satisfactorily explain about the creditworthiness of the creditors and genuineness of the cash loan. Thus, under the facts and circumstances of the case, addition has rightly been confirmed by

the Ld. CIT(A). Accordingly, I confirm the addition. Consequently, appeal of the assessee is dismissed.

5. In the result appeal of the assessee is dismissed.

Order pronounced in the open court on 25th March, 2019.

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 25/03/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi