

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

Before Ms. Sushma Chowla, Vice President

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

(E-Court Module)

ITA No. 2862/Del/2017 : Asstt. Year : 2012-13

Bikram Singh, Prop.M/s Lovelin Enterprise, 8/34, Mehram Nagar, New Delhi-110037	Vs	DCIT, Circle-21(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ABKPS5232P		

**Assessee by : Sh. C. S. Agarwal, Sr. Adv.
Revenue by : Ms. Rakhi Vimal, Sr. DR**

Date of Hearing: 16.07.2020

Date of Pronouncement: 17.07.2020

ORDER

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

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-7, New Delhi dated 29.03.2017.

2. Following grounds have been raised by the assessee:

"1. That the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 1,50,00,000/-, a sum received as loan from Shri Joginder, merely because it had been inadvertently credited in the books of accounts in the name of Shri Birender.

2. That the learned CIT(A) has overlooked that Shri Birender was an employee of the assessee and the accountant mistakenly instead of crediting the credit, name of the creditor i.e. Shri Joginder, (despite the fact undisputedly the amount was received by an

account payee cheques from Shri Joginder who happened to be the real brother of Shri Birender) has held that the appellant has unsuccessfully tried to weave a new story to explain the impugned transaction. Such a finding is wholly erroneous and is arbitrary.

3. That the learned CIT(A) has failed to appreciate the aforesaid sum of Rs. 1,50,00,000/- was received from the joint account of Shri Joginder and Smt. Krishna Devi, (mother of Shri Joginder) through account payee cheques and as such in view of an unimpeachable evidence, the finding recorded is apparently misconceived and is arbitrary.

4. That the learned CIT(A) has failed to appreciate that no adverse inference could be drawn to hold the credit remained as unexplained which could be drawn from the statement of Shri Birender (without even providing a copy thereof) and producing him for cross examination and further the learned CIT (A) has failed to appreciate that the statement has been selectively read which could enable him to draw an adverse inference.

5. That the learned CIT(A) has further overlooked that the creditor from whose bank account the amount was received as a loan namely Shri Joginder was produced who was also examined by the CIT(A) and that he had duly confirmed of having provided the loan which sum was received by him from Land Acquisition Collector, Gurgaon on acquisition of his land and also on realization from saving bond showing maturity amount of Rs. 3 crores on 29.03.2009.

6. The findings of the learned CIT(A) because the creditor was not assessed to tax and by merely furnishing of copy of aadhar number and PAN card, the creditworthiness and genuineness of the transaction has not been established, is by overlooking the evidence furnished i.e. the source of the credit in the account of creditor as also the confirmation of the creditor, who had personally appeared and deposed to the effect of having

provided a loan to the assessee through account payee cheque.

7. That the finding recorded by the learned CIT(A) in para 4.6 that the affidavits filed of Shri. Joginder Singh and Smt. Krishna Devi are self serving documents is misconceived both in law and on facts and further is in disregard of the fact that, the affidavit filed was of the creditor (was in the nature of confirmation) and had been admitted as an additional evidence under Rule 46A of the IT Rules, which had been supported by documentary evidences [Page of PB filed before the learned CIT(A)] in support that the amounts advanced were out of the bank balances and represented compensation received as well as maturity of bond as was duly reflected in the bank account of the creditor.

8. That the learned CIT(A) has further erred in sustaining the addition on the basis of the judgment in the case of CIT vs. Focus Exports Pvt. Ltd., CIT -II vs. MAF Academy Pvt. Ltd. and in the case of Sumati Dayal vs. CIT, which have absolutely no application to the facts of the instant case.

9. The findings of the CIT(A) that the assessee has not provided satisfactory explanation is misconceived both on facts and in law and overlooks the factual substratum of the case and material on record."

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

4. The assessee received loan from Smt. Krishna Devi mother of Sh. Joginder who is a brother of Sh. Birender. Sh. Birender is working as an accountant with the assessee. The assessee, with regard to the loan received from Smt. Krishna Devi, has wrongly entered the name of Sh. Birender in the balance sheet instead of Smt. Krishna Devi. This mistake of entering the name of Sh. Birender instead of Smt. Krishna Devi has been made because

the cheque of Smt. Krishna Devi has been handed over by Sh. Birender to the assessee. During the assessment proceedings, the AO enquired with Sh. Birender who feigned ignorance of lending any loan to the assessee. Before the revenue authorities, it was submitted time and again that the amount has been given by Smt. Krishna Devi mother of Sh. Virender. However, the revenue authorities did not heed to the submission of the assessee and held it is concocted story and made addition u/s 68 of the Income Tax Act, 1961.

5. The Tribunal in the interest of justice has gone through the bank statements of the assessee as well as the purported lender namely, Smt. Krishna Devi. We find that Smt. Krishna Devi received money on account of land acquisition which have been kept as FDRs and on maturity, the amounts have been given as loan to the assessee. The receipt of money by the assessee is reflected in the bank statement of the Prop. concern of the assessee namely, M/s Lovelin Enterprises, OBC A/c No. 00295010000220 on 16.03.2012, Cheque No. 20276, the corresponding entry is reflected in the bank statement of Smt. Krishna Devi A/c No. 2100502307 maintained in Gurgaon Gramin Bank. Hence, the amounts received by the assessee and the sources of the lender have been undisputedly proved. The revenue has declined to allow the assessee to correct the error in the entering the name of the party and treated the same as a fictional fairy-tale.

6. Since, the bank statements of the assessee has been filed by the order of the bench, in the interest of justice, the revenue is given the liberty to obtain the official bank statement for

verification of the entries for its authenticity from their end and approach the Tribunal in case of any discrepancy.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 17/07/2020.

Sd/-

(Sushma Chowla)
Vice President

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 17/07/2020

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR