

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 7239/Del/2019
(Assessment Year: 2016-17)

Devki Nandan Maheshwari, 4546, Mahavir Bazar, Cloth Market, FF, Chandni, Delhi (Appellant) PAN:ACQPJ1188G	Vs. ACIT, Circle47(1), New Delhi (Respondent)
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Assessee by :	Shri K. Sampath, Adv Shri V. Rajakumar, Adv
Revenue by:	Shri Vivek Upadhyay, Sr. DR

Date of Hearing	15/02/2024
Date of pronouncement	19/04/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.7239/Del/2019 for AY 2016-17, arises out of the Id. Commissioner of Income Tax (Appeals), 16, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10318/2018-19 dated 29.12.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.12.2018 by the Assessing Officer, ACIT, Circle-47(1), New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

"1. the order passed by the learned Commissioner of Income Tax (Appeals) is against the law, facts and circumstances of the case and hence be quashed.

2. That the learned Commissioner of Income-tax (Appeals)-16, New Delhi erred in facts and law in confirming Rs. 36,00,000/- under Section 68 of the Income Tax Act, out of total addition of Rs. 50,00,000/-, (Rs. 26,00,000/- + Rs. 24,00,000/-) ignoring all the evidence, facts and documents available on record, which is against the law and hence must be quashed.

3. That by deleting only partial addition made under Section 68, the learned Commissioner of Income-tax has erred in confirming this addition, in spite of the fact that the creditability of the party had already been admitted by himself. In the above circumstances the part addition confirmed is absolutely unjustified and uncalled and be deleted.

4. That the C.I.T. (Appeals) has erred in confirming the addition of proposed interest, out of disallowance of Rs. 21,300/-, which is against the law, facts and circumstances and be deleted.

5 Without prejudice to the above, the learned C.I.T. (Appeals) has erred, in ignoring her own argument, in ignoring the RTGS received by the lender in his Bank A/c. amounting to Rs. 19,24,072/- and Rs. 11,97,563/- on 29th March 2016, before the advance was given by the lender amounting to Rs. 24 lakhs."

3. We have heard the rival submissions and perused the materials available on record. The return of income for the Asst Year 2016-17 was filed by the assessee on 24.9.2016 declaring total income of Rs 24,95,020/-. The assessee is the proprietor of M/s D.N.M. and company and M/s Maheshwari Impex, engaged in the trading of cloth business and commission business thereon. During the year under consideration, the Id. AO noticed that the assessee had declared a turnover of Rs 7.17 crores and Gross Profit (GP) rate declared by the assessee was 10.18% which had declined when compared to that in immediately preceding assessment year at 11.91%. The Id. AO noticed that the assessee had received loan of Rs 50 lacs from "Banwari Lal Naresh Kumar". The Id. AO observed that there were cash deposits in the bank account of the lenders which was the immediate source of credit for the lender. The assessee on his part furnished all the requisite documents pertaining to the said unsecured loan to prove the three necessary ingredients of section 68 of the Act viz identity of the lender, creditworthiness of the lender and genuineness of the transaction. Since there were cash deposits in the bank account of the lender, the Id. AO sought to disbelieve the loan

given to the assessee in the sum of Rs 50 lacs u/s 68 of the Act and consequentially disallowed the interest expense thereon to the tune of Rs 21,300/- in the assessment.

4. It is a fact that the lender firm which had advanced loan to the assessee is not a Non-Banking Finance Company (NBFC) and is engaged in the business of trading of pulses, while the assessee is a trader in cotton cloth. The Id. AO observed that there was absolutely no business connection at all between the assessee and the lender firm. The Id. CIT(A) granted relief to the tune of Rs 14,00,000/-, against which, the revenue is not in appeal before us. Hence the dispute to be adjudicated by us is only to the tune of Rs 36 lacs and its corresponding interest expenses. It is a fact that there were some cash deposits made in the bank account of the lender which acted as a source for advancing loan to the assessee by the lender firm. Apart from this, there were certain cheque deposits also in the bank account of the lender firm which stood as a source for advancing loan to the assessee.

5. The primary undisputed facts are that assessee had to invest a sum of Rs 5.20 crores towards share capital in a company proposed to be set up at Nagpur to produce Denim cloth, in the capacity of the promoter of the company. For that purpose, the assessee obtained financial support from M/s Banwari Lal Naresh Kumar, with whom the assessee has close relationship for over 40 years. The proposed investment in the company was a step in forward integration of the business interests of the assessee.

6. With regard to cash deposits made in the bank account of the lender firm, it is pertinent to note that Shri Naresh Goel, partner of the lender firm was examined by the Id. AO u/s 131(1A) of the Act on 28.12.2018. Shri Naresh Goel duly explained the sources of cash deposits made in the bank account of his partnership firm and confirmed the fact of advancing loan to the assessee. Since the statement was recorded on 28.12.2018 i.e. during the fag end of the proceedings, Shri Naresh Goel sought to answer all the questions that were posed by the Id. AO to him and also sought time for replying to certain questions to produce further evidence to support his statement.

Since no details were called for in the summons issued u/s 131(1A) of the Act by the Id. AO , Shri Naresh Goel had admittedly not carried any material with him while giving the deposition before the Id. AO. So he had to sought time obviously to furnish further evidences in support of his statement. We find that the Id. AO had merely overlooked all the relevant materials submitted by the assessee which also stood confirmed by the lender in the statement u/s 131(1A) of the Act and proceeded to treat the loan received as unexplained cash credit u/s 68 of the Act and disallowed consequential interest thereon. The Id. AR placed on record the scrutiny assessment order of the lender firm M/s Banwari Lal Naresh Kumar for the Asst Year 2016-17 u/s 143(3) of the Act dated 10.12.2018 framed by ITO Ward 47(1), Delhi (whereas the AO of the assessee is ACIT , Circle 47(1), Delhi which goes to prove that both the cases fall under the same range) wherein the returned income was accepted by the AO of the lender firm. Once the cash deposits made in the bank account of the lender firm had been accepted as coming from explained sources by the revenue under scrutiny assessment of the lender, the revenue cannot take a divergent stand in the case of the assessee that those cash deposits had emanated out of undisclosed sources of the assessee which had been deposited in the lender's bank account and monies received by assessee in the form of unsecured loan. Further we find that Shri Naresh Goel in his statement u/s 131(1A) of the Act had categorically explained the modus operandi of the business of the lender firm and had duly replied that the firm generates cash on a daily basis out of its sales. Hence the said cash sales were deposited by the lender firm in its bank account in cash. That's why no additions were made in the hands of the firm by the ACIT, Circle 47(1), Delhi. Eventhough the case of the assessee was selected only for 'Limited Scrutiny' in the hands of the lender, still if the Assessing Officer had found anything alarming, he could have converted the Limited Scrutiny into Complete Scrutiny by seeking permission from the competent authority in the manner known to law. This was admittedly not done in the case of the lender, which goes to prove that the ACIT, Circle 47(1), Delhi did not find anything alarming with regard to cash deposits made in the bank account of the lender firm and did not doubt about its sources. The scrutiny assessment

proceedings of the lender firm for the very same assessment year itself explains the creditworthiness of the lender and genuineness of the loan transaction with the assessee. Hence we have no hesitation to hold that assessee had duly proved the three necessary ingredients of section 68 of the Act in respect of unsecured loan received during the year from Banwari Lal Naresh Kumar (lender firm). Consequentially the interest paid thereon would also be allowable as deduction u/s 36(1)(iii) of the Act as it is not the case of the revenue that the borrowed funds were not used by the assessee for business purposes. Accordingly, the grounds raised by the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 19/04/2024.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:19/04/2024

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi