

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI  
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No.3153/Del/2019  
Assessment Year: 2015-16

Onkar Aggarwal,  
148, Pushpanjli,  
Vikas Marg Extn.,  
Delhi 6 110 092

Vs

ACIT,  
Circle-55(1),  
New Delhi.

PAN: AFNPA0637H

(Appellant)

(Respondent)

Assessee by : Shri K. Sampath, Advocate  
Revenue by : Shri D.S. Yadav, Sr.DR

Date of Hearing : 04.03.2020  
Date of Pronouncement : 13.03.2020

**ORDER**

This appeal filed by the assessee is directed against the order dated 8<sup>th</sup> March, 2019 of the CIT(A)-19, New Delhi, relating to the A.Y. 2015-16.

2. In the grounds, the assessee has challenged the order of the CIT(A) in confirming the addition of Rs.10,55,000/- made by the AO u/s 68 of the IT Act in respect of the loan obtained from the following four parties:-

- i. Isha Agarwal : Rs.1,00,000/-
- ii. Prateek Agarwal : Rs.4,55,000/-
- iii. Rajeev Kumar Sharma : Rs.2,00,000/-
- iv. Devendra Pratap Singh : Rs.3,00,000/-

3. Facts of the case, in brief, are that the assessee is an individual and derives income from salary from the partnership firm, house property, profit from business and income from other sources. He filed his return of income on 31.10.2015 declaring an income of rs.17,89,678/-. The AO, in the order passed u/s 143(3) of the IT Act, made addition of Rs.15,51,254/- being exempt long-term capital gain of Rs.15,51,254/- which has not been challenged by the assessee. Therefore, we are not concerned with the same. However, the AO, in the order passed u/s 143(3), made an addition of Rs.10,55,000/- being the unsecured loans obtained by the assessee from the above persons on the ground that the assessee could not substantiate the credit worthiness of the said persons and the genuineness of the transactions since the lenders were not produced by the assessee before the AO for his examination. In appeal, the Id.CIT(A) upheld the addition made by the AO.

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

5. The Id. Counsel for the assessee strongly challenged the order of the CIT(A) confirming the addition made by the AO. Referring to page 14-17 of the paper book, he submitted that the assessee has furnished the details of Ms Isha Agarwal, daughter of the assessee by furnishing the bank statement, confirmation letter and copy of income-tax return showing a taxable income of Rs.7,26,590/-. Since Ms Isha Agarwal is the daughter of the assessee and has given a loan of Rs.1 lakh only to the assessee and has furnished sufficient details to establish her identity and

credit worthiness, therefore, the addition made by the AO and sustained by the CIT(A) should be deleted.

6. So far as the amount of Rs.4,55,000/- from Shri Prateek Agarwal is concerned, the Id. Counsel drew the attention of the Bench to paper book pages 18-25 and submitted that Shri Prateek Agarwal has given two cheques of Rs.4,05,000/- and Rs.50,000/- on 2<sup>nd</sup> May, 2014 and 7<sup>th</sup> May, 2014, respectively. The assessee has furnished the bank account, copy of income-tax return declaring the total income at Rs.2,79,310/-, confirmation, etc., during the course of assessment proceedings. He had sufficient balance in his bank account to explain the loan and, therefore, the addition should not have been confirmed by the CIT(A) when the assessee has proved the identity and credit worthiness of the loan creditor and genuineness of the transaction.

7. Similarly, in the case of Shri Rajeev Kumar Sharma, the Id. Counsel for the assessee, referring to paper book pages 26-32, submitted that the assessee has received two loan of Rs.40,000/- and Rs.1,60,000/- on 12.09.2014 and 24.12.2014 and to prove the identity and credit worthiness of the loan creditor and genuineness of the transaction he had filed the copy of income-tax return for A.Y. 2015-16 showing the total income at Rs.2,79,310/- after various deductions, copy of bank account, confirmation letter, etc.

8. Similarly, in the case of Devendra Pratap Singh, the assessee has received Rs.3 lakhs, i.e., Rs.1 lakh each on three different days and to substantiate the

identity and credit worthiness of the said loan creditor, the assessee has filed the requisite documents such as copy of bank statement, copy of income-tax return declaring total income at Rs.3,01,630/-, bank account, confirmation letter, etc. He submitted that merely because the loan creditors were not produced before the AO, the same cannot be a ground to make the addition especially when the assessee has taken loans from two family members and two close friends for his business purposes and has furnished all the requisite details before the AO who are all income-tax assesses having sufficient source of income to advance the loan.

9. The Id. DR, on the other hand, heavily relied on the orders of the AO and the CIT(A) and submitted that the assessee, by not producing the loan creditors before the AO for his examination, has not discharged the onus cast on him in terms of the ingredients of section 68 of the Act. Therefore, the Id.CIT(A) was fully justified in sustaining the addition. In his alternate contention, he submitted that he has no objection for restoring the issue to the file of the AO if the assessee is in a position to produce the above loan creditors for his examination.

10. I have considered the rival arguments made by both the sides and perused the orders of the AO, CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the assessee, in the instant case has taken a loan of Rs.10,55,000/- from the following four persons the details of which are as under:-

i. Isha Agarwal : Rs.1,00,000/-

- ii. Prateek Agarwal : Rs.4,55,000/-
- iii. Rajeev Kumar Sharma : Rs.2,00,000/-
- iv. Devendra Pratap Singh : Rs.3,00,000/-

11. While Ms Isha Agarwal is the daughter of the assessee, Shri Devendra Pratap Singh is a close relative. However, Shri Prateek Agarwal and Shri Rajeev Kumar Sharma are close friends as stated by the Id. Counsel for the assessee. A perusal of the details furnished by the assessee shows that all the four persons are income-tax assesses, have filed their income-tax return for the impugned assessment year, filed their confirmations, bank statements, copy of income-tax returns, etc. before the AO. No doubt, the assessee should have produced the above four persons before the AO for his examination to verify the identity and credit worthiness of the loan creditors and genuineness of the transaction. However, considering the fact that Ms Isha Agarwal is the daughter of the assessee and is filing her return of income showing substantial income therefore to extend a loan of Rs.1 lakh does not raise any suspicion and, therefore, the same is directed to be deleted.

12. Similarly, in the case of Shri Devendra Pratap Singh, the nephew of the assessee, a perusal of the documents placed at paper book pages 33-38 shows that for the A.Y. 2015-16, he has declared the total income at Rs.3,01,630/- and has sufficient bank balance after extending the loan. Even after giving the loan he is having sufficient cash balance of more than Rs.1 lakh, therefore, considering the

totality of the facts of the case, I do not have any doubt regarding the credit worthiness of Shri Devendra Pratap Singh and, therefore, the addition made by the AO and sustained by the CIT(A) is directed to be deleted.

13. Similarly, in the case of Shri Rajeev Kumar Sharma, a perusal of the copy of the income-tax return shows that he has declared a taxable income of Rs.3,14,630/- after claiming various deductions and has sufficient bank balance to substantiate the loan of Rs.2 lakh. I, therefore, set aside the order of the CIT(A) and direct the AO to delete the addition.

14. However, in the case of Shri Prateek Agarwal, a perusal of the income-tax return shows that he has declared an income of Rs.2,79,310/- only whereas he has extended a loan of Rs.4,55,000/-. Since his income is not substantial so as to extend a loan of Rs.4,55,000/-, therefore, considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue regarding the loan of Rs.4,55,000/- obtained from Shri Prateek Agarwal to the file of the AO with a direction to give one opportunity to the assessee to produce Shri Prateek Agarwal before him and substantiate the credit worthiness of the said person. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

15. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 13.03.2020.

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

Dated: 13<sup>th</sup> March, 2020.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi