

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.689/Del/2017
Assessment Year: 2011-12

Ms. Neeti Mittal, 70, Mittal Bhawan, Darya Ganj, New Delhi	Vs.	Income Tax Officer, Ward-30(2), New Delhi
PAN :AIHPM7878B		
(Appellant)		(Respondent)

Appellant by	Shri P.P. Mittal, CA
Respondent by	Shri Atiq Ahmad, Sr.DR

Date of hearing	17.09.2019
Date of pronouncement	14.11.2019

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 01/11/2016 passed by the Commissioner of Income-tax (Appeals)-16, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 raising following grounds:

- 1. That the Ld. A.O. as well as Ld. CIT (Appeal) have failed to appreciate the evidence produced before the authorities below and has wrongly added Rs. 15,00,000/- borrowed from M/s Abhinandan Traffin Pvt. Ltd.*
- 2. That the Ld. A.O. as well as Ld. CIT (Appeal) have failed to appreciate the evidence produced before the authorities below and has wrongly added Rs. 15,00,000/- borrowed from M/s Hollysea Finvest Pvt. Ltd.*

3. *That the Ld. A.O. as well as Ld. CIT (Appeal) have failed to appreciate the evidence produced before the authorities below and has wrongly added Rs. 18,00,000/- received from Mrs. Sonal Khandelwal wife of Sh. Naveen Khandelwal.*
4. *That the Ld. A.O. as well as Ld. CIT (Appeal) have failed to appreciate the evidence produced before the authorities below and has wrongly added Rs.1,11,49,200/- borrowed from Prahlad Dass & Sons.*
5. *That the entire assesment order as well as appeal order is wrong, arbitrary, illegal, unjust against the fact as well as against the law.*

2. Briefly stated facts of the case are that the assessee, an individual, filed her return of income on 26/03/2012 declaring total income of ₹ 2,21,868/-. The case was selected for scrutiny and in the scrutiny assessment completed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act'), the total income was assessed at ₹ 2,23,31,070/- after making certain additions/disallowances. On further appeal, the Ld. CIT(A) allowed part relief and sustained few additions. Aggrieved with the addition sustained by the learned CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the Ld. counsel of the assessee has filed a paper-book containing page 1 to 124 .

3.1 In support of Ground No. 1 and 2, the Ld. counsel of the assessee referred to page 10 to 96 of the paper-book and submitted that all the documents substantiating, identity and creditworthiness of the loan creditor and genuineness of the transaction were already filed before the lower authorities and the assessee discharged her onus under section 68 of the Act.

3.2 The Ld. DR, on the other hand, relied on the order of the lower authorities.

3.3 We have heard rival submission of the parties and perused the relevant material on record. We find that learned Assessing Officer made addition in respect of loan creditor of ₹ 15 lakh each from M/s Abhinandan Traffin Private Limited and M/s Hollysea Finvest P Ltd. mainly on the ground that those parties could not be located at their address by the Inspector of the office of the Assessing Officer and the assessee also failed to produce them before the Assessing Officer. Before the learned CIT(A) also, the assessee could not produce Principal Officer of those loan creditor companies. In view of the facts of the case, the learned CIT(A) upheld the addition observing as under:

“I have considered all facts and circumstances of the case. The appellant has claimed to have received a very substantial amount i.e. Rs.30 lakhs from the above mentioned two companies. The assessee has filed the documents in the form of confirmation, bank statement, ITR etc. From the perusal of the bank statement of M/s Abhinandan Traffin Pvt. Ltd, it is seen that the loan was advanced to the appellant Ms. Neeti Mittal on 30/06/2010 and on 28/06/2010, there was a deposit of Rs.15 lakhs. Thereafter there was hardly any transaction and closing balance as on 21/07/2010, is Rs.9,791.29. Almost identical is the situation in the bank statement of M/s Hollysea Finvest Pvt. Ltd. Rs.15. lakhs were deposited on 30/06/2010 and on the same day they were transferred to Ms Neeti Mittal leaving in the balance of Rs.11,029.28 only as on 30/06/2010. The amount of loan received from M/s. Abhinandan Traffin Pvt Ltd and M/s Hollysea Finvest Pvt. Ltd. are not above board. The appellant has not been able to give one reason for not been able to produce the directors before the Assessing Officer. Just because the loan, have been received, through banking channel, the same does not become genuine. Similarly, the filing of ITR per say does not reveal the creditworthiness of the lender. The Assessing Officer has rightly rejected the contention of the appellant. I do not find any reason to interfere with the finding of the AO. The addition of Rs.15 lakhs each, as unexplained cash credit from M/s Abhinandan Traffin Pvt Ltd and M/s Hollysea Finvest Pvt. Ltd. is confirmed.”

3.4 In our opinion, merely filing of confirmation letter and bank statement and other financial statements, requirement of section 68 of establishing identity and creditworthiness of the parties and genuineness of the transaction cannot be fulfilled, particularly when cash deposits are appearing in the bank statements of the loan creditors immediately prior to the date of giving loan to the assessee. In such circumstances, the onus is on the assessee to produce those persons before the Assessing Officer and justify creditworthiness and genuineness of the transaction. The assessee has failed to produce the loan creditor parties in assessment proceeding as well as during first appellate proceedings before Income-tax authorities and thus, she failed to discharge her onus under section 68 of the Act. In view of the facts and circumstances of the case, we do not find any error in the finding of the learned CIT(A) on the issue in dispute and accordingly, we uphold the same. The Grounds No. 1 & 2 of the appeal of the assessee are accordingly dismissed.

4. In ground No. 3, the assessee aggrieved with the confirmation of the addition of ₹ 18 lakh received from Mrs. Sonal Khandelwal, wife of Sh. Naveen Khandelwal, under section 68 of the Act.

4.1 Regarding the addition the Assessing Officer has noted that he did not find the entry of the loan amount of ₹ 18 lakh in the name of Smt. Sonal Khandelwal in the balance sheet filed by the assessee. It was explained by the assessee that in the balance sheet said loan was by mistake entered in the name of her husband, Sh. Naveen Khandelwal. It was further explained by

the assessee that advance was received from her for the purpose of registration of the property. The contentions of the assessee were not accepted by the Assessing Officer in absence of evidence in support of identity, creditworthiness and genuineness of the transaction. The learned CIT(A) also upheld the addition.

4.2 Before us, the Ld. counsel of the assessee referred to pages 97 & 98 to 115 of the paper book, which is copy of confirmation of Mrs. Sonal Khandelwal and copy of the plaint of the suit filed by Mrs. Sonal Khandelwal. The Ld. counsel submitted that in view of the documents filed, the assessee has discharged her onus under section 68 of the Act and this addition might be deleted.

4.3 The ld. DR, on the other hand, relied on the order of the lower authorities.

4.4 We have heard rival submission and perused the relevant material on record. The learned CIT(A) sustained addition observing as under:

“I have considered all facts and circumstances of the case. The Ld AR during the appellate proceedings has just reiterated submissions before Assessing Officer. Apart from the submission, the AR also placed on record an unsigned copy of a suit alleged to have been filed in the Hon. High Court of Delhi, by Mrs Sonal Khandelwal. Firstly, whether the suit has been actually filed or not, cannot be made out from the plaint. Secondly, even if the suit have been filed, the same does not change the colour of transaction which had already taken place. The appellant has not been able to establish the genuineness of transaction as well as the creditworthiness of the lender before Assessing Officer. During the appellate proceedings, the situation remained the same. I do not find any reason to interfere with the order of the Assessing Officer. The ground is therefore, dismissed.”

4.5 We find that before the learned CIT(A), the assessee filed unsigned copy of a suit alleged to have been filed in the Hon'ble

High court Delhi. Before us, also the assessee has filed a photocopy of the draft of the plaint without any signature of the parties to the suit. The assessee was very well aware that the learned CIT(A) upheld the disallowance in view of the unsigned copy of the plaint. For discharging the onus under section 68 of the Act, the assessee was required to submit documentary evidence in support of identity and creditworthiness of the loan creditor and genuineness of the transaction. In our opinion, the assessee has failed to discharge her onus under section 68 of the Act. We do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same.

5. In ground No.4, the assessee had raised issue of addition of ₹ 1,11,49,200/- under section 68 of the Act in respect of the money shown to have been borrowed from M/s. Prahlad Dass and Sons.

5.1 Before the Assessing Officer, the assessee failed to submit copy of bank statement and evidence in support of creditworthiness of M/s Prahalad Dass and Sons. Before the learned CIT(A), the assessee filed a copy of bank passbook of the said creditor, but learned CIT(A) found that whenever a major amount was advanced to the assessee, it was invariably preceded by a number of buildup deposits and accordingly, he upheld the addition in view of the failure of the assessee in establishing the genuineness of the transaction as well as creditworthiness of the creditor.

5.2 Before us, the Ld. counsel of the assessee referred to pages 116 to 124 of the paper book and submitted that the assessee has discharged her onus under section 68 of the Act.

5.3 The Ld. DR, on the other hand, relied on the order of the lower authorities.

5.4 We have heard rival submission of the parties and perused the relevant material on record. The learned CIT(A) upheld the addition observing as under :

“I have considered all facts and circumstances of the case. The Ld AR during the appellate proceedings has reiterated the submission filed before Assessing Officer. From the perusal of bank statement filed by the Ld AR, it is seen that whenever a major amount has been advanced it is invariably preceded by number of build up deposits. After the advancing of the amount, only petty balance is left in the bank. The Assessing Officer has rightly viewed the transaction with suspicion. In this case also the Ld AR has not been able to establish the genuineness as well as the creditworthiness of the creditor. Therefore I do not find any reason to interfere with the order of the Assessing Officer. The ground is therefore, dismissed.”

5.5 We find that the learned CIT(A) has upheld the addition mainly on the ground that money advanced to the assessee was preceded by buildup of deposits and concluded that the Assessing Officer has rightly viewed the transaction with suspicion. In our opinion, no addition can be sustained merely on the basis of the suspicion. On perusal of the bank statement of the creditor available on page 117 to 119 of paper book, we find that deposits in the accounts of the creditor are mainly by way of clearing or fund transfer. The assessee also filed copy of acknowledgement of the Income Tax Return and statement of affairs before the learned CIT(A) as additional evidence, which have not been considered by the Ld. CIT(A). In the facts and circumstances of the case, we feel it appropriate to restore this issue-in-dispute back to the file of the learned Assessing Officer for deciding afresh after providing adequate opportunity of being heard to the assessee. The assessee is directed to furnish all necessary documents in

support of its claim for discharge of onus under section 68 of the Act. The ground of the appeal is accordingly allowed for the statistical purposes.

6. The round No. 5 is general in nature, we are not required to adjudicate upon specifically and, accordingly, it is dismissed as infructuous.

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

Order is pronounced in the open court on 14th November, 2019.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 14th November, 2019.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi