

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.3914/Del/2019
निर्धारणवर्ष/Assessment Year:2013-14**

Amit Jain, 151, Savita Vihar, Delhi. PAN No.AAFPJ5124R	बनाम Vs.	ACIT Central Circle-6 Room No.364, E-2, ARA Centre, Jhandewalan, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri C.S. Anand, Adv.
Revenue by	Shri Zafarul Haque Tanweer, CIT DR

सुनवाईकीतारीख/ Date of hearing:	08.01.2024
उद्घोषणाकीतारीख/Pronouncement on	29.02.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred in short as "Ld.CIT(A)"]-24, New Delhi dated 29.03.2019 for the AY 2013-14. In the grounds of appeal the assessee challenged the orders of the Ld.CIT(A) in sustaining the addition of Rs.80 lakhs made u/s 68 of the Income Tax Act, 1961 (hereinafter referred in

short as “I.T. Act”) by the Assessing Officer (hereinafter referred in short as “AO”).

2. Brief facts are that in the course of assessment proceedings u/s 153A r.w.s. 143(3) of the Act the assessee was required to furnish complete details of unsecured loans along with confirmed copies of account and to prove the creditworthiness, identity and genuineness of the lenders. Assessee filed reply along with confirmations and other details called for by the AO. On examining the details, evidences furnished by Assessee the AO was of the view that loan of Rs.80 lakhs taken from one Shri Sachin Dutta no complete documentary evidences were furnished to establish the identity, creditworthiness and genuineness of transaction. The AO, thus, was of the view that assessee failed to discharge the onus in proving the credit as genuine.

3. In the appellate proceedings, the assessee provided confirmation of ledger accounts, copy of bank statement of the lender and submitted that the amount has been accepted through banking channel and repaid the same through banking channel and to prove this fact the bank statements were furnished. The assessee also contended that Shri Sachin Dutta was a Director in Shri Balaji Hitech Constructions Pvt. Ltd. in which he was holding 98.4%

of shareholding and Shri Balaji Hitech Constructions Pvt. Ltd. advanced Rs.80 lakhs to Shri Sachin Dutta who in turn lent this amount to the assessee. It was contended that all these transactions are through banking channels. The assessee provided the financials of the Balaji Hitech Constructions Pvt. Ltd. for the assessment years 2012-13 to 2014-15 to prove that the company has substantial income. The assessee also furnished Income tax returns for the assessment years 2011-12 to 2013-14 of Shri Sachin Dutta the lender and contended that the lender has shown substantial income in his returns of income and, therefore, the assessee contended that the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor is proved and hence, no addition is warranted u/s 68 of the Act.

4. All the above documents were filed as additional evidence under Rule 46A of the Act before the Ld.CIT(A). The Ld.CIT(A) called for a remand report for the comments of the AO. In the remand report the AO submitted that assessee has been given sufficient opportunity to file the evidences and since the assessee has failed to file the evidences the same cannot be admitted. On merits of the addition the AO submitted that though several opportunities were given the assessee could not produce the

creditor and, therefore, identity of the creditor is not proved. The AO also stated that the creditor filed return for AY 2013-14 declaring income of Rs.12,70,656/- and whereas the loan advanced to the assessee was Rs.80 lakhs and, therefore, the lender is not creditworthy to give such a huge loan to the assessee.

5. The Ld.CIT(A) admitting the additional evidences and considering the remand report of the AO and the rejoinder of the assessee the addition made u/s 68 was sustained agreeing with the AO that the assessee failed to discharge the onus of establishing the identity of the party as the lender was not produced before the AO.

6. The Ld. Counsel submitted before us that the various evidences furnished before the authorities clearly establishes the identity, creditworthiness and genuineness of the transaction. The Ld. Counsel for the assessee referring to various documents furnished in the Paper Book submits that the assessee has furnished copies of returns of the assessee for various assessment years, copies of confirmation of the lender, copies of Income tax return of the lender, copies of bank statements of the assessee as well as the lender to prove that the transactions were made only through banking channels, loan received as well as loan payment. The Ld. Counsel further submits that the assessee also furnished financials of

Shri Balaji Hitech Constructions Pvt. Ltd. where the lender Shri Sachin Dutta holds 98.4% of share holding and declared profits for the AY 2013-14 at Rs.60,11,610/- on which tax of Rs.18,84,850/- was paid. Ld. Counsel also submits that the company had declared taxable profit of Rs.1,58,93,142/- in the AY 2012-13 and paid taxes of Rs.53,33,783/- on a turnover of Rs.19,36,16,223/-. Therefore, the Ld. Counsel submits that the genuineness, identity and creditworthiness of the creditor has been proved by the assessee and, therefore, the addition u/s 68 of the Act is not warranted.

7. The Ld. DR supported the orders of the authorities below.

8. Heard rival submissions, perused the evidences produced before us. On hearing the Ld. DR and perusing the evidences produced before us, we find that there is substantial merit in the submissions of the Ld. Counsel for the assessee. Assessee has produced the following document before the AO/CIT(Appeals) : -

- *Copy of Computation for Assessment Years 2011-12, 2012-13, 2013-14 and copy of ITR for Assessment Years 2011-12, 2012-13 and 2013-14.*
- *Copy of Bank account statement of Mr. Sachin Dutta.*
- *Copy of audited financial statement as on 31.03.2013 and 31.03.2012 of Shri Balaji Hitech Construction Pvt. Ltd. in which Sachin Dutta is having 98.4% interest in form of shareholding.*

- *Copy of ITR for Assessment Year 2013-14 and 2012-13.*
- *Copy of master data of Shri Balaji Hitech Constructions Pvt. Ltd. signify credit limit of Rs.42 crores from PNB.*
- *Confirmation as on 31.03.2013.*
- *Balance Sheet as on 31.03.2011 of Shri Sachin Dutta stating capital of Rs.1,52,70,315/-.*
- *That the attachment are part of remand report hence are not being attached again.”*

9. The assessee produced all these evidences to establish the genuineness, identity and creditworthiness of the lender. The AO in the assessment proceedings required the assessee to furnish the documents the assessee has furnished confirmation, other relevant documents. The assessee furnished all the above documents before the AO as well as before the Ld.CIT(A). The addition was sustained by the Ld.CIT(A) agreeing with the AO that the identity is not proved as the assessee could not produce the creditor. This in our opinion is not justified. The assessee has furnished confirmation, copy of Income tax returns of the lender, copy of bank statements of the lender to prove the identity, genuineness and creditworthiness of the transaction. The assessee also produced the financials of the company in which the lender was one of the Directors holding 98.4% of the shareholding. According to which the

company made substantial profits and had sufficient funds to advance amounts to the Director Shri Sachin Dutta. Therefore, the assessee has proved the source of source also in this case although not required to prove in law. Thus, we hold that the assessee has proved the identity, genuineness and creditworthiness of the creditor and therefore, the AO is erred in treating the loan of Rs.80 lakhs received by the assessee as unexplained cash credit u/s 68 of the Act. Thus, reversing the findings of the Ld.CIT(A), we direct the AO to delete the addition made u/s 68 of the Act.

10. The assessee also raised one more ground in sustaining the addition of Rs.85,304/- made u/s 2(22)(e) of the Act. The AO while completing the assessment, it is noticed from the balance sheet that the assessee has received loan of Rs.8,75,000/- from M/s KAJ Infrastructure Pvt. Ltd. Assessee is a Director and shareholder of M/s KAJ Infrastructure Pvt. Ltd. holding more than 10% of voting rights of the company. Therefore, the AO applying the provisions of section 2(22)(e) of the Act treated the loan of Rs.8,75,000/- taken by the assessee from M/s KAJ Infrastructure Pvt. Ltd. as deemed dividend. However, since M/s KAJ Infrastructure Pvt. Ltd. has accumulated profits to the extent of Rs.85,304/- as on 31.03.2013 he restricted the addition to Rs.85,304/-.

11. On appeal the Ld.CIT(A) sustained the addition.
12. The Ld. Counsel before us reiterated the submissions made before the Ld.CIT(A) submitted that the company has provided loan of Rs.8,75,000/- for purchase of agricultural land to the assessee as the assessee has experience and expertise in arranging the land to the company. Ld. Counsel submits that the loan was given to the assessee for the purpose of business. However, the assessee could not produce any substantial evidence to prove its contentions. Therefore, we see no infirmity in the order passed by the Ld.CIT(A) in sustaining the addition. This ground of appeal is rejected.
13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.02.2024

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 29.02.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi