

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No. 3514/DEL/2014		
	A.Y. 2008-09		
ACIT, CIRCLE-33(1), CIVIC CENTRE, NEW DELHI - 110 002	VS.	SMT. PREM ANAND 31/9, EAST PATEL NAGAR, NEW DELHI - 110 008 (PAN: AAHPA4222D)	
(APPELLANT)		(RESPONDENT)	

Department by : Sh. F.R. Meena, Sr. DR
Assessee by : Sh. Raj Kumar, CA

ORDER

PER H.S. SIDHU, JM :

This appeal by the Revenue is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-XXVI, New Delhi dated 11.3.2014 pertaining to Assessment Year 2008-09 on the following grounds:-

1. The Ld. CIT(A) has erred in allowing the assessee to file fresh evidence under the Rule 46A without appreciating the fact that the assessee was given two opportunities for filing the details during the assessment proceedings.

2. The Ld. CIT(A) has erred by deleting the addition of Rs. 38,50,000/- without appreciating the fact that the assessee did not produce proof / document during the course of assessment proceedings.
3. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of hearing of the appeal.

2. The brief facts of the case are that the Assessee filed her return of income showing income of Rs. 21,23,470/-. The assessee's case was selected for scrutiny under CASS. About the end of the assessment proceedings, the AO vide order sheet entry dated 6.12.2010 asked the assessee for first time to prove the identity, genuineness and creditworthiness in respect of the unsecured loans of Rs. 38,50,000/- taken from three persons during the relevant assessment year. Thereafter, the AO vide order sheet entry dated 16.12.2010 called same details again. However, the Assessee failed to ensure compliance and AO taxed the credit aggregating to Rs. 38,50,000/- u/s. 68 of the I.T. Act vide his order dated 29.12.2010 passed u/s. 143(3) of the I.T. Act, 1961 by assessing the income of the assessee at Rs. 59,73,470/-. Aggrieved with the assessment order, assessee filed the appeal before the Ld. CIT(A) who vide his impugned order dated 11.3.2014 deleted the additions by allowing the appeal of the assessee.

3. Aggrieved with the impugned order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

5. On the contrary, Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order which does not need any interference and requested that the same may be upheld.

6. We have heard both the parties and perused the relevant records, especially the order of the Ld. CTI(A). We find that Ld. First Appellate Authority has elaborately discussed and adjudicated the issue No. 1 vide para no. 3.3 to 3.4 at page no. 9 & 10 of the impugned order and issue no. 2 vide para no. 4 to 4.1 at page no. 16 to 18 of the impugned order, which are reproduced hereunder-

"3.3 I have carefully considered the facts of the case, perused the impugned order & remand report of the AO and considered submission & rejoinder of the appellant. The AO objected to admission of additional evidence under Rule 46A of the I. T. Rules. It may be seen from the details that additional evidences filed before me are produced for purpose of deciding the issue involved in

this appeal. These evidences only enable me to pass an order on the issue one way or other. In Venkataramiah vis A Seetharama Reddy AIR 1963 SC 1526 interpreting the words "any other substantial cause", it was held: "There may well cases where even though the court finds that it is able to pronounce judgment on the state of record as it is, and so, it cannot strictly say that it requires additional evidence 'to enable it to pronounce judgment', it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence." The above judgment was followed in ITO v. B N Bhattacharya, 112 ITR 423 (Cal).

3.4 As, for an appellate authority, it is implicit in coming to a proper conclusion; it is for this reason that though the rules require new evidence to be admitted only where there is reason for the assessee for not being able to present such evidence before the AO, it is considered not only fair but justified, where the appellate authority itself considers such evidence necessary. The Hon'ble Courts have held that where there is omission to submit part of

documents as required by the AO, the Appellant authority may not be justified merely by drawing an adverse inference against the assessee failing to furnish certain documentary evidences as it would amount to a punitive measure. The appellate authority may well undertake to make good such omission. Here in the present case, the appellant has reasonable cause also for admission of additional evidence as evident from the fact that the issue of cash credits was first time raised on 06.12.2010 just before the completion of the assessment (23 days; time period between the order sheet entry dated 06.12.2010 through which the above mentioned details were called and the conclusion of the assessment proceedings vide impugned order.) and that too when the requisite details were required to be called from third persons. Thus, it appears that the appellant has reasonable cause in ensuring compliance. Therefore, I am of the considered view that it is a fit case for admission of additional evidence. Hence, all the documents submitted by the appellant are admitted herewith for deciding this appeal on merit and in the

interest of justice. Reliance is placed on following case laws:

Shahrukh Khan vs DCIT 13 SOT 61(Mum)

ITO vs Dwarka Prasad 63 ITD I(TM)(Patna)

Rachhpal Singh vs ITO 94 ITD 79 (Asr)

Electra Jaipur (P) Ltd. vs Inspecting Asstt. CIT 26 ITD 236(Del)

CIT vs K Ravindranathan Nair 265 ITR 217(Ker)

Prabhavati S. Shah vs CIT 231 ITR I(Bom)

Manish Buildwell (Delhi High Court; order dated 20.11.2011)

3.5 After admission of the additional evidence; the AO, in view of the decision of the Hon'ble Delhi High Court in the case of Manish Buildwell (supra), vide this office letter dated 09.10.2013, was directed to carry out the enquiry/investigation as deemed fit to verify the genuineness of the above mentioned loans. The AO, after conducting enquiry from the above mentioned three parties, submitted her report vide letter dated 10.12.2013. It is worth mentioning here that the AO has not offered any comment on the outcome of enquiry/investigation carried out by her. Further, there is

nothing new in the second report dated 10.12.2013 as it does not include the AO's comment on the outcome of enquiry/investigation. To a large extent, it is just reiteration of old report.....

.....4. I have carefully considered the submissions of the appellant and perused the record. The AO has admitted the identity of the above mentioned three persons from whom the appellant has taken loan. She has doubted the credit worthiness of these persons and consequentially genuineness of transactions.

Definitely; only submission of the ITR and balance sheet will not only explain the credit worthiness of any person. The appellant has given copies of the Income Tax Return (ITR) of two persons; namely, Mr. Shailender Kumar and Ms. Sujata Sachdeva as mentioned above. However, these persons are not engaged in business; therefore, they are not preparing their balance sheets as the same is not legally required. Definitely, the taxable income is not only the criteria to explain the credit worthiness of any person; though it is an indicator.

I have perused all three bank accounts of the above mentioned persons and find that the loan of

Rs.22,00,000/- has advanced by Shri Parkhi Sigh out of a credit in his bank account through cheque clearing of Rs.23,41,500/- on 08.06.2007 and the loan has not been given to the appellant out of any cash deposit in his bank account. Similar facts are in respect of Shri Shailendra Kumar; wherein a credit of Rs.10,01,128/- through cheque is appearing in his bank account on 05.10.2007 and the loan has been advanced thereafter. There is no cash deposit in his bank account before advancing loan. Similar facts are in respect of Smt. Sujata Sachdeva. Her bank account is showing consistent credit and debits having substantial credit balance throughout year.

4.1 From the above, it is evident that the appellant has discharged her onus of proving identity, the source of loan and the genuineness of transactions in accordance with the provisions of section 68. It is a settled law that the assessee is not answerable to explain source of source of the fund. In light of the fact that there is no cash deposit in the bank accounts of the above mentioned three persons for advancing loan and their categorical admission confirming loan during the remand proceedings, I am of the considered view that the above

mentioned loans aggregating to Rs.38,50,000/- cannot be charged to tax in the appellant's hands u/s 68 particularly in absence of any contrary evidence brought on the record by the AO. My inference that the appellant is not required to explain source of source of the fund gets buttressed by the amendment made in section 68 with effect from 01.04.2013, which empowers the AO to examine source of source in case of share application money from 01.04.2013 and no other cases prior to that. This amendment further does not give power to the AO to examine source of source of non-share capital cases and that too prior to 01.04.2013. Undisputedly; the appellant has given complete addresses and credit worthiness of the persons from whom she has taken loans. Further, I have also analyzed the facts of this case with that of the case of the CIT Vs Nova Promoters & Finlease (P) Ltd.,[2012] 342 ITR 169 (Del) and find that these two cases are distinguishable on facts and thus, I hold that the decision of Nova Promoters & Finlease (P) Ltd. (supra) is not applicable in the appellant's case. After examining the materials available on the records, I am of the view that there is no material which may even

raise doubt about the genuineness of the loans. Therefore, it is held that the AO has erred in taxing above mentioned loans aggregating to Rs.38,50,000/- u/s 68 in the hands of the appellant. Therefore, it is deleted. The AO shall allow consequential relief of Rs.38,50,000/-. However, the AO is directed to pass on the information to the AOs of the above mentioned three persons for examining the source of their fund in their cases and doing needful as per the law."

7. On going through the aforesaid findings of the Ld. CIT(A), with regard to ground no. 1 relating to admission of additional evidence under Rule 46A is concerned, we find that the AO objected to admission of additional evidence under Rule 46A of the I.T. Rules. From the details, it reveals that the additional evidences filed before the Ld. CIT(A) were produced for purpose of deciding the issue involved in this appeal. These evidences only enable the Ld. CIT(A) to pass an order on the issue one way or other. It was noted that in the case of Venkataramiah vis A Seetharama Reddy AIR 1963 SC 1526 interpreting the words "any other substantial cause", it was held: "There may well cases where even though the court finds that it is able to pronounce judgment on the state of record as it is, and so, it cannot strictly say that it requires additional evidence 'to

enable it to pronounce judgment', it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence." The above judgment was followed in ITO v. B N Bhattacharya, 112 ITR 423 (Cal). We note that it is for this reason that though the rules require new evidence to be admitted only where there is reason for the assessee for not being able to present such evidence before the AO, it is considered not only fair but justified, where the appellate authority itself considers such evidence necessary. We further note that the Hon'ble Courts have held that where there is omission to submit part of documents as required by the AO, the Appellant Authority may not be justified merely by drawing an adverse inference against the assessee failing to furnish certain documentary evidences as it would amount to a punitive measure. The appellate authority may well undertake to make good such omission. Here in the present case, the assessee has reasonable cause also for admission of additional evidence as evident from the fact that the issue of cash credits was first time raised on 06.12.2010 just before the completion of the assessment (23 days; time period between the order sheet entry dated 06.12.2010 through which the above mentioned details were called and the

conclusion of the assessment proceedings vide impugned order.) and that too when the requisite details were required to be called from third persons. Thus, it appears that the assessee has reasonable cause in ensuring compliance. Therefore, in our considered opinion, the Ld. CIT(A) has rightly held that it is a fit case for admission of additional evidence. Hence, all the documents submitted by the assessee were rightly admitted for deciding this appeal on merit and in the interest of justice by placing reliance on the following case laws:

Shahrukh Khan vs DCIT 13 SOT 61(Mum)

ITO vs Dwarka Prasad 63 ITD I(TM)(Patna)

Rachhpal Singh vs ITO 94 ITD 79 (Asr)

Electra Jaipur (P) Ltd. vs Inspecting Asstt. CIT 26
ITD 236(Del)

CIT vs K Ravindranathan Nair 265 ITR 217(Ker)

Prabhavati S. Shah vs CIT 231 ITR I(Bom)

Manish Buildwell (Delhi High Court; order dated
20.11.2011)

We further find that after admission of the additional evidence; the AO, in view of the decision of the Hon'ble Delhi High Court in the case of Manish Buildwell (supra), vide this office letter dated 09.10.2013, was directed to carry out the enquiry/investigation as

deemed fit to verify the genuineness of the above mentioned loans. The AO, after conducting enquiry from the above mentioned three parties, submitted her report vide letter dated 10.12.2013. It is worth mentioning here that the AO has not offered any comment on the outcome of enquiry/investigation carried out by her. Further, there is nothing new in the second report dated 10.12.2013 as it does not include the AO's comment on the outcome of enquiry/investigation. To a large extent, it was just reiteration of old report. In view of the above, we uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the ground nos. 1 raised by the Revenue.

7.1 With regard to ground no. 2 relating to deletion of addition of Rs. 38,50,000/- is concerned, we find that the AO has admitted the identity of the three persons from whom the assessee has taken loan. She has doubted the credit worthiness of these persons and consequentially genuineness of transactions. Definitely; only submission of the ITR and balance sheet will not only explain the credit worthiness of any person. The appellant has given copies of the Income Tax Return (ITR) of two persons; namely, Mr. Shailender Kumar and Ms. Sujata Sachdeva as mentioned above. However, these persons are not engaged in business; therefore, they are not preparing their balance sheets as the same is not

legally required. Definitely, the taxable income is not only the criteria to explain the credit worthiness of any person; though it is an indicator. We have perused all three bank accounts of the above mentioned persons and find that the loan of Rs.22,00,000/- has advanced by Shri Parkhi Sigh out of a credit in his bank account through cheque clearing of Rs.23,41,500/- on 08.06.2007 and the loan has not been given to the appellant out of any cash deposit in his bank account. Similar facts are in respect of Shri Shailendra Kumar; wherein a credit of Rs.10,01,128/- through cheque is appearing in his bank account on 05.10.2007 and the loan has been advanced thereafter. There is no cash deposit in his bank account before advancing loan. Similar facts are in respect of Smt. Sujata Sachdeva. Her bank account is showing consistent credit and debits having substantial credit balance throughout year. From the above, it is evident that the assessee has discharged her onus of proving identity, the source of loan and the genuineness of transactions in accordance with the provisions of section 68. It is a settled law that the assessee is not answerable to explain source of source of the fund. In light of the fact that there is no cash deposit in the bank accounts of the three persons for advancing loan and their categorical admission confirming loan during the remand proceedings, we are of the considered view that the loans

aggregating to Rs.38,50,000/- cannot be charged to tax in the Assessee's hands u/s 68 particularly in absence of any contrary evidence brought on the record by the AO. Hence, we find that Ld. CIT(A) has rightly observed that the assessee is not required to explain source of source of the fund gets buttressed by the amendment made in section 68 with effect from 01.04.2013, which empowers the AO to examine source of source in case of share application money from 01.04.2013 and no other cases prior to that. This amendment further does not give power to the AO to examine source of source of non-share capital cases and that too prior to 01.04.2013. Undisputedly; the assessee has given complete addresses and credit worthiness of the persons from whom she has taken loans. Further, Ld. CIT(A) has also analyzed the facts of this case with that of the case of the CIT Vs Nova Promoters & Finlease (P) Ltd.,[2012] 342 ITR 169 (Del) and find that these two cases are distinguishable on facts and thus, he rightly held that the decision of Nova Promoters & Finlease (P) Ltd. (supra) is not applicable in the assessee's case. After examining the materials available on the records, Ld. CIT(A) observed that there is no material which may even raise doubt about the genuineness of the loans. Therefore, it was rightly held that the AO has erred in taxing above mentioned loans aggregating to Rs.38,50,000/- u/s 68 in the hands of the

appellant. Therefore, the addition was rightly deleted, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the ground no. 2 raised by the Revenue.

8. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 13/04/2017.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**SD/-
(H.S. SIDHU]
JUDICIAL MEMBER**

Date 13/04/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches