

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.553/Del./2017
Assessment Year 2010-2011

M/s. Navyug Iron Traders, Ghaziabad. PANAAAFN9536A C/o. Shri Akhilesh Kumar, Advocate, Chamber No.206-207, Ansal Satyam, RDC Raj Nagar, Ghaziabad.	vs.,	The DCIT, Circle-1, Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Akhilesh Kumar, Advocate
For Revenue :	Shri Atiq Ahmad, Sr. D.R.

Date of Hearing :	17.09.2019
Date of Pronouncement :	24.09.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Muzaffarnagar, Dated 18.11.2016, for the A.Y. 2010-2011, challenging the addition of Rs.65 lakhs on account of unexplained loan.

2. Briefly the facts of the case are that assessee firm filed return of income declaring income of Rs.12,18,790/-. The assessee maintained books of account which were audited. The A.O. noted that there is a better G.P, N.P. and turnover in assessment year under appeal. Therefore, book results were accepted. The A.O. after going through the details and Annexures of the Audit Report found that assessee has shown unsecured loans in the name of several parties. The A.O. asked the assessee to file confirmation with copy of the ITR and bank statements of the lenders. The assessee furnished the details asked for by the A.O. The assessee explained that unsecured loans/advances were received from the customers against the purchase of the goods. Ultimately, when goods could not be purchased, the amounts have been refunded to them. All the transactions are carried out through banking channel which are supported by their ledger account, copy of ITR, bank statement and other documents produced on record. Independent enquiries were also conducted in the cases of certain parties which A.O. has accepted. However, regarding

three unsecured loans/advances received from M/s. Maa Bhagwati Trading Co. Rs.15 lakhs, Noni Steels Pvt. Ltd., Rs.30 lakhs and R.D. Steel Feb (P) Ltd., Rs.20 lakhs, the A.O. noted that independent summons issued to these parties, but, remain un-complied with. The A.O. in respect of these parties considered that the loans/advances received from these parties are not genuine. The A.O. accordingly made the addition of Rs.65 lakhs on account of unexplained investment under section 68 of the I.T. Act, 1961. The Ld. CIT(A) on more or less same reasoning confirmed the addition.

3. The assessee relied upon several decisions before the Ld. CIT(A) and reiterated that all the documentary evidences were filed to prove that genuine advances were received from trading parties and when goods could not be supplied to them, the amounts have been returned back through banking channel. Therefore, no addition should have been made against the assessee. The contention of assessee was not accepted and this ground of appeal of assessee was dismissed.

4. We have considered the rival submissions and perused the material available on record. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee filed copy of ledger account, confirmations, ITR, bank statement and other documents to prove that assessee received genuine advances through banking channel. No cash was found to have been deposited in their account and these parties have frequent business transactions with the assessee. Since no goods were supplied, therefore, amounts have been returned to them in subsequent year. Entries in the books of account were not found wrong or fake. The assessee requested the A.O. to conduct direct enquiry from the parties, but, no steps have been taken despite assessee deposited Rs.400/- in respect of enquiry to be conducted from these parties. The amount have been returned through banking channel. Learned Counsel for the Assessee referred to all these documents in the paper book to show that advances were received through banking channel which were returned through banking channel and are confirmed by the parties

which is also supported by the copies of the bank statements. He has submitted that A.O. did not make any independent enquiry from these parties. Therefore, there is no default on the part of the assessee if the three creditors do not respond. In respect of the above proposition. Learned Counsel for the Assessee relied upon the following decisions:

A. Where loan is supported with confirmation/ITR etc. and

loan is received and refunded back th. banking channel

— Can't be added in the hands of assessee u/s 68:

CIT V Rahul Vineet Traders [2014] 41 taxmann.com 86

(All)

CIT V Ayachi Chandrashekhar Narsangji [2014] 42

taxmann.com 251 (Guj.)

CIT V Kapoor Chand Mangesh Chand [2013] 38

taxmann.com 239 (AIL)

CIT v ABT ITD. (2015) 370 ITR 159 (Madras)

B. Where loan is supported with confirmation/PAN/BANK

A/c and loan is received through banking channel and

no cash is deposited in depositor a/c — Onus

discharged. AO may add in the hands of depositor or has to conduct enquiry to bring material to reject loan

CIT V Shalimar Buildwell Pvt. Ltd. [2013] 40 taxmann.com 285 (All)

CIT V SURENDRA CHAND BANSAL [2014] 42 TAXMANN.COM 201 (ALL)

CIT VS ORISSA CORPORATION (P) LTD. (1986) 159 ITR 78: 52 CTR 138 (SC)

ACIT V Shyam Indus Power solutions P Ltd. (2018) 90 taxmann.com 424(DEL-B)

C. Where assessee shows his inability and request AO to conduct enquiry but fails to do so,

Onus on assessee discharged. He cant make addition for non-production etc.

OM Prakash Singh V ACIT—ITA NO.331/agra/2016 - order dt.22.03.2019 (Agra Bench) 21-27 MUNNA LAL MURIDHAR VS CIT (1971) 79 ITR 540 (ALL)

NathuRam Premchand (1963) 49 ITR 561(ALL)

D. NO addition u/s 68 for non-production of depositors/Confirmation/non-service of summons etc..

Where confirmation/Bank details etc. filed

H.R. Mehta V ACIT [2016] 72 taxmann.com 110

(Bombay H.C.)

Himachal Fibers Ltd. [2018] 98 taxmann.com 173 (SC) -

Affirming DEL.H.C.

CIT V Jalan Hard Coke Ltd. [2018] 95 taxmann.com 330

(Rajasthan)

SLP dismissed in [2018] 95 taxmann.com 331 (SC) /

[2018] 257 Taxman 91 (SC)

CIT v Goel Sons Golden Estate P. Ltd. -ITA 212/2012 -

Order dt. 11.4.12 (DEL)

5. On the other hand Ld. D.R. relied upon the Orders of the authorities below.

6. We have considered the rival submissions and perused the material available on record. It is not in dispute that assessee filed copies of ledger account of all the three creditors along with their ITR, confirmation, bank statement and balance-sheet of the investors. The creditors have confirmed giving advances to the assessee. Since the deal could not be materialized, the assessee returned the amount

in question in subsequent year. All the transactions are carried out through banking channel and no defects in the books of account have been pointed out. All the creditors are assessed to tax and have disclosed the transactions to the Income Tax Department. The assessee explained that since parties are not in his direct control, therefore, direct enquiry may be made from the creditors, for which, assessee also deposited fees as required for the same. However, no attempt have been made to verify the transactions from the creditors. Since all the creditors were assessed to tax and their PAN were available to the A.O, therefore, A.O. could have examine the source of their income from the income tax record. But the A.O. did not do anything in the matter. Therefore, decision of the Hon'ble Supreme Court in the case of Orissa Corporation Pvt. Ltd., 159 ITR 78 (SC) would apply. The assessee in these circumstances is able to discharge onus upon it to prove the ingredients of Section 68 of the I.T. Act. We rely upon Judgment of the Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 360 (Guj.) and Gauhati High Court

in the case of Nemichand Kothari 264 ITR 254 (Gauhati). Since in this case the repayment made by assessee in subsequent year have not been disputed by the Revenue Department, therefore, case of assessee would also be covered by Judgment of Hon'ble Gujarat High Court in the case of CIT vs. Ayachi Chandrashekhar Narsangji (supra) and Hon'ble Allahabad High Court in the case of CIT vs. Kapoor Chand Mangesh Chand (supra). The authorities below rejected the explanation of assessee because in response to notice issued by A.O. the creditors did not respond. The Hon'ble Delhi High Court in the case of Divine Leasing and Finance Ltd., 299 ITR 268 (Del.) held that "*no adverse inference should be drawn if shareholders failed to respond to the notice issued by the A.O.*" Similar view is taken by Hon'ble Delhi High Court in the case of CIT vs. Winstrall Petro Chemicals Pvt. Ltd., 330 ITR 603 (Del.). Further no material has been brought on record that the credit amount introduced by the creditors was actually emanated from the coffers of the assessee so as to enable it to be treated as undisclosed income of the assessee. We rely

upon Judgment of Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., 307 ITR 334 (Del.). Considering the totality of the facts and circumstances of the case and that when it is explained that trading advances were received and when the material could not be supplied, amounts have been returned in subsequent year, same could not be disputed by the authorities below to treat the same as undisclosed income of the assessee. Considering the totality of the facts and circumstances, we do not find any justification to sustain the addition because assessee is able to prove identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. In this view of the matter, we set aside the Orders of the authorities below and delete the entire addition.

7. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER
Delhi, Dated 24th September, 2019
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.