

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.2670/Del/2019
Assessment Year: 2014-15

Singh Infrastructure India Pvt. Ltd., Vs. DCIT,
9, Bougain Villa Marg, Circle-24(2),
DLF Phase-2, New Delhi.
Gurgaon,
Haryana – 122001.

PAN: AAJCS3083M

(Appellant)

(Respondent)

Assessee by : Ms Ayushi Gupta, CA &
Shri Ajay Wadhwa, Advocate
Revenue by : Shri Abhishek Kumar, Sr. DR
Date of Hearing : 28.11.2023
Date of Pronouncement : 21.02.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 01.02.2019 of the CIT(A)-8, New Delhi, relating to Assessment Year 2014-15.

2. The grounds of appeal taken by the assessee read as under:-

- *"That the Order of Ld. CIT(A) - 8, dated 01/02/2019 is bad in law and on facts.*
- *That the Ld. CIT(A) has erred on facts and in law in sustaining the addition of Rs. 2,86,50,000/- representing unsecured loan creditors u/s 68 of the Income Tax Act, 1961.*

- *The Ld. CIT(A) has erred on facts and in law in holding that the assessee has failed to discharge the onus of proving credit-worthiness of lenders.*
- *That the Ld. CIT(A) has erred on facts and in law by not accepting the application under rule 46A for additional evidence.*
- *That the Ld. CIT(A) has erred on facts by stating that the assessee has not made any application u/r 46A for the admission of additional evidences. The assessee had duly filed an application u/r 46A dated 15/01/2019 for additional evidences along with the submissions and other evidences which the Ld. CIT(A) failed to consider and thereby incorrectly alleged at Pg. 8,1st Para, 3rd line that no application u/r 46A has been filed.*
- *That the appellant craves to amend/alter/modify the grounds of appeal and/or to raise additional grounds of appeal."*

3. First of all, we note that the Id. Sr. DR did not object to the factual contention of the Id. Counsel of the assessee that the transaction of loan of Rs.17 lakh was done with Shri Naveen Kumar as is evident from PAN and other documentary evidences, but, inadvertently, name was mentioned as Bhupinder Singh and this fact was also clarified by the assessee before the AO during the assessment proceedings. The Id. Sr. DR also did not dispute that the assessee has taken an amount of Rs.17 lakh once only from Shri Naveen Kumar as is evident from the documentary evidences submitted in respect of loan taken from him and the assessee did not submit any documents in respect of Shri Bhopinder Singh as wrongly mentioned in the chart at page 3 of the assessment order because the assessee did not take any loan from Shri Bhupinder Singh. We, therefore, safely hold that the assessee did not take any loan from Shri Bhupinder Singh as listed by the AO at sl. No.1 of the table.

4. Now we proceed to consider the grievance of the assessee contained in ground

5. The Id. Counsel submitted that the Id.CIT(A) has erred on facts by stating that the

assessee has not made any application u/r 46A for the admission of additional evidences whereas the assessee had duly filed an application u/r 46A dated 15/01/2019 for admission and consideration of additional evidences along with the submissions and other evidences which the Ld. CIT(A) failed to consider and thereby incorrectly alleged at para 1 at page 3 of the first appellate order that no application u/r 46A of the rules has been filed by the assessee. The Id. Sr. DR supported the observations of the Id.CIT(A) in para 8 of the first appellate order. However, he did not controvert the fact that the assessee duly filed application under Rule 46A of the Rules dated 15.01.2019 along with the submissions and other evidences wherein the assessee specifically stated that the documents could not be submitted due to non-cooperation of loan creditors during the course of assessment proceedings as the loans were repaid before commencement of the said assessment proceedings. From a careful reading of the first appellate order, we observe that the Id. CIT(A) did not comment upon the said reasonable cause shown by the assessee for non-furnishing of relevant evidences before the AO submitted by the assessee and the said application filed under Rule 46A of the Rules and rejected the submission of the assessee simply in a slip shot manner which is not a justified and reasonable approach of a tax authority. Therefore, we also observe that the reasons given for rejection of additional evidences were very general which clearly show that the application of the assessee for admission of additional evidence was not considered, rather it was ignored without any justified and sustainable findings. Therefore, the observations made by the Id. First appellate authority specifically in para 8 of the first appellate order are hereby dismissed.

On merits

5. The Id. Counsel drew our attention to the written submissions of the assessee dated 28.11.2022 and briefly reiterated the written submissions of the assessee.

6. The submissions of the Id. AR Ms Ayushi Gupta can be precisely summarized on the following points:-

- (i) The assessee had discharged the initial onus placed on it. If the Department had a doubt with regard to the genuineness of the transactions or with regard to the credit worthiness of the creditors, it would have discharged the onus which had shifted on the shoulders of the AO after the discharge of onus by the assessee;
- (ii) The AO has made a bald assertion/allegation without any basis and adverse positive material against the assessee that the assessee's own money earned from undisclosed sources on which tax has not been paid and brought into the books through unsecured loan provided by the so-called lenders named above cannot be held as sustainable in the eyes of law;
- (iii) The assessee had filed various conclusive and contemporary documents in respect of lenders viz., their PAN data, copy of income-tax return, bank statements, ledgers, confirmed copy of accounts, affidavit of the creditors, their names, addresses, opening and closing balances and amounts repaid in certain cases placed at pages 63 to 133 of the assessee's paper book and, thus, the assessee has discharged its initial onus to establish the identity of lenders, genuineness of the transaction and the credit worthiness of the

creditors, but, the authorities below have not considered the same in right perspective and made addition without bringing on record any positive adverse material or information to prove this allegation that it was appellant's own money;

(iv) The assessee has given complete chart of loan creditors with their names, addresses, PAN, amount, before the Id.CIT(A) vide letter dated 19.12.2016 and requested the AO to verify the creditors at his end as almost all the loans had been repaid to the creditors before the commencement of assessment proceedings and the assessee was unable to collect all documents due to lapse of time, but, no efforts was made by the AO to verify the creditors;

(v) It was also contended by the Id. AR that the bank statement of the assessee has also been filed before the AO to establish that the loans were taken and repaid through banking channels and she referred to pages 116 to 113 of the assessee's paper book;

(vi) It has also been contended that when the names, addresses, copies of PAN, bank statements, balance sheets, in respect of each lender was furnished before the AO and the Id.CIT(A), then, the identity of the lender cannot be disputed and capacity and credit worthiness of the creditor and the genuineness of the transaction which was routed through banking channels cannot be doubted in any manner and, in such a situation, no addition can be made in the hands of the assessee; and

(vii) The initial onus has been discharged by the assessee as per the requirement of section 68 of the Act and it was shifted on to the shoulders of the AO and the AO as well as the Id.CIT(A), without dislodging and controverting the said

documentary evidences filed by the assessee, proceeded to make addition in the hands of the assessee u/s 68 of the Act ignoring a very relevant fact that before initiation of assessment proceedings the assessee had repaid the huge amount of loan to the respective creditors through banking channels and such transaction cannot be doubted by the Department.

7. The Id. AR has also vehemently pointed out that the Department could have used its power to call the lender and verify the transaction, but, without doing so, the AO took an easy way to make addition in the hands of the assessee keeping aside the reliable, plausible and sustainable documentary evidence and submissions of the assessee merely on the basis of a bald statement that the amount was assessee's own unaccounted money/income. Therefore, the addition made by the AO and confirmed by the Id.CIT(A) may kindly be deleted. The Id. AR has placed reliance on various judgements including the judgement of the Hon'ble Supreme Court in the case of *Orissa Corporation Pvt. Ltd., 159 ITR 78 (SC)*; judgement of the Hon'ble jurisdictional High Court of Delhi in the case of *Mod Creations Pvt. Ltd., 354 ITR 282 (Del)*; the judgement in the case of *Real Time Marketing Pvt. Ltd., 306 ITR 35*; and the order of the ITAT Delhi Bench in the case of *AI Developers Pvt. Ltd., reported as 46 ITR (T) 321-ITAT Delhi*, and other orders of the coordinate Benches of the ITAT to submit that no addition is called for in the hands of the assessee u/s 68 of the Act under the facts and circumstances of the present case.

8. Replying to the above, the Id. Sr. DR strongly opposed the contentions of the assessee. Relying on the orders of the authorities below, he submitted that the assessee has failed to either submit relevant documentary evidence or the documents

submitted by the assessee during the assessment proceedings were not complete and sufficient which itself proves that the assessee was not able to substantiate the genuineness of unsecured loan transaction and credit worthiness of the lenders. The Id. Sr. DR, again, drawing our attention to relevant part of the first appellate order, submitted that the Id.CIT(A) rightly confirmed the addition as the numerous opportunities were given to the assessee during the assessment proceedings which were not availed by the assessee. He further submitted that the assessee could not submit the documentary evidences to prove the credit worthiness of the lenders to the satisfaction of the AO and the Id.CIT(A) and, therefore, the assessee had failed completely to discharge the onus as per the requirement of section 68 of the Act. Therefore, the appeal of the assessee may kindly be dismissed upholding the findings arrived at by the Id.CIT(A).

9. On careful consideration of the above rival submissions, we are of the considered view that in response to the notices u/s 142(1) of the Act dated 14.06.2016, 25.05.2016 and 18.11.2016, the assessee filed replies on 28.11.2016, 05.12.2016, 16.12.2016 and 19.12.2016 and submitted documentary evidences placed at pages 49-60 of the assessee's paper book along with a chart showing names, addresses, PANs, opening balance, amount of loan taken during the year and amount of repayment, and, closing balance at the end of the year placed at pages 61-62 of the assessee's paper book, but, the AO proceeded to make addition in the hands of the assessee without any inquiry from the alleged loan creditors and without verifying the documentary evidences and details submitted by the assessee. From the documentary evidences available at pages 49-133 of the assessee's paper book, it is clearly discernible that the assessee filed copies of ledger accounts of loan, confirmed

copy of loan account & loan ledger account for the period 01.04.2013 to 31.03.2015 along with copies of PAN, ITR, bank statements and affidavits of lenders Shri Naveen Kumar and Shri Dhanesh Ranjan. The assessee had also submitted copies of PAN, confirmation copy of ITR and bank statements pertaining to all the lenders for the financial period 01.04.2013 to 31.03.2014 and these documentary evidences have not been controverted by the authorities below in any manner. Admittedly, the documentary evidences filed by the assessee before the AO was incomplete and the assessee filed copy of ITR of Shri Naveen Kumar and his affidavit before the Id. CIT(A). Likewise, copy of affidavit of Shri Dhanesh Ranjan, copy of ITR of Pristine Developers, copy of statement of Smt. Ritu Abrol and Sajan Abrol and cash book of Shri Narender Singh was filed before the Id.CIT(A).

10. In view of the foregoing, we finally observe that neither the AO nor the Id.CIT(A) has doubted or dislodged the facts clearly discernible from the said documentary evidences which are successfully demonstrating the identity and credit worthiness of loan creditors and genuineness of transaction and the assessee successfully discharged the onus lay on his shoulders as per the requirement of section 68 of the Act. Neither the AO nor Id. CIT(A) has controverted a very relevant submission of assessee that assessee has repaid loans to the respective creditors before initiating the assessment proceedings and in such a situation the genuineness of transaction and identity & creditworthiness of creditors cannot be doubted by the AO. At the same time, we further observe that the authorities below have not further discharged the onus shifted onto their shoulders to bring on record any positive adverse material against the assessee controverting the documentary evidence filed by the assessee and establishing the fact that the assessee could not substantiate the

identity and credit worthiness of loan creditors along with genuineness of transactions and factum of repayment of the alleged creditors. Therefore, we are unable to agree with the findings recorded by the Id.CIT(A) in confirming the addition made by the AO u/s 68 of the Act and, thus, we are inclined to hold that the Id.CIT(A) has confirmed the addition without any justified reason and basis and, thus, the same is not found to be sustainable. Respectfully following the judgement of Hon'ble Supreme Court in the case of Orissa Corporation Pvt. Ltd. (supra), judgement of Hon'ble jurisdictional High Court of Delhi in the case of Mod Creations Pvt. Ltd. (supra) as relied by the Id. Counsel fo the assessee the grievance of the assessee is allowed. The AO is directed to delete the addition. Accordingly, the grounds of the assessee are allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21.02.2023.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 21st February, 2023.

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Copy forwarded to :

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

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi