

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
ITA No.4911/Del/2016
(ASSESSMENT YEAR 2008-09)**

M/s Birla Transasia Carpets Ltd 3&4, Industrial Area Sikandrabad Bulandsahar Uttar Pradesh-203 205 PAN-AAACB 4659B	Vs.	Dy. CIT Circle-3(1) New Delhi
(Appellant)		(Respondent)

**ITA No.4329/Del/2016
(ASSESSMENT YEAR 2008-09)**

Dy. CIT Circle-5(1) New Delhi	Vs.	M/s Birla Transasia Carpets Ltd. B-10, Ansal Chamber-1 Bhikaji Cama Place New Delhi-110 066 PAN-AAACB 4659B
(Appellant)		(Respondent)

Assessee by	Mr. R.S. Samria, CA
Department by	Ms. Maimum Alam, Sr. DR

Date of Hearing	26/04/2023
Date of Pronouncement	/07/2023

ORDER

PER M. BALAGANESH AM:

This appeal in ITA No.4329/Del/ 2016 of the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-2, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.312/2014-15 of CIT(A)-2 dated 31/03/2016 against the order passed by Ld. Dy. Commissioner of Income Tax, Circle-3(1), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 13/12/2010 for the Assessment Year 2008-09 as well as the Revenue has also filed Cross Appeal in ITA No.4911/Del/2016 for AY 2008-09.

2. The following grounds raised by the assessee as well as Revenue.

ITA No.4911/Del/2016

"1. learned AO has erred in treating the unsecured loans appearing in the books of the assessee as unexplained cash credit u/s 68, concluding that the assessee has not filed relevant information to proved genuineness of the loan taken by the assessee. The assessee company is a sick industrial company and the case of the assessee is with Board of Industrial & Financial Reconstruction (BIFR) Also, the Accounts & Finance Department (A&F) Deptt. of the assessee was located at Sikanderabad at Uttar Pradesh and subsequently due to financial problems and to have better control these functions of the assessee were centralized at it corporate office at Murnbai. Moreover, there were frequent changes in A&F Deptt. of the assessee company. Due to combined effects of these facts, the assessee has not been able to gather all the required information.

2. The assessee has preferred appeal against the assessment order u/s 143(3) before the Hon CIT(Appeals)-2 and pleaded to the CIT(Appeals) 2 to allow the assessee to submit additional evidence which the assessee could not submit at the time of scrutiny The said appeal was partially allowed by admitting the additional evidence in case of M/S Searson Investment & Trading Co. Pvt. Ltd. (Unsecured Loan Rs 1,68 25,236/-).

3. The assessee has preferred appeal against the assessment order u/s 143(3) before the Hon. CIT(Appeals)-2 and the said appeal was partially disallowed by not admitting the additional evidence in case of M/S Godavari Corporation Pvt. Ltd (Unsecured Loan Rs. 1,72,50,000/-) by stating that "as per copy of ITR acknowledgement for AY 2008-09 of M/S Godavari Corporation Pvt. Ltd. filed during appellate proceedings, gross total income of Rs. 12.23 lacs only and net total income of Rs. NIL has been declared. In these circumstances, the capacity of the party to advance loan of Rs.1,72,50,000/- does not get proved. Also, in the absence of confirmation of the creditor the genuineness of the transaction is also in doubt" The learned CIT(A)-2 has not considered the bank statement of the assessee company(submitted on 16.03.2016)which reflects the inflow of money from the lender and the confirmation of the lender(submitted as per page no. 63 along with submission dated 03.12.2013) as well, which if read together clearly established the flow of funds from the lender to the assessee. Moreover, the capacity of the lender to lend Rs. 1,72,50,000/- can be established in view of the fact the total income of the lender was Rs. 3,05,25,201/- and not Rs.12.23 lacs as is evident from page no. 89 of the submission dated 03.12.2013. The A.O has also failed to recognize as how can a company whose profit is Rs. 12.23 lacs is paying a tax of Rs. 33.55 lacs as is clearly evident from the copy of ITR submitted.

4. The appellant craves leave to add, alter, amend, and/or modify any of the aforesaid grounds before or at the time of hearing."

ITA No.4329/Del/2016

"The DCIT, Circle -5(1), New Delhi is hereby filing appeal in the above mentioned case before the ITAT, New Delhi on the following grounds of appeal.

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition amounting to Rs. 1.68.25.236/- as unexplained cash credit u/s 68 of the LT. Act, 1961, without appreciating the fact that Ld. CIT(A) himself upheld part addition us 68 of the LT. Act, 1961 to the tune of Rs. 1,81,90,701/- with the same kind of facts, which proves that the AO had rightly made addition u/s 68 of the LT. Act, 1961.

2. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal.”*

3. As identical issues are involved in both these appeals and hence, they are taken up together and disposed off by this common order for the sake of convenience.

4. The only effective issue to be decided in this appeal is as to whether the addition u/s 68 of the Act in respect of unsecured loans received by the assessee could be made in the facts and circumstances of the instant case.

5. We have heard the rival submissions and perused the materials available on record. The assessee company is engaged in the business of Manufacturing of Machine made Plain & Design Carpets & Woolen Yarn. The assessee company filed its return of income on 30/09/2008 declaring total income Nil. Later, the assessee filed its revised return of income on 24/12/2008 declaring a loss of Rs.1,18,54,341/-. This revised return filed by the assessee was taken due cognizance by the Ld. AO while framing the

assessment. The assessee has received unsecured loan from following parties:-

Sr. No.	Parties Name	Unsecured Loan
1.	M/s Nirved Traders Pvt. Ltd	1,25,00,000/-
2.	M/s Godavari Pvt. Ltd.	1,72,50,000/-
3.	M/s Shearson Investment Trading Pvt. Ltd.	1,68,25,236/-
4.	M/s Birla Cotsyan (I) Ltd.	9,40,701/-

The AO proceeded to treat the unsecured loan received from parties listed in Serial No. 2 to 4 above totaling to Rs.3,50,15,937/- as unexplained cash credit u/s 68 of the Act on the premise that genuineness of the transactions and creditworthiness of the lenders were not proved by the assessee. Before the Ld. CIT(A), the assessee filed additional evidences in terms of Rule 46A of the Income Tax Rules containing the confirmation of accounts from the lenders, their ITR and annual reports. These additional evidences were duly forwarded to the Ld. AO by the Ld. CIT(A) calling for a remand report. The Ld. AO opposed to the admission of additional evidences on the ground that sufficient opportunities were given to the assessee during the course of assessment proceedings. However, on without prejudice basis, the Ld. AO examined the documents filed by the assessee as additional evidences and stated as under:

Loan from M/s Godavari Pvt. Ltd.:- (a) The assessee has filed confirmation letter dated 23/06/2008. On perusal of the same, it is noted that the same has been confirmed by the assessee company. The Ld. AO noted that assessee had filed ITR and Annual Report of this lender company but had not filed bank statement of the lender company and that on perusal of the Annual Report of lender company, it was noted that a sum of Rs.2131.22 lacs has been reflected as interest free advances given to certain parties on commercial expediency, for which no break up has been provided. Accordingly, the Ld. AO concluded that documents filed by the assessee are not enough to prove the genuineness of the unsecured loan taken by the assessee.

Loan from M/s Shearson Investment Trading Pvt. Ltd.:-

The AO acknowledged that the said company is related to a group concern of the assessee and confirmation letter on 01/04/2008 is filed together with ITR and financial statements. However, he stated that the assessee had not submitted the bank statement. Later, the Ld.AO concluded

that since the said lender company is a group company of the assessee, the confirmation filed cannot be believed. Hence, the genuineness of the loan is not proved by the assessee.

Loan from Birla Cotsyan (I) Ltd.:- The Ld. AO submitted that assessee had filed a copy of Annual Report which is unsigned of the lender company and other documents were furnished.

6. With regard to all three parties, the Ld. AO also sought for details of year wise balances of ledger account in respect of unsecured loan received and interest paid thereon. The assessee submitted year wise ledger account balances of unsecured loan for all the three parties but no details regarding interest paid was filed. Based on all these documents, the Ld. AO reiterated the stand taken by him in the assessment. A copy of the remand report was submitted to the assessee for its rejoinder. The assessee submitted in its rejoinder that it is a sick industrial company and reference was registered with erstwhile Board for Industrial and Financial Reconstruction (BIFR). The assessee submitted that due to financial problems and to have better control, the Accounts & Finance Department of the assessee company was centralized and was shifted to its Corporate Office at Mumbai. Accordingly, the assessee

was not able to gather all the requisite details and furnish before the ld. AO. The assessee vehemently pleaded that M/s Godavari Private Limited is a group company of the assessee and that the said parties had already furnished the copy of the confirmation, its ITR and audited financial statements before the Ld. AO. Merely because the bank statement has not been submitted, the loan taken from the said party cannot be disbelieved. Similar explanation was given by the assessee in respect of loan received from M/s Shearson Investment & Trading Co. Pvt. Ltd. which is also a group company of the assessee. The assessee also submitted that loan received from Shearson Investment & Trading Co. Pvt. Ltd. to the tune of Rs.11,43,125/- were in order to discharge the ESI dues payable by the assessee. Similarly, the assessee has received Rs.61,82,111/- for discharging the PF dues payable by the assessee. The remaining 95 lacs were received by the assessee as inter corporate deposits from M/s Shearson Investment & Trading Co. Pvt. Ltd. as under:-

<i>Sr. No.</i>	<i>Ch. No.</i>	<i>Date</i>	<i>Amount</i>
1.	950727	31.05.2007	25,00,000/-
2.	950730	04.06.2007	25,00,000/-
3.	154531	19.09.2007	15,00,000/-
4.	RTGS	19.03.2008	30,00,000/-

7. Similarly the assessee has received various inter corporate deposits from M/s Godavari Pvt. Ltd. as under:-

<i>Sr. No.</i>	<i>Ch. No.</i>	<i>Date</i>	<i>Amount</i>	<i>Reed in Bank</i>
1.	770588	19.04.2007	20,00,000/-	Punjab National Bank
2.	625915	09.05.2007	25,00,000/-	ICICI Bank
3.	625916	15.06.2007	25,00,000/-	ICICI Bank
4.	625936	18.05.2007	25,00,000/-	ICICI Bank
5.	625943	29.05.2007	25,00,000/-	ICICI Bank
6.	570043	17.09.2007	4,00,000/-	Punjab National Bank
7.	625992	17.09.2007	8,00,000/-	Punjab National Bank
8.	938593	17.09.2007	8,00,000/-	Punjab National Bank
		<i>Total</i>	<i>1,40,000,000/-</i>	

8. The assessee also submitted a bank statement of Godavari Pvt. Ltd. before the Ld. CIT(A). The Ld. CIT(A) admitted all the additional evidences by the assessee and agreed to the contention of the assessee that non production of various evidences before the Ld. AO has been attributed due to the shifting of the assessee's

office from U.P to Mumbai and moreover, the additional evidences furnished by the assessee go to the root of the matter and would be relevant for adjudication of the dispute. Accordingly, the Ld. CIT(A) gave a categorical finding that the additional evidences furnished by the assessee are admitted. The Ld. CIT(A) in respect of loan from M/s Godavari Pvt. Ltd. observed that the assessee had not furnished the confirmation of balance and the said lender company had reported income of Rs.12.23 lacs only and hence, creditworthiness and genuineness of the transactions were not proved by the assessee. Aggrieved, the assessee is in appeal before us.

9. In respect of loan received from M/s Birla Cotsyan (I) Ltd., the Ld. CIT(A) reiterated the findings given by the Ld. AO in his remand report and confirmed the addition. Aggrieved, the assessee is in appeal before us.

10. In respect of loan received from M/s Shearson Investment & Trading Co. Pvt. Ltd., the Ld. CIT(A) observed that the assessee had filed confirmation and ITR of the said lender company and said lender company has reported income of Rs.3.00 Crores

which would prove the creditworthiness of the parties. Accordingly, the Ld. CIT(A) deleted the addition in respect of unsecured loan of Rs.1,68,25,236/- received from M/s Shearson Investment & Trading Co. Pvt. Ltd. Aggrieved, the Revenue is in appeal before us.

11. At the outset, it is not in dispute that the assessee company is a sick industrial company and registered with erstwhile BIFR under sick industrial company (Special Provisions) Act, 1985 for rehabilitation since its net worth turned negative and fully eroded in year 1991. It is not in dispute that M/s Godavari Pvt. Ltd. and M/s Shearson Investment Trading Pvt. Ltd. are group concerns of the assessee company. Since, the assessee company is a sick industrial company and under the clutches of BIFR, the group companies had come forward to assist the assessee company by advancing interest free unsecured loans year on year from time to time. Whatever details that were available with the assessee company, the same were furnished by the assessee given the problems of shifting of accounts & finance department from UP to Mumbai.

12. In respect of Loan from M/s Shearson Investment Trading Pvt. Ltd., we find that the assessee had furnished the following documents in respect of that parties:-

(a) Ledger account of the assessee company as appearing in the books of the lender company.

(b) Confirmation from lender company.

(c) PAN of the lender company.

(d) Income tax return of lender company.

(e) Evidences to prove that some amounts were paid by this lender company to discharge the ESIC and PF dues payable by the assessee company. Bank statements of lender company to prove that they have sufficient bank balances in their kitty to advance unsecured loans to the assessee.

(f) Annual report of lender company.

12.1. From the perusal of the annual report, we find that the lender company has got free reserves to the tune of Rs.145 crores which itself proves the creditworthiness to make interest free advances to the assessee company. All the transactions are routed through regular banking channels and duly reflected in the balance sheet of

the lender company and duly supported by a confirmation from lender company. Hence, the identity, creditworthiness of the lender and genuineness of the transaction are prove beyond doubt. Hence, we hold that the ld. CIT(A) was justified in granting relief in respect of this party. Accordingly, the grounds raised by the Revenue are dismissed.

13. In respect of loan from M/s Birla Cotsyan (I) Ltd., the assessee has purchased the Carpets & Wools from the said party to the tune of Rs.9,38,031.60 vide bill dated 20.09.2007. This fact is evident from the ledger account of the assessee as appearing in the books of the lender company. Apart from this, the said lender company had also incurred expenses to Rs.2,670/- on behalf of the assessee company. Accordingly, assessee company owes Rs.9,40,701/- (938031+2670) on account of trading liability which has been converted into loan payable to the lender company. This fact is also evident from the confirmation filed by the lender company which is enclosed in page 219 of the PB. The assessee has also furnished ITR of the lender company. This company is also a group company of the assessee company. The assessee company has also furnished

the annual report of the lender company, on perusal of which, it is seen that the lender company has own funds of Rs 75.13 crores in its kitty which proves the sufficient creditworthiness of the lender company. Moreover, it is a fact that the lender company had supplied Carpets and Wools to the assessee company and the said trading liability together with sundry expenses of Rs.2670 has been converted into loan by the assessee company. These facts are duly confirmed by the lender company in its confirmation placed on record. Hence, identity of the lender, creditworthiness of the lender, and genuineness of the transactions are proved beyond doubt and hence no addition could be made for the same u/s 68 of the Act.

14. In respect of loan from Godavari Pvt. Ltd., it is not in dispute that the said lender company is a group company of the assessee. During the course of earlier hearings, this Tribunal had sought for the purpose of advancing interest free loans to the assessee together with Board Resolution passed by the Board of Directors of the lender company. These details were duly furnished by the assessee company. An affidavit duly notarized was also duly submitted before the Tribunal confirming the entire facts. The said

facts states since assessee company is a sick company, it had to seek financial assistance from its group company M/s Godavari Pvt. Ltd. The assessee enclosed a requisition placed by it on Godavari Pvt. Ltd. to continue to extend financial assistance up to maximum extent of Rs.10 Crores. The assessee also furnished the board minutes dated 04/04/2001 of the lender company agreeing to extend financial assistance to the assessee company up to the maximum of Rs.10 Crores. The assessee has also furnished additional evidences in the form of bank statement of lender company maintained with South Indian Bank and UCO Bank which goes to prove that the entire advance to the lender company were made through regular banking channels and the same also proves that the lender company had sufficient bank balances in its kitty to advance interest free loans to the assessee company. The assessee had already furnished the ledger account of the lender which contained the details of date of payment, cheque number in which the amount was paid, bank from which amount was paid together with the amount thereon. The bank statement alone is furnished by the assessee as fresh evidence. Bank statement which are furnished as additional evidence only corroborates the very same details and

documents which are already placed on record. Hence, strictly speaking, these bank statements of South Indian Bank and UCO Bank are actually not additional evidences but are only supporting/strengthening the transactions already on record. Further, the assessee has also furnished confirmation from M/s Godavari India Ltd, apart from ITR and annual report of lender company. From the perusal of the annual report, the lender company has free reserves of Rs.72.36 crores which itself goes to prove the sufficient creditworthiness of the lender company. The loan transactions are routed through regular banking channels and reflected duly in the annual accounts of the lender company. Hence the genuineness of the transactions is also proved beyond doubt. All the three necessary ingredients of section 68 of the Act has been proved in respect of this loan transaction. Accordingly, we hold that the loan received from M/s Godavari Pvt. Ltd. is to be treated as genuine.

15. Accordingly, grounds raised by the assessee are allowed.

16. In the result, the appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced in the open court on 19th July, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:19/07/2023

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI