

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.765/KoI/2016

(निर्धारण वर्ष /Assessment Year:2012-2013)

Kausar Ali, 69/1, Noor Md. Munshi Lane Howrah -711101	Vs.	ITO, Ward-46(2), 3, Govt. Place, Kolkata-1
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AGPPA 8968 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by :Arya Das and Shri Anibarya Das, Advocates

Revenue by : SK. Z.H.Tanveer, JCIT, Sr. DR

सुनवाई की तारीख / Date of Hearing : 27/12/2016

घोषणा की तारीख/Date of Pronouncement 20/01/2017

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee, pertaining to the Assessment Year 2012-13, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-14, Kolkata, in Appeal No.224/CIT(A)-14/Cir-46/2014-15, dated 14.01.2016, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section 143(3) of the Income Tax Act 1961, (in short the 'Act'), dated 09.02.2015.

2. Brief facts of the case qua the assessee are that the assessee filed its return of income electronically for the assessment year 2012-2013 on 30.09.2012, declaring total income of Rs.5,97,880/-. The Assessee's case was selected for scrutiny u/s.143(3) of the Act and the AO has completed the assessment u/s.143(3) of the Act by making the addition of Rs.4,00,000/- on account of excess liability shown by the assessee observing the followings :-

Unsecured Loan : The assessee in the Balance Sheet showed unsecured loan of Rs.6620000/-.During the course of assessment proceeding, Mr. S.K.Das, AR of the assessee appeared and he is requested to produce list of unsecured loan. The AR of assessee produced the list of unsecured loan on 22/10/2014. Notice u/s. 133(6) of the income tax act, 1961 was issued to the loan creditors. Loan conformation reports were furnished by the loan creditors. But Creditworthiness of the loan creditors had not been satisfied, so, notice u/s.131 of the I.T.Act, 1961 was issued to Loan creditors. In response of notice Mr. Babulal Adak authorized representative of Smt. Shabana parvin Prop of K.K.SWITCH GEAR CO. appeared and his statement had been recorded on 17/12/2014. In answer to question No.6, Mr. Babu Adak stated that "No loan was given to Mr. Kausar Ali; Smt. Sabana Parvin gave the money to Kausar Ali from her capital as 'advance' for purchase of electric material. "It is clear from the statement of Mr. Babulal Adak authorized representative of Smt. Shabana parvin Prop of K.KSWITCH GEAR CO that KKSWITCH GEAR CO did not provided any loan to Kausar Ali, Prop of M/s. High Voltage Electrical Company. A show cause notice was issued to Kausar Ali on 14/01/2015 asking for explanation that Mr. Babulal Adak authorized representative of Smt. Shabana parvin Prop of K K SWITCH GEAR CO stated that no loan provide by K.K.SWITCH GEAR CO to Kausar Ali, please explain unsecured loan shown against KK.SWITCH GEAR CO why it should not be added back to your total income. Mr. S.K.Das, AR of the assessee appeared on 28/01/2015 in response of show cause dated 14/01/2015 and stated that there is no explanation in his part on that issue. Hence, unsecured loan shown by Kausar Ali, Prop of M/s High voltage Electrical Company in the case of K.K.SWITCH Gear Co of Rs.400000/- is being disallowed and added back to the total income of the assessee as excess liability shown by the assessee by way of unsecured loan. Penalty, proceeding u/s.271(1)(c) are separately initiated for furnishing inaccurate particulars of income."

3. Aggrieved from the order of the AO, assessee filed an appeal before the CIT(A), who confirmed the order passed by the Id. AO observing the followings :-

"On observation of the documents produced during assessment proceedings, the AO found that in the Balance Sheet of the appellant, unsecured loans was shown amounting to Rs.6,620,000.00. The Assessee was asked to explain these transactions, in response to which he furnished list of the loan creditors. Loan confirmations were also submitted.

• The AO however did not find the credit worthiness of the loan creditors satisfactory so notices u/s 131 were issued to them. In

response to these notices, Shri Babular Adak, the AIR of Smt Shabana Parvin, proprietor of M/S K. K. Switch Gear Co., one of the loan creditors, as shown by the appellant, appeared and deposed under oath that no loan had been given to the Assessee by the company but that they had given the money out of the capital as advance to purchase electrical materials.

As per the show cause notice, Assessee was asked to explain about the unsecured loan shown against Messrs. K. K. Switch Gear Co. In compliance the Assessee had no explanation to give regarding the same. Thus the amount of Rs.4,00,000.00 was added to the income of the appellant.

4. Not being satisfied with the order of Id. CIT(A), the assessee is in appeal before us and has taken the following grounds of appeal :-

1. *That the addition made by the Id. CIT(A) bad in law as well as fact.*
2. *Ld. A.O. in spite of showing, all the loan confirmation, Bank Statement, and balance sheet, as well as the transactions were made by account payee cheque did not want to believe that there was a loan of Rs.4,00,000/- which was taken from Smt. Shavana Parvin, Prop Of M/s. K. K. Switch Gear. As a matter of fact, in the Balance Sheet of M/s. K. K. Switch Gear the amount of Rs. 4,00,000/- is shown as ADVANCE TO SUPPLIERS (M/S. High Voltage Electrical.Co.).*

Further, without giving the proper opportunity the Ld. A.O had made the addition by quoting" in the case of K. K. Switch Gear Co of Rs.4,00,000/- is being disallowed and added back to the total income of the assessee as excess liability shown by the assessee by the way unsecured loan. In spite of showing all the relevant documents the Id. CIT(Appeal) disallowed the same.

3. *if there are any other grounds, will be produced at the time of hearing.*

4.1. Ld. AR for the assessee has submitted before us that the assessee runs a business in the nature of manufacturing of electrical overhead transmission line material equipment under the name and style of M/s High Voltage Electrical Company. For the purpose of carrying on such activity the assessee during the year under appeal took loan of Rs.

66,20,000/- (added from previous year also) from various parties and relatives. Out Of this, assessee took the loan from M/S. K K SWITCHGEAR CO.(Prop- Smt Shabana Parvin). At, at the time of scrutiny proceeding, Ld. A.O had issued notice u/s. 131 of the Income Tax Act 1961, on 17/12/2014. After making the examination the Id A.O came to a conclusion that Smt. Shabana Parvin, (Prop of M/s. K K Switch Gear) did not give any loan to Kausar Ali, (Prop- of M/s. High Voltage Electrical Company) but she gave it out of her capital as 'advance' for purchase of electrical materials.

The Id. AR further submitted that Ld. A.O in spite of showing all the loan confirmation, Bank Statement, and balance sheet, did not want to believe that there was a loan of Rs.4,00,000/- which was taken from Smt. Shabana Parvin, Prop Of M/s. K K Switch Gear. Ld AR drew our attention to the fact that, the Balance Sheet Of M/s. K K Switch Gear, shows that the amount of Rs. 4,00,000/- is given as ADVANCE TO SUPLIERS (M/S. High Voltage Electrical Co.). But without giving the opportunity the Ld. A.O had added back the amount without any basis.

Ld. AR further submitted that the assessee is quite in dark that after signing the loan confirmation, how can the Authorised Representative of Smt. Shabana Parvin deny the fact that LOAN was not given to your assessee, Mr. Kausar Ali. Hence, the balance of M/s. K K Switch Gear shows that same amount is now repaid and refer to P.13 22. Moreover, the assessee does not have any business transaction with M/s. K. K.

Switch Gear. The assessee has just paid certain amount as repayment of loan.

Further, the Id. AR for the assessee submitted that without giving the proper opportunity, the Ld. A.O had made the addition by quoting:

“in the case of M/s K K. Switch Gear Co of Rs. 4,00,000/- is being disallowed and added back to the total income of the assessee as excess liability shown by the assessee by the way of unsecured loan”

Ld. AR further submitted that if it is assumed but not admit the fact that the amount of Rs. 4,00,000/- was taken as advance for purchasing electrical materials then it would also be included in the CURRENT LIABILITY of the balance sheet. Then how the Ld. A.O came to the conclusion that excess liability was shown by the assessee by showing it as unsecured loan.

Moreover Smt. Shabana Parvin has signed the loan confirmation certificate which was duly produced before the Ld. A.O at the time of scrutiny proceeding and without this loan transaction there was no business transaction between these companies ever.

It is well settled that way in which the entries are made by M/s. K K Switch Gear, in their books of account is not determinative of the question that whether the loan was taken by assessee or not. M/s. KK Switch Gear made entries which are not in conformity with the facts and circumstances of the present case or proper accountancy principles. Entries made by them therefore cannot be regarded as conclusive one way or the other. The true nature of the transaction in each case has to be determined on a

consideration of the totality of the facts and circumstances of the case. It is thus clear that in this instant case the amount in question was received by the assessee from M/s. K K Switch Gear should be treated as loan.

4.2. On the other hand, Id. DR for the Revenue has reiterated the stand taken by the AO, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

4.3 Having heard the rival submissions, perused the material on record, we are of the view that there is merit in the submissions of assessee, as the proposition canvassed by Id. AR for the assessee are supported by the facts narrated by him above. As Id. AR for the assessee submitted before us that assessee had submitted loan confirmation, bank statement, balance sheet. Moreover the transaction were made by account payee cheque, the assessee took loan of Rs.4 lakhs from Smt. Shabana Parvin, (Prop. of M/s K.K.Switch Gear.). In the balance sheet of M/s K.K.Switch Gear the amount of Rs.4 lakhs is shown as advance to suppliers. The assessee has submitted before us the amount received and paid by cheque. He also submitted before us confirmation and balance sheet and profit and loss account. In the balance sheet of M/s K.K.Switch Gear Co. the amount is shown as advances. Therefore, the identity, creditworthiness and genuineness of the transactions have been proved by the assessee. Considering the factual position, we are of the view that

the addition made by the AO and confirmed by Id. CIT(A) needs to be deleted. Accordingly, we delete the same.

8. In the result, appeal filed by the assessee, is allowed.

Order pronounced in the open court on this 20/01/2017.

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 20/01/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-Kausar Ali
2. प्रत्यर्थी / The Respondent.-ITO, Ward-46(2), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता