

IN THE INCOME TAX APPELLATE TRIBUNAL, "C" BENCH, KOLKATA

Before : **Shri Mahavir Singh, Judicial Member, and**
 Shri M. Balaganesh, Accountant Member

ITA No. 428/Kol/2012 A.Y 2008-09

ACIT, Circle-23, Kolkata

Vs.

Sri Rakesh Bhartia

PAN: ADGPB 7715C

(Appellant)

(Respondent)

For the Appellant/Department: Shri Niloy Baran Som, JCIT, Id.Sr.DR
For the Respondent/Assessee: Shri D.S. Damle, FCA, Id.AR

Date of Hearing: 22-02-2016

Date of Pronouncement: 29 -02-2016

ORDER

SHRI M.BALAGANESH, AM

This appeal of the revenue arises out of the order of the Learned CIT(A)-XIV, Kolkata in appeal no. 326/CIT(A)-XIV/08-09 dated 27-12-2011 for the assessment year 2008-09 against the order of assessment framed by the Id.AO u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The first issue to be decided in this appeal is as to whether an addition u/s. 69C of the Act towards unexplained expenditure amounting to Rs.6,00,000/- for household expenses could be made in the facts and circumstances of the case.

3. The brief facts of this issue are that the Id. AO found that the assessee even though had made withdrawals of Rs. 18,69,039/- for his personal expenses had not chosen to make any cash withdrawals for meeting his household expenses. The Id. AO also found that the assessee had withdrawn Rs.50,000/- from his another bank account (no. 75952) with the Axis Bank, Mumbai, which was lying as closing cash balance at the end of the year. In these circumstances, he chose to make an addition

of Rs. 6 lakhs towards unexplained expenditure for meeting the household expenses u/s.69C of the Act. On 1st appeal, the Id. CIT(A) after considering the submissions of the assessee deleted the addition made by the Id.AO on this count. Aggrieved, the revenue is in appeal before us on the following ground:-

“1. In the facts and circumstances of the case the Ld. CIT-(A) erred in law and facts in deleting the addition of Rs. 6,00,000/- made by A.O. on account of unexplained expenditure u/s. 69C of the Income Tax Act, 1961, without appreciating that the assessee's cash withdrawals from the explained sources were never utilized for expenses and in fact used to shore up his explained capital by utilising unexplained cash for his actual family expenses.

4. The Id.DR vehemently supported the order of the Id.AO and argued that it is very unlikely that the assessee has not incurred any expenditure towards his personal expenses. Accordingly, the Id.AO was justified in making the impugned addition on this issue. In response to this, the Id.AR vehemently supported the order of the Id. CIT(A) and argued that the Id.CIT(A) had made detailed observation about the total heads of income of the assessee and various personal expenses that have been incurred by the assessee. Thus he argued that there is no need to make any addition towards household expenses. Without prejudice to the addition, he further argued that the Learned AO having stated that the sources for meeting the household expenses were cash withdrawals from the Axis Bank, Mumbai, ought not to have made any addition as unexplained expenditure, as admittedly the sources of withdrawals have been proved by the Id.AO himself.

5. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee. We find that the assessee has shown total drawings of Rs.35,38,395/-, which included the amounts incurred towards personal expenses of the assessee. This includes withdrawals made by the assessee by cheques for his personal expenses towards rent paid amounting to Rs.13,80,000/-for residential accommodation and telephone expenses etc. We also

find that sum of Rs.2,82,728/- has been treated as perquisite in the salary income disclosed by the assessee. We also find that the Id.AO had also stated that the assessee had made cash withdrawals of Rs. 50,000/- p.m from the Axis Bank, Mumbai and the same were lying as closing cash balance, among others, which ought to have been incurred towards household expenses. This very fact explains the source for incurring household expenditure, if any, over and above the drawings as reported by the assessee (stated supra). Hence, there cannot be any addition by invoking the provisions of section 69C of the Act. We also find that the Id.AO had not brought any material/evidence on record to prove that the assessee had personal expenses over and above the disclosed sum of Rs.35,38,395/- towards drawings. We also find that the Id.AO had also not brought any material/evidence to prove that the cash withdrawals made from said Axis Bank, Mumbai have been spent elsewhere by the assessee thereby the said cash is not available to remain as closing cash balance. In these circumstances, we do not find any infirmity in the impugned order of the Id.CIT(A) in this regard. We uphold the same. The ground no.1 of the revenue's appeal is dismissed.

6. The last issue to be decided in this appeal is as to whether a sum of Rs.2,50,00,000/- received as loan by the assessee from M/s. Bright Impex and Agencies (P) Ltd could be added as unexplained cash credit u/s. 68 of the Act in the facts and circumstances of the case.

7. The brief facts of this issue are that the assessee was in receipt of interest free loan of Rs. 2.50 crores from M/s. Bright Impex and Agencies (P) Ltd during the assessment year 2008-09. The assessee furnished the name, address and income-tax particulars of the said loan creditor together with balance sheet and return acknowledgements of the loan creditor to explain the identity, creditworthiness and genuineness of the transactions before the Id.AO. It was found that monies were received by the assessee by a/c payee cheques. The assessee also furnished the bank

statement of the lender to prove the immediate source of credit. The Id.AO found that the assessee had not discharged his onus in terms of section 68 of the Act by proving the genuineness of the transaction and creditworthiness of the lender. The Id.AO also made various observations about the financial capacity of the lender in his order passed u/s. 143(3) of the Act. On 1st appeal, the Id.CIT(A) after considering the submissions of the assessee deleted the impugned addition on this issue. Aggrieved, the revenue is in appeal before us on the following ground:-

2. In the facts and circumstances of the case the Ld. CIT-(A) erred in law and facts in deleting the addition of Rs. 2,50,00,000/- made by A.O. on account of unexplained cash credit u/s. 68 of the Income Tax Act, 1961. The CIT(A)'s Order in treating the lender company as a genuine lender and the loan transaction as genuine is perverse in nature due to the following reasons:-

a) The CIT(A) has relied upon a paid up capital figure of Rs.3,25,85,000/- which was after the date on which the loan was given and not prior to it.

b) The CIT(A) has accepted the alleged share premium of Rs. 27 crores as genuinely net owned funds of the lender company, when in reality it has no worthwhile business and assets to justify such premium in its books of accounts.

c) The CIT(A) has relied upon the gross income to justify the credit worthiness of the lender while in reality the net income of the lender was a loss of Rs.2,89,917/-.

d) The CIT(A) has totally overlooked the most important fact that the lender company did not receive any interest on such a huge loan and neither did it offer any reasonable explanation for not receiving the same.

e) The CIT(A) has ignored the debits and credits of crores in the account of the lender company which have no connection with any business transactions and are proof of its actual business of providing Hawala entries.

8. The Id. DR vehemently supported the order of the Id.AO in making addition. In response to this, the Id.AR argued that the entire details about loan creditor have been duly furnished by the assessee before the Id.AO. The said transactions were received by the assessee by a/c payee cheques. The said loans were also duly represented by the assessee in May-June 2009 by a/c payee cheques. The three essential ingredients of section 68 of the Act namely, identity of the creditor, genuineness of the transaction and creditworthiness of the creditor have been duly proved by filing/submitting necessary evidences by the assessee, which is beyond doubt. The Id.AR of the assessee has also pointed out to the factual errors committed by the Id.AO by mentioning that the lender company has got paid up capital of Rs.25,00,000/- as against the actual paid up capital of Rs. 3,25,85,000/-. Similarly, the Reserves and Surplus of lender company as on 31-03-2008 was Rs.26,87,67,396/- as against few thousands erroneously mentioned by the Id. AO in his order. He also argued that the lender company is a non banking financial company (NBFC) duly registered with the Reserve Bank of India and is principally engaged in granting loans and advances and also derived interest income of Rs.1,70,95,047/- during the year in which the loan was advanced by them to the assessee. Accordingly, he prayed before us for confirmation the impugned order of the Id.CIT(A) in deleting the addition made by the AO on this count.

9. We have heard the rival submissions and perused the material available on record including the detailed paper book containing the statement of computation of total income for the AY 2008-09 & salary certificate to this effect in page 1-5 of the assessee's paper book, assessee's personal balance sheet as at 31.03.2008, Capital A/c & Income & Expenditure A/c in page 6-8 of the paper book, Copies of loan confirmation issued by M/s. Bright Impex & Agencies Pvt. Ltd for the FYs. 2007-08, '08-09 & '09-10 in pages 13-15 of the paper book, copy of audited annual financial accounts of M/s. Bright Impex & Agencies Pvt. Ltd for the FY 2007-08 in pages 16-28 of the paper book, copy of bank statement in respect of Current A/c No.95111010006717 of M/s. Bright Impex & Agencies Pvt. Ltd in pages 29-32 of the

assessee's paper book, PAN details of M/s. Bright Impex & Agencies Pvt. Ltd in page 33 of the assessee's paper book and copy of Id.AO's Remand report in pages 35-36 of the assessee's paper book. On perusal of the aforesaid papers, we find that the lending company, M/s. Bright Impex & Agencies Pvt. Ltd has got paid up capital of Rs.3,25,85,000/- as on 31-03-2008 and Reserves & Surplus of Rs.26,87,67,396/- as on 31-03-2008. We also find that the said lending company, M/s. Bright Impex & Agencies Pvt. Ltd is a registered Non Banking Financial Company (NBFC) engaged in the business of granting of loans and advances and had indeed derived interest income of Rs.1,70,95,047/- from money lending business during the financial year 2007-08. We also find from the bank statement of lending company i.e M/s. Bright Impex & Agencies Pvt. Ltd, that there are several high value transactions with different persons through out the year. It is not the case of the Id.AO that the cash was deposited in the bank account of the loan creditor immediately before issuing the cheques to the assessee. We also find that the entire loan of Rs. 2.5 crores have been paid by the loan creditor by 3 account payee cheques drawn on Syndicate Bank, Esplanade Branch, Kolkata. These facts have been cleared through banking channels. We also find that the entire loan has been repaid by the assessee in May-June 2009 by account payee cheques, which was also confirmed by the loan creditor. We find that the assessment has been completed in this case on 27-12-2010, which is after 18 months from the date of repayment of the loan by the assessee. All these facts prove the genuineness of the transaction beyond doubt. We further find that the assessee has duly filed confirmation letters from the loan creditor by duly disclosing its income tax particulars. We find that the loan transaction of Rs. 2.5 crores have been duly reflected in the balance sheet of the loan creditor, which were also placed before the Id.AO. However, the Id.AO based on certain factual errors committed by him with regard to the status and creditworthiness of the loan creditor that it is assessee's own money, which has been laundered and found it is way back to his own coffers in the garb of loan from M/s. Bright Impex & Agencies Pvt. Ltd . From the facts and material available on record, we find that the assessee has duly proved his complete

onus with regard to the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor and had satisfied all the three ingredients of section 68 of the Act. We find that the Id.AO had not chosen to issue summon/notice u/s. 133(6)/131 of the Act to verify the loan creditor and its veracity together with the creditworthiness of the loan creditor. We find that the wild allegation is made by the Id.AO that the assessee has laundered his unaccounted money/income and the same is brought back in the form of loan. We find from the entries of the bank statement of the loan creditor that no cash was deposited in the account of the loan creditor immediately before issuing the cheques to the assessee. On the contrary, there were other high value transactions reflected in the bank statement of the loan creditor. Hence, the basic allegation that the assessee has laundered his unaccounted income is not prima facie proved by the Id. AO even during the remand proceedings when the Id.AO got the second opportunity to make necessary verification by using his statutory powers vested on him and provided to him in the statute. We find that the facts of the case clearly proved that the assessee had completely discharged his onus by filing all the documentary evidences in support of the loan transaction from M/s. Bright Impex & Agencies Pvt. Ltd in terms of section 68 of the Act. Hence, it is fully covered by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Orissa Corporation reported in 159 ITR 78(SC). The facts before the Hon'ble SC and the facts of the case before us are exactly similar. Hence, the addition made on this count u/s. 68 of the Act based on mere surmises and suspicion is hereby deleted. This ground of revenue's appeal is also dismissed.

10. In the result, the appeal of the revenue is dismissed as stated above.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 29 -02- 2016

Sd/-
(Mahavir Singh, Judicial Member)

Sd/-
(M. Balaganesh, Accountant Member)

Date 29 -02-2016

Copy of the order forwarded to:-

- 1.. The Appellant/Department: The ACIT, Cir-23, 109 AJC Bose Road, Kol-14.
- 2 The Respondent/Assessee- Shri Rakesh Bhartia, CF-172, Salt Lake, Kol-64.
- 3 /The CIT, 4.The CIT(A)
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

**PRADIP SPS