

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

**BEFORE SH.S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.8530/Del/2019
Assessment Year: 2016-17

ACIT, Central Circle -20 ARA Centre-269A, F-2Jhandewalan, New Delhi	Vs.	RAJESH KAUSHIK 460/1A,Street no 17 Shahdara Vishwas Nagar Delhi PAN NO.ALNPK4140R
(APPELLANT)		(RESPONDENT)

(C.O. No.01/Del/2020)
ITA No.8530/Del/2019
Assessment Year: 2016-17

RAJESH KAUSHIK 460/1A,Street no 17 Shahdara Vishwas Nagar Delhi PAN NO.ALNPK4140R	Vs.	ACIT, Central Circle -20 ARA Centre-269A, F-2Jhandewalan, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Shri Anirudh Saran Singh, Sr DR
Respondent by	Sh. Sachin Kumar, CA

Date of hearing:	05/11/2024
Date of Pronouncement:	22/11/2024

ORDER**PER SUDHIR KUMAR, JM:**

This appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-27 New Delhi [hereinafter referred to as "CIT(A)"] vide order dated 19.08.2019 pertaining to A.Y. 2016-17 arises out of the assessment order dated 25.012.2018 under section 143 (3) of the Income Tax Act 1961 [hereinafter referred as 'the Act].

2. The revenue has raised the following grounds;

1. The Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.2,27,15,000/- on account of unsecured loans, without properly appreciating the facts and circumstances of the case.

2. That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.1,76,024/- on disallowance of interest paid on unsecured loans, without properly appreciating the facts and circumstances of the case.

3. The brief facts of the case are that the assessee has filed its return of income declaring total income of Rs 17,01,360/-. The case was selected for Limited Scrutiny through CASS. A notice u/s 143(2) of the Act was issued to the assessee and duly served on the proprietor of the firm. Further notice u/s 142(1) of the Act with questionnaire was issued to the assessee on 09-

10-2018. According to assessing officer the assessee did not submit the necessary evidences for substantiating the credit worthiness of the creditor and genuineness of the transaction. The assessing officer has observed in his order and made the following additions as under; order

i. unsecured loan amounting to Rs 2,27,15,000/-

ii claimed interest on the claimed bogus unsecured loan amounting to Rs 1,76,024/-

4. Aggrieved the order of the assessing officer the assessee has filed the appeal before the Ld CIT(A) who vide his order dated 19-08-2019 allowed the appeal against which the revenue is in appeal before us. The assessee has also filed the cross objection in the appeal.

5. The ld. DR has relied upon the order of the assessing officer and submitted that addition made by AO was deleted without properly appreciating the facts and circumstances of the case. The assessee has failed to prove the creditworthiness of the creditor and genuineness of the transactions.

6. The Ld. AR of the assessee has submitted that assessee has filed the documents before the AO. He has also submitted that the loan was received through regular banking channel. The assessee has proved the identity and creditworthiness of the lender and genuineness of the transactions. Reliance has placed on the following judgments;

1. *CIT Vs. Oasis Hospitality P. Ltd.* 333 ITR 119 (Del-
HC) = [2011] 238 CTR 402

2. *Abhik Jain Vs. ITO*, (2012) 18 ITR 0497 (Delhi-Trib.) =
[2013] 33 taxmann.com 577

3. *ACIT Vs. Shyam Indus Power Solutions (P) Ltd.* (2018)
62 ITR (Trib.) 0512 (Delhi)= [2018] 90 taxmann.com 424

7. We have heard the parties and perused the material available on record.

8. The ld. CIT(A) has deleted the addition made by AO by observing as under;

4.3 I have considered the facts of the case and the written submissions of the appellant. Factually the submissions made by the appellant are verifiable from the assessment records as well as submissions made during appellate proceedings.

4.3.1 It is observed that the AO has made addition of closing loan balances, which is not the correct way to add any loan which in the opinion of the AO have any Ingredient of ingenuine loan, except in cases where there are no opening balances & repayments during the year. In such cases, only the loans taken during the year can be taxed in that year and the loans takes in earlier years need to be taxed in those assessment years. Therefore, any addition, on account of unsecured loans can only be made of the amounts raised in the year under consideration which in the present case is Rs. 10,00,000/-

in case of Ms Shalini Sharma and Rs 11 Cr appx. in case of M/s Narayan Traders which has running current account (where peak balance may be taxed).

4.3.2 It is observed that the appellant has filed the requisite primary details like loan confirmation, bank statement and acknowledgement of the return filed by all these parties, thereby discharging his primary onus of these loans. These details were available in the assessment records called from the AO. Thus the observation made by the AO in the assessment order that no confirmation was received is factually incorrect and any addition on such factually incorrect observation is not sustainable.

4.3.3 The another observation made by the AO is that the returned income of these parties is not commensurate with the loan given by these parties, proves that party has no creditworthiness. It is submitted that the current year income of the loan giver cannot be the sole criteria to determine the creditworthiness of the loan giver. There can be other sources like earlier year incomes, loans taken or the business loans. The case law given by the appellant jurisdictional ITAT supports this view. Thus this factor cannot be the sole criterion to determine the creditworthiness of loan giver.

4.3.4 In these facts & circumstances and the legal position given by the appellant, it is held that the appellant has

discharged his primary onus regarding identity, source and creditworthiness of the loan giver by submitting the primary details during the assessment proceedings. Further the current year income of loan givers cannot be the sole criterion to judge creditworthiness of loan givers. The loans from these parties are regularly being raised and repaid even in earlier years. Loans from all the parties except Ms. Pushpa Devi Garg have been accepted in the past assessments made by the AO in earlier years. There is no adverse material brought out by the AO in the assessment order, which could allow the AO to take a different view on these loans raised in the current year. In the case of Ms Pushpa Devi Garg, the appellant had been able to give all primary evidences regarding identity, source and creditworthiness of the loan advanced by her including her source of funds. Without prejudice to it, all these loan parties are separately regularly assessed to tax and any adverse inference, if any, of the loans given by them should be taken in their own case, when they have filed the necessary confirmations in this regard. Therefore, the addition made by the AO without bringing any adverse material on the record is based on presumption & conjectures and is therefore, not sustainable. Accordingly, the addition made by the AO on account of closing balances of loans parties aggregating from these to

Rs.2,27,15,000/- is hereby deleted and this ground of appeal is allowed.

5. Ground no. 3: Issue of disallowance of Interest paid of Rs.1,76,024/-,

5.1 The AO has disallowed the interest paid of Rs. 1,76,024 to M/s. Ram Avtar Kamal Kumar on the basis of the decision that the unsecured loan from this party remain unverified.

5.2 The appellant has submitted that he has deducted TDS of Rs. 17,602 and M/s Ram Avtar Kamal Kumar has declared the interest of Rs. 1,76,024 as their income which has been offered for tax in their hands. The interest was also paid to M/s Ram Avtar Kamal Kumar during AY 2013-14 and 2014- 15 as is evident from their confirmation and the same was allowed by the AO in assessment u/s 143(3) for AY 2013-14 and 2014-15, copy of the assessment orders have been placed on record.

5.3 I have considered the facts of the case and the written submissions of the appellant. The facts mentioned by the appellant above are factually correct. It is further observed that the appellant had paid Interest of Rs.1,39,781/- to Ms. Pushpa Devi Garg, which has not been disallowed by the AO in similar circumstances. As the addition on account of Loan received from M/s Ram Avtar Kamal Kumar has been deleted in the above para, considering it to be a genuine loan, the interest payment on this loan of

Rs.1,76,024/-, being consequential in nature is allowed. Therefore, the addition made by the AO on payment of interest of Rs.1,76,024/- is hereby deleted and this ground of appeal is allowed.

9. In the instant case the assessee has filed the documents as bank statement and acknowledgement of the return filed by parties to prove the creditworthiness of the creditors and genuineness of the transaction. The AO has not under taken any investigation of the veracity of the documents filed by the assessee. The assessee has discharged his onus regarding the identity, source and creditworthiness of the creditors by filing the documents. The loans from all parties except Ms Pushpa Devi Garg have been accepted in the past assessments made by AO in the earlier years. As regard as deletion of disallowance of interest the assessee has deducted TDS of Rs 17,602/- which was paid to the government account. M/s Ram Avtar Kamal Kumar has declared the interest amount of Rs 176,024 /- as their income and paid tax and this amount has declared the interest of Rs 1,76,024/- as their income and paid the tax on that amount. The 1d CIT(A) has discussed every point in his order and has rightly deleted the with the findings of the 1d CIT(A). The appeal has no force and liable to be dismissed.

10. In the result, the appeal of the revenue is dismissed.

Cross objection No. 01/Del/2020 (A.Y. 2016-17)

11. The Ld. AR has submitted that a valid notice u/s 143(2) of the Act was not served upon the assessee. The appeal of the revenue has been dismissed then need not go to adjudicate the jurisdictional issue since we have already dismissed the appeal of the revenue. Consequently, the cross objection filed by the assessee is liable to be dismissed.

12. In the result, the cross objection filed by the assessee is also dismissed.

Order pronounced in the open court on 22.11.2024.

Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:- .11.2024

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI