

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.1873/Del/2019
Assessment Year: 2015-16

Yarn Sales Corporation, 4586, 1 st Floor, Mahavir Bazar, Cloth Market, Delhi	Vs.	Income Tax Officer, Ward-47(1), New Delhi
PAN :AAAFY0192M		
(Appellant)		(Respondent)

Appellant by	Sh. Ruchesh Sinha, Advocate Ms. Suman Jain, Advocate
Respondent by	Sh. Toufel Tahir, Sr.DR

Date of hearing	25.05.2022
Date of pronouncement	31.05.2022

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee against order dated 20.12.2018 of learned Commissioner of Income Tax (Appeals)-16, New Delhi, for the assessment year 2015-16.

2. The only effective ground raised by the assessee reads as under:

“1. That the Ld. CIT(A) is erred under the law while confirming addition to the extent of Rs.44,20,000/- u/s 68 of the Act as made by the A.O.”

3. Briefly the facts are, the assessee is a partnership firm. For the assessment year under dispute, the assessee filed its return of income on 20.09.2015 declaring total income of Rs.4,95,480/-. In course of assessment proceeding, while examining the balance-sheet of the assessee the Assessing Officer noticed that during the year under consideration, the assessee has received unsecured loan aggregating to Rs.4,38,53,500/- from various lenders. After examining the details called for including the bank accounts of the lenders, the Assessing Officer observed that loan of Rs.82,98,000/- availed from one Mr. Ritesh Gupta is not genuine, as, he did not have the creditworthiness to advance such loan. Accordingly, he treated it as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. The assessee contested the aforesaid addition before learned Commissioner (Appeals).

4. In course of proceeding before the first appellate authority, the assessee again furnished evidences already furnished before the Assessing Officer and claimed that the loan availed is genuine. On examining the evidences furnished, including two bank accounts of Mr. Ritesh Gupta in

ICICI Bank and HDFC Bank, learned Commissioner (Appeals) accepted loan availed from the concerned person as genuine, except for an amount of Rs.36,65,000/-.

5. As regards the amount of Rs.36,65,000/-, learned Commissioner (Appeals) held that since, such loan transaction is not reflected in the bank account of Sh. Ritesh Gupta, the source remains unexplained, hence, cannot be accepted as genuine. Besides the aforesaid amount of Rs.36,65,000/-, learned Commissioner (Appeals) also upheld the addition of loan of Rs.4,50,000/- received from Sh. Ritesh Gupta, Rs.2,05,000/- from M/s. Adinath Capital Services and further amount of Rs.1,01,265/- received from Sh. Ritesh Gupta.

6. Before us, learned counsel appearing for the assessee submitted, both the Assessing Officer and learned Commissioner (Appeals) have not properly appreciated the evidences submitted by the assessee. He submitted, though, learned Commissioner (Appeals) has stated that she has examined the bank accounts of Sh. Ritesh Gupta held in ICICI Bank and HDFC Bank and the loan transactions of Rs.36,65,000/- is not reflected in the bank account, however, it is not a correct statement of fact. He submitted, learned

Commissioner (Appeals) has completely overlooked the entries made in the bank account held in HDFC Bank, which clearly reflects the loan transaction of Rs.36,65,000/-. In this context, he drew our attention to a copy of the bank account of Sh. Ritesh Gupta in HDFC Bank as submitted in the paper-book. Thus, he submitted, the reasons on which, learned Commissioner (Appeals) has not accepted loan of Rs.36,65,000/- as genuine is unsustainable.

7. As regards the balance loan amount of Rs.7,55,000/-, learned counsel submitted, though, in course of proceeding before the departmental authorities the assessee had furnished various documentary evidences to prove the genuineness of the loan transaction, however, the departmental authorities were not convinced. He submitted, without asking the assessee to submit further documentary evidences, in case, they were required to prove the genuineness of loan transaction, the departmental authorities have treated them as unexplained cash credit. He submitted, post conclusion of proceedings before the departmental authorities, the assessee has been able to gather further evidences to prove the loan transactions. Thus, he sought

permission of the Bench to furnish them as additional evidences. In this context, the assessee has also filed a separate application dated 5th May, 2022 under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 enclosing the additional evidences.

8. Learned Departmental Representative submitted, in case, certain evidences furnished by the assessee were not properly examined and if the assessee wants to furnish further evidences, let the issue be restored back to the Assessing Officer for fresh adjudication.

9. We have considered rival submissions and perused the materials on record. It is evident, though, the Assessing Officer has treated an amount of Rs.82,98,000/-, being loan availed from certain lenders, as unexplained cash credit under section 68 of the Act, however, learned Commissioner (Appeals) has granted partial relief to the assessee by sustaining the addition of Rs.44,20,000/-. It is further evident, the major component of the addition sustained by learned Commissioner (Appeals) is an amount of Rs.36,65,000/-, being loan availed from Sh. Ritesh Gupta. It is observed, while sustaining the aforesaid addition, learned Commissioner (Appeals) has given a factual finding that the transaction relating to loan availed of Rs.36,65,000/- is not

reflected in the bank accounts of Sh. Ritesh Gupta. However, from the materials placed before us, it appears that the aforesaid amount of Rs.36,65,000/-, in fact, is reflected in the bank account of Sh. Ritesh Gupta held in HDFC Bank.

10. Thus, prima facie, it appears, certain facts/evidences brought on record by the assessee have apparently been overlooked by the departmental authorities while sustaining the addition. Even, as regards the balance additions sustained by learned Commissioner (Appeals), materials have been produced before us by way of additional evidence to prove that learned Commissioner (Appeals) did not give sufficient opportunity and the assessee was prevented by sufficient cause from submitting them before learned Commissioner (Appeals). Since, learned Commissioner (Appeals) decided the issue without giving the assessee adequate opportunity, therefore, we admit the additional evidences under rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963.

11. However, considering the fact that the departmental authorities never had an opportunity to examine such evidences, we are of the view that the issue needs to be restored back to the Assessing Officer for fresh adjudication. The Assessing Officer is

directed to examine the bank account of Sh. Ritesh Gupta held in HDFC Bank to find out, whether the loan transaction of Rs.36,65,000/- is reflected in the said bank account. In case, assessee's claim is found to be correct, then there may not be any difficulty in accepting the loan transaction. As regards the balance amount, the Assessing Officer, after verifying the additional evidences furnished by the assessee, may decide the issue in accordance with law.

12. Needless to mention, before deciding the issue the assessee must be afforded reasonable opportunity of being heard. At this stage, we must make it clear, the Assessing Officer in the fresh assessment, in pursuance to our directions, must confine himself to the addition sustained of Rs.44,20,000/- only. Grounds are allowed for statistical purposes.

13. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 31st May, 2022

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 31st May, 2022.

RK/-

Copy forwarded to:

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

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER