

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1267/Del/2023
Assessment Year: 2012-13

M/s. Garv Associates, B/105, Green Field Colony, Sarai Khawaja, Faridabad, Haryana 121010 PAN AAJFG 5926 E	vs.	ITO Ward -1(3), Faridabad
(Appellant)		(Respondent)

For Assessee :	Shri Dinesh Kumar Aggarwal, CA
Revenue For :	Shri Om Prakash, Sr. DR

Date of Hearing :	08.06.2023
Date of Pronouncement :	28.07.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Ld. NFAC, New Delhi dated 08.03.2023 for AY 2012-13.

2. The Id. assessee's representative submitted that the assessee, except ground no. 10, does not want to press other grounds of appeal hence, other grounds of appeal are dismissed. Remaining sole effective ground no. 10 reads as follows:-

10) The Ld. CIT (A) has erred in interpreting provision of Section 68 after considering facts and circumstances of the matter in respect of Unsecured Loans of Rs. 40,00,000/-, raising the following questions:-

i. WHETHER, 'First Proviso' of 'Section 68' of the Income Tax Act, 1961 is squarely covered transaction in the nature of Unsecured Loans' or shall restricted to credits on account of 'Share Application Money', 'Share Capital', Share Premium etc.? ii. WHETHER, as per provisions of Section 68 of the Income Tax Act, 1961, the Assessee has not discharged its initial onus to prove:

- (1) Identity of the Creditor Lenders;*
 - (2) Credit-worthiness of the Creditor Lender; and*
 - (3) Genuineness of the Transaction.*
- By submitting following set of documentation:*

- (i) Confirmation of Accounts;*
- (ii) Copy of PAN Card;*
- (iii) Acknowledgement of ITRs;*
- (iv) Financial Statement and Audit Report of the Year of Lending;*
- (v) Copy of Bank Statement;*
- (vi) Incorporation details of the Creditor Lenders.*

iii. WHETHER, sole criteria for assessment of 'Credit Worthiness' of the creditor lenders are their declared Income, ignoring 'Net Worth' of the Creditor Lenders?

iv. WHETHER, examination of 'Source of sources' comes under the purview of Ld.AO of the assessee, even in case, Creditor Lenders are Income Tax Assessee and Assessment Details of such Creditor Lender has been submitted at the time of Assessment?

vi. WHETHER, payment of Interest on the Lent money and deduction of TDS and follow-up of other provisions as per provisions of Income Tax Act, 1961 and claims of such deducted TDS by the 'Creditor Lenders' is an ignorable fact and could not have weightage for assessment of 'Genuineness'?

vii. WHETHER, Repayment of Lent money back to 'Creditor Lenders' is an ignorable fact and could not have weightage for assessment of 'Genuineness'?

3. The Id. AR submitted that the Id. CIT(A) has erred in interpreting provisions of sec 68 of the Act while upholding the addition made by the Assessing Officer on account of unsecured loans transactions with KRAC Securities and Pooja Equity Advisors. The Id. counsel submitted that the first proviso to sec 68 of the Act is restricted to credits on account share application money, share capital and share premium etc. and this does not apply to transactions in the nature of unsecured loans therefore the addition is not sustainable on this count.

4. The Id. AR also submitted that the assessee has discharged onus lay on it by filing documentary evidence establishing identity & creditworthiness of lender. He further submitted that the assessee by submitting confirmation of account, copy of PAN, acknowledgment of ITR, financial statement and audit report, copy of bank account and incorporation detail of lender companies also establish capacity and creditworthiness of lender as well as genuineness of transaction therefore addition cannot be made in the hands of assessee without raising any doubt or discrepancy in the said documentary evidence filed by the assessee. The Id. AR also pointed out that the criteria for establishing creditworthiness is not confine to their returned or declared income but net worth of the lenders is to be seen for deciding said point. He also pointed out that the examination of source of source is right of Assessing Officer and at the same time this cannot be ignored the creditors are income tax assessee and assessment details of said lenders have been submitted during the course of assessment proceedings. The Id. AR also submitted that the assessee has paid interest on the unsecured loan to the lender after deducting TDS as per provisions of the Act

and repayment of unsecured loan to the lenders is also a vital fact supporting the creditworthiness of lenders and genuineness of transaction therefore addition made by the Assessing Officer and upheld by the Id. CIT(A) may kindly be deleted.

5. The Id. AR drew our attention towards assessee's paper book spread over 259 pages and submitted that the assessee has also placed copies of all documentary evidences in the form of paper book which were submitted before the authorities below he also pointed out that the relevant documentary evidence pertaining to M/s. Pooja Equity Advisors P. Ltd. has been placed at pages 203 to 224 and documentary evidence pertaining to second lender M/s KRAC Securities P. Ltd. have been filed at pages 225 to 244. The Id. AR also pointed out that the assessee has submitted copies of replies of lender companies directly to the Assessing Officer in compliance with notice u/s. 133(6) of the Act which also supports the explanation of assessee. The Id. AR submitted that the lender M/s. Pooja Equity Advisors name was changed to M/s. Holean Traders Pvt. Ltd. subsequently on 08.07.2016 and there were owned capital fund of Rs. 25.50 crore during FY 2011-12 relevant to AY 2012-13 and the unsecured loan amount of Rs. 30 lac was given to the assessee out of owned fund of company and financial statement of lender clearly reveals the fact of providing loan to assessee company during relevant period. It was also contended by the Id. AR in the said confirmation the lender also confirm repayment of amount inclusive of interest during FY 2013-14 as per list given in the said letter vide dated 19.10.2019 therefore no adverse inference can be taken against the assessee and the said loan cannot be alleged as bogus.

6. The AR further pointed out that the name of second lender M/s. KRAC Security P. Ltd. was changed into KRAC Developers P. Ltd. with effect from 13.04.2012 and finally again changed to M/s. Highrise Metals Pvt. Ltd. with effect from 16.05.2016 and it was confirmed by said lender in response to notice u/s. 133(6) of the Act to the Assessing Officer vide dated 18.10.2019 that it has given unsecured loans of Rs. 10 lacs on the interest at the rate of 10% per annum on 04.07.2011 which was repaid including interest on 14.05.2013 by repaying Rs. 12 lac including interest. The Id. AR, therefore submitted that in view of above factual position of availability of owned funds with the lender company and repayment of loan along with interest after deduction of TDS again supports the explanation of assessee establishing genuineness of transaction. Therefore no addition is required to be made in the hands of assessee.

7. Replying to the above, the Id. Senior DR strongly oppose to the above contentions of assessee and drawing our attention towards relevant part of the orders of the authorities below submitted that since the assessee has claimed to have received amount from a company which was controlled by an establish entry provider Shri Anirudh Joshi, who himself admitted before the investigation wing that he has provided accommodation entries through his sister concerns. The Id. Senior DR also pointed out

that since the assessee failed to establish creditworthiness of lenders and genuineness of transaction discharging onus as per requirement of sec 68 of the Act, therefore the Id. CIT(A) rightly presume that the assessee has brought his own unaccounted income through banking channel therefore he was right in upholding the addition u/s. 68 of the Act.

8. The Id. AR, placing rejoinder to the above submitted that during assessment proceedings the assessee demanded the opportunity of cross examination of Shri Anirudh Joshi multiple times vide dated 05.10.2019, 13.10.2019 and 18.11.2019 but the Assessing Officer did not provided the same. He vehemently pointed out that in spite of copies of said request to the Assessing Officer placed before the Id. CIT(A) by the assessee the Id. First Appellate Authority in his order incorrectly mentioned that the request of cross examination was not made to the Assessing Officer. The Id. AR further drawing our attention towards paper books pages 206, 209, 228 and 229 submitted that the share holder fund including paid up share capital and reserves and surplus in the case of KRAC Securities (Now M/s. Highrise Metal Pvt. Ltd.), was Rs. 49.90 crores and in the case of Pooja Equity Advisors (Now M/s. Holean Traders P. Ltd.), was Rs. 26.78 crores which are much higher than the amount of Rs. 10 lac and 30 lac respectively from the said two lenders and in absence of any controverting findings to the financial capacity of lenders the creditworthiness and capacity cannot be doubted or disturb merely on the basis of whims and fancies of tax authorities. The Id. AR submitted that since the assessee has discharged onus lay on it therefore entire addition may kindly be ordered to be deleted.

9. On careful consideration of above submissions, we note that the assessee obtained impugned loan from said two lenders namely M/s. Pooja Equity Advisors and KRAC Securities P. Ltd. amounting to Rs. 30 lac and 10 lac respectively which was treated as unexplained credit by the Assessing Officer by invoking provision of sec 68 of the Act. It is undisputed that the assessee received amounts through banking channel and in support of identity and creditworthiness of lenders and genuineness of transaction assessee filed their PAN nos., certificate of incorporation, copies of returns for AY 2012-13 and audited financial statement and ledger copy of lender companies from FY 2011-12 to 2013-14, copy of TDS certificate pertaining to the interest paid to the creditors, bank statements and confirmations pertaining to both the Pvt. Ltd. lenders company these documents have been placed at pages 203 to 242 of assessee paper book.

10. Copies of confirmation of both the lender companies available at pages 243 to 247 reveals that the notices u/s. 133(6) of the Act, were duly responded by the lenders company confirming the alleged transactions, receipt of interest and repayment of loan to the respective lender by the assessee in the subsequent assessment year. So far as

contention of assessee that the opportunity of cross objection was not provided is concerned the Id. CIT(A) at page 19 top para last sentence wrongly noted that there is no request from the assessee seeking cross examination of the witness as the copies of request letters placed at pages 65 to 71 clearly reveals that the assessee vide applications dated 05.10.2019, 13.10.2019 and 18.11.2019 consistently requested the Assessing Officer to provide cross examination on the witness Shri Anirudh Joshi which was never provided to the assessee and this omission on the part of revenue is fatal to the case of Assessing Officer and the same is clear violation of principles of natural justice as the use the said statement against the assessee without allowing due opportunity of cross examination to the assessee despite its several requests/applications as noted above.

11. Copies of financial statements of M/s. KRAC Securities Pvt. Ltd. are available at pages 225 to 242 which reveals that the lender company has share holders fund including paid up share capital and reserves and surplus of Rs. 49.90 crores out of which long term loans and advances are Rs. 24,35,47,879/- which includes amount of Rs. 10 lac given to the assessee during FY 2011-12 relevant to AY 2012-13. Likewise, the copies of PAN, ITR computation, balance sheet, profit & loss account reveals that the second lender M/s. Pooja Equity Advisors Pvt. Ltd. holds share holder fund including paid up share capital and reserves and surplus amounting to Rs. 26,78,47,110/- and has shown long term loans and advances of Rs. 9,97,53,764/- which included amount of loan of Rs. 30 lac given to the assessee during AY 2012-13. Copies of confirmations issued by said two lenders available at pages 243 to 247 supports the said factual position and also reveals that the assessee has paid due interest on the credits after deducting TDS and entire amount of loan has been repaid during subsequent financial period 2013-14 to both the said lenders companies. From the orders of the authorities below we note that these factual positions have not been doubted or destroyed by way of any positive adverse material against the assessee.

12. In view of foregoing discussion we note that the Id. CIT(A) confirmed the addition without proper appreciation of facts and relevant law and the same is based on the incorrect and wrong factual findings. The Id. CIT(A) at page 19 top para wrongly noted that the assessee did not requested to provide cross examination and wrongly noted that the search was carried out in the premises of Anirudh Joshi whereas in fact the search was carried on in Skylarc Group on 25.04.2017 and these incorrect facts have not been disputed by the Id. Senior DR. The Id. CIT(A) recorded a finding that no proof of interest payment and TDS but the confirmations and other documentary evidence not only reveals the fact of payment of interest to the creditors after deduction of TDS by the assessee but also reveals the factum of repayment of entire loan during FY 2013-14 and these vital facts cannot be ignored or kept aside by way of incorrect appreciation and recording of wrong findings.

13. Our above noted conclusion also gets support from the judgment of Hon'ble High Court of Allahabad in the case of CIT vs Kapoor Chand Mangesh Chand (2013) 38 taxmann.com 239 (Allahabad) and judgment of the Hon'ble Supreme Court in the case of Dhananjaya Reddy vs. State of Karnataka, 2001 (4) SCC 9, as vehemently relied by the Id. AR, to submit that where there is no material to destroy the identity and creditworthiness and genuineness of transaction particularly when the lender companies are being regularly assessed to tax and has produced their financial & bank statement before the authorities below then it has to be held that the assessee has discharged its primary onus of proving the identity, capacity and creditworthiness of creditor and genuineness of transactions and in such situation no addition u/s. 68 of the Act is called for.

14. In view of forgoing discussion we reach to a logical conclusion that the authorities below were not correct and justified in holding that the assessee has not discharged onus lay on it as per mandatory requirement sec 68 of the Act. Per contra, as per discussion made hereinabove based on self speaking documentary evidences of the assessee we are compelled to hold that the assessee has properly discharged said onus by way of sustainable explanation and documentary evidence showing and establishing identity, capacity & creditworthiness of lenders and genuineness of transaction therefore no addition can be made in the hands of assesses u/s. 68 or any provision of the Act. Accordingly sole ground no. 10 of assessee is allowed and Assessing Officer is directed to delete the entire addition.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 28.07.2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: July, 2023.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi