

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND  
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 1430/Del/2020  
(Assessment Year : 2015-16)

Sheela Overseas Pvt. Ltd. A-42, Gate No.2, Mayapuri Industrial Area, Phase-II, New Delhi – 110 064  <b>PAN No. AABCS 0790 D</b> <b>(APPELLANT)</b>	Vs.	ITO Ward – 23(2) New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Ms. Sonal Wadhwa, C.A.
Revenue by	Shri B. M. Singh, Sr. D.R.

Date of hearing:	30.01.2023
Date of Pronouncement:	07.02.2023

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the assessee is directed against the order dated 31.01.2020 of the Commissioner of Income Tax (Appeals)-25, New Delhi relating to Assessment Year 2015-16.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of Readymade Garments and leather goods. Assessee

electronically filed its return of income for A.Y. 2015-16 on 29.09.2015 declaring total income of Rs.93,660/-. The case of the assessee was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dated 30.12.2017 and the total income was determined at Rs.51,93,660/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 31.01.2020 in Appeal No.25/10145/18-19 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

*On the facts and circumstances of the case, the Ld CIT(A) has erred:*

1. *In sustaining the addition of Rs.27,50,000/- out of the addition of Rs.51,00,000/- made by the AO u/s 68 of the IT Act representing the deposit made by one of the director of the company during the year under consideration, when he had an opening balance of Rs.55,84,980/- in the company.*
2. *In confirming the above addition of Rs.27,50,000/- u/s 68 of the Act when the depositor is one of the directors of the company, who is an existing assessee, has confirmed his account in the company, and has filed evidence in support of the credit entries in his account with the assessee company during the year.*
3. *In not accepting the genuineness of the transaction and creditworthiness of the creditor, who is a regular Income Tax assessee, had opening cash in hand of Rs.26,50,637/- from the various business in which he was a partner, a detailed account of which was filed before him and the AO.*

*The appellant craves leave to add, modify, substitute, delete any of the grounds of appeal on or before the date of hearing.”*

5. Before us, at the outset, Learned AR submitted that though assessee has raised various grounds but the sole controversy is

with respect to the addition of Rs.27,50,000/- made u/s 68 of the Act that has been upheld by CIT(A).

6. During the course of assessment proceedings AO noticed that assessee had received unsecured loans aggregating to Rs.83,00,000/- from two directors namely Shri R. C. Bhatia and Shri Hitesh Bhatia. AO has noted that Summon u/s 131 of the Act was issued to Hitesh Bhatia from whom assessee had received unsecured loan amounting to Rs.51,00,000/- to attend the office on 13.11.2017. AO has noted that neither Hitesh Bhatia attended nor furnished any details. While making the addition AO also noted that in the bank account of Hitesh Bhatia there were cash deposits. He further noted that on various dates there were deposits either by cash/RTGS/Cheque and on very next day or in couple of day there were debit entries. He therefore held that the bank statement of the assessee did not inspire confidence. He therefore considered Rs.51,00,000/- received from Hitesh Bhatia as unsecured cash credit and made its addition u/s 68 of the Act. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) after considering the submissions of the assessee, remand report received from the assessee granted partial relief to the assessee by observing as under:

*“14. Considering the above facts, it is held that the appellant has failed to prove creditworthiness of Shri Hitesh Bhatia due to following reasons:*

- i. During A.Y 2015-16, Shri Hitesh Bhatia filed return of income of Rs. 9,05,220 which could not possibly explain*

*source of his deposit of Rs. 51,00,000 in the appellant company.*

- ii. Cash of Rs. 27,50,000 was found deposited in bank account of Shri Hitesh Bhatia for which no reasonable explanation has been furnished.*
- iii. Summons u/s 131 were issued to Shri Hitesh Bhatia on 13.11.2017 against which there was no compliance. Thus, the appellant has failed to discharge its onus with regard to creditworthiness of Shri Hitesh Bhatia. Reliance is placed upon following judgments:*

*(i) In the case of .....*

*In view of the above facts and case laws, it is held that the appellant has failed to prove creditworthiness of Shri Hitesh Bhatia to the extent of Rs.27,50,000/-. Hence, addition of Rs.27,50,000/- is confirmed and addition of Rs.23,50,000/- is deleted. Thus, Ground Nos.2, 5 & 6 are partly allowed.”*

7. Aggrieved by the order of CIT(A), assessee is now before us.

8. Before us, Learned AR reiterated the submissions made before lower authorities and further submitted that the cash deposits were out of the opening cash in hand of Rs.26,50,637/- from the various businesses in which he was a partner. She further submitted that assessee had established the source of loan in its hand by proving the identity and creditworthiness of the person from whom loan was received and the genuineness of transaction. She further submitted that assessee was not required to establish the source of source. She thus submitted that the CIT(A) was not justified in upholding the addition of Rs.27,50,000/-.

9. Learned DR on the other hand supported the order of lower authorities and further pointed to the findings of CIT(A).

10. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the addition u/s 68 of the Act. Section 68 of the Act *inter alia* provides that wherein the sum of found credited in the books of the assessee maintained for any previous year, the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not found to be satisfactory, the sum so credited may be charged to income tax as income of the assessee of the previous year. In the case of cash credit in the books of accounts, the assessee has to establish; (a) the identity of the party, (b) his capacity and (c) the genuineness of the transaction. In order to discharge the burden which Section 68 casts upon the assessee, the assessee has to not only establish the identity of the source but also establish at least *prima facie* the capacity of such source and genuineness of the transaction. Merely pointing out to the source and the source admitting that it had made the payments is not sufficient to discharge the burden placed on the assessee by Section 68 of the Act. To discharge the burden which Section 68 casts upon the assessee, at least some plausible explanation is required to be furnished, which must be backed by some reliable evidence. We find that CIT(A) after considering the submissions of the assessee,

the bank statement which have been reproduced by the CIT(A) in his order has given a finding that for A.Y. 2015-16 assessee had filed return of income of Rs.9,05,220/- which could not explain the source of its deposit of Rs.51,00,000/-. He has further given a finding that for the cash deposit of Rs.27,50,000/- no reasonable explanation was furnished by the assessee and the summons issued to Hitesh Bhatia was not complied with. Before us, no fallacy in the findings of CIT(A) has been pointed out by assessee. Further, if the circumstances required u/s 68 and the findings of CIT(A) are taken into consideration, then in the present case we are of the view that the assessee has not discharged the burden which was cast u/s 68 of the Act. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the grounds of assessee are dismissed.**

**11. In the result, appeal of the assessee is dismissed.**

**Order pronounced in the open court on 07.02.2023**

**Sd/-**

**(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 07.02.2023  
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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI