

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 137/JP/2018  
निर्धारण वर्ष / Assessment Year :2014-15

K.S. Enterprises, Flat No. 104, Triambatul, R-9, Yudhisther Marg, C-Scheme, Jaipur-302005.	बनाम Vs.	I.T.O., Ward 6(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGFK 7083 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms. Shivangi Samdhani &  
Shri Rajiv Sogani (CAs)  
राजस्व की ओर से / Revenue by : Shri A.K. Mahla (JCIT)

सुनवाई की तारीख / Date of Hearing : 10/04/2019  
उदघोषणा की तारीख / Date of Pronouncement : 30/04/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A)-2, Jaipur dated 24/11/2017 for the A.Y. 2014-15 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. In this appeal, the assessee is aggrieved for addition of Rs.5,50,000/- U/s 68 and disallowance of interest expenditure of Rs. 53,625/- U/s 57 of the Act on such borrowed funds.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a firm engaged in the business of providing freight and forwarding services. The assessee Firm filed its Return of Income on 28.10.2014 declaring income of Rs. 0/-. The assessment u/s 143(3) was completed vide order dated 21.12.2016 wherein the addition of Rs. 5,50,000/- was made U/s 68 of the Act in respect of two loan creditors namely Girdhar Gopal and Kaml Kishore and interest was also disallowed. The A.O. observed that the assessee could not produce the loan creditors, accordingly, creditworthiness was not established. By the impugned order, the Id. CIT(A) confirmed the action of the A.O.

4. It was contended by the Id. AR of the assessee that the assessee during the assessment proceedings provided confirmation of the parties from whom loan was received during the year under consideration. The confirmation contained details like name, address and PAN of the lenders. During the proceedings before AO and Id. CIT(A), the assessee firm submitted the account confirmations of both the parties. Thus, the assessee firm was under *bona-fide* belief that the submissions and confirmations would suffice. The assessee firm discharged its onus of proving identity, genuineness and creditworthiness by submitting the following:

S. No.	Particulars	Girdhari Gopal Jhanwar Rs.3,50,000	Kamal Kishor Premraj Rathi Rs. 2,00,000
1.	Confirmation of accounts (containing name & address)	PB 3	PB 4
2.	Copy of computation	-	PB 5-6
3.	Extract of bank Passbook	-	PB 7-8
4.	ITR acknowledgment	-	AE 1
5.	Undertaking for change in address (alongwith proofs)	-	AE 2-5
6.	Account Statement (A.Y. 2014-15 to June 2018)	AE 18-23	AE 6-11
7.	Form No. 16A	AE 26-31 (A.Y. 2017-18)	A.E. 12-17 (A.Y. 2014-15)
8.	Form 15G of A.Y. 2014-15	AE 24-25	-
9.	PAN	PB-2	PB-2

Reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs Orissa Corpn. (P) Ltd. (1986) 25 Taxman 80F (SC) in support of the contention that the assessee has discharged its primary onus by furnishing name, address of the alleged creditors alongwith their confirmations. Accordingly, the assessee has discharged its primary onus, therefore, the addition made U/s 68 of the Act was not justified.

5. On the other hand, the Id DR has relied on the orders of the authorities below and contended that in spite of specific requisition of the A.O., the assessee could not produce the loan creditors before the A.O.. The Id DR also invited our attention to the notice issued by the A.O. U/s 133(6) of the Act to Kamal Kishore which was returned with remark of "left without address".

6. We have considered the rival contentions and carefully gone through the orders of the authorities below. From the record we found that during the course of assessment proceedings, the assessee has provided confirmation of loan creditors alongwith PAN details. However, notices sent by the A.O. U/s 133(6) of the Act but there was no response, accordingly, the A.O. concluded that the assessee has not discharged its onus of proving the creditworthiness of the loan creditors. We also observe that whatever documents filed by the assessee do not establish the creditworthiness of the loan creditors, therefore, one of the conditions of Section 68 of the Act was not fulfilled. We also observe that following additional documents were filed by the Id. AR before us with respect to loan creditors and which goes to the root of the issue:

S. No.	Particulars	Page No.
1.	Kamal Kishor Rathi	
	a. Copy of 1TR for A.Y. 2014-15	1
	b. Undertaking for the change in address	2
	c. Copy of Aadhar Card	3-4
	d. Extract of Bank Statement for the address verification	5
	e. Account Statement from A.Y. 2014-15 till June 2018	6-11
	f. Form No. 16A for the A.Y. 2014-15	12-17
2.	Girdhar Gopal Jhanwar	
	a. Account Statement from A.Y. 2014-15 till June 2018	18-23

	b. Copy of letter to AO for submission of Form 15G for AY 2014-15	24-25
	c. Form No. 16A for the A.Y. 2017-18	26-31

In all fairness, we restore back all the issues to the file of the A.O. for deciding afresh after considering the above documents and after providing reasonable opportunity of being heard to the assessee. We direct accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 30<sup>th</sup> April, 2019.

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(रमेश सी शर्मा)  
(RAMESH C SHARMA)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 30<sup>th</sup> April, 2019

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- K.S. Enterprises, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 6(5), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 137/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar