

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI I.C.SUDHIR, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.169/Del/2013
(Assessment Year: 2005-06)

ITO,
Ward-12(2), Room No.337,
C. R. Building,
New Delhi

(Appellant)

Vs.

Gross Holdings Pvt. Ltd.,
4th Floor, Vardhman Plaza,
Corner,
Inder Enclave, Paschim Vihar,
New Delhi
PAN:AAACG0436B
(Respondent)

Assessee by :
Revenue by:

Date of Hearing
Date of pronouncement

Sh. T. Vasanthan, Sr. DR
Sh. Anil Kr. Gupta, CA
Sh. Ashu Tandan, CA
03/05/2016
01/07/2016

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is appeal filed by the revenue against the order of the Id CIT (A)-X, New Delhi dated 20.11.2012 for the Assessment Year 2005-06.
2. The revenue has raised the following grounds of appeal:-
 - “1. *Ld. Commissioner of Income Tax {Appeals} erred, in law and on the facts and circumstances of the case, in deleting the addition of Rs. 26,23.037/-made by the AO u/s 68 of the I. T Act being unexplained credits. In fact, the amount of addition should be enhanced by Rs.2,60,000/-.*
 2. *Ld. Commissioner of Income Tax (Appeals) erred, in law and on the facts and circumstances of the case in deleting the addition of Rs.10.52,558/-made by the A.O. u/s 68 being unexplained cash credits.”*
3. The first ground of appeal is against the deletion of addition of Rs. 26,23.037/- u/s 68 on account of unexplained cash credit. And further

ground No. 2 was against the deletion of addition of Rs. 1052558/- on account unexplained cash credit.

4. Brief facts of the case are that the assessee is engaged in the business investment in the share. It filed its return of income on 31.03.2006 showing income of Rs. 1910/-. During the year the assessee has taken fresh unsecured loan from four parties amounting to Rs. 2623037/- . With respect to loan of some of the parties, the assessee could not show the source of credit entries on account of loans of those parties and therefore the Assessing Officer made an addition of this sum u/s 68 of the Income Tax Act. Assessee preferred an appeal before the ld CIT(A) who in turn deleted the addition as before him assessee filed loan confirmation of the parties stating their PAN No and copy of the ledger account. Ld CIT(A) sought remand report from the Assessing Officer who submitted two remand reports dated 05.08.2011 and 13.10.2011. ld CIT(A) further consider the rejoinder submitted by the AR of the appellant. Based on this vide para No. 2.6 of the order he deleted the addition of Rs. 2623037/-. Regarding the second addition on account of shortage of cash he deleted the addition except to the extent of Rs. 30,000/-. Against this revenue is in appeal before us.
5. The ld DR on the ground No. 1 concerning the addition of Rs. 26.23 lakhs submitted that the additional evidences have been admitted by the ld CIT(A) suo moto. He further submitted that the addition u/s 68 has correctly been made by the Assessing Officer. He submitted a paper book before us containing the Assessment order, Form No. 35, copy of remand report and copy of CIT(A)'s order. He further reiterated his submission made before ld CIT(A). he further relied on the decision of Hon'ble Delhi High Court in case of Novadaya Castles Ltd.[367 ITR 306] as well as CIT V Empire Buildtech P Limited [366 ITR 110]. Regarding admissions of additional evidence he relied on the decision of Hon'ble Delhi High Court in case of CIT Vs. Manish Build Well Pvt. Ltd.
6. The ld AR also submitted a paper book containing 161 pages. The main contention of the ld AR was that admission of additional evidences have been admitted by the ld CIT(A) after careful consideration which are

mentioned in para 2.2 wherein, same were admitted by order dated 03.02.2011. the additional evidences were sent to the Assessing Officer for their examination and then remand report was submitted. In view of this the additional evidence have been rightly admitted by the Id CIT(A) after giving proper opportunity of hearing to the Assessing Officer who submitted two remand reports. On the merits of the case he submitted the confirmation of the parties stating the names and addresses and therefore, his argument was that the assessee has proved identity, creditworthiness, and genuineness of the transaction and therefore addition has been rightly deleted by the Id CIT(A).

7. We have carefully considered the rival contentions. As per page No. 61 and 62 of the paper book of the assessee the order 03.02.2011 passed by the Id CIT(A) being order under Rule 46A of the IT Rules, he has admitted the additional evidence which he has stated that the assessment orders were called for during the course of appellant proceedings and wherein in the original assessment proceedings all this confirmation have been found to be submitted. However, the Assessing Officer has mentioned that it has not been produced. Since those evidences were not examined and taken into consideration by the Assessing Officer then in the interest of justice he directed the Assessing Officer for submission of remand report. This fact has not been controverted by the Id DR before us. In view of this and on perusal of the order of the Id CIT(A) 03.02.2011 it is an admitted fact that there is no new evidence but the evidence by the assessee before the Assessing Officer were not considered by him while passing the order. In view of this the decision cited by the Id DR of the Hon'ble Delhi High Court in case of CIT Vs. Manish Buildwell Pvt. Ltd. dated 15.11.2011 is misplaced as the facts does not apply to the facts of this case. On deletion of the above addition Id CIT(A) has dealt with this issue as under:-

2.6. I have gone through the facts and circumstances of the case, observations of the A.O., submissions of the A.R. of the appellant, 2 remand reports dated 05-08-2011 and 13-10-2011 as well as the rejoinder letters of the A.R. of the appellant dated 05-09-2011 and 25-11-2011. This ground related to addition of Rs.26,23,0377- is being disposed off after making the following observations:

(a) On going through the assessment order, it is observed that the A.O. has mentioned on page 3 of the order that the addition of Rs.26,23,037/- has been made on account of amounts received from the following persons:

Sh. O.P. Banga	(20,20,199-14,93,414)	Rs. 5,26,785/-
Mrs Geeta Banga		Rs. 2,46,000/-
M/s Fresco Appliances P. Ltd		Rs. 8,00,000/-
Others '		Rs.10.50.2527-
		Rs.26.23.037/-

The A.O. has mentioned that the source of these amounts have not been properly explained by the assessee and, therefore, the amounts were treated as undisclosed u/s 68 of the I.T. Act.

However, during the course of appellate proceedings, the additional evidences were admitted under rule 46A by my predecessor CIT(A) vide letter dated 03-02-2011 and the A.O. was directed to consider all the details with fresh evidences filed in the paper book. These documents included confirmation letters from Sh. O.P. Banga , confirmation letter from Mrs Raj Banga and confirmation letters from Mrs. Ruchika Baweja. It was further contended that no fresh loan had been taken from Mrs.Geeta Banga and M/s Presco Appliances P. Ltd. The appellant also produced copy of audit report and accounts showing that no fresh loan had been taken from Mrs. Geeta Banga and M/s Presco Appliances P. Ltd.

(b) On going through the assessment order it is also seen that the A.O. had made the additions by treating the amounts received from Mrs. Geeta Banga of Rs.2.46 lakhs and M/s Presco Appliances P. Ltd. of Rs.8 lakhs as fresh loans during the year. However, these were not fresh loans taken and had been carried forward from earlier years. The PAN Number, address and confirmation letters of Mrs. Ruchika Baweja from whom fresh amount of Rs.10,50,252/- was taken was also provided to the assessing officer during remand proceedings, but no adverse findings were reported by the AO in the remand report. From the assessment order, specific details regarding the exact amounts added against various persons was not fully explained. However, during the remand report, the A.O. has reported that statements of Sh. O.P. Banga and Smt. Raj Banga were also taken since fresh loans had been taken from these two persons during the year. In his report dated 13-10-2011, the assessing officer has mentioned that Sh. O.P. Banga and Smt. Raj Banga attended in compliance to notices u/s 131 on 12-10-2011, and also gave statement confirming the amounts given to the appellant company. The A.O. has, however, observed that Sh. O.P. Banga was also having salary of Rs.3,20,400/- and substantial amount has been received by him from M/s P.R. Chits P. Ltd. which was subsequently given to the appellant company. Similarly, in the case of Smt Raj Banga, there was only salary of Rs.2,60,400/- and the amounts given to the appellant company was out of a salary and past and present savings. With regard to Ms. Ruchika Baweja, no further investigation or

enquiry was done by the assessing officer to arrive at any adverse information regarding this amount.

(c) The A.R. of the appellant vide his letter dated 05-09-2011 has proceeded that with regard to the amounts received from Sh. O.P. Banga and Smt Raj Banga, the following documents had been provided to the assessing officer to establish the identity, creditworthiness and genuineness of the transaction.

i) Copy of Income Tax Return for A. Y. 2005-06

ii) Copies of Bank Statement of SB a/c maintained with Indian Bank, Karol Bagh, N. Delhi and Punjab National Bank, Minto Road, N. Delhi with explanation as to source of deposit of cash therein.

iii) Date wise details of Cash deposits / withdrawals in both the above bank accounts.

iv) Statement of Affairs as on 31.03.2005. v) Copy of salary Certificate in Form No. 16.

With regard to Mrs. Raj Banga, the following documents were also provided to the assessing officer:

i) Copy of Income Tax Return for A.Y. 2005-06

ii) Copy of Bank Statement of SB A/c maintained with Punjab National Bank, Minto Road, New Delhi with explanation as to the source of deposit of cash therein.

iii) Copy of salary Certificate in Form No. 16 vi) Statement of Affairs as on 31.03.2005

The A.R. further relied upon large number of judicial pronouncements including the following to argue that it had discharged its onus of establishing the genuineness and creditworthiness of the unsecured loans. The decisions primarily relied upon were (i) DCIT v. Rohini Builders 256 ITR (Guj.) (ii) CIT v. Orbital Communications P. ltd 327 ITR (Del) (iii) CIT v. K.G. Fibres Ltd. 187 Taxman (Del) (iv) CIT v. Dwarkadhish 194 Taxman (Del.) & others. ;

(d) The A.O. had pointed out that after going through the bank accounts of Shri O.P. Banga, it was observed that there were large number of cash deposits and issue of cheques which raised suspension that the persons did not have adequate creditworthiness for advancing the loan to the appellant. During the statement of Sh. O.P. Banga, the same issue was raised to him on 12-10-2011 wherein the relevant question and answer is being reproduced as follows:

"Q.6 Pl. explain the sources of investment where as you are having income of Rs.3,20,400/-/

A.6. It was from my past and present saving and major amount was invested after taking money from M/s P,R. Chits.

Q.7. At Q.No.2 you have disclosed only source of income i.e. salary where as now you are explaining that about the money from M/s P.R. Chits, pi. explain.

A. 7. No income was incurred while taking chit during

The pendency of chit period.

Q.8. Your bank statement submitted shows cash deposits immediately before issue of cheques to M/s Gross Holding P. Ltd. PI. explain the source of cash deposits made in your bank account during the year.

A.8. The cash was withdrawn from the bank earlier on number of occasion which was deposited later on before issuing cheques to M/s Gross Holding P. Ltd. The statement of cash deposits and withdrawal datewise has already been submitted,"

The A.R. has also contended that Sh. O.P. Banga was 75 years of age and was a regular income tax assessee for the last 30 years. Similarly, Smt. Raj Banga was 67 years old and had been a regular income tax assessee for 20 years. As per the details of statement of affairs filed regarding Sh. O.P. Banga, the capital account as on 31-03-2005 showed a balance of Rs.71,87,2537- and statement of affairs of Smt. Raj Banga as on 31-03-2009 was shown at Rs.49,89,394/-. It was argued that these persons were people of means and accordingly their creditworthiness could not be assessed only on the basis of the salary earned during the relevant assessment year.

In my opinion, the assessing has erroneously treated the total addition of Rs.26/23,0377- as fresh unsecured loans whereas the actual fresh unsecured loans amounting to Rs.28,83,037/- consisting of following 3 amounts:

(i) Sh. O.P. Banga	Rs. 15,72,785/-
(ii) Smt. Raj Banga	Rs. 2,60,000/-
(iii) Ms Ruchika Banga (NRI Tfr. entry)	<u>Rs.10.50.252/-</u>
	<u>Rs. 28. 83. 0377-</u>

The assessing officer has erroneously treated the amounts from Ms. Geeta Baweja and M/s Presco Appliances P. Ltd. as fresh unsecured loans.

(e) On going through the facts as has emerged after considering the fresh evidences as well as the report of the assessing officer, it is clear that there were only 3 fresh loans during the year as elaborated above, whereas the assessing officer had made incorrect observations regarding the unsecured loans. The A.R. of the appellant had provided various documents regarding the persons from whom fresh unsecured loans had been taken. Even though the A.O. had not made any addition with regard to Mrs. Raj Banga and had only considered an amount of Rs. 5,26,78s/- as fresh unsecured loans from Sh. O.P. Banga, the actual amounts as elaborated above from the 3 persons were explained by the A.R. of the appellant and supporting documents including PAN, bank account etc. were provided.

During the remand proceedings, the assessing officer also took statements of Sh. O.P. Banga and Smt Raj Banga on the basis of which their identities were established and though the assessing officer made certain observations regarding cash transactions in their bank accounts, the assessing officer was not able to establish that Sh. O.P. Banga and Mrs Raj Banga were not persons of means. The A.R. strongly argued that they were income tax assesseees for several decades and their creditworthiness could not be doubted. Sh. O.P. Banga explained through his bank account that he had received substantial amounts from M/s P.R. Chits P. Ltd. The A.R. further submitted through his letter dated 05-11-2012 that Sh. O.P. Banga had a salary income of around Rs.12 lakhs per year in earlier years. It was submitted by the A.R. of the appellant that an amount of Rs. 17,27,5007- had been received from M/s P.R. Chits P. Ltd. and these amounts had been reflected in his SB A/c No.56916 of Indian Bank, Karol Bagh, New Delhi. Keeping in view the submissions of the A.R. of the appellant regarding Sh. O.P. Banga (PAN AAGPB 5045 C) and in view of his income and tax past history as well as statement taken by the assessing officer, it could not be disputed by the assessing officer that the amounts claimed to have been received from M/s P.R. Chits P. Ltd. were not genuine or Sh. O.P. Banga was not a man of means. Accordingly, from the facts which have emerged it is clear that identity of Sh. O.P. Banga cannot be disputed and at the same time the source of advancing the unsecured loans or the creditworthiness of Sh. O.P. Banga could also not be disputed. On the other hand, the assessing officer in the assessment order and the statement taken u/s 131 has not taken the correct figures and has also not specifically pointed out as to why the unsecured loans were not genuine.

With regard to Mrs. Raj Banga (PAN AAGPB 5046 B), the assessing officer has not made any addition but at the same time has also taken a statement u/s 131 of the I.T. Act on the basis of which the identity, creditworthiness and genuineness could not be disputed. With regard to Ms. Ruchika Baweja (PAN AAMPB 1892 K), the A.R. of the appellant has submitted confirmation letter as well as address and PAN details. It has been contended by the A.R. that this was a transfer entry received from M/s S.B. Packaging which was a sister concern. However, in this regard also the assessing officer has not made any further investigations or has got anything on record to dispute the contention of the A.R. of the appellant.

(f) After considering the various judicial pronouncements on this issue as well as the facts of the case, I would like to highlight that it is trite law that with regard to unsecured loans the identity, creditworthiness and genuineness of the transaction has to be established. In this case, the A.R. of the appellant has provided ample evidence and documents to establish these transactions. In 2 of the 3 cases where fresh unsecured loans had been taken the persons had been examined u/s 131 of the I.T. Act and their bank accounts and statement of affairs provided to the A.O. With regard to Ms. Ruchika Baweja the assessing officer has not made any further enquiry or disputed the details submitted by A.R. of the appellant.

After also considering the various judicial pronouncements relied upon by the A.R. of the appellant it is clear that since the A.O. has not fully appreciated the facts of the case and has also not been able to establish anything adverse with regard to submission and evidences of the A.R. of the appellant, there is no justification for sustaining this addition of Rs.26,23,037/-. Accordingly, this addition is deleted.”

8. The Id CIT(A) has deleted the addition with respect to Mrs. Geeta Banga and M/s. Presco Appliances Pvt. Ltd. of Rs. 2.46 lakhs and Rs. 8 lakhs respectively as these were not fresh loans and had been carried forward from earlier years. With respect to Mr. OP Banga and Smt. Raj Banga both appeared before the Assessing Officer u/s 131 on 12.10.2011 and also confirmed the above amount. In case of Ruchika Baweja assessee has submitted that it has been received through transfer entry from M/s. SB Packaging Pvt. Ltd and sufficient evidences of the same have been furnished. With respect to these parties sufficient evidences have been given showing the identity, creditworthiness and genuineness of the transaction. In view of this we find no infirmity in the order of the Id CIT(A) deleting the addition of Rs. 2630037/-.
9. The second addition was with respect to Rs. 1052558/- added by the Assessing Officer on account of shortage of cash. During the course of assessment AO found that total cash withdrawal was Rs. 610000/- and deposit was Rs. 1803380/- as there was a cash difference an addition of Rs. 1052558/- was made. Ld DR relied upon the order of the Assessing Officer and Id AR relied on the orders of the Id CIT(A). He submitted that there is no cash shortage.
10. We have carefully considered the rival contentions the Id CIT(A) has deleted this addition as the cash has been received from M/s. SB Packaging and for which the complete details have been submitted. The Id DR has nothing to say on this ground as how the Id CIT(A)'s order is incorrect in deleting the addition. the addition of Rs. 658000/- the addition to the extent to Rs. 430000/-. The Id CIT(A) has deleted the same as under:-

“3.3. After careful consideration of the facts and circumstances of the case, contentions of the A.R. of the appellant, the documents filed, it is observed that the assessing officer has also mentioned in his remand report dated 05-

08-2011 in para 2 that the matter regarding the cash receipts from M/s S.B. Packaging has been forwarded to the A.O. for taking appropriate action.

3.4. After considering the facts of the case and the contentions of the A.R. of the appellant, it appears that with regard to the amount of Rs.4,00,000/- proper documents do exist with the appellant. The A.O. has also taken follow up action regarding the same as mentioned in the remand report. However, with regard to shortage of Rs.30,000/- no further documents were provided by the A.R. of the appellant and to that extent the amount has not been properly explained. The amount of addition on account of shortage of cash should, therefore, be restricted to Rs. 30,000/- which has not been properly explained. Accordingly, this ground of the appellant is treated as partly allowed.”

11. We do not find any infirmity in the order of the 1d CIT(A) in deleting the above addition of Rs. 1052558/-. Hence, we confirm his order. In the result ground No. 2 of the appeal is dismissed.
12. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 01/07/2016.

-Sd/-

(I.C.SUDHIR)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 01/07/2016
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi