

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.4332/Del/2015  
Assessment Year: 2010-11

Gayatri Seva Sansthan,  
155, G.T. Road,  
Panchwati,  
Ghaziabad.

Vs Addl. CIT,  
Range-1,  
Ghaziabad.

PAN: AAATG1960H

(Appellant)

(Respondent)

|                       |   |  |
|-----------------------|---|--|
| Assessee by           | : | Shri Ajay Vohra, Sr. Advocate,<br>Shri Rohit Jain, Advocate &<br>Ms Deepashree Rao, CA |
| Revenue by            | : | Ms Rakhi Vimal, Sr. DR   |
| Date of Hearing       | : | 30.07.2020   |
| Date of Pronouncement | : | 18.08.2020   |

ORDER

PER R.K. PANDA, AM:

This is an appeal filed by the assessee against the order dated 9<sup>th</sup> March, 2015 passed by the CIT(A), Muzaffarnagar relating to the A.Y. 2010-11.

2. Facts of the case, in brief, are that the assessee is a society engaged in the business of manufacturing of soap. It filed its return of income on 31<sup>st</sup> August, 2010 declaring the total income at Rs.9,84,900/-. During the course of assessment

proceedings, the AO noted from the balance sheet that there was an increase of Rs.1,88,25,151/- during the year under consideration which consists of Rs.90 lakhs received by the Society from M/s Baldev Promoters Pvt. Ltd., B-15, 2<sup>nd</sup> Floor, Main Road, Shalimar Village, Delhi. He asked the assessee to prove the identity and credit worthiness of the loan creditor and genuineness of the transactions. He conducted enquiries with regard to the existence of M/s Baldev Promoters Pvt. Ltd., at the given address. However, the Inspector reported that Shri Ghanshyam Minocha, resident of ground floor, B-15, Shalimar Village, informed that there was some tenant before two years on the address and he has vacated the premises around two years ago. The AO, therefore, in order to verify the existence of the company issued summons u/s 131(1) to the Branch Manager, Axis Bank, Shakti Nagar, New Delhi, requiring him to furnish the following documents:-

- i) Photocopy of account opening form of M/s Baldev Promoters Pvt. Ltd. along with all enclosures attached while opening of account;
- ii) Details of transfer account from where the money has been credited/transferred in the above referred bank account; and
- iii) If the concerned account is maintained in your bank then complete copy of bank account from the date of opening to till date, else photocopy of cheque along with complete address and account statement.

3. The Branch Manager supplied the information which revealed that the account of M/s Baldev Promoters Pvt. Ltd., was opened by Shri Gulab Chand

Verma, director of the company M/s Baldev Promoters Pvt. Ltd. The photograph affixed on the application form for opening the bank account of Shri Gulab Chand Verma was altogether different from that given on Election Commission Identity Card. The AO confronted the above to the assessee and asked the assessee to produce the director with evidence that he is the director along with his personal return, assessment order of M/s Baldev Promoters Pvt. Ltd. as on date of his becoming the director with proof, ID proof, electricity bills of the company, agreement copy of rental premises and annexure to balance sheet, etc. On the date fixed, i.e., on 26<sup>th</sup> March, 2013, the assessee society produced one Shri Pratap Singh Negi and his statement on oath was recorded. He stated that he is an employee of Baldev Promoters Pvt. Ltd., and joined the company only four or five months ago. In his statement, he denied of having any appointment letter or ID from the said company. On being asked by the AO to explain as to whether he knows Shri Gulab Chand Verma, he stated in the negative. On being asked by the AO to prove the credit worthiness of Shri Gulab Chand Verma, Shri Pratap Singh Negi expressed his inability. Since the company failed to produce the director and the assessee also failed to furnish the personal return of the director, electricity bill, rent agreement and all other annexures of balance sheet, etc., the AO disbelieved the investment made by M/s Baldev Promoters Pvt. Ltd. While doing so, he further noted that the income of M/s Baldev Promoters Pvt. Ltd., for A.Y. 2008-09 was only Rs.12,300/-. The AO further doubted the genuineness of the company on account of the following:-

- (i) There are frequent transfers of money in the bank account of the company.
- (ii) The director who is maintaining the bank account is not signing the ITR of the company in as much as the confirmation has been given by any other person with regard to advancing of the loan.
- (iii) Neither the Managing director Sh. Gulab Chand Verma has been produced nor his creditworthiness of becoming a director in the company has been established. Even the copy of ITR of Sh. Verma or the current Director has not been furnished.
- (iv) The assessee failed to furnish the annexures of the balance sheet showing the investments of the company M/s Baldev Promoters Pvt. Ltd.
- (v) A perusal of the balance sheet of M/s Baldev Promoters Pvt. Ltd. reveals that the company has shown loans and advances recoverable in cash or kind of Rs.4,98,18,357/- which includes itself Rs. 90,00,000/- alleged to be advanced to the assessee company but the taxes paid by M/s Baldev Promoters Private Ltd, by way of TDS are only Rs. 2,00,476/- which establishes that the company is not charging the interest on the loans and advances given to other parties/companies.-
- (vi) The assessee company has not been able even to furnish the rate of interest payable on the unsecured loans of M/s Baldev Promoters Pvt. Ltd. loans. A perusal of the annexures of the balance sheet of the assessee society shows maximum outstanding at any time to M/s Baldev Promotes at Rs,

93,03,760/- which reflects that the assessee society has paid interest of Rs. 3,03,760./- on unsecured loans of Rs. 90 lakhs to Baldev Promoters Ltd., whereas the interest even @ 10% on the unsecured loans works out to Rs. 4,25,000/-. The interest of Rs. 3,03,760/- is shown to payable.

4. In view of the above, the AO held that M/s Baldev Promoters Pvt. Ltd. is not a genuine company and is merely an entry provider and the assessee Trust failed to prove the creditworthiness of Mr. Gulab Chand Verma who is the Managing Director and is maintaining the bank account of the company. Accordingly, the AO made addition of Rs.90 lakhs u/s 68 of the IT Act.

5. The AO further noted that the assessee society has also shown unsecured loan of Rs.25 lakhs from one Shri Raju Khan. Since the assessee failed to prove the identity and credit worthiness of Shri Raju Khan and also has not provided PAN of Shri Raju Khan, the AO conducted his own enquiries and found that no such person was found at the address given. Further, the assessee has not paid any interest to the lender on the loan obtained. Rejecting various explanations given by the assessee and observing that the assessee failed to prove the identity and creditworthiness of the loan creditor and the genuineness of the transaction, he made an addition of Rs.25 lakh to the total income of the assessee by invoking the provisions of section 68 of the Act.

6. In appeal, the Id.CIT(A) sustained the addition made by the AO.

7. Aggrieved with such order, the assessee is in appeal before the Tribunal raising the following grounds:-

1. That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in assessing the income of the appellant at Rs. 1,24,84,900 as against income of Rs.9,84,900 declared by the appellant.

2. That the CIT(A) erred on facts and in law in not admitting additional evidences filed by the appellant under Rule 46A of the Income Tax Rules, 1962 (the Rules), which were extremely crucial for adjudication of the issues raised in the appeal.

3. That the CIT(A) erred on facts and in law in confirming the addition of Rs.90,00,000 made by the assessing officer, being unsecured loan received from M/s. Baldev Promoters Pvt Ltd., as alleged unexplained cash credit under section 68 of the Income Tax Act, 1961 (the Act).

3.1 That the CIT(A) erred on facts and in law in holding that the appellant was not able to establish identity and creditworthiness of the creditor and genuineness of the transaction, in total disregard of the contemporaneous evidences filed by the appellant.

3.2 That the CIT(A) erred on facts and in law in affirming the action of the assessing officer in conducting and relying upon ex-parte enquires under section 131(1) of the Act.

4. That the CIT(A) erred on facts and in law in confirming the addition of Rs.25,00,000 made by the assessing officer, being unsecured loan received from Sh. Raju Khan, as alleged unexplained cash credit under section 68 of the Act.

4.1 That the CIT(A) erred on facts and in law in holding that the appellant was not able to establish identity and creditworthiness of the creditor and genuineness of the transaction, in total disregard of the contemporaneous evidences filed by the appellant.

4.2 That the CIT(A) erred on facts and in law in affirming the action of the assessing officer in conducting and relying upon-ex-parte enquires under section 131(1) of the Act.

5. That the CIT(A) erred in confirming levy of interest under sections 234B and 234C of the Act.

The appellant craves leave to add, amend, alter or vary the above grounds of appeal at or before the time of hearing.

8. The Id. Counsel for the assessee submitted that the assessee has obtained a loan of Rs.1.15 crores from M/s Baldev Promoters Pvt. Ltd., of Rs.90 lakhs and from Raju Khan of Rs.25 lakhs for the purpose of its business. Those loans were subsequently repaid in the subsequent years. He submitted that the primary/initial onus to explain the nature and sources of amounts found credited in the books of the assessee was substantiated before the AO by filing various details. In the case of the loan from M/s Baldev Promoters Pvt. Ltd., the amount was repaid in financial year 2014-15 and the assessee has also paid interest aggregating Rs.6,75,000/- @ 15% per annum on such loans. The assessee, to substantiate the identity and credit worthiness of the loan creditor and genuineness of the transaction, has filed the copy of acknowledgement of return of income of M/s Baldev Promoters Pvt. Ltd., for the A.Y. 2008-09 to 2012-13, copy of audited accounts for the F.Y. 2007-08 to 2011-12, the list of directors of M/s Baldev Promoters Pvt. Ltd., copy of loan confirmation of the above company, relevant extracts of bank statement of the above company and copy of Form-16A in support of tax deducted on the interest paid on the loan. He submitted that although the AO had issued summons u/s 131(1) of the Act dated 31<sup>st</sup> December, 2012 to M/s Baldev Promoters Pvt. Ltd., directing for the personal attendance, however, the said notice nowhere specifically required personal attendance of the director of the said company. He submitted that in response to the aforesaid summon, Mr. Chandra Mohan Negi, employee of the loan creditor had appeared before the AO whose statement was recorded. Further, summon issued by the

Assessing Officer u/s 131 of the Act to the bank of the lender M/s Baldev Promoters Pvt. Ltd., was duly responded by the bank by furnishing the requisite details as asked by him. He submitted that the assessee has successfully discharged its initial onus in terms of section 61 of the Act in so far as the identity and credit worthiness of the loan creditor and genuineness of the transaction in respect of M/s Baldev Promoters Pvt. Ltd. He submitted that mismatch if any in the photograph of Mr. Gulab Chand Verma, has no correlation whatsoever with the loan transaction undertaken by the assessee. He submitted that Shri Gulab Chand Verma was the earlier/initial director and was no longer associated with the company w.e.f. 26<sup>th</sup> March, 2010 after his resignation as a director. So far as the allegation of the AO that there was frequent transfer of the money in the bank account of M/s Baldev Promoters Pvt. Ltd., is concerned, he submitted that the credit entries in the bank account reflected only regular business transactions undertaken by the company and are not in the nature of any cash deposit. So far as the allegation of the AO that the director who is maintaining the bank account is not signing the income-tax returns of the company nor has signed the confirmation letter furnished in respect of the loan is concerned, he submitted that after the resignation of Shri Gulab Chand Verma w.e.f. 26<sup>th</sup> March, 2010, the income-tax return was signed by Krishna Kumar Sharma, who was one of the directors of the said company and subsequent to his resignation on 10<sup>th</sup> December, 2010 Shri Arvind Kumar Modi has signed the income-tax return for A.Y. 2011-12. So far as the allegation of the AO that neither the Managing Director Shri Gulab Chand

Verma was produced nor his credit worthiness was established and that the ITR of Shri Verma has not been furnished is concerned, he submitted that there is no requirement in law to establish the credit worthiness of the directors of the company from whom such loan has been availed.

9. So far as the allegation of the AO that the assessee failed to furnish the annexures of the balance sheet showing the loan advanced to the assessee company is concerned, he submitted copy of audited accounts of M/s Baldev Promoters Pvt. Ltd. were produced during the course of proceedings before the CIT(A). The appellant had filed as additional evidence, copy of balance sheet alongwith with schedules of M/s Baldev Promoters Pvt. Ltd for the financial year 2009-10, which separately reflected the amount of loan advanced to the appellant during the said year. That apart, no addition can be made under section 68 of the Act only on the presumption that loan was not found to be reflected in balance sheet of lender. For the above proposition, he relied on the decision of the Honøble Gujaat High Court in the case **PCIT vs. Bhanuprasad D Trivedi (HUF): 87 taxmann.com 137 (Guj)** and submitted that the SLP filed by the Revenue was dismissed by the apex court.

10. So far as the allegation that the company was not charging interest on the advance is concerned, he submitted that the assessee has paid interest of Rs.6,75,000/- during the relevant assessment year which is apparent from the Form 16A filed for the said year. Further, the company, M/s Baldev Promoters

Pvt. Ltd. has declared substantial interest income since A.Y. 2010-11 onwards which has only been increasing on a year to year basis.

11. So far as the allegation of the AO that the company has reported meagre income in its income tax returns is concerned, the Id. Counsel for the assessee relied on various decisions and submitted that so long as the lender has sufficient sources at his disposal, meagre income is not relevant.

12. So far as the allegation that Mr. Pratap Singh Negi, the employee of M/s Baldev Promoters Pvt. Ltd. was not aware of Shri Gulab Chand Verma and is not aware whether Mr. Verma is assessed to tax or not is concerned, he submitted that this is totally irrelevant since the employee joined the company only recently whereas Shri Gulab Chand Verma resigned much earlier in March, 2010. Referring to the order of the CIT(A), he submitted that the Id.CIT(A), without considering the contemporaneous documents filed before him proceeded to confirm the addition made by the AO by incorrectly relying on the decision of the Honorable Delhi High Court in the case of CIT vs. Nova Promoters & Finlease (P) Ltd., 342 ITR 169 and CIT vs. Empire Builtech Pvt. Ltd., 366 ITR 110 although the facts of those cases were completely distinguishable and different from the facts of the instant case. He accordingly submitted that since the assessee has discharged the initial onus cast on it by proving the identity and credit worthiness of M/s Baldev Promoters Pvt. Ltd. and the genuineness of the transaction, the

addition of Rs.90 lakhs made by the AO u/s 68 of the act and which has been confirmed by the CIT(A) should be deleted.

13. So far as the loan obtained from Shri Raju Khan is concerned, the Id. Counsel for the assessee submitted that since the assessee was not provided sufficient time to provide documents in support of the above loan transaction, the assessee during the course of appellate proceedings, requested the Id.CIT(A) to admit the following additional evidences:-

- i) Copy of affidavit of Mr. Raju Khan confirming loan given to the appellant; and
- ii) Copy of purchase deed executed by Mr. Raju Khan, evidencing the source of funds utilized for advancing loan to the appellant.

14. He submitted that since these additional evidences are crucial to the disposal of the appeal, the Id. CIT(A) should have admitted these additional evidences and decided the issue. For the above proposition, he relied on the decision of the Honøble Delhi High Court in the case of CIT vs. Virgin Securities & Credit (P) Ltd., 332 ITR 396 (Del).

15. So far as the allegation of the AO that the assessee failed to establish the identity and credit worthiness of Mr. Raju Khan is concerned, he submitted that the assessee had filed copy of confirmation and the response from the bank providing copy of PAN and bank statement which clearly establishes the identity and credit worthiness of Mr. Raju Khan. Further, the AO himself has observed in the

assessment order that there are no cash deposits in the bank account and Mr. Raju Khan also maintains another account with PNB Bank, which again corroborates his identity and credit worthiness.

16. So far as the allegation of the AO that the PAN of Mr. Raju Kha was not provided and complete copy of bank statement was not furnished, he submitted that the complete copies of PAN and bank statements were provided to the AO. So far as the allegation of the AO that Shri Raju Khan was not found at the said address is concerned, he submitted that the details of such enquiry were not shared/provided to the assessee. As regards the allegation that the bank account of Mr. Raju Khan was closed after undertaking loan transaction is concerned, he submitted that no adverse inference can be drawn against the appellant merely because the account from which loan amount was disbursed was subsequently closed. He submitted that the loan was repaid in F.Y. 2012-13 through normal banking channel. Relying on various decisions, he submitted that the addition made by the AO and sustained by the CIT(A) should be deleted.

17. The ld. DR, on the other hand, heavily relied on the order of the AO and the CIT(A). He submitted that for accepting any cash credit u/s 68 of the Act, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the identity and credit worthiness of the loan creditor and genuineness of the transaction. He submitted that the assessee, in the instant case had not filed sufficient documents to substantiate successfully the identity and credit worthiness

of the loan creditor and the genuineness of the transaction. Referring to various observations made by the AO, the Id. DR submitted that the AO had brought on record elaborately the non-existence of the loan creditors and their meagre income/no income, to extend such huge loan to the assessee society. He submitted that the Id. CIT(A) has given justifiable reasons while sustaining the additions made by the AO and not admitting the additional evidences filed in respect of Shri Raju Khan. He accordingly submitted that the order of the CIT(A) be upheld and the grounds raised by the assessee be dismissed.

18. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, has accepted a loan of Rs.90 lakhs from one M/s Baldev Promoters Pvt. Ltd., and Rs.25 lakhs from Shri Raju Khan during the year under consideration. We find, the AO invoking the provisions of section 68 made addition of Rs.1.15 crores being loan obtained from the above two persons. So far as the loan obtained from M/s Baldev Promoters Pvt. Ltd., is concerned, it is the case of the AO that the photograph of Shri Gulab Chand Verma, the Managing Director of the company, as appearing in the bank statement is different from the photograph appearing in the voter I. Card. Further Shri Gulab Chand Verma was never produced nor his credit worthiness for becoming a director in the said company was established. The company does not have sufficient income to

advance such huge loan and further, there are frequent transfer of money in the bank account of Baldev Promoters Pvt. Ltd. The assessee also failed to produce the director of M/s Baldev Promoters Pvt. Ltd., to establish the credit worthiness of the said company and genuineness of the transaction since the company was not found at the given address. It was also his allegation that the company has not paid any interest on the loan obtained from M/s Baldev Promoters Pvt. Ltd. Similarly, in the case of Raju Khan, it was his allegation that the assessee failed to establish the identity and credit worthiness of Shri Raju Khan, and his PAN No. and complete bank statement were not filed. Further, Mr. Raju Khan, was not found at the given address. We find, the Id. CIT(A) sustained the addition made by the AO in both the cases. It is the submission of the Id. Counsel that it has filed contemporaneous documents to prove the identity and credit worthiness of the loan creditors and genuineness of the transaction and, therefore, the same should have been accepted and no addition should have been made. It is also his submission that in the case of Shri Raju Khan, certain additional evidences were filed before the CIT(A) and the CIT(A) without accepting those vital documents which are crucial for deciding the issue sustained the addition.

19. It is the settled proposition of law that for accepting any cash credit as genuine, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the identity and credit worthiness of the loan creditor and genuineness of the transaction. In the instant case, no doubt, the

assessee has filed some papers/documents before the AO. However, the assessee company failed to produce the directors of M/s Baldev Promoters Pvt. Ltd., and Shri Raju Khan. The source of Shri Raju Khan to extend such huge amount was also not substantiated. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the AO with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the identity and credit worthiness of the loan creditors and the genuineness of the transaction. The assessee is hereby directed to produce the Managing Director/Director of M/s Baldev Promoters Pvt. Ltd. and Shri Raju Khan before the AO for his examination. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

The Order pronounced in the open court on 18.08.2020.

Sd/-

(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 18<sup>th</sup> August, 2020.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi