

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.647/Del/2020, A.Y. 2016-17

Deputy Commissioner of Income Tax, Circle -3(1), New Delhi	Vs.	M/s. Artex Knitting Industries Pvt. Ltd. Khasra No. 902-290, Khata Khatoni No. 13, Old Lal Dora Village, Shalimar Bagh, New Delhi-110 088 PAN : AALCA3377L
(Appellant)		(Respondent)
Appellant by	None	
Respondent by	Sh. Kanv Bali, Sr.DR	
Date of Hearing	14/05/2024	
Date of Pronouncement	22/05/2024	

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the Assessment Year [In short, the 'AY'] 2016-17, preferred by the appellant/Revenue, challenges an order dated 05.11.2019, of the Commissioner of Income Tax (Appeals)-1, New Delhi [In short, the 'CIT(A)']. By the order under challenge, the CIT(A) allowed the appeal of the assessee on the reasoning that the persons who advanced loans aggregating to Rs.1,93,50,000/- to the assessee had creditworthiness to do so and the assessee had duly explained these loan transactions in accordance with the provisions of Section 68 of the

Income Tax Act, 1961 [In short, the 'Act'] during the appellate proceedings.

2. We are tasked to decide here the solitary issue that whether the unsecured loans aggregating to Rs.1,93,50,000/- taken from three persons [Directors of the assessee and Group Company] were explained, as held by the CIT(A), in accordance with the provisions of section 68 of the Act.

3. The relevant facts, in brief, are that the assessee, a company, engaged in the spinning, weaving and finishing of textiles, filed its Income Tax Return [In short, the 'ITR'] on 07.10.2016 declaring loss of Rs. 2,41,02,350/-. The case was picked up for limited scrutiny for the following reasoning:-

<i>Unsecured loans from persons who have not filed their Return of Income (form 3CD)</i>	<i>Whether unsecured loans are genuine and from disclosed sources.</i>
<i>Mismatch in sales turnover reported in Audit Report and ITR (Form 3CD and Total Sales/Gross Receipt in part A-P&L of ITR)</i>	<i>Whether sales turnover/receipts has been correctly offered for tax.</i>

4. During the course of scrutiny proceedings, the Assessing Officer (In short, the 'AO') sent 11 statutory notices to the assessee, as detailed in the tabulated chart mentioned in para 4 of the assessment order, which remained uncomplied with except once; 17.10.2018, when the assessee submitted part reply. In such facts and circumstances of

consistent non-compliance, the AO who show-caused the assessee to explain the unsecured loan of Rs.1,93,50,000/- in accordance with the provision of section 68 of the Act, has no option except to tax it under section 68 of the Act. On assessee's appeal, the CIT(A) knocked of the entire addition of Rs.1,93,50,000/-.

5. During the first appellate proceedings, the assessee filed additional evidence containing confirmation letters from Mr. Fakir Chand Sarawagi, Mr. Bikash Sarawagi and Cubaties Tax Fab Pvt. Ltd. along with copies of ITRs of both individuals; Mr. Fakir Chand Sarawagi and Mr. Bikash Sarawagi. As per Rule 46A of the Income Tax Rules, the CIT(A) sent additional evidence to the AO, on 09.08.2019, for examining the same and submitting a report thereon. In response, the AO submitted the remand report stating his inability to conduct any inquiry on the reasoning (The said remand report is extracted in para 6 of the appellate order) extracted below:-

“It is further requested that the proceedings are now faceless and DIN number is mandatory on each correspondence and there is no module on ITBA/ITD for this function. This office has no jurisdiction to conduct enquiry without order under Rule 46A passed by your honor's office.”

5.1 The CIT(A), without appreciating the technical difficulties being faced out by the AO in conducting the requisite and desired investigations for submitting the remand report, again sent further

additional evidence to the AO on 15.10.2019 for submitting the remand report. Since the AO did not ensure submission of the remand report within the fortnight [The CIT(A)'s letter dated 15.10.2019] after carrying out the requisite and desired investigations in faceless environment after fulfilling all technical requirements, therefore, the CIT(A) disposed of the matter on 05.11.2019.

6. This case was scheduled 7 times for hearing. However, none from the respondent/assessee side attended ever except seeking adjournment once. We heard the Senior Departmental Representative (In short, the 'Sr. DR') at length. Due to consistent non-prosecution from the respondent/assessee side, we have no option except to decide this case after hearing the Sr. DR. Accordingly, we proceeded with.

7. The Ld. Sr. DR contended that the CIT(A) had not provided reasonable time to the AO for investigating the additional evidence in faceless environment particularly when the Faceless System had not stabilized for smooth functioning. The Ld. Sr. DR further submitted that the Faceless E-assessment Scheme, 2019 notified on 12.09.2019 vide SO 3264 and 3265 was having teething problem in initial stage, which was not appreciated by the CIT(A) even after categorical mentioning of the same by the AO. It was further contended by the Ld. Sr. DR that the CIT(A) having all powers of the AO had also failed to

carry out the requisite investigations to ascertain the creditworthiness of lenders and the genuineness of the loan transactions. The Ld. Sr. DR; highlighting and emphasizing on the technical problems faced by the AO in carrying out the routine work in new Faceless Environment, contended that the appeal should have not been decided in haste particularly when the respondent/assessee adopted tactical non-compliance, before the AO, to avoid investigations. In such facts and circumstances, the role of the CIT(A) became more crucial and the CIT(A) was duty bound to get the issue properly examined/investigated before concluding the appellate proceedings. However, the CIT(A) failed to do so and the AO was not able to do the needful. Accordingly, he prayed for remitting the matter back to the AO for ascertaining the creditworthiness of lenders after doing requisite enquiries/examinations/ investigations.

7.1 The Ld. Sr. DR, placing emphasis on various parts of the appellate order and the submissions of the assessee extracted in the appellate order, demonstrated that the assessee has failed to submit the bank accounts and statement of affairs/balance sheet of all lenders who advanced the money to the respondent/assessee. The crucial limbs of section 68 of the Act did not get examined /investigated. The Ld. Sr. DR placed emphasis on the ground of appeal where the decision of the

Hon'ble Jurisdictional Delhi High Court in the case of N. R. Portfolio Pvt. Ltd. in ITA No. 134/2012 dated 21.12.2012 was mentioned.

7.2 To buttress his claim, the Ld. Sr. DR drew our attention to the following case laws:-

- i. Suman Gupta-(SLP(C)CC-2152-2013)(2013-LL-0122-69) SLP dismissed by the Hon'ble Supreme Court on 22.01.2013,
- ii. Pradhan Telecom India Pvt. Ltd. 2018-TIOL-1983(Mum.),
- iii. Seema Jain [2018] 96 taxmann.com 307 (Del),
- iv. Bikram Singh 399 ITR 407 (Del),
- v. Sidharth Export [2019] 112 taxmann.com 193 (Del),
- vi. Krishna Kumar Sethi 92 taxmann.com 324 (Del),
- vii. Sitaram Ramchanddas Patel Vs ITO [2018] 95 taxmann.com 290 (Guj),
- viii. Mangi Lal 315 ITR 105 (Mad),
- ix. Pavankumarm Sanghvi [2018] 90 taxmann.com 386 (Guj),
- x. Upendra Singh Raghav 88 taxmann.com 95 (Alld),
- xi. Toby Consultants (P.) Ltd. 324 ITR 338 (Del),
- xii. Sanraj Engineering Pvt. Ltd. (ITA 79/2016) (Del),
- xiii. N.R.Portfolio Pvt. Ltd. in ITA No. 134/2012 dated 21.12.2012 and
- xiv. Precision Finance (P.) Ltd. 208 ITR 465 (Cal).

8. Heard the Ld. Sr. DR at length and perused the case record and the above case laws. The sole issue for our consideration here is the

taxability of the cash credit. We find force in the argument of the Ld. Sr. DR that the issue under dispute here not properly examined/investigated due to tactical non-compliance of the respondent/assessee before the AO and partial compliance before the CIT(A) vis-à-vis teething problem faced by the AO during the remand proceedings in Faceless System.

9. According to the Section 68 of the Act, where any sum is found credited in the books of assessee, the assessee offers no explanation about the nature and source of the same or explanation offered by him is not found satisfactorily in the opinion of the AO, the sum credited may be charged to tax as the income of the assessee of the relevant year. The identity, creditworthiness and genuineness of transactions have to be explained by the assessee if in his books of account that sum is found credited. The identity, creditworthiness/ financial strength of the lenders and genuineness of such loans have to be proved/established by the respondent/assessee. The burden of proof of these is on the respondent/assessee.

10. Here, in this case, we are of the opinion that the identity of lenders had been proved before the CIT(A). However, the other two limbs of Section 68 of the Act had not been explained properly by the respondent/assessee. After submitting the requisite documents to

prove the identity, creditworthiness/financial strength of the lenders and genuineness of such loans, the burden of proof shifts to the AO. The respondent/assessee had not produced the bank account of persons along with the explanations of credits therein before advancing the loans. The creditworthiness of these persons for advancing loans had not been demonstrated beyond doubt as the details submitted by the respondent/assessee during the appellate proceedings to explain the creditworthiness of the lenders were neither investigated, as envisaged u/s 68 of the Act, during the remand proceedings by the AO nor by the CIT(A) during the appellate proceedings. The Hon'ble Delhi High Court, in similar facts and circumstances, in the case of Siddharth Export 112 taxmann.com 193 has held that where assessee received unsecured loan from a person outside India but failed to produce relevant documents to prove identity and creditworthiness of creditor and genuineness of transaction either before AO or before the CIT(A), certain documents produced by the assessee during instant appeal before High Court under section 260A could not be accepted and, therefore, impugned addition made under section 68 in respect of said loan was justified. The Hon'ble Supreme Court in the case of N. R. Iron and Steel Pvt. Ltd. SIP No. 29855 of 2018, referring the decision of Hon'ble Delhi High Court in the case of Oasis Hospitalities Pvt. Ltd. 333 ITR 119 (Del.) observed that merely proving the identity of the investor

does not discharge the onus of the taxable in the capacity or creditworthiness has not been established.

11. In the present case, the AO did not make any independent inquiry as no such details were made available by the assessee however the CIT(A) before whom certain details were furnished did neither carry out investigation nor allowed the AO to do so by providing reasonable & sufficient opportunity to the AO to carry out the investigation for verifying the creditworthiness of the parties, the source of funds and the genuineness of transaction. This view was further held in the case of Nemi Chand Kothari 264 ITR 254 (Gau.) wherein it was held that it cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has proved the identity of his creditors the genuineness of the transactions, and the creditworthiness of his creditors vis-à-vis the transactions which he had with the creditors, his burden stands discharged and the burden then shifts to the revenue to show that though covered by cheques, the amounts in question, actually belonged to, or was owned by the assessee himself. Similar findings have been given by the Hon'ble Delhi High Court in case of N. R. Portfolio Pvt. Ltd. (Supra).

12. In view of the above and in the interest of justice, we are of the considered opinion that the details/documents filed by the respondent/

assessee to discharge its primary onus of explaining the loans of Rs.1,93,50,000/- before the CIT(A) have not subjected to the requisite enquiry/examination/investigation. Thus, the respondent/assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances. In view thereof, without offering any comment on merit of the case, we deem it fit to set aside the impugned order and remit the matter back to the file of the AO for de-novo consideration. The respondent/assessee should ensure compliances during the set-aside proceeding before the AO. The AO is also required to provide reasonable opportunities of being heard before deciding the case on merit.

13. In the result, the appeal of Revenue is allowed for statistical purposes.

Order pronounced in open Court on 22nd May, 2024.

Sd/-

**(MADHUMITA ROY)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 22/05/2024

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI