

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.6322/Del/2016
Assessment Year: 2011-12

M/s. Ramjilal Construction Pvt. Ltd., L-1/288A, DDA Flats, Kalkaji, New Delhi	Vs.	Income Tax Officer, Ward-21(1), New Delhi
PAN :AACCR0292G		
(Appellant)		(Respondent)

Appellant by	Shri T.R. Talwar, CA
Respondent by	Shri Surender Pal, Sr.DR

Date of hearing	05.09.2019
Date of pronouncement	15.11.2019

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 28/10/2016 passed by the Commissioner of Income-tax (Appeals)-10, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 raising following grounds:

On the facts and circumstances of the case, the learned CIT(A) has erred:

1. *In sustaining the addition of Rs. 13,30,000/- u/s 68 representing an unsecured loan of M/s Delhi Textiles Cooperative Group Housing made by the Assessing Officer.*
2. *In ignoring that the unsecured loan has been confirmed by the president of the above cooperative society and which has been advanced through banking channel.*
3. *In ignoring the copy of the bank account of the cooperative society opened in 2006 through which the above unsecured loan has been*

advanced and which was submitted before the Assessing Officer/ CIT(A).

The appellant craves leave to add, alter, substitute and delete any of the grounds of appeal on or before the date of hearing.

2. Briefly stated facts of the case are that the assessee was engaged in the real estate business. During the year under consideration, the assessee filed return of income on 29/09/2011, declaring loss of ₹ 9,21,085/-. The scrutiny assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 20/07/2014, wherein total income was assessed at ₹ 57,19,640/- after making certain additions/disallowances. On further appeal, the learned CIT(A) partly allowed the grounds raised by the assessee. The assessee filed appeal before the Tribunal against the addition of ₹ 13,30,000/- sustained by the learned CIT(A), which was made by the Assessing Officer under section 68 of the Act for loan received from M/s Delhi Textile Cooperative Group. The learned CIT(A) sustained the addition of Rs.13,30,000/- on the ground that the assessee failed to substantiate the exact nature of the claim of the loan taken from 'Delhi Textile Cooperative Group'.

3. Before us, the Ld. counsel of the assessee has given undertaking to produce the party 'M/s. Delhi Textile Cooperative Group' before the Assessing Officer along with all necessary documents to discharge its onus under section 68 of the Act.

4. The Ld. DR though relied on the order of the learned CIT(A), did not object to restoring the matter back to the Assessing Officer subject to producing the party by the assessee along with documents to discharge its onus under section 68 of the Act.

5. We have heard rival submission of the parties and perused the relevant material on record. The learned CIT(A) sustained the sum of Rs.13,30,000/- observing as under:

“4.4.1 During the year under consideration only there is fresh addition of M/s. Delhi Textiles from which appellant has obtained unsecured loan of Rs.13.30 lacs. During the appellate proceedings, Ld. AR has filed copy of ledger accounts, bank statements and affidavit duly sworn in by Sh. Ramji Lai in the capacity as President affirming that the loan has been advanced by the above cooperative society by way of cheques issued from State Bank of Bikaner and Jaipur, New Delhi. The then CIT(A) - XVIII vide letter no. 417 dated 30.07.2014 called for a report on the admissibility of additional evidences as well as on their merits. In response to the same. Assessing Officer Vide letter No. 85 dated 03.09.2014 has submitted as under:

“...3(iv) Delhi Textiles Cooperative Group Housing Rs.13,30,000/- The assessee has shown that this amount has been taken from this society. No copy of sanctioned amount of the loan and the repayment plan and rate of interest has been filed.”

From the above, it is evident that though Ld. AR has filed confirmation along with copy of ledger, bank statement and affidavit but has further failed to substantiate the exact nature of claim of loan taken by the appellant from the above society, as mentioned in the remand report by the AO. Therefore, in the above backdrop of the facts, I am of the considered view that Ld. AR has failed to substantiate his claim, with requisite documentary evidence that it has obtained loan from the above concern, as in the absence of documentary evidences, cited by the AO in his remand report (relevant portion of which is reproduced above), it is not established that appellant has obtained a loan from the above concern, therefore, it is held that Ld. AR has failed to substantiate his claim in respect of amount of Rs. 13,30,000/- as unsecured loan. Therefore, I am of the considered view that no interference is called for to the addition made by the AO of section 68 of the Act in respect of amount of Rs.13,30,000/- obtained from M/s. Delhi Textiles during the year under consideration. Accordingly, out of the total addition of Rs.32,57,000/- only addition of Rs. 13,30,000/- survives and appellant gets relief in respect of remaining amount of Rs.19,27,000/-.”

6. In view of the undertaking given by the Ld. counsel of the assessee to produce the party M/s Delhi Textiles Cooperative Group Housing, in whose name credit entry of ₹ 13,30,000/- is

appearing in the books of accounts of the assessee and submit all that necessary documentary evidences for discharging its onus under section 68 of the Act, and in view of the facts and circumstances of the case, we feel it appropriate to restore this matter to Ld. Assessing Officer for deciding the issue of addition of ₹ 13,30,000/- amount received from M/s. Delhi Textile Cooperative Group Housing afresh, in accordance with law. The onus is on the assessee to produce the said party before the Ld. Assessing Officer along with all documentary evidences to discharge its onus under section 68 of the Act. Adequate opportunity of being heard shall be provided to the assessee. The ground of the appeal is accordingly allowed for statistical purposes.

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

Order is pronounced in the open court on 15th November, 2019.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

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

Dated: 15th November, 2019.

RK/-(D.T.D.)

Copy forwarded to:

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