

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No. 2747/Del/2017, A.Y. 2012-13**

Rajesh Madan, M/s. S.S.Trading Co., A-148, Gujranwala Town, Part-I, Delhi-110009 PAN : AODPM5247E	v/s.	Income Tax Officer Ward-36(5), New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	None
Respondent by	Sh. Vivek Vardhan, Sr.DR

Date of Hearing	04/07/2024
Date of Pronouncement	12/07/2024

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM**

The instant appeal of the Assessment Year [In short, the 'AY'] 2012-13 preferred by the assessee is against the order, dated 27.02.2017, of the Commissioner of Income Tax (Appeals)-12, New Delhi [In Short 'the CIT(A)].

2. The relevant facts giving rise to this appeal are that the appellant/assessee, proprietor of S.S.Trading Co., is engaged in trading of Catechu (Katha). He filed his Income Tax Return (In short, the 'ITR') on 30.09.2012 declaring income of Rs.3,71,430/-. The case was picked up for scrutiny and consequential assessment was completed at income of

Rs.46,20,000/- under section 143(3) of the Income Tax Act, 1961 (In short, the 'Act') The Assessing Officer (In short, the 'AO') made following additions/disallowances: (i) unexplained credits of Rs.46,20,000/- under section 68 of the Act and (ii) disallowances of Rs.31,195/- made out of car and telephone expenses. On appeal of the assessee, the Ld. CIT(A) confirmed the unexplained credits of Rs.46,20,000/- and deleted the disallowance made out of telephone & car expenses.

2.1 The appellant/assessee challenged the taxability of unexplained credits of Rs.46,20,000/- confirmed by the Ld. CIT(A) raising various grounds. The case was scheduled for hearing on various dates i.e. 03.12.2019, 20.02.2020, 07.12.2020, 09.02.2021, 05.04.2021, 05.08.2021, 04.10.2021, 02.12.2021, 07.02.2022, 18.04.2022, 12.07.2022, 29.09.2022, 27.02.2023, 15.05.2023, 13.07.2023, 12.10.2023, 26.12.2023, 11.03.2024, 24.05.2024 and 04.07.2024; however, the appellant sought adjournments for almost all time on one reasoning or another since 05 years. From the above details, it is seen that this case was scheduled many times for hearing. However, none from the appellant/assessee side attended ever except seeking adjournment some time. We heard the Senior Departmental Representative (In short, the 'Sr. DR') at length. Due to consistent non-prosecution from the appellant/assessee side, we have no option except to decide this case after hearing the Sr. DR. Accordingly, we proceeded with.

3. Neither appellant nor anyone on his behalf attended on 04.07.2024. No adjournment was also sought on 04.07.2024.

4. The Ld. Sr. DR, placing emphasis on the assessment order and the order of Ld. CIT(A), prayed for dismissal of the appeal. He contended that the appellant/assessee failed to demonstrate the genuineness of the transaction along with identity and creditworthiness of various persons from whom the sums aggregating to Rs.46,20,000/- were taken as loan. He contended that the finding of the CIT(A) was not controverted; therefore, this appeal deserved dismissal.

5. We have heard the Sr. DR and perused the material available on record. During the first appellate proceedings the appellant/assessee filed various additional evidences. The Ld. CIT(A) remanded the matter to the AO, who submitted a remand report after conducting requisite enquiries/investigations. During the remand proceedings, the AO called certain information from all who had given loan to the appellant/assessee. In case of Golden Timber Merchant, the notice under section 133(6) of the Act received back unserved. However, the appellant/assessee filed confirmation of account, bank statement, etc. But the creditworthiness of Golden Timber Merchant was doubted by the AO as the same was not properly explained. Similar facts were reported by the AO in the case of Smt. Laxmi Devi from whom the loan of Rs.10,00,000/- was taken by the appellant/assessee. Mrs. Harvinder Kaur and Mr. Amarjeet Singh gave loan of Rs.3,00,000/- each. Neither these persons complied nor the

appellant/assessee submitted copies of their ITRs or any other document to explain the source and genuineness of these loans. Hence, the AO drew adverse inference that these loans were non-genuine. The assessee had taken loan of Rs.28,80,000/- from Mr. Hargovind Arora. During remand proceeding, the AO issued notice to Mr. Hargovind Arora to furnish various details& documents. The AO noticed that Mr. Hargovind Arora had taken sum from Smt. Laxmi Devi who had also given loan of Rs.10,00,000/- to the appellant/assessee as discussed above before advancing loan to the appellant/assessee. The Ld. CIT(A) observing as under confirmed the cash credits: -

*“I have carefully considered the observations of the Assessing Officer and submissions of the Appellant. In the case of Sh. Hargovind Arora, it is seen that Appellant has received the amount on various dates from Sh. Hargovind Arora. Appellant has received an amount of Rs.4,80,000/- on 20.01.2012 from the OD Account of Smt. Laxmi Devi and not Sh. Hargovind Arora and there was negative balance in account at Rs.(-) 4,78,480.83 as there was balance of Rs.1,509.17 only prior to issue of the cheque to the Appellant. There was no deposit in this account prior to the transactions whereas on 21.01.2012, amount of Rs.4,49,632/- has been credited. Further, it is seen that prior to issue of cheque of Rs.50,000/- to the Appellant, there is cash deposit of equivalent amount. Further, it is seen that there is deposit of Rs.9,50,000/- before to issue of cheque of Rs.9,50,000/- on 07.10.2011 to the Appellant. With respect to the transactions of Rs.12,00,000/-, it is seen that there is credit in the account of creditor Sh. Hargovind Arora by cancellation of 4 DDs amounting to Rs.14,50,000/-. It is not clear as to why anybody will give loan after cancellation of DDs when no interest has been given by the Appellant. The account has been opened on 14.10.2011, thereafter, there is credit of Rs. 14,50,000/-. Further, DDs of Rs.14,50,000/- has been issued on 19.10.2011 which has been cancelled on 25.10.2011 and on 27th October, cheque of Rs. 12,00,000/- has been issued to the Appellant. Regarding the amount of Rs.9,50,000/- dated 08.11.2011, it is seen that on same date, there is credit of Rs.9,50,000/- and regarding Rs.5,00,000/- dated 12.10.2011, no details have been submitted by the Appellant. Facts of the case laws relied on by the Appellant are different. Therefore, in view of the facts and circumstances of the case, it is held that the creditworthiness has*

*not been established by the Appellant and, therefore, disallowance of Rs.46,20,000/- is sustained.”*

6. 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. Seema Jain [2018] 96 taxmann.com 307 (Del),*
- iii. Bikram Singh 399 ITR 407 (Del),*
- iv. Sidharth Export [2019] 112 taxmann.com 193 (Del),*
- v. Krishna Kumar Sethi 92 taxmann.com 324 (Del),*
- vi. Toby Consultants (P.) Ltd. 324 ITR 338 (Del),*
- vii. Sanraj Engineering Pvt. Ltd. (ITA 79/2016) (Del),*
- viii. N. R. Portfolio Pvt. Ltd. in ITA No. 134/2012 dated 21.12.2012 and*

7. 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.

8. 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 assessee. The burden of proof of these is on the assessee.

9. Here, in this case, we are of the opinion that the identity of lenders had been proved. However, the other two limbs of Section 68 of the Act had not been explained properly by the appellant/assessee. The creditworthiness of these persons for advancing loans had not been demonstrated beyond doubt as the details submitted by the appellant/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 Supreme Court in the case of NRA 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 beyond doubt. 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).

10. The CIT(A) has given the finding that loan of Rs.28,80,000/- received by the appellant/assessee from Mr. Hargovind Arora were in many tranches. Rs.4,80,000/- received on 20.01.2012 was from OD account of Mrs. Laxmi Devi and not from Mr. Hargovind Arora. Other credits in the bank account of Mr. Hargovind Arora were DDs cancellation and cash deposits of Rs.10,00,000/-. The source of DDs was not explained. The credits appearing in the bank account of Mr. Hargovind Arora were not explained properly though the AO and CIT(A) provided sufficient opportunity to do so. No fresh material was brought on the record by the appellant/assessee to controvert the finding of the CIT(A). We therefore, in view of the facts and case laws cited above, of the considered opinion that it is not fit case to interfere with the finding of the CIT(A). Accordingly, we do so and uphold the finding of the CIT(A) that the loan of Rs.28,80,000/- received from Mr. Hargovind Arora is unexplained and has been rightly taxed in the hands of the appellant/assessee. The addition of Rs.28,80,000/- thus, is sustained.

11. With respect to other unexplained credits of Rs.17,40,000/-, the CIT(A), in para 9.5 of the order, has given categorical finding. In respect of loan from Golden Timber Merchant, she has specifically mentioned that the AO is directed to verify whether the amount of Rs.1,40,000/- is interest and may make necessary rectification, if required. Even the CIT(A) is not sure about the nature of Rs.1,40,000/-. In cases of Mrs. Harvinder Kaur and Mr. Amarjeet Singh, the appellant's claim is that these are old credits of FY 2008-09 and

hence, the same cannot be taxed in the relevant AY. The CIT(A) has admitted the fact that the appellant/assessee has converted sundry creditors' balance into loan. Even then she has held the same as unexplained. In case these sums have not been credited in the books of account of the appellant/assessee for first time in the relevant year, then the nomenclature of these sums as loan will not make these sums unexplained. In case of Smt. Laxmi Devi, the CIT(A) has held that the bank account of Smt. Laxmi Devi reveals that the loan has been given out of TDR. Even then she has doubted the creditworthiness of Smt. Laxmi Devi.

12. As far as the unexplained credits of Rs.17,40,000/- is concerned, 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 his primary onus of explaining the loans of Rs.17,40,000/- before the AO and the CIT(A) have not been subjected to the requisite enquiry /examination /investigation. Thus, the appellant/assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances. In view thereof, without offering any comment on merit of the credits of Rs.17,40,000/-, 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 as far as the credits of Rs.17,40,000/- is concerned. The AO is also required to provide reasonable opportunities of being heard before deciding the case on merit.

13. Accordingly, the appeal is partly allowed as above for statistical purposes.

Order pronounced in open Court on 12<sup>th</sup> July, 2024

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

**Sd/-**

**(AVDHESH KUMAR MISHRA)  
ACCOUNTANT MEMBER**

Dated: 12/07/2024

*Binita, Sr. PS*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI