

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

**Before Sh. N. K. Choudhary, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 1842/Del/2017 : Asstt. Year : 2011-12**

M/s Tanya Automobiles Pvt. Ltd., C/o Sandeep Sapra, Adv., C-763, New Friends Colony, New Delhi-110025	Vs	Deputy Commissioner of Income Tax, Circle-16(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAC3639B</b>		

**Assessee by : Sh. Sandeep Sapra, Adv.**

**Revenue by : Sh. Abhishek Kumar, Sr. DR**

**Date of Hearing: 05.02.2020**

**Date of Pronouncement: 05.02.2020**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-9, New Delhi dated 20.01.2017.

2. Following grounds have been raised by the assessee:

*"1. That the Id. CIT (A) has erred on facts and under the law in confirming the addition of Rs.35,00,000/- as made by the AO on account of unexplained credit received from M/s Infraheights Pvt. Ltd. u/s 68 of I.T. Act any rate, the addition as made is very excessive.*

*2. That the levy of interest u/s 234B and u/s 234C is arbitrary, unjust, illegal and at any rate, without prejudice, very excessive."*

3. Brief facts relevant to the case are that the assessee received an amount of Rs.35,00,000/- as loan from one

company namely, M/s Heritage Infraheights Pvt. Ltd. (HIPL). The Assessing Officer after making due enquiries held that the assessee could not prove the genuineness and creditworthiness of the creditor and hence made addition u/s 68 of the Income Tax Act, 1961. The enquiries conducted by the revenue and the results thereof are as under:

- i. The premises of the lender company found to be residential premises and the tenants feigned ignorance about existence of any such company.
- ii. The return of income is only Rs.7,780/- and every debit is preceded by a credit of exactly the same amount and apart from that the balance in the bank was always minimal.
- iii. The creditworthiness has not been proved.
- iv. There is no sustainable business activity of the creditor.

4. Based on the above results, the revenue held that the explanation of the assessee regarding the source of the money is not satisfactory which led to addition of this amount.

5. During the arguments before us, the Id. AR argued that the assessee has submitted revised address and enquiries have been made by the Assessing Officer which have not been referred by the Id. CIT (A) in his order. Further, it was argued that not only the source but source of source of the amount of Rs.35,00,000/- has been furnished to the revenue authorities. The amount of Rs.35,00,000/- has been received on 20.12.2010 through RTGS from HIPL. The amount of Rs.15,00,000/- has been returned through RTGS on 10.01.2011 and an amount of Rs.20,00,000/- on 07.02.2011 and thus, the total amount of Rs.35,00,000/- has been

refunded within a span of two months. It was argued that this fact has not been considered by the revenue authorities.

6. Regarding the source of source, it was argued that the amounts have been received by the creditor company HIPL on 09.11.2010 from Vatika Nirman Pvt. Ltd.(VNPL) The Id. AR, thus argued that after receipt of the money from VNPL in the month of November 2010 by HIPL, the amounts have been given as loan to the assessee in the month of December 2010. The Id. AR further argued that the amounts have been received from one concern namely, Dev Priya Products Ltd. by VNPL. The Id. AR argued that the copy of ITR, bank statement, confirmations have been filed by all the three parties thus proving source and also the source of source. It was also argued that during the remand proceedings, summons u/s 131 have been issued to the Directors of the lender company HIPL and Sh. Bharat Bhushan Gupta, the Director of the HIPL has duly appeared and given statement confirming the fact of issuing the loan. It was also argued that the Inspector has also independently gathered the documents from the lender company, thus the allegation of the revenue that the lender company was not traceable at the given address is not acceptable.

7. The Id. DR, on the other hand, argued that the business of the lender company is not substantiated, the sources have not been proved. He also argued that even the lender company's source of Vatika Nirman Pvt. Ltd. is also questionable as the return income of that company is only Rs.1,46,291/- and even the company Dev Priya Products Ltd. is

also an entity of meager means. Further, he argued that the address given by the assessee regarding the lender found out to be a purely residential premises and hence it cannot be accepted that a company is existing and operating from that premises.

8. Heard the arguments of both the parties and perused the material available on record.

9. Regarding the premises, we find from the record that the owner of the premises has filed a letter before the DCIT on 11.12.2014 that he is the owner of the premises and his premises have been given for use as the registered office of HIPL. The Inspector, Sh. Ombir Singh has collected the information from HIPL directly from the office addressed at 308, Meerut Mall, Meerut. He could also serve notice to Sh. Pradeep Kumar Agarwal, Director of the company. Further, Sh. Bharat Bhushan Gupta, the another Director of the lender company has already deposed before the revenue authorities confirming the loan which the revenue could not dispute or found to be incorrect. The source of the amount lent is also proved and also the source of source to the extent that the assessee received from HIPL who in turn received from VNPL, who in turn received the money from Dev Priya Products Ltd. All the parties have filed their confirmations regarding the fact that the amounts have been given as loan.

10. Thus, keeping in view that fact that sources have been proved upto three stages backwards, the identity, genuineness and creditworthiness has been established, the revenue could not prove the case that any unaccounted money has been

infused into the system, no cash deposits in any bank accounts of all the three parties advancing the loan and their categorical admission of confirming the loan during the remand proceedings, we are of the considered view that the loan received by the assessee cannot be charged to tax u/s 68 of the Act in the absence of any contrary evidence brought by the revenue.

11. In the result, the appeal of the assessee is allowed.  
Order pronounced in the Open Court on 05/02/2020.

Sd/-

**(N. K. Choudhary)**  
**JUDICIAL MEMBER**

**Dated: 05/02/2020**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B.R.R. Kumar)**  
**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**