

**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND**  
**SHRI RAM LAL NEGI, JUDICIAL MEMBER..**

I.T.A. No. 434/Nag/2013.  
Assessment Year : 2006-07.

Asstt. Commissioner of Income-tax,  
Circle-1, Nagpur.

Vs. M/s Millenium Developers &  
Promoters Pvt. Ltd., Nagpur.  
**PAN AADCM2194M.**

Appellant.

Respondent.

Appellant by : Shri A.R. Ninawe.  
Respondent by : Shri Mukesh Agrawal.

Date of Hearing : 22-03-2017.  
Date of Pronouncement : 24<sup>th</sup> March, 2017.

**ORDER.**

**PER SHAMIM YAHYA, A.M. :**

This appeal by the Revenue is directed against the order of learned CIT(Appeals)-I, Nagpur dated 26-09-2013 and pertains to assessment year 2006-07. The grounds of appeal read as under :

1. On the facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.1,00,00,000/- as unexplained credit u/s 68 of the I.T. Act, 1961.
  2. On the facts and circumstances of the case and in law, the CIT(A) erred in accepting the genuineness of the cash credit of Rs.1,00,00,000/- ignoring the fact that the assessee did not prove the creditworthiness of the cash credits before the CIT(A) or before the AO.
2. Brief facts of the case are as under :

The assessee is a developer & promoter, engaged in the business of development of land and sale of developed plots of land. During the relevant

financial year under consideration, the assessee has taken a loan of Rs.1 crore from three individuals residing in UAE. The AO in para 3 of his assessment order has stated that the said amounts of Rs. 1 crore were received through banking channel and deposited into the bank account of the company with HDFC bank as and when received. The AO in the course of assessment proceedings asked for confirmation letters from creditors which were furnished by the assessee before the AO. The AO further asked the assessee to substantiate the financial capacity i.e. the credit worthiness of the creditors. The assessee vide letter dated 24-11-2008 submitted to the AO that the amounts were received by cheque and demand drafts through banking channel which justify the credit worthiness of the assessee. The AO, however, was not convinced and asked the assessee to produce the bank account details of creditors including their financial statements in support of credit worthiness which the assessee could not produce before AO, during the assessment proceedings. The AO, however, has recorded a finding "*what is on record this much that the creditors are doing business of hardware in UAE*" is not sufficient to prove the credit worthiness. Therefore, the AO treated such credits of Rs. 1 Crore as unexplained credits u/s 68 on the sole ground that out of three conditions i.e. identity, the credit worthiness of the creditor and genuineness of the transaction, the assessee has failed to prove the credit worthiness of the creditors. The AO in this regard has relied on judicial decisions in the case of Kamal Motor Vs. CIT (2003) 131 Taxman 155 (Raj.) and decision in the case of Kalekhan Mohhamad Hanif Vs. CIT, CIT Vs. Devi Prasad Vishwanath Prasad.

3. Upon assessee's appeal learned CIT(Appeals) noted that the assessee has submitted additional evidences in the form of ledger account, bank statements, copies of passport and other details. The learned CIT(Appeals) has also asked for remand report. However, the AO did not respond. After considering the

evidences and facts on record, learned CIT(Appeals) deleted the addition holding as under :

“ I have carefully considered the oral and written submissions of the AR of the appellant, the order of the AO, and the material on record. The appellant has availed loan of Rs. 1 cr. from 3 different parties residing in UAE. The appellant has availed Rs. 60 lakhs from Mr. Juzer Fakruddin Mama (Dubai), Rs. 20 lakhs from Saifee Dama (Dubai) and Rs.20 lakhs from Ahmad Bhai Thekawala (Abudhabi). The finding given by the AO in the assessment order reveals that the identity and the genuineness of the transaction are not disputed as the appellant furnished the confirmation letters from the creditors and also because the transaction has routed through the banking channel as the amount borrowed from all the 3 creditors got deposited in the account no. 1022020000147 of the company with the HDFC Bank. It is only the credit worthiness, which according to the AO, could not be proved as the appellant failed to file the bank statement and financial statements of these creditors during the assessment proceedings.

7.1 The AR of the appellant, however, in the course of the appellate proceedings has filed written submissions enclosed with the details of all the 3 creditors. The submission is found enclosed with the copies of Ledger Accounts, the bank statements, the copies of passports, copies of cheques/demand drafts issued in favour of the appellant, a copy of bank statement of the appellant with HDFC Banks wherein the borrowed amounts are deposited. Since the details filed by the AR of the appellant contained additional evidences, therefore, a remand report vide this officer letter dtd. 20.09.2011 was called for from the ACIT, Circle-1, Nagpur. The AO submitted his remand report vide letter dtd. 01.06.2012. It, however, was found that the Ld. AO has repeated the same argument given in the assessment order without addressing the issue of the additional evidence filed by the appellant. The AO was given further opportunity vide this office letter dtd. 17.09.2012 to examine the additional evidence and give report by 17.10.2012 but, no report is received till date. The Ld. AO as such has not objected to the additional evidence in the form of bank statement. Therefore, the bank statements of the creditors filed by the AR of the appellant in the course of the appellate proceedings as additional evidences are accepted. Besides the bank statements, the appellant has also filed copies of ledger accounts of the creditors in his books in support of his claim. The appellant has also filed the proof of hardware business being done by Zargose Hardware Trading (LLC) where Mr. Juzer Fakruddin Mama is a partner which has been referred by AO in the assessment order. It is a fact emanating from the

order of the AO that the identity of the creditors and the genuineness of the transaction are not disputed as the appellant filed confirmation letters before the AO. However, in support of his claim the appellant has also filed copies of passports, indicating the addresses of the creditors along with other evidences. On perusal of copies of passport, it is seen that the all the 3 creditors are of Indian origin, doing their business in UAE. Further on perusal of entries in the bank account of the creditors, it is found that these parties are engaged in regular business activities and their credit worthiness cannot be doubted once the identity of the creditors and the genuineness of the transaction have been accepted. The AR of the appellant has brought ample material evidences on record to demonstrate that the creditors are identified and the transaction being bonafide and genuine and also that creditors had the capacity to advance the money as they are found engaged in the business of hardware as as contended by the appellant during the assessment proceedings before the AO. Thus taking into consideration all the above cumulative factors coupled with the fact that the transactions have been routed through banking channel, and ample evidences filed, no adverse inference can be drawn in the absence of any contrary evidence on record. I, therefore, decline to agree with the AO and the addition is directed to be deleted.”

4. Against the above order, the Revenue is in appeal before us.
5. We have heard both the counsel and perused the records. We find that there is no dispute regarding the identity and genuineness of the transaction. The AO has disputed the credit worthiness of the lenders. For this, additional evidences in the form of bank statements and ledger accounts of the parties were submitted. On examination of the same, learned CIT(Appeals) has given a finding that their credit worthiness cannot be doubted. We find that these evidences were also remanded by the learned CIT(Appeals) to the AO. The AO has chosen not to respond to the remand by the learned CIT(Appeals). Nothing is on record that the AO was having any reservations about the veracity of these documents or he doubted the credit worthiness of the lenders after examining these evidences. Further more we also note that the assessee's counsel has submitted that these loans have been subsequently repaid by the assessee. For this purpose learned counsel has produced bank statements of further periods.

6. Upon careful consideration we find that the evidences as to further repayment of the loans need verification at the level of the AO. Hence we remit this issue to the file of the AO for the limited purpose of examining the veracity of the claim of repayment of the loans. If the loans have actually been repaid, it would be further in support of the well reasoned order of the learned CIT(Appeals) and the assessee's claim regarding the veracity of these loans will be accepted.

7. In the result, this appeal filed by the Revenue stands allowed for statistical purposes.

Order pronounced in the Open Court on this 24<sup>th</sup> day of March, 2017.

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER.

Sd/-  
( SHAMIM YAHYA)  
ACCOUNTANT MEMBER.

Nagpur,  
Dated: 24<sup>th</sup> March, 2017.

<b>Copy forwarded to :</b>
1. M/s Millenium Developers & Promoters Pvt. Ltd., 303, Amar Palace, Opp. Yashwant Stadium, Dhantoli, Nagpur.
2. AC.I.T., Circle-I, Nagpur.
3. CIT(Appeals)-I, Nagpur.
4. C.I.T.-I, Nagpur.
5. D.R., ITAT, Nagpur.
6. Guard File

True Copy

By Order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Nagpur Bench, Nagpur.

Wakode.