

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SH. G.S.PANNU, HON'BLE VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 7391/Del/2019
(Assessment Year : 2016-17)**

Sh. Ashwini Kumar Taneja 586, Gandhi Cloth market Chandni chowk, Delhi-110006 C/o M/s RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi-110049 PAN : ADBPT3461A	Vs.	ITO, Ward-46(3), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Dr. Rakesh Gupta, Adv.; & Shri Deepesh Garg, Adv.;
Revenue by	Shri Kanv Bali, Sr. DR; & Shri Vivek Vardhan, Sr. DR

Date of hearing:	08.03.2024
Date of Pronouncement:	27.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the assessee against the order dated 08.08.2019 of CIT(A)-16, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. 10284/2018-19 arising out of

assessment order dated 31.12.2018 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-46(3), New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that the Assessee filed return of income of Rs. 13,85,460/- and the return was processed u/s 143(1) of the Act and subsequently, the case was selected for complete scrutiny on the grounds, whether loans and advances received are genuine and from disclosed sources, whether outward foreign remittance is from disclosed sources and appropriate withholding and reporting obligations have been complied with, whether receipt of foreign remittance has been correctly offered for tax, whether sales turnover/receipts has been correctly offered for tax. Statutory notices were issued and served upon the assessee. During course of assessment proceedings, the AO on perusal of the books of account, noted that during the year under consideration, the assessee had received huge unsecured loans of Rs 1.45 crore from Sh. Shyam Sunder Bansal, Sh. Bhajan Singh Pratap Singh and Ms. Ankit Birla and most of them were claimed to be squared off. The AO required the assessee to furnish details of unsecured loans received during the year and file the supporting documentary evidences within the precincts of 68 of the Act. After examination of documents filed, the AO made an addition of Rs 1.45 crore of unsecured loans treating them as unexplained by invoking the provisions of Section 68 of the Income Tax Act.

The AO also noted that there was a fall in GP rate and the claim of the assessee that the fall in GP rate was on account of market conditions was not substantiated by any comparable case in the market. The AO, accordingly, applied the GP rate of the previous assessment year i.e. A.Y 2015-16 and made an addition on this account of Rs 4,78,864/-.

2.1 Aggrieved by the order, the assessee is in appeal. Before Ld. CIT(A) additional evidence was filed for which for admission of the additional evidence comments of AO were called on admissibility as well as merits of the additional evidence. The copy of remand report was provided to the ld. AR of the assessee for filing the rejoinder and the additional evidence was accordingly admitted and thereafter Ld. CIT(A) upheld the addition to extent of Rs. 25 lakhs u/s 68 with following relevant findings.

“As discussed at length, the appellant has been unable to establish the genuineness of the loans of Rs 21,00,000/-, Rs 4,00,000/- and Rs 15,00,000/- (out of the total loan of Rs 50,00,000/-) disbursed on various dates to the appellant. The explanation offered by the appellant that these amounts have been sourced by loans from family members of the lender are not corroborated by any credible evidence. The AO rightly treated the purported loans of Rs 40,00,000/- as unexplained credit under section 68. No adverse' inference is, however, being drawn with regard to the loan of Rs 10,00,000/- disbursed as the AR of the appellant has discharged his onus pertaining to the said loan as discussed supra. Since the pre-requisites required under section 68 stand satisfied, with regard to loan of Rs 40,00,000/- given by Ankit Birla, clearly section 68 is applicable to the facts of the case. I, accordingly, uphold the addition of the AO amounting to Rs 40,00,000/- on this ground. My observations with regard to section

68 as elucidated on pages 24, 25 and 26 of my appellate order also apply mutatis mutandis to this adjudication. Thus, a total addition of Rs 65,00,000/- (Rs 25,00,000/- of Shyam sunder Bansal + Rs 40,00,000/- of Ankit Birla) is upheld.”

2.2 In regard to the addition made on account of fall in gross profits, the ld. CIT(A) was satisfied and deleted the addition.

2.3. Accordingly, the assessee is in appeal raising following grounds ;

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.65,00,000/- (out of Rs. 1,45,00,000/-) made by Ld. AO on account of unsecured loan by treating it as alleged unexplained credit u/s 68 and that too by recording incorrect facts and findings and without granting opportunity of cross examination of the entire adverse material and deponents used against the assessee and without observing the principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in sustaining the addition of Rs.65,00,000/- made by Ld. AO on account of unsecured loan u/s 68, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B & 234D of Income Tax Act, 1961.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. Heard and perused the record.

4. Ld. AR submitted that the lenders are clearly identifiable and when the lenders have confirmed the fact of loans having been given to the assessee and lenders are assessed to tax and have furnished their bank statements, copies of income tax return and copies of their balance sheets, no addition qua such credits can be made. Reliance was placed on the judgments ;

- Labh Chand Bohra vs. ITO, (Raj), 219 CTR 571
- Aravali Trading Co. vs. I.T.O. 220 CTR 622 (H.C. of Raj)
- CIT vs. Shri Raj Kumar Agarwal: Income Tax Appeal no. 179 of 2008 dt. 17.11.2009 (Allahabad High Court).
- Mangilal Agarwal (Late) vs. ACIT 300 ITR 372 (Raj)
- CIT vs. Metachem Industries 245 ITR 160 (MP)

4.1 It was submitted that once assessee points out the depositor from whom he has received money and depositor earns the advancement of money the source of source cannot be explore for which reliance was placed on judgment:

- Tolaram Daga vs. Commissioner of Income Tax 59 ITR 632 (Assam)
- CIT vs. Shri Ram Narain Goel 224 ITR 180 (Pun. & Har.)
- Nemi Chand Kothari vs. CIT & another 264 ITR 254 (Gauhati)
- Rohini Builders vs. DCIT 76 TTJ 521 (Ahmd.)
- DCIT vs. Rohini Builders 256 ITR 360 (Gujarat)
- CIT vs. Rohini Builders 254 ITR 275 (Statute)
- CIT vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC)

- GG Films vs. ITO 45 TTJ 644 (Cochin) and Anil Kumar Midha (HUF) vs. ITO 100 TTJ 644 (jodhpur)
- Sarogi Credit Corporation vs. CIT, Biahra 103 ITR 344 (Pat)
- Jalan Timbers vs. CIT 223 ITR 11 (Gauhati)
- Sona Electric Co. vs. CIT 152 ITR 507 (Delhi)
- S. Hastimal vs. Commissioner of Income Tax 49 ITR 0273.

5. Ld. DR however supported the findings of Ld. AO.

6. On appreciating the material on record and the submissions, and the grounds raised, primarily it comes forth that the assessee was given part relief by the Id. CIT(A) . On appreciating the order of the Id. CIT(A) , it comes up that primarily, the Id.CIT(A) has considered certain part of the loan transactions as suspicious as there were immediate credit of the exact amounts just a few days before the loan was given to the assessee.

6.1 In this context, it comes up that with regard to total loan of Rs. 45 lakhs from Shyam Sunder Bansal, there was a credit entry of Rs.25 lakhs on 08.12.2015 for which an explanation was given that this amount had come up from M/s Bhagirath Mathura and Company. The Id.CIT(A) has, however, disbelieved the same with this observations, "why would a person take a loan from another to give loan to the assessee" and, thus, he considered it as a layered transaction.

6.2 Similarly, in regard to the loan transaction of Rs. 40 lakhs from Ankit Birla, the Id. CTT(A) has observed that a loan of Rs.21 lakhs on 28.04.2015 is immediately preceded with a deposit of identical amount on 27.04.2015. Similarly, an amount of Rs.15 lakhs disbursed as loan on 01.05.2015 is preceded by a deposit of an identical amount on the same date.

6.3 A loan of Rs. 4 lakh credited on 30.04.2015 is preceded by credit of exactly same amount on same date. The assessee had submitted that these credits were sourced by loans from family members/HUF viz., Shri Nitish Sharda, HUF, Smt. Seema Sharda, Smt. Shashi Sharda, Shri Mahesh Sharda and Shri Kailash Narain Sharda. However, in the absence of confirmations to corroborate the same, the Id. CIT (A) has not considered them duly explained.

6.4 The Bench is of the considered view that when the assessee, for the purpose of section 68 of the Act, establishes the identity of the creditors and the Revenue accepts the genuineness of a part of the transaction, it is not justified to disbelieve remaining part of the transaction by mere attribution of suspicion. The burden having been discharged partly, the onus was on the Revenue to establish by some substantive evidences or series of circumstances, rather than bare suspicion on the basis of what is termed as 'happy coincidence of loan being followed by credit entries of similar amounts', more particularly, as observed earlier, at the cost of repetition, when part loan transaction from the same person

is admitted to be genuine. Thus, in regard to the ground raised, the findings of the Id. CIT(A) cannot be sustained. The grounds are allowed. Appeal is allowed.

Order pronounced in the open court on 27.05.2024 .

**Sd/-
(G.S.PANNU)
VICE PRESIDENT**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**