

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

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITAs No.355 to 358/Del/2019  
Assessment Years: 2010-11, 2011-12, 2012-13 & 2015-16

Chhitar Singh,  
B-30, Sector Gamma-1,  
Greater Noida,  
Uttar Pradesh – 201 308.

Vs. DCIT,  
Central Circle,  
Noida.

PAN: AUVPS4885J

(Appellant)

(Respondent)

Assessee by	:	Shri Sandeep Jain, CA
Revenue by	:	Shri T. James Singson, CIT, DR
Date of Hearing	:	22.02.2023
Date of Pronouncement	:	29.03.2023

ORDER

PER C.M. GARG, JM:

These appeals filed by the assessee are directed against the orders of the CIT(A)-IV, Kanpur relating to Assessment Years 2010-11, 2011-12, 2012-13 & 2015-16.

Assessee's appeal for AYs 2010-11, 2011-12 & 2015-16.

2. The Id. Counsel for the assessee, drawing our attention to relevant part of the assessment orders for all three years, submitted that after filing details by the Id. AR of the assessee, the AO did not ask any further compliance by way of any show cause notice or order sheet entry asking the assessee to file further details for any

documentary evidence and proceeded to pass order by taking into consideration irrelevant facts and depriving the assessee the opportunity to file relevant documentary evidence. Therefore, the assessment order has been passed in violation of principles of natural justice. The Id. AR vehemently pointed out that even the Id.CIT(A) also rejected the prayer of the assessee for admission of additional evidence under Rule 46A of the Income-tax Rules, 1962 by wrongly holding that the appellant was not prevented by sufficient cause from producing evidence before the AO. Therefore, Rule 46A will not come to the rescue of the appellant. The Id. AR submitted that the orders of the authorities below have been passed in violation of principles of natural justice. Therefore, the same may kindly be set aside.

3. Replying to the above, the Id. CIT-DR supported the orders of the authorities below. However, on being asked by the Bench regarding para 5 of the assessment order and observations of the Id.CIT(A) in dismissing the prayer of the assessee on admission of additional ground, the Id.CIT-DR, in all fairness, submitted that if it is found just and proper, then, the department has no serious objection if the matter is remitted back to the file of the AO for passing a fresh assessment order.

4. On careful consideration of the above rival submissions and on careful perusal of the orders of the authorities below, we find that after receiving details from the assessee's representative, the AO proceeded to record his findings by holding that in absence of any explanation offered by the assessee, the amounts have to be treated as unexplained. Thus, we are satisfied that the AO did not ask the assessee to file further documentary evidence and explanation regarding issues picked up by him for making assessment. Similarly, from the orders of the Id. First appellate authority, we

also find that the Id.CIT(A) dismissed the prayer of the assessee for admission of additional evidence under Rule 46A by holding that there was no sufficient cause which prevented the assessee from filing evidence before the AO. In our considered view, these findings recorded by the Id.CIT(A) while dismissing the prayer of the assessee for admission and consideration of additional evidence are perverse and, thus, not sustainable. Therefore, the assessee was not provided due opportunity of hearing before the authorities below. Therefore, the orders of the authorities below are set aside.

5. As agreed by the Id. Representatives of both the sides, and to avoid multiplicity of proceedings, the matter for AY 2010-11, 2011-12 and 2015-16 are restored to the file of the AO for framing of *denovo* assessment order after allowing due opportunity of hearing to the assessee and without being influenced from the earlier assessment and first appellate order. Needless to say, the assessee shall be entitled to file all relevant documentary evidences along with explanation and submissions before the AO to substantiate his stand. Accordingly, grounds No.4 and 5 of the assessee for AY 2010-11 and 2015-16 and ground No.4 of the assessee for AY 2011-12 are allowed.

6. Since, by the earlier part of this order, we have restored the matter to the file of the AO for framing a fresh assessment order and the Id. AR for the assessee has not addressed us on the aspects of merits at the time of hearing we do not consider it necessary to dwell upon the same.

7. In the result, the appeals of the assessee for AYs 2010-11, 2011-12 and 2015-16 are allowed for statistical purpose only.

Appeal of the assessee for AY 2012-13

8. The Id. AR submitted that the assessee does not want to press ground No.5, hence, the same is dismissed as 'not pressed.' Grounds No.1 and 6 of the assessee are general in nature. The remaining effective grounds no. 2, 3 and 4 read as under:-

*"2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming addition despite assessee fulfilling the burden cast on him u/s 69 of Income Tax Act & ignoring the submission and evidences submitted during appellate proceedings.*

*3. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming addition without appreciating the fact that said loan has been returned by assessee in short time.*

*4. On the facts and circumstances of the case, the learned CIT(A) has erred in law and on facts in confirming the addition of Rs. 25,00,000.00 without conducting proper procedure during appellate proceedings."*

9. The Id. AR submitted that the Id.CIT(A) has erred both on facts and in law in confirming addition despite assessee fulfilling the burden cast on him u/s 69 of Income and the Id. CIT(A) has ignored the very relevant plausible submission and documentary evidence filed during the appellate proceedings. The Id. AR also pointed out that the learned CIT (A) has erred both on facts and in law in confirming addition without appreciating the fact that said loan was returned or repaid by assessee within a short span of time during the subsequent financial year 2012-13 which is clear from the copy of the bank passbook of the assessee. The Id. AR also extraneously contended that the authorities below has erred on facts and in law in confirming the addition of Rs. 25,00,000.00 in the hands of the assessee despite the fact that the assessee submitted all documentary evidences discharging the onus lay on his shoulders as per the provisions of the Act by filing copy of ITR and confirmation from

Shri Rohit Gupta from whom the unsecured loan was taken through banking channel along with copy of bank statement of the assessee, ITR & computation and copy of order sheet which clearly show that the AO framed assessment order in a hasty manner without requiring any further compliance from the assessee. The Id. AR, therefore, submitted that the addition made by the AO and upheld by the Id.CIT(A) may kindly be set aside.

10. Replying to the above, the Id. CIT-DR supported the orders of the authorities below and submitted that the assessee has failed to explain the source of the funds of the lender from whom unsecured loan was taken. Therefore, the AO was right in making addition in the hands of the assessee and the Id. CIT(A) was also correct in upholding the same by holding that the appellant neither at the time of assessment nor during first appellate proceedings could establish the credit worthiness of the lender. The Id.CIT-DR submitted that the addition made by the AO may kindly be upheld.

11. On careful consideration of above submissions, first of all, from the copy of the order sheet available at page 17 of the assessment order, we clearly note that the AO issued notice u/s 143(2) of the Act on 14.12.2017 for making compliance and, thereafter, without issuing any show cause notice or asking the assessee to explain the his stand, framed assessment order on 30.12.2017. Further, from a vigilant reading of first appellate order, we also note that the Id.CIT(A) in para 5.3, noted the contention of the AR and also stated that the AR submitted copy of the ITR, confirmation of account and bank statement of assessee. He also noted that the AR has furnished copy of bank statement of Shri Rohit Gupta and ITR, so that the issue

of credit worthiness can be examined, but, he dismissed these relevant documentary evidence by wrongly observing that no details were filed by the appellant in this regard without raising any doubt regarding documentary evidence submitted by the assessee in the form of copy of his ITR and his passbook along with copy of ITR, bank statement and confirmation pertaining to Shri Rohit Gupta from whom the assessee received unsecured loan through banking channel. From copy of bank passbook available at pages 5-7, we clearly note that the assessee received an amount of Rs.25 lakh and from Shri Rohit Gupta on 01.11.2011 during FY 2011-12 pertaining to present AY 2012-13. At the same time, from page No.7, i.e., third page of assessee's passbook, we further note that the assessee, on 01.09.2012 returned the same amount of Rs.25 lakh to Shri Rohit Gupta through banking channel which clearly establish that the assessee returned or repaid the amount of unsecured loan to Shri Rohit Gupta during the subsequent financial year, FY 2012-13 pertaining to AY 2013-14. In view of the above, when the assessee has successfully demonstrated by way of filing of copy of income-tax return of Shri Rohit Gupta for AY 2012-13 and 2013-14 wherein Shri Rohit Gupta has shown gross total income at Rs.52,08,434/- and Rs.1,17,93,294/- respectively, then, the identity, capacity and credit worthiness of lender cannot be doubted or disputed. It is also pertinent to mention that the assessee has successfully demonstrated that the unsecured loan was received and repaid through banking channel, then, even iota of doubt remains which may trigger or entitled the AO to make addition in the hands of the assessee u/s 69 of the Act or under any other provisions of the Act. Accordingly, grounds No.2, 3 and 4 of the assessee are allowed and the AO is directed to delete the addition.

12. In the result, the appeal filed by the assessee for AY 2012-13 is partly allowed.

Order pronounced in the open court on 29<sup>th</sup> March, 2023.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 29<sup>th</sup> March, 2023.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi