

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R KUMAR, ACCOUNTANT MEMBER

ITA.No.4127/Del./2017
Assessment Year 2010-2011

Society for Institute for Professional Studies, Ghaziabad. PAN AAEAS2356J C/o. Sh Akhilesh Kumar, Advocate, Chamber No.206-207, Ansal "Satyam", RDC Raj Nagar, Ghaziabad.	vs.	The JCIT, Range – 1, Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Akhilesh Kumar, Advocate
For Revenue :	Shri Prakaash Dubey, Sr. DR

Date of Hearing :	24.02.2021
Date of Pronouncement :	02.03.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Muzaffarnagar, Dated 28.03.2017, for the A.Y. 2010-2011, on the following grounds :

1. That learned CIT(A) grossly erred in sustaining addition of Rs. 95 lakhs , being loans from three parties supported with ITR, confirmation, B/s proving huge funds/disclosing loans and bank a/c of said parties etc. and even after verifying that repayment of loans and/or interest payment is accepted by revenue in subsequent years, which is against the ratio of decision of Hon'ble jurisdictional High Court/other Courts etc. some of which are mentioned on page 34 of order.
2. That in addition to above, ld. CIT(A) failed to appreciate that the alleged enquiries about the address of director etc. are wholly irrelevant beside said uncontroverted enquiries were taken up half decade before without any opportunity to cross etc. and there is no material against the mass evidences/ material placed on record and Id. AO failed to discharge the shifted onus lay upon him.
3. That learned CIT(A) grossly erred in sustaining addition of Rs.16.28 lakhs , being loans from four

parties supported with ITR, confirmation, B/s and bank a/c of said parties and even after verifying repayment of loan in case of one party while other parties confirmed the loans in response to direct enquiries conducted by AO and all the parties are assessed at Ghaziabad itself.

- 4. That learned CIT(A) has recorded wrong findings in sustaining the additions that assessee has failed to discharge the shifted onus lay upon, identities/ creditworthiness etc. of parties not proved (para 15), verification latter remained uncomplined (Page41) identity in dispute (Page 42) etc. by wrongly applying the ration of the cases of Sumati Dayal/Nova promoters etc.*
- 5. That without prejudice to above and without any dilution in above grounds but in alternative, learned CIT(A) failed to follow the ratio of jurisdictional/other courts holding that provisions of s. 68 has no applicability where deemed income u/s 68 is applied for charitable purposes .*

6. That in addition to above, learned CIT(A) failed to appreciate that loans were taken within 2-3 months of constituting the society, hence neither there was any possibility to have earned so much of income nor assessee u/s 12A had any advantage to reflect income as loans and failed to follow the ration of jurisdictional/other courts on the issue.”

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. Briefly the facts of the case are that assessee society is registered with the Registrar of Society, Uttar Pradesh vide letter Dated 09.07.2009. The society has been granted Registration under section 12AA of I.T. Act, 1961 by the Ld. Commissioner of Income Tax, Ghaziabad vide order Dated 02.07.2012. The assessee society has also been granted exemption under section 80G of I.T. Act, 1961 by the Ld. Commissioner of Income Tax, Ghaziabad vide order Dated 02.07.2012 for the period from 18.01.2011. The

assessee filed return of income declaring NIL income. The case was selected for scrutiny assessment and requisite details were called for. The assessee produced books of account and other details which have been test-checked by the A.O. During the assessment year under appeal, assessee society has received an amount of Rs.1,25,78,000/- on account of unsecured loans from the following parties.

Sl.No.	Name of the lender	Amount
1	M/s Diwakar Commercial Pvt.	30,00,000/-
2	Shri Rajender Singh	12,00,000/-
3	M/s Ras Raj Marketing Pvt. Ltd.	57,00,000/-,
4	M/s Atoll Vypaar Pvt. Ltd.	8,00,000/-
5	M/s Pranjal Steel Trading Co.	9,50,000/-
6	Shri Pavitra Singh	1,30,000/-
7	Shri Satish Jain	6,78,000/-
8	Shri V.N. Singh	1,20,000/--
	Total	1,25,78,000/-

3.1. The assessee was required to verify the identity, capacity, creditworthiness and genuineness of the transaction. In compliance to the same, assessee filed complete details of the lenders which has been discussed by the A.O. as under.

3.2. M/s. Pranjal Steel Trading Company [Rs.9.50 lakhs]. The assessee has filed copy of ITR for the

assessment year under appeal of Prop. Shri Sachin Goel, which shows return income of Rs.1,70,620/-. The A.O, therefore, noted that capacity and creditworthiness is not proved, therefore, addition was accordingly made.

3.3. Shri Satish Chand Jain [Rs.6.78 lakhs]. The assessee has filed complete details i.e., copy of Bank statement, Confirmation, copy of Income Tax acknowledgement for the assessment year under appeal as well as preceding assessment year along with copy of computation of incomes of both years and balance sheet of the lender as well as Shri Risab Jain and Ms. Vandana Jain. The A.O. noted that as per balance sheet loan was taken in the name of Shri Satish Jain, but above submission would show that it is in the name of Sh. Satish Chand Jain, Shri Risab Jain and Ms. Vandana Jain, and bank statement reveal that this amount is given to the assessee society in cash. The A.O, therefore, noted that creditworthiness of the lender is not proved. The addition is accordingly made.

3.4. M/s. Diwakar Commercial Pvt. Ltd., [Rs.30 lakhs], (2) M/s. Ras Raj Marketing Pvt. Ltd., [Rs.57 lakhs] and (3) M/s. Atoll Vypaar Pvt. Ltd., [Rs.8 lakhs]. The A.O. discussed all the three parties together and noted that address of these companies are given of Kolkata and have one Director Shri Sunil Kumar Gupta having the same address. The screen shot of address, downloaded from Internet was placed on record to show address of M.L. Agarwal & Co. Chartered Accountants is given. Further amount have been given to other societies. Enquiries were also made by the Income Tax Inspector of the O/o. Assessing Officer and found that the said address is not occupied by Shri Sunil Kumar Gupta, Director. The A.O, therefore, treated the same as accommodation entries for all these three concerns and made the addition accordingly. The A.O. also noted that information is given to the concerned A.O. for taking remedial action in these cases. The A.O. accordingly made addition under section 68 of the I.T. Act, 1961 on account of unexplained cash credits of the amount of Rs.1,11,28,000/-.

3.4.1. It may also be noted here that the A.O. while computing the income of the assessee at the end of the assessment order mentioned that fresh computation of income available for application to charitable purposes and after considering the issue in detail, granted benefit of Section 11 of the I.T. Act, 1961. The A.O. in this regard noted that the assessee society was required to apply income of Rs.84,12,596/- during the assessment year under appeal, however, income of Rs.95,39,582/- has been applied for charitable purposes, therefore, accumulation of income is more than 85%. The A.O. accordingly accepted the return of income at NIL by granting benefit of Section 11 of the I.T. Act, 1961 in the case of the assessee. However, addition of Rs.1,11,28,000/- was made on account of unexplained credits under section 68 of the I.T. Act, 1961.

3.5. The assessee challenged the addition before the Ld. CIT(A) and detailed written submissions of the assessee is reproduced in the appellate order in which assessee briefly explained that it has filed confirmation of all the creditors giving their names, addresses and mode of

payment through banking channel and account payee cheques. The assessee also filed copy of ITR of the creditors along with their bank statements and their balance-sheets. No cash was found to have been deposited except in one case of Shri Satish Chand Jain. Whatever enquiry was conducted at the back of assessee, was not confronted to the assessee as regards genuineness of the loans. The loans are verifiable from the bank statement of the assessee as well as of the creditors. The loans were temporary and interest is paid to the creditors and ultimately the loan amount have been returned to the creditors. TDS is also deducted. In subsequent year, scrutiny assessment have been made and A.O. accepted the repayment of loan in those years. It was submitted that merely because Shri Sunil Kumar Gupta is a common Director or having common address is no ground to reject the explanation of assessee. All the creditors are having source to give loan to the assessee and are man of means and their balance-sheets shows their worth to give loan to the assessee. Two loans are taken from the individuals and rest of the

amounts have taken from the corporate entities. All the parties have confirmed giving of loan to the assessee, therefore, assessee proved identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. The assessee relied upon the following decisions in support of the contention that assessee received genuine loans.

1.	CIT vs., Surendra Chand Bansal [2014] 42 taxmann.com 201 (All)
2.	CIT vs., Rahul Vineet Traders [2014] 41 taxmann.com 86 (All.)
3.	DCIT vs., Rohini Builders [2002] 256 ITR 360 (Guj.)
4.	Nemi Chand Kothari vs., CIT & Another [2003] 264 ITR 254 (Gauhati)
5.	CIT vs., Orissa Corporation Pvt. Ltd., [1986] 159 ITR 78 (SC)
6.	Sreelekha Banerjee vs., CIT [1963] 49 ITR 112 (SC).
7.	CIT vs., Diamond Products Limited [2009] 177 Taxman 331 (Del.)
8.	CIT vs., Bharat Engg. & Const. Co. [1972] 83 ITR 187 (SC)

3.6. The assessee also submitted that it is an undisputed fact that assessee is meant for charitable purposes and has utilised the amount of loans for charitable purposes only. Therefore, even if addition is made under section 68 of the I.T. Act, 1961, but, it is exempt while computing the income of assessee under section 11 of

the I.T. Act, 1961 because the amount have been utilised for achieving the objects of the assessee society. In support of his contention, he has relied upon the Judgment of the Hon'ble Karnataka High Court in the case of DIT (Exemptions) vs., Sri Belimatha Mahasamsthan Socio Cultural & Education Trust [2011] 336 ITR 694 (Kar.) and Judgment of Hon'ble Delhi High Court in the case of DIT (Exemptions) vs., Keshav Social & Charitable Foundation [2005] 278 ITR 152 (Del.). The assessee, therefore, prayed that entire addition may be deleted.

3.7. The assessee also filed additional evidences before the Ld. CIT(A) on which remand report from the A.O. was called for. The remand report is reproduced in the appellate order. The assessee also filed rejoinder to the same and submitted that whatever enquiry was conducted with regard to the creditors at the back of the assessee was not confronted to the assessee, therefore, such material cannot be used in evidence against the assessee. The assessee relied upon Judgment of Hon'ble Supreme Court in the case of Kishanchand Chellaram vs., CIT 125 ITR 713 (SC).

3.8. The Ld. CIT(A) considered the issue in detail and examined the facts on record, but, did not accept the explanation of assessee. The Ld. CIT(A) adopted the same reasoning given by the A.O. and also noted that the creditors are not doing any real business, therefore, addition on merit was confirmed. The Ld. CIT(A) as regards application of income under section 11 of the I.T. Act, 1961 also noted that the case Law relied upon by the Learned Counsel for the Assessee, the amounts added were already part of income and expenditure account and assessee declared the same as income. But, in the case of the assessee addition have been made by the A.O. on account of unverifiable loans under section 68 of the I.T. Act, 1961, therefore, such decision cannot be relied upon in favour of the assessee. The Ld. CIT(A) confirmed the addition and dismissed the appeal of assessee.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that it is first year of registration of the assessee society as the assessee society was registered with the

Registrar of Societies, U.P. vide letter Dated 09.07.2009. The assessee has been granted registration under section 12AA of the I.T. Act, 1961 by the CIT, Ghaziabad vide Order Dated 02.07.2012 w.e.f. 23.12.2009 as per directions of the Tribunal. The Registration under section 12AA of the I.T. Act, 1961 is in force in assessment year under appeal, copy of which is filed at page-14 of the PB. He has submitted that in the case of all the creditors assessee filed copy of their ITR, confirmations, bank statements, ledger account and in the case of Company its balance-sheets and list of the loan copies of the same are also filed in the paper book. Copy of the bank account of the assessee was also filed along with copy of the utilization chart to show that the amount in question have been utilised towards the object of the assessee society. All the loans were subjected to interest, on which, TDS has also been deducted and paid. The A.O. allowed deduction of interest on the loans paid in assessment year under appeal. The loans have been paid in subsequent year, the details of which is filed at page-106 of the paper book showing NIL balances later on. Copy of the

assessment order under section 143(3) for A.Y. 2012-2013 is also filed at page-111 of the PB in the case of the assessee in which A.O. has not doubted the repayment of the loans to the above parties. The loans were already returned before the case of the assessee were taken-up for scrutiny assessment. The A.O. has already granted benefit under section 11 of the I.T. Act, 1961 and accepted the NIL returned income. He has submitted that since it was the first year of the existence of the assessee and assessee utilised the entire amount in question towards objects of the assessee society, therefore, assessee could not have earned huge undisclosed income in the first year of its charitable activities, as such, the addition is otherwise also not justified. In support of his contention, he has relied upon Judgment of the Hon'ble Supreme Court in the case of CIT vs., Bharat Engineering & Construction Co. 83 ITR 187 (SC). He has submitted that whatever enquiry was conducted by the A.O. through Income Tax Inspector, was never confronted to the assessee, therefore, report of the Income Tax Inspector cannot be used in evidence against

the assessee. He has further submitted that where assessee applied the amount even considering the impugned amount as income, it was more than 85% of the amount spent by assessee towards object of the assessee society, therefore, no addition could be made against the assessee. In support of his contention, he has relied upon Judgment of the Hon'ble Delhi High Court in the case of DIT (Exemptions) vs., Keshav Social & Charitable Foundation [2005] 278 ITR 152 (Del.) which is affirmed by the Hon'ble Supreme Court reported in 394 ITR 496 (SC).

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that notices issued for examination were not responded by the creditors and even if the amount in question have been utilised towards objects of the assessee society, it would not have any impact on the income of the assessee. The balance-sheet of the creditors are on similar line, therefore, addition have been rightly made by the authorities below.

6. We have considered the rival submissions and perused the material on record. The assessee has taken the loans from the above 05 parties out of which 03 are the Companies. The assessee admittedly filed confirmation of all the creditors, their ITRs, bank statements, ledger accounts and wherever balance-sheets of the companies were prepared have been filed, copies of the same are also filed in the paper book. In the case of Diwakar Commercial Pvt. Ltd., it has shown gross income of Rs.31,82,358/- as per return of income. The creditors have confirmed giving loan to the assessee through banking channel and their bank accounts shows sufficient balance with them to give loan to the assessee. In the balance-sheet of 03 creditors sufficient balances are available to show their net worth to give loan to the assessee. The loans are subject to payment of interest earned and TDS has also been deducted. Details of the TDS are filed at Pages - 114 & 115 of the paper book. The assessee has filed the details to show that all the loan amounts have been utilised towards objects of the assessee society and details are also filed at Paper Book - 106 to

show that loans have been later on returned to the parties. Thus, at the time of scrutiny assessment, all the loans were repaid by the assessee. The Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 360 (Guj.) considering the findings of the Tribunal in which interest have been allowed by the A.O. on loans, therefore, addition on merit of the unexplained loan have been deleted. The view of the Tribunal has been affirmed by the Hon'ble Gujarat High Court. Since in the present case also the interest have been allowed as deduction by the A.O, therefore, A.O. cannot take a different view that loans are unexplained. Moreover, the A.O. in the assessment order while considering these loans separately have mentioned that the information is issued to the concerned A.O. for taking remedial action against the creditors. It would show that all the creditors are assessed to tax and as such their identity cannot be disputed. The A.O. also passed the scrutiny assessment under section 143(3) for subsequent A.Y. 2012-2013 [PB-111] in which A.O. did not doubt the repayment of loans by the assessee to the creditors. Therefore, initial onus upon the assessee to

prove identity of the creditors, their creditworthiness and genuineness of the transaction have been discharged by the assessee. The decisions relied upon by the Learned Counsel for the Assessee before the authorities below clearly supports the explanation of assessee that assessee received genuine loans into the matter which were later on returned to the concerned parties. It may also be noted here that assessee has registration under section 12AA of the Income Tax Act, 1961 which is in force in assessment year under appeal and A.O. has also computed the income of the assessee as per Section 11 of the Income Tax Act, 1961 and accepted the NIL returned income filed by the assessee because the amount more than 85% have been incurred by the assessee towards its objects. Since assessee came into existence in part of the assessment year under appeal and it was the first year of charitable activities conducted by the assessee, therefore, it is highly unbelievable that assessee would earn huge undisclosed income in assessment year under appeal. Thus, no addition could be made against the assessee of such nature in assessment year under appeal

particularly when the nature of the activities of the assessee is admittedly mentioned in the assessment order to run an Educational Institution. In support of the above finding we rely upon the Judgment of the Hon'ble Supreme Court in the case of CIT vs., Bharat Engineering & Construction Co. [1972] 83 ITR 187 (SC) in which it was held as under :

“The assessee, an engineering-construction company, commenced its business in May, 1943. In its accounts there were several cash credit entries in the first year of its business totalling Rs.2,50,000. Though the explanation regarding the cash credit entries was found to be false, the Appellate Tribunal held that these cash credits could not represent the income or profits of the assessee as they were all made very soon after the company commenced its activities :

Held, that the inference drawn from the facts proved was a question of fact and the Tribunal's finding on that question was final. A construction company took time to earn profits and it could not have earned a huge profit

within a few days after the commencement of its business. Hence, it was reasonable to assume that the cash credit entries represented capital receipts though for one reason or another, the assessee had not come out with the true story as regards the source of the receipts.”

6.1. It is well settled Law that assessee need not to prove source of the source. We rely upon the Judgment of the Hon'ble Delhi High Court in the case of Dwarkadhish Investment P. Ltd., [2011] 330 ITR 298 (Del.) (HC), Judgment of Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 360 (Guj) and Judgment of Hon'ble Allahabad High Court in the case of Zafar Ahmed & Co. 30 taxman.com 269 (All.).

6.2. The A.O. entirely on different reasons that there is a common Director in 03 companies and common address disbelieved the explanation of assessee. It may not be relevant criteria to decide the issue under section 68 of the I.T. Act, 1961. While considering the issue under section

68 of the I.T. Act, 1961, the A.O. shall have to consider the identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. Since all the creditors are assessed to tax, therefore, their identity cannot be disputed by the A.O. All the loans are given through banking channel and the creditors have sufficient bank balance in their bank accounts and net worth as per their balance-sheets. Therefore, creditworthiness of the creditors is also not in doubt. Therefore, assessee has been able to prove the genuineness of the transaction in the matter because the amounts in question have been returned subsequently which were subjected to interest and TDS payment on such loans. The assessee has been able to discharge onus under section 68 of the I.T. Act, 1961. However, the A.O. has not brought any evidence against the assessee on record to disbelieve the documentary evidences. Whatever enquiry was conducted through Income Tax Inspector does not appear to have been confronted to the assessee or explanation of assessee have been called for. Therefore, such material cannot be used in evidence against

the assessee. We rely upon Judgment of the Hon'ble Supreme Court in the case of Kishanchand Chellaram vs., CIT 125 ITR 713 (SC). Considering the totality of the facts and circumstances above, we do not find any justification to sustain the addition. In view of the above findings, we set aside the Orders of the authorities below and delete the entire addition. In view of the above, the other contentions raised by the Learned Counsel for the Assessee are left with academic discussion only and we do not propose to decide the same. Accordingly, appeal of the assessee is allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 02nd March, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.