

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCHES, NEW DELHI
(CIRCUIT BENCH AT MEERUT)**

**BEFORE SHRII.C. SUDHIR, JUDICIAL MEMBER AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.439/Del/2015
(Asstt. Year:2010-11)**

Al-Hind Exports, 13, Ismail Nagar, Meerut	Vs.	ITO, Ward-1(1), Meerut
(Appellant)		(Respondent)

Date of hearing	17/12/2015
Date of pronouncement	15/03/2016
Assessee by:	Sh. Ravindra Aggarwal, FCA Sh. Rohit Aggarwal, ACA
Revenue by:	Sh. Bharat Bhushan Garg, Sr DR

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of Id.CIT (A), Meerut dated 18th December 2014 for Assessment Year 2010-11. The following grounds of appeal have been raised by the assessee:-

1. *That the learned Commissioner of Income Tax (Appeals) (hereinafter referred to as 'Id. CIT (A)') has erred in law as well as on the facts of the case by upholding the assessment of appellant's income at Rs.84,66,7607- as against the returned income at 64.460/- and the various observations and findings made are incorrect and untenable in law and the facts of the case have not been considered in the right perspective thereof.*
2. *That the Id. CIT(A) has erred in law and in facts of the case by confirming the addition of Rs.51,81,500/- u/s 68 of the Income Tax Act, 1961 upholding that the loans received by the appellant during the relevant year were not genuine and that the creditworthiness of*

lenders is not proved, when the same was duly established by the documents placed on record. The facts of the case and the submissions of the appellant are not considered in right perspective and various findings made by the Id. CIT(A) including that all the 7 unsecured lenders were apparently unconnected persons are either factually incorrect or untenable law.

3. That the Id. CIT(A) has grossly erred in law as well as on the fact of the case by confirming the addition of Rs.31,90,7997- u/s 40(a)(ia) of the Income Tax Act, 1961, for alleged non-deduction of TDS for various reasons including the following:-

- a) The Id- CIT-(A) has grossly erred on the facts of the case by holding that none of the persons to whom payments were made were agents of foreign shipping lines. Despite the fact that bills of two persons out of five clearly state that they are agents of foreign shipping lines and those bills were duly placed on record and detailing the amount paid by the remaining three parties to foreign shipping line was also placed on record along with the respective shipping bills showing that all the goods were dispatched through foreign shipping lines.
- b) The Id. CIT-(A) has erred by ignoring CBDT Circular no. 715 dated 8/8/1995 on the issue and also ignoring the judicial pronouncements thereon.
- c) The Id. CIT-(A) has grossly erred in law and on the facts of the case by not accepting the law laid down by the Hon'ble Supreme Court in the case of Allied Motors Pvt. Ltd. [224 ITR 677], and not allowing the benefit of the 2nd proviso to section 40(a)(ia) of the I.T. Act, 1961, to the appellant.
- d) Without prejudice to the above, the Ld. CIT-(A) ought to have given the benefit of 1st proviso to section 40(a)(ia) of the I.T. Act, 1961 as amended by Finance Act, 2014, by restricting the disallowance to 30%, as the same being curative should be treated as retrospective in terms the law laid down by the Hon'ble Supreme Court in the case of Allied Motors Pvt. Ltd. [224 ITR 677].”

2. Ground No.1 is against the addition u/s 68 of Rs.5181500/- for unsecured loan taken from 7 parties. These 7 parties have deposited cash to the tune of Rs.3.50 to 6.25 lacs each in their bank accounts on a single day on 27th June 2009 and subsequently on next day the cheques were issued and deposit was accepted in the name of these parties in the books of assessee. This amount was added by assessing officer u/s 68 of the Income tax Act holding that the creditworthiness and genuineness of the transaction is not

proved because of the reasons that the lenders are having meager income and does not have capacity to deposit such amount in the bank account of the assessee. The following table prepared by the AO depicts the detail of these loans:-

Sr No	Name	Amount of loan	Amount of cash deposited in bank	Other amounts by cheque	Date of Deposit	
1	Farhana Praveen	725000	625000	50000	27.06.2009	
2	Fazal Elahi	415000	375000	40000	27.06.2009	
3	Mehmooda begum	695000	350000	295500	27.06.2009	
4	Naseem bano	943000	625000	268000	27.06.2009	
5	Sabana Parveen	770000	635000	85000+ 50000	27.06.2009	
6	Saeeda begum	858500	350000	458500	27.06.2009	
7	Sarifan Begum	775000	400000	375000	27.06.2009	
	Total	5181500			27.06.2009	

3. Aggrieved by this the assessee preferred an appeal before the Id.CIT (A) who in turn confirmed the addition u/s 68 of the Act. Therefore, the assessee is in appeal before us.
4. The Id. AR of the assessee submitted a Paper Book wherein the details of income tax return, computation of income, statement of affairs of bank statement of the seven creditors are submitted. The Id. AR of the assessee submitted that despite filing the confirmation no summons have been

issued to these parties. Hence, the addition has been wrongly made by the AO and the same was wrongly confirmed by the Id.CIT (A).

5. The Id. DR relied on the orders of the lower authorities and submitted that assessee has failed to prove the creditworthiness and genuineness of the transaction.
6. We have carefully considered the rival contention. We have also perused the Paper Book submitted before us containing the details of unsecured loans wherein with respect to all seven lenders their confirmation, Copy of bank account computation of total income and return of income along with statement of affairs are submitted. In ITA No 438/Del/2015 we have dealt with the issue of cash credit of these lenders where they have also lent money to another assessee M/s Fazal FrozenFoods for AY 2010-11 where on identical facts, evidences and circumstances we have decided the issue of addition u/s 68 in the case of the same creditors vide our order of even date as under :-

7. We have carefully considered the rival contention. we have also perused the paper book containing 67 pages, wherein the assessee has submitted the copies of the confirmation, income tax return, computation of income, statement of affairs, and bank passbook statement of the 10 unsecured lenders. It also contains the affidavit of the 8 ladies and two persons submitted in response to this summons, where they have confirming advance given to the assessee and further copy of the statement of two unsecured lenders which are recorded by the AO during the assessment proceedings. The assessee also placed before us the written submission made before the learned Commissioner of Income tax (Appeals). We have carefully gone through the submission and evidences placed before us. On perusal of all the evidence, we are of the view that for the purpose of section 68 of the Act following three conditions are required to be proved.

1. *Identity of the lenders*
 2. *Creditworthiness of the lenders*
 3. *Genuineness of the transaction.*
8. *Regarding the identity of the creditors, it has been proved by the assessee beyond doubt as all the lenders are having permanent account number bank account and have filed their return of income.*
9. *Regarding the creditworthiness of the parties assessee has submitted copies of returns filed by these assesses. On verification of the return of income of all these persons, it is apparent that all these returns for AY 2010-11 have been filed on same day i.e. 31.03.2011. In all the computation of income, income shown by the lenders is a single line entry wherein income from embroidery and knitting has been shown. There is no profit and loss account or income and expenditure statement. For all the returns, the income computed is approximately 2.15 to Rs. 3 lacs only and meagre tax of Rs. 15 thousands to Rs. 2500 is paid in all these accounts. In an identical manner statement of affairs of all these eight women and two men is prepared wherein advances to the assessee and Al Hind Export (party referred to in the order of the Id. CIT (A)) are mentioned. The statement of affairs showed meager bank balance of approximate Rs. 1500 to Rs. 2000 is shown and also meager cash in hand of Rs. 7000/- approximately in all these accounts are disclosed. Further, while preparing the statement of affairs of all these persons having opening balance of their capital accounts i.e. sum of Rs.1632000/- in the name of Mrs. Farhanha Praveen Rs. 10.94 lacs in the name of Mrs. Mehmooda Begum, Rs, 12.94 lacs in the name of Mrs. Naseem Bano and Rs. 10.66 lacs in the name of Sabana Praveen are shown. In past no loan is given to the assessee and other sister concern of the assessee. In same the statement of the affairs of some of the lenders sundry creditors are shown which are also cannot be identified. From the statement of affairs surprisingly there is no profit and loss account was available*

no income and expenditure statement has been prepared. While filing the computation of total income along with return of income only income from embroidery and knitting is mentioned. There is no detail of gross income or expenditure incurred by these assesses on their respective business is shown. All the computation of income, statement of affairs and capital account has been prepared in similar fashion. Surprisingly all the 10 lenders have opened their bank account with the same branch of Dena bank i.e. Dena Bank, Subash Bazar, Meerut City. It is also surprising that the address of all the parties is 13 Ismail Nagar, Meerut City. All these lenders have come together and deposited cash in their bank accounts with the same bank and then deposit these amounts with the assessee as well as its sister concern on the very next day proves more than what is said by lower authorities. Therefore in the case of these 8 ladies wherein the identical modus operandi has been adopted for giving alleged loan to the assessee who are having their meager income and has meager cash in hand and have minimum bank balance with them. We are of the view that the assessee has miserably failed to prove the creditworthiness of these lenders.

10. Now coming to the issue of genuineness of these transactions. We found that the assessee has failed to prove the genuineness of the transaction as all the bank accounts are with the same bank, in the same branch and on the same day, cash is deposited and on the next day loan was advanced to the assessee company and its sister concern. All the assessee have filed their return of income showing meager income and paying small amount of tax and further preparing and submitting their computation of total income, a statement of affairs, capital account in similar manner and showing opening capital of those assess to show the advance, it is a façade created to prove the genuineness of the transaction. All the decisions relied upon by the ld. AR cannot be come to the rescue of the assessee in view of façade

created by the assessee in obtaining loan from lenders who does not have any creditworthiness by filing the return of income and entering in to transaction through banking channel . Any transaction entered in to cannot be held to be genuine or otherwise merely because it is through banking channel. It is merely a mode of entering into transaction. Because loan is through banking channel it cannot surpass the test of genuineness of the transaction on the facts narrated above in the case of the assessee. Similarly, in the case of other two other assesses who have deposed before the AO regarding deposit Rs. 5 lacs each are also dealt in a similar manner. In case of Mr. Ashique Elahi the income of Rs. 210,000/- has been shown however, there is no narration in the computation of total income about the activities of these persons. In the statement of affairs cash at hand of Rs. 170,000/- has been shown, further in his bank account only cash of Rs. 25,000/- is available. In the case of Rehmat Elahi, the facts are also identical. Therefore all these evidences in case of lenders lead that the identity of these creditors have been proved and nothing else. In view of the above facts, we confirm the order of the learned Commissioner of Income tax (Appeals) confirming addition of Rs. 6125000/- with respect to 10 lenders unsecured loan added u/s 68 of the Act. Accordingly, ground No.1 of the appeal is dismissed.

7. In this case in some of the bank accounts there are entries of transfer deposits in the bank account of these persons before the issue of cheque to the assessee. However we could not find any entry of unsecured loan in the statement of affairs of these parties except gift received from the mother of Rs 50,000/- in some accounts. Therefore there is no source available with the assessee of the sums shown to have been received by the lenders through banking transfer entries in their account. Further the finding of the CIT (A) in a tabular form at page no 9 of his order also depict the modus operandi of the amount deposited in the books of the

assessee as unsecured loan from these parties. We are of the view that there is no difference if the amount is deposited by the assessee through cheque or through banking channel as these are the different modes of the transaction. They neither prove nor disprove the creditworthiness of the lender or genuineness of the transactions. We are also of the view that no decision cited by the assessee or Id AR are applicable on the facts of the case of the manner in which the return of income is filed, statement of affairs are prepared and amounts are introduced in the books of assessee which does not commensurate with the income shown by the lenders. In view of our above finding we also hold on the same reasoning as there is no change in facts and evidences produced before us that the loans of Rs. 51,81,500/- has rightly been added by the AO u/s 68 of the Act and confirmed by the Id. CIT(A). Therefore, the ground No.2 of the appeal is dismissed.

8. The next ground of appeal is against the disallowance u/s 40a (ia) of the Income Tax Act for non-deduction of tax at source to the persons who are agent of foreign shipping lines.
9. The brief facts of the case are that the assessee has made a payment of Rs.3190799 to various parties towards shipping charges. AO was of the view that the assessee should have deducted tax on these payment and hence disallowance u/s 40a (ia) of the Act is made. Against this, the assessee preferred an appeal Id.CIT (A) who in turn confirmed addition. Before us, the Id. AR submitted that issue is now squarely covered in favour of assessee by the decision of jurisdictional High Court in the case of Vector Shipping 357 ITR 642. It was further submitted that the payment are also made to agents of foreign shipping lines on which no TDS is required to be deducted in view of the CBDT Circular and further the CBDT 715 has been overlooked by the AO. The Id. DR relied on the order of lower authorities.

10. We have carefully considered the rival contentions the assessee has submitted that payment have been made to various parties who are shipping agents. If the facts areso then according to us the provision of section 172 applies to them and tax is not required to be deducted u/s 194 C of the act. Secondly if the expenses are already paid and not payable in that case the provision of section 40a (ia) is required to be applied and no disallowance is called for to the extent sums are paid, in view of the decision of the Hon'ble Allahabad High Court in the case of CIT Vs. Vector Shipping Pvt. Ltd 357 ITR 642. In view of this above two directions, we set aside the issue to the file of the AO for verification if the payments are made to the agents of foreign shipping agents then no disallowance is called for. Further, the disallowance is also required to be reduced to the extent of amount paid by the assessee in view of decision of the Hon'ble Allahabad High Court.
11. In the result ground, No.3 of the appeal is allowed with above direction.
12. In the result, the appeal is partly allowed.

Order pronounced in the open court on 15.03.2016.

-Sd/-
(I.C. SUDHIR)
Judicial Member

-Sd/-
(PRASHANT MAHARISHI)
Accountant Member

Dated:15 .03.2016

*Ajay Kumar Keot

Copy of order forwarded to:

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| (1) <i>The appellant</i> | (2) <i>The respondent</i> |
| (3) <i>Commissioner</i> | (4) <i>CIT (A)</i> |
| (5) <i>Departmental Representative</i> | (6) <i>Guard File</i> |

By order

*Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*