

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.541/Lkw/2015
Assessment Year:2012-13

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| Dy.C.I.T., Circle-2, Bareilly. | Vs. | Shri Rajesh Singh Yadav, 488-A, Jasauli, Near S.B.I. Quila Branch, City Station Road, Bareilly. PAN:ABBPY0040N |
| (Appellant) | | (Respondent) |

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| Appellant by | Shri Rakesh Garg, Advocate |
| Respondent by | Shri Pankaj Sachan, D.R. |
| Date of hearing | 02/06/2022 |
| Date of pronouncement | 19/07/2022 |

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the Revenue against the order of learned CIT(A), dated 28/05/2015 pertaining to assessment year 2012-2013. The revised grounds of appeal, including fresh grounds of appeal, filed by the Revenue, are reproduced as under:

REVISED GROUNDS OF APPEAL ALONGWITH NEW GROUNDS OF APPEAL

- "1. *That the order of the Commissioner of Income Tax (Appeals) is erroneous in law and on facts in deleting the addition of Rs.84,40,000/-, rightly made by the Assessing Officer on account of unsecured loans under section 68 of the Income Tax Act, 1961 under the income from other sources.*

2. *That the order of the Commissioner of Income Tax (Appeals) is erroneous in law and on facts in addition of Rs.10,14,987/-, rightly made by the Assessing Officer on account of Sundry Creditors under section 68 of the I.T. Act, 1961 under the head income from the sources.*
3. *That the order of the Commissioner of Income Tax (Appeals) is erroneous in law and on facts in deleting the addition of Rs.1,58,65,000/-, rightly made by the Assessing Officer on account of unexplained investment under section 69 of the I.T. Act, 1961 under the head income from the sources.*
4. *That the order of the Commissioner of Income Tax (Appeals), Bareilly is erroneous in law and on facts may be cancelled and the order of the Assessing Officer may be restored.*
5. *Any ground of appeal may be taken at the time of hearing of appeal.*

Fresh Grounds of appeal

6. *That the Ld. CIT (A) has erred in law while admitting the application of the assessee under rule 46A of the IT Rules for admission of additional evidence.*
7. *That the Ld. CIT (A) has failed to appreciate that the assessee was given various opportunities to file the said evidences which were availed of in the assessment proceeding and the order was passed under section 144."*

2. Learned D. R., at the outset, submitted that assessment in this case was completed u/s 144 of the Act and Assessing Officer has made additions on account of unexplained unsecured loans amounting to Rs.84,40,000/- and further addition on account of unexplained sundry creditors to the tune of Rs.10,14,987/- was made and the Assessing Officer has also made an addition of Rs.1,58,60,000/- on account of unexplained investment. Learned D. R. in this respect invited our attention to the copy of assessment order and also invited our attention to the findings of the Assessing Officer

in this regard. It was submitted that before learned CIT(A), the assessee filed certain additional documents which the learned CIT(A) has wrongly admitted as the assessee was given various opportunities which were not availed of by the assessee and therefore, learned CIT(A) should not have admitted the additional evidences. As regards the merits of the additions, Learned D. R. submitted that since the assessee had not explained the unsecured loans as well as unexplained investment and therefore, the Assessing Officer had rightly made the additions. It was further submitted that during remand proceedings also, the Assessing Officer has held that due to low income level of the lenders, the creditworthiness of the lenders was not proved and therefore, the addition was rightly made u/s 68 of the Act but the learned CIT(A) has deleted the additions without considering the findings of the Assessing Officer and therefore, it was prayed that the order of learned CIT(A) be set aside and that of the Assessing Officer be upheld.

3. Learned counsel for the assessee, on the other hand, submitted that Assessing Officer has completed the assessment u/s 144 of the Act. However, during assessment proceedings the assessee had filed most of the evidences and in this respect our attention was invited to page 3 of the CIT(A)'s order where the learned CIT(A) has mentioned that he had examined the assessment records of the assessee and the contention of the assessee, that most of the evidences were already filed with the Assessing Officer, was found to be correct. It was submitted that during the course of assessment proceedings, the assessee produced various evidences through the ledger of credits and other extracts from the books of account but books of account could not be produced before the Assessing Officer as the computer system of the assessee, on which the books of account had been maintained, had become infected with the virus and there was complete technical snag and that is why the complete data could not be

filed during the assessment proceedings but part details, as and when extracted, were produced before the Assessing Officer and therefore, the application under Rule 46A of the I.T. Rules was filed with the learned CIT(A) and all the remaining evidences were filed before him and learned CIT(A) remanded these evidences to the Assessing Officer for his comments. It was submitted that during remand proceedings, though the Assessing Officer had raised certain reservations regarding creditworthiness of certain lenders but learned CIT(A), in a detailed order, has discussed the creditworthiness of all the lenders and, after discussion, has allowed relief to the assessee. Learned counsel for the assessee further argued that similarly the additions u/s 69 regarding unexplained investment were also deleted by learned CIT(A) on finding the same to be supporting with evidence and were part of the balance sheet of the assessee. Learned counsel for the assessee heavily placed reliance on the order of learned CIT(A) and in view of his arguments it was prayed that the order of learned CIT(A) be upheld.

4. We have heard the rival parties and have gone through the material placed on record. We find that vide revised grounds of appeal, the Department has challenged the admission of additional evidence under Rule 46A of the I.T. Rules. The grievance of the Department is that despite giving a number of opportunities, the assessee did not file complete evidences before the Assessing Officer and therefore, learned CIT(A) should not have admitted the additional evidence under Rule 46A. Regarding the deletion made by learned CIT(A) on account of unsecured loans, Learned D. R. invited our attention to the copy of remand report where the Assessing Officer had held that creditworthiness of the lender was not proved and similarly regarding the deletion of unexplained investments, the Assessing Officer during remand proceedings has again held that satisfactory explanation, about the nature and source of these investments, was not

given. Learned D. R. argued that first of all the evidences should not have been admitted and if at all admitted, the learned CIT(A) should have considered the adverse remarks of the Assessing Officer. We find that learned CIT(A), at page 3 of his order, has categorically mentioned that he has verified the assessment record and has found that most of the evidences, filed by the assessee under Rule 46A, were already on the assessment records. The assessee, before the learned CIT(A), had prayed that because of a technical snag in the computer system, the assessee could not file the complete extract of books of account before the Assessing Officer and therefore, the application under Rule 46A of the I.T. Rules was filed. We find that learned CIT(A) has held that assessee was prevented by a reasonable cause in furnishing evidence before the Assessing Officer and most of these were already available in assessment records. In the facts and circumstances of the case, we find that the assessee was necessarily prevented by sufficient cause for not filing complete evidence before the Assessing Officer and therefore, learned CIT(A) has rightly admitted the additional evidence and in view of the above, ground no. 6 & 7 of the appeal are dismissed.

4.1 Now coming to the merits of the deletions, made by learned CIT(A), we find that Assessing Officer had made the addition on account of unexplained unsecured loans belonging to the following persons:

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| 1. Smt. Binita Saxena | Rs.10,00,000/- |
| 2. Smt. Binita Saxena received from Shiva Medical | Rs. 5,00,000/- |
| 3. Kusum Yadav | Rs.15,60,000/- |
| 4. Ram Medical Agencies | Rs. 1,80,000/- |
| 5. RP Enterprises | Rs.52,00,000/- |

4.2 The Assessing Officer, during the course of assessment proceedings, in the remand report, held that the creditworthiness and genuineness of the

transactions in respect of unsecured loan from Kusum Yadav and Binita Saxena was not proved. With regard to unsecured loans from Ram Medical Agencies and RP Enterprises, he held that the assessee himself is proprietor in these firms and assessee has to explain with evidence as to from where the assessee had obtained loans through these concerns. In this respect we find that learned CIT(A), in respect of loans from Binita Saxena of Rs.10 lac and from Shiva Medical of Rs.5 lac, the assessee had filed bank statements of the lender as well as confirmations from the lenders. The learned CIT(A) has noted that the lender Beena Saxena was also proprietor in Shiva Medical and she had a Permanent Account Number also. He has further held that the payment of Rs.10 lac was made from her opening balance in her bank account and the balance payment of Rs.5 lac was made from the proprietorship account of Shiva Medical in which he had a credit balance. He has further held that the said amount of Rs.5 lac was debited to her account of Shiva Medical while issuing the cheque on her behalf. Learned CIT(A) has held that when the lender had given Rs.10 lac, the opening balance in the account was more than Rs.27 lacs and the assessee had furnished her copy of income tax return and confirmation. The learned CIT(A) held that these facts were not disputed by the Assessing Officer during the assessment proceedings and the only reason for making adverse remarks by the Assessing Officer are that she had a low income. The learned CIT(A) has held that through the income level of the lender was on a lower side but she had sufficient capital and bank balance to make the payments to the assessee and therefore, he deleted the addition. We find from the copy of remand report that the Assessing Officer had not disputed these facts and his only allegation is the low level of the income of the assessee. We find that despite lower income the lender had sufficient bank balance and capital and therefore, the learned CIT(A) has rightly deleted the addition.

4.3 As regards the loan from Kusum Yadav, we find that Kusum Yadav had given an amount of Rs.14,60,000/- to the assessee on 24/01/2012 out of her bank balance. The lender had received cash gifts from relatives on the occasion of her 20th marriage anniversary in May, 2011 for which she had filed confirmations regarding giving of gifts to the lenders and learned CIT(A) has held that lender had sufficient bank balance in her bank account. As regards the amount of Rs.1,00,000/-, we find that learned CIT(A) has observed that such amount was credited to the account of the lender on account of adjustment with one creditor of the assessee Nikhil Pharma. The learned CIT(A) has observed that none of the evidences furnished by the assessee were disputed by the Assessing Officer during the assessment proceedings and we also observe that Assessing Officer, in the remand report, has not adversely commented on these evidences therefore, we are in agreement with the findings of learned CIT(A) by which he has deleted the additions.

4.4 As regards the unsecured loans from Ram Medical Agencies and RP Enterprises, we find that the assessee himself is proprietor in these two proprietorship firms and Assessing Officer observed during assessment proceedings that there was a credit balance of these proprietorship concerns in the books of the assessee which is a third proprietorship concern of the assessee. The learned CIT(A) has held that a corresponding debit balance also appeared in the name of Ram Medical Agencies which is again a proprietorship concern of the assessee. The learned CIT(A) has made a finding of fact that these amounts were verified from the individual and consolidated balance sheets of these concerns and these were already furnished to the Assessing Officer and assessee had also furnished inter copies of the accounts of the concerns reflecting detailed transactions

among themselves. Therefore, we do not find any infirmity in the order of learned CIT(A) so far as regards the deletion of addition of Rs.1,80,000/- and Rs.52 lacs respectively are concerned. In view of the above, ground No. 1 of the appeal is dismissed.

6. Now coming to ground No. 2 regarding addition on account of sundry creditors, we find that Rs.10,14,987/- is the closing balance in the proprietorship balance sheet of RP Enterprises as well as in the consolidated balance sheet. The detailed ledger account of creditor could not be filed before the Assessing Officer and it was filed before the learned CIT(A) under Rule 46A of the I.T. Rules and there is no adverse comment regarding this credit in the remand report. Finding no adverse comment by the Assessing Officer in the remand report, the learned CIT(A) has rightly deleted the additions on the basis of documents on record. Therefore, ground No. 2 is also dismissed.

7. As regards ground no. 3 regarding addition u/s 69 of the Act, amounting to Rs.1,58,65,000/-, we find that the Assessing Officer had made the addition on account of certain assets relating to land, FDR, share and advance to A.V.R. Infra Developers Private Ltd. During assessment proceedings the assessee had failed to produce various supporting evidences in support of investment and which were explained as additional evidences before proceedings before learned CIT(A). The Assessing Officer, in the remand proceedings, did not comment adversely on the evidences filed and has only held that the assessee has not furnished any satisfactory explanation about the nature and source of these investments. The learned CIT(A), in his order, has held that the detailed copy of land purchased with copy of registered deed was produced before him. The learned CIT(A) has further held that out of the total value of land debited in the ledger account

of Rs.17,25,000/-, Rs.5,00,000/- was paid in the succeeding year whereas Rs.11,50,000/- was paid on various dates from the bank account of Punjab National Bank and further a sum of Rs.75,000/- has been incurred towards the stamp duty in cash which written submissions duly accounted in the cash book of the assessee. The learned CIT(A) has further made a finding of fact that the assessee had filed confirmation from bank pertaining to FDR, which were old and had also furnished copy of account regarding payments made to A.V.T. Infra Developers Private Limited on account of advance and on account of purchase of shares. The learned CIT(A) has rightly held that these evidences clearly show and explain the source from where the payments were made by the assessee and which were duly recorded in the books of account of the assessee and in view of the above, the learned CIT(A) has rightly deleted the additions. Accordingly, ground no. 3 also stands dismissed.

8. Ground No. 4 & 5 of the appeal are general in nature therefore, no specific adjudication is required.

9. In the result, the appeal of the Revenue stands dismissed.

(Order pronounced in the open court on 19/07/2022)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:19/07/2022

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar