

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

**ITA No. 2263/Del/2016
Assessment Year: 2008-09**

Praveen Gupta 2606/4, Shop No. 103, 1 st Floor, Solitaire Plaza, Gurudwara Road, Karol Bagh, New Delhi. PAN No. AEMPG0199J	vs	Addl. CIT Range 33, New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri Hiren Mehta, CA
Revenue by	Shri Surender Pal. Sr. DR

Date of Hearing	28.05.2019
Date of Pronouncement	18.06.2019

ORDER

PER SHRI R K PANDA, A.M.

This appeal filed by the assessee is directed against the order dated 10.02.2016 of the Ld.CIT(Appeals)-17, New Delhi relating to AY 2008-09.

2. Ground nos. 1, 2 & 8 of the appeal being general in nature are dismissed. The Ld. Counsel for assessee did not press ground nos. 3 & 7 of the appeal for which the Ld. DR has no objection. Accordingly, these grounds are dismissed as not pressed.

3. Grounds of appeal no. 4 & 5 read as under:

4. *“That on the facts and circumstances of the case and in law the Ld.CIT(A) was not justified and erred in partly confirming the addition of Rs. 93,56,268/- for alleged unexplained cash credits without properly appreciating the documentary evidence furnished including filed under Rule 46A(3) of the Income Tax Rules.*

5. *That on the facts and circumstances of the case and in law the Ld. CIT(A) was not justified and erred in directing to add an amount of Rs. 23,05,000/- as addition u/s 2(22)(e) of the Act in respect of unsecured loans taken from M/s Goel Exim India Pvt. Ltd.”*

3.1 Facts of the case, in brief, are that the assessee is an individual and derives income from house property, business income and income from other sources. He has filed his return of income on 06.09.2008 declaring total income of Rs. 22,87,842/-. The AO during the course of assessment proceeding, observed from the statement of assets and liabilities that there are additions to unsecured loans during the year amounting to Rs. 2,44,79,078/- the details of which are as under:

<i>Mondal Jewellers</i>	<i>Rs. 1,05,579/-</i>
<i>S K Works</i>	<i>Rs. 1,43,237/-</i>
<i>Naru Goptal Ghosh</i>	<i>Rs. 57,001/-</i>
<i>Paresh Jewellers</i>	<i>Rs. 57,588/-</i>
<i>Nihal chand Diwan</i>	<i>Rs. 6,40,000/-</i>
<i>M/s Naresh Enterprises</i>	<i>Rs. 17,20,000/-</i>
<i>M/s J P Gupta HUF</i>	<i>Rs. 33,80,000/-</i>
<i>Kamal Kalia</i>	<i>Rs. 51,268/-</i>
<i>Dinesh Trading Co.</i>	<i>Rs. 12,60,000/-</i>
<i>Ginni Devi</i>	<i>Rs. 95,000/-</i>
<i>Goel Exim India Pvt. Ltd.</i>	<i>Rs. 23,05,000/-</i>
<i>Goel Jewellers Overseas Corporation</i>	<i>Rs. 27,810/-</i>
<i>L P Overseas</i>	<i>Rs.1,50,00,000/-</i>

4. Since, the assessee did not file the requisite details such as ITRs/Balance Sheets/Confirmations and bank statements, etc., the AO held that assessee could not discharge the onus cast on him. He, therefore, made an addition of Rs. 2,44,79,078/- to the total income of the assessee on account of such un-substantiated unsecured loans as the undisclosed income of the assessee.

5. In appeal, the Ld. CIT(A) called for a remand report from the AO on the basis of various submissions made by the assessee. After considering such remand report of the AO and the rejoinder of the assessee to such remand report the Ld. CIT(A) restricted the addition to Rs. 93,56,268/- by observing as under:

“12.2 So far as addition of Rs. 2,44,79,078/- is concerned, the AO found during the remand proceedings that in the cases of Nihal Chand Dewan, Kamal Kalia and Dinesh Trading Co. no copy of ITR and bank statement was filed to prove genuineness of the transaction. In the case of J.P. Gupta though copy of ITR and bank statement was filed but income was shown of Rs. 1,24,564/- only which does not prove the credit worthiness of the person concerned. However, in the case of Ginni Devi, Goyal Jewellers Overseas Corporation and L.P. Overseas, copy of confirmation, ITR, balance sheet and bank statement was submitted before the AO and the AO had not given any adverse comments with regard to these persons. So far as addition in connection with the case of M/s Goel Exim Pvt. Ltd. is concerned, the appellant himself admitted the said addition u/s 2(22)(e) of the I.T. Act. Therefore, this addition is directed to be deleted from the addition made u/s 68 but directed to be added as addition u/s 2(22)(e) of the Act. In the result, the addition is reduced to Rs. 93,56,268/-, which includes the addition to be made u/s 2(22)(e) of the Act.”

6. Aggrieved with such order of the Ld.CIT(A), the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for assessee submitted that the assessee could not file the copy of ITR and bank statement in respect of loans obtained from Mr. Nihal Chand Dewan Rs. 6,40,000/-, Mr. Kamal Kalia Rs. 51,268/-, M/s Dinesh Trading Co. Rs. 12,60,000/- and M/s Naresh Enterprises Rs. 17,20,000/- since, the assessment year involved is very old and the parties did not make any extra effort to provide the required documents. He submitted that given an opportunity, the assessee is in a position to substantiate the same with evidence to the satisfaction of the AO. So far as the amount of Rs. 33,80,000/- received from M/s J P Gupta (HUF) is concerned he submitted that Mr. J P Gupta is the father in law of the assessee. Merely because the returned income of the HUF is Rs. 1,24,564/-, the same cannot be a ground to suspect the creditworthiness of the lender. Referring to the bank statement of Mr. J P Gupta (HUF) he submitted that the bank statement shows that there are no cash deposits and the amount has been advanced from the bank balance available. So far as the amount of Rs. 23,05,000/- from Goel Exim India Pvt. Ltd. is concerned he submitted that the assessee did not receive any notice for enhancement from the CIT(A) during the course of appellate proceedings. Further, the Ld. CIT(A) himself has given a finding that no addition in respect of the sum of Rs. 23,05,000/- received as loan from Goel Exim India Pvt. Ltd. is warranted. However, he confirmed the addition u/s 2(22)(e) of the Act by

holding that the assessee was holding more than 10% shares in the same company. He submitted that in case of a new source of income and its taxability which has not been considered by the AO, the CIT(A) does not have the power to do so. For the above proposition, he relied on the decisions of the Hon'ble Supreme Court in the case of CIT vs. Sardari Lal Co. reported 120 taxman 447, CIT vs. Union Tyres reported in 107 taxman 447 and CIT vs. Shapoorji Pallonji Mistry reported in 44 ITR 891.

8. In his alternate submission, he submitted that this issue may be set aside to the file of the AO or CIT(A) as the Bench deems it proper, since, the CIT(A) has not given effective opportunity to the assessee. Therefore, in the interest of justice, this matter may be set aside to the file of the AO with a direction to the assessee to substantiate with evidence to the satisfaction of the AO substantiating the identity and creditworthiness of the loan creditors and the genuineness of the transaction.

9. The Ld. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that the assessee in the instant case had not discharged the onus cast on him. Therefore, the order of the Ld. CIT(A) should be upheld.

10. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We have also considered the various decisions relied upon by the Ld. Counsel for the assessee. We find the AO made an addition of Rs. 2,44,79,078/- being the addition to the unsecured loans during

the year since the assessee could not substantiate with evidence to his satisfaction regarding such unsecured loans. We find Ld. CIT(A) restricted the addition to Rs. 93,56,268/-, the reasons for which has already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that since the assessment year involved is very old the assessee could not obtain the copies of the ITRs/ Bank Statements, etc. to be filed before the lower authorities. It is also his submission that merely because the returned income is less in case of J P Gupta (HUF), the same cannot be a ground for making the addition especially when no cash deposits have been made in the bank account of Sh. J P Gupta (HUF). So far as Goel Exim India Pvt. Ltd. is concerned, it is the submission of the Ld. Counsel for the assessee that the Ld. CIT(A) without giving any enhancement notice has sustained the addition by discovering a new source of income which is not permissible in law. It is the alternate contention of the Ld. Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the AO regarding the identity and creditworthiness of the unsecured loan creditors and the genuineness of the transaction. We find the alternate contention of the Ld. Counsel for the assessee is acceptable under the given facts and circumstances of the case. We, therefore, deem it proper to restore this issue to the file of the AO with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the identity and creditworthiness of the loan creditors

and the genuineness of the transaction. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground nos. 4 & 5 are accordingly allowed for statistical purposes.

11. Ground of appeal no. 6 reads as under:

“6. That on the facts and circumstances of the case and in law the Ld. CIT(A) was not justified and erred in confirming the addition of Rs. 12,23,800/- by erroneously holding that the sundry creditor could not be verified for alleged non compliance of notice u/s 133(6) of the Act issued during remand report proceedings, without properly appreciating the documentary evidence furnished including filed under Rule 46A(3) of the Income Tax Rules and without affording the effective and meaningful opportunity to the assessee.”

12. After hearing both the sides, we find the assessee did not file any confirmation in respect of sundry creditors appearing in the balance sheet in respect of Sh. Prem Chand Gupta amounting to Rs. 12,23,800/- for which the AO made the addition treating the same as *bogus*. In appeal, the Ld. CIT(A) confirmed the addition by observing as under:

“12.3 With regard to addition of Rs. 12,23,800/-, the AO during the remand proceedings issued notice u/s 133(6) to Sh. Prem Chand Gupta from whom the assessee claimed to have purchased gold bar, however, on one address the notice returned back unserved with the remarks that no such person in the address. But in the another address, though notice was served but no requisite details were filed before the AO for verification. The assessee was given opportunity of being heard or to get verified the facts in this regard during the appellate proceedings but the same could not be got verified.

Therefore, I do not find any infirmity in the AO's order in this regard."

13. It is the submission of the Ld. Counsel for the assessee that given an opportunity the assessee is in a position to produce the party before the AO for his examination or file the requisite details to substantiate the same to the satisfaction of the AO. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the AO with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the credit balance appearing in the name of Sh. Prem Chand Gupta to the tune of Rs. 12,23,800/-. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The above ground raised by the assessee is accordingly allowed for statistical purposes.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on 18/06/2019

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER
Dated: 18/06/2019
*Kavita Arora

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	17.06.2019
Date on which the typed draft is placed before the dictating Member	17.06.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	18.6.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	18.6.2019
Date on which the fair order comes back to the Sr. PS/PS	18.6.2019
Date on which the final order is uploaded on the website of ITAT	20.6.2019
Date on which the file goes to the Bench Clerk	20.6.2019
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	

