

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.8333/Del./2019
Assessment Year 2016-2017

Meenu Kapoor, 819 Katra Neel, Chandni Chowk, Delhi – 110 006 PAN AAJPK6319D	vs.,	The ACIT, Circle-47(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri R.K. Singhal, C.A.
For Revenue :	Ms. Pramita M. Biswas, CIT-DR

Date of Hearing :	17.02.2020
Date of Pronouncement :	25.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-16, New Delhi, Dated 03.09.2019, for the A.Y. 2016-2017, challenging the Order of the Ld. CIT(A) in upholding the addition of Rs.10,20,45,840/- on account of unexplained loan under section 68 of the I.T. Act, 1961.

2. Briefly the facts of the case are that assessee filed return of income of Rs.30,06,604/- for the assessment year under appeal. The case was selected for scrutiny on the reason "*Whether investment and income relating to properties are duly disclosed.*" The assessee has income from house property and interest from bank and bonds. In the year under consideration assessee purchased property at B-191, Greater Kailash, New Delhi and paid Rs.11,65,50,100/- which included stamp duty of Rs.44,40,000/-. The source of the funds for purchase of property was unsecured loans taken from various related and unrelated parties who credited this sum in the HDFC Bank Account Number xxx24233 of the assessee. All these loans were given interest free to the assessee, except one party named M/s Ranjitgarh Finance Company Pvt. Ltd. which made an interest provision at 9% per annum. The total loan was in a sum of Rs.10,20,45,840/- from the following parties :

Party	Loan Given
Rakesh Kapoor	6,98,45,840
Rakesh Kapoor HUF	1,37,00,000
BRK Infotech & Developers Pvt. Ltd.,	50,00,000
Isha Kapoor	60,00,000
RanjitGarh Finance Co. Pvt. Ltd.,	75,00,000
Total :	10,20,45,840

2.1. The case was examined for huge unsecured loans received by assessee for purchase of a residential property. The A.O. noted from the details on record that the amounts credited by these parties were highly disproportionate to their returned income. The A.O. has taken the figure of 03 parties for providing loans for last 05 years. The A.O. also noted that while assessee's income is only Rs 30 Lakhs, but, she had made investment of Rs 11.65 Crores, taken from loan and it is not replied as to how she is going to repay such loans or whether she has capacity to repay the loan also. The A.O, therefore, noted that assessee has no capacity to take such huge loans and no capacity to

purchase residential property of more than Rs.11 crores from unaccounted source of income.

2.2. The A.O. from the balance sheet and P&L account of BRK Infotech found that it has no revenue from operations and only Rs.7 Lakh as other income. In contrast, it has over Rs.1.1 Crore of expenses even before taxes. It has absolutely no creditworthiness to advance a loan of Rs.50 Lakhs and that too at no interest rate. From the balance sheet and P&L account of Ranjitgarh Finance Co. Pvt. Ltd., who have advanced loan of Rs.75 Lakhs to the assessee. It was noted that the Profit Before Tax (PBT) of the company for the entire year is Rs.57.47 Lakhs. The A.O. noted that assessee has not provided balance-sheet of other creditors and in case of Rakesh Kapoor, it was found that he got matured FDR of Rs.2.1 Crores, Rs.31.92 lakhs was received from sale of .basement of property, Rs.1.7 Crores from BR Kapoor and Sons towards repayment of loan and mentioned that Rs.2.5 Crores was received from the brother of Rakesh Kapoor. The A.O. did not accept the contention of assessee because Mr Rakesh Kapoor was having

disproportionate sources of income as regards the loan given to the assessee. Similarly, in the case of Ms. Isha Kapoor who has given unsecured loan of Rs.60 lakhs despite having income of Rs.12,15,359/- only. Likewise, Rakesh Kapoor HUF has given deposit of Rs.1.37 crores to the assessee, although its return of income is only Rs.28,54,101/- and in 05 years income put together is only Rs.1.24 crores. The A.O, therefore, noted that assessee shall have to prove identity of the creditors, their creditworthiness and genuineness of the transaction. The A.O. also noted that onus is not discharged just by providing confirmations, acknowledgment of ITR and bank statements, if no known source of funds proportionate to the loan advanced are visible from the documents submitted. The A.O, therefore, noted that these are unexplained loans and made addition of Rs.10,20,45,840/-.

3. The assessee challenged the addition before the Ld. CIT(A). The written submissions of the assessee were reproduced in the appellate order in which assessee has submitted that assessee duly produced all the documents

on record to prove genuineness of the loans, the documents filed on record are bank statements as well as returns filed by the creditors along with their PAN, balance-sheet or statement of assets of the creditors, confirmation from all the creditors. All the amounts are taken by way of banking channel which were recorded in the books of account of the creditors. Therefore, no addition could be made against the assessee. It was explained that 04 concerns are related to the assessee, therefore, no interest is paid and to one party interest is paid. The Ld. CIT(A), however, did not accept the contention of assessee and dismissed the appeal of the assessee.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee has produced documentary evidences on record to prove identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. The assessee produced confirmation of account from all the creditors, their bank statements, their computation of income, details of source of funds received by them and

statement of financial assets. Copies of the same are filed in the paper book details of which are filed at page-12 of the PB. Learned Counsel for the Assessee submitted that assessee has taken loan for the purpose of purchase of property for family. The creditor Shri Rakesh Kapoor is husband of the assessee, Rakesh Kapoor HUF is their family HUF in which her husband is Karta, M/s. BRK Infotech & Developers Pvt. Ltd., is a family company in which husband of the assessee is Director, creditor Ms. Isha Kapoor is daughter-in-law of the assessee. M/s. Ranjit Garh Finance Co. Pvt. Ltd., is NBFC to whom interest is paid on loan. Learned Counsel for the Assessee, therefore, submitted that since mostly loans are taken from the family members and their concerns, therefore, there was no requirement to pay interest to them. Learned Counsel for the Assessee submitted that loans are taken through banking channel and assessee explained the source of all the creditors in the case of family members their source is explained which is through maturity of FDRs and sale of property etc., No cash was found deposited in any of the bank accounts of the

creditors. Sufficient bank balances were available in the accounts of creditors before cheques were issued to the assessee. All the entries are recorded in the books of account of the creditors. He has submitted that none of the creditors have been called by the A.O. for examination on oath in case A.O. was having any doubt about them. Learned Counsel for the Assessee submitted that assessee in the present has proved source of the source while though as per Law assessee need not to prove source of the source. Therefore, initial burden upon the assessee to prove identity of the creditors, their creditworthiness and genuineness of the transaction have been proved by assessee. The A.O. did not make any investigation into the matter and summarily rejected the documentary evidences filed by assessee. Therefore, addition is wholly unjustified. Assessee explained the source of the loans for purchase of property. Therefore, addition be deleted.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that it is a case of paper compliance only. There is a disproportionate

income with reference to the loan taken by assessee. interest is paid to one party only and it is not explained why no interest is paid to others. The assessee did not file any satisfactory evidence on record. Therefore, onus upon assessee to prove genuine credit have not been discharged by assessee. The Ld. D.R. submitted that assessee has no source to return the loan amount from known source of income, therefore, addition was correctly made.

6 We have considered the rival submissions and perused the material on record. The assessee explained that loan amount was taken from 05 parties for purchase of property, out of which, 04 creditors are family members and related concern of the assessee Shri Rakesh Kapoor, creditor, is the husband of the assessee, Rakesh Kapoor HUF is family HUF in which husband of the assessee is Karta, Creditor M/s. BRK Infotech & Developers Pvt. Ltd., is a family company in which husband of the assessee is Director and Creditor Ms. Isha Kapoor is daughter-in-law of the assessee. The assessee filed confirmation of accounts from all these creditors supported by ITR, PAN, bank

statements and computation of income, statement of financial assets and details and source of funds received by them. Mostly, the bank statements reveal their source of deposits are particularly their matured FDRs and sale of properties etc. All these creditors are having sufficient funds in their Bank account to give loan to the assessee. No cash was found deposited in the accounts of the creditors before giving loan to the assessee. It is illogical to say that assessee is required to explain why interest is not paid on loan to the family concern. It is settlement between family members whether to charge interest or not. A.O. cannot dictate any terms to the assessee and his family members in this regard. In case of M/s. Ranjit Garh Finance Co. Pvt. Ltd., all the above documentary evidences have been filed and the bank statement revealed that it has sufficient funds to give loan to the assessee. The A.O, thus, did not doubt the identity of the creditors and their creditworthiness. The A.O. merely doubted genuineness of the transaction because of the disproportionate income of the creditors as regards the loan advanced to the assessee. In case A.O. was having any

doubt on any of the point, he could have summoned all the creditors and record their statements on oath under section 131 of the I.T. Act, 1961, to find-out the truth. Since all the creditors are having sufficient funds in their Bank accounts and they have confirmed giving loan to the assessee, initial burden upon assessee is discharged to prove all the three ingredients of Section 68 of the I.T. Act, 1961, i.e., identity of the creditors, their creditworthiness and genuineness of the transaction particularly when all the creditors are assessed to tax and transactions are routed through banking channel only. The A.O, however, did not make any enquiry into the matter on the documentary evidences furnished by the assessee and merely rejected the claim of assessee on irrelevant reasons that the creditors have disproportionate income to that of the loan advanced to the assessee. The A.O. failed to examine the creditworthiness of the creditors from the source explained in their Bank accounts. Since no further investigation have been carried-out by the A.O. on the documentary evidences filed by assessee, therefore, A.O. cannot fasten the assessee with

such liability under section 68 of the I.T. Act, 1961. The A.O. failed to carry his suspicion to logical conclusion by further investigation. We rely upon Judgment of Hon'ble jurisdictional High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., &Ors. 361 ITR 220 (Del.) in which it was held as under :

“Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable.”

6.1. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. WinstralPetrochemicals P. Ltd., 330 ITR 603, in which it was held as under :

“Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee.”

6.2. Decision of Hon’ble jurisdictional High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) (HC), in which it was held as under :

“Dismissing the appeal, that the additional burden was on the Department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose.”

6.3. Judgment of Hon’ble Supreme Court in the case of Commissioner of Income Tax, Orissa vs., Orissa Corporation P. Ltd., [1986] 159ITR 78 (SC) in which it was held as follows :

“Held, that in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the

said alleged creditors to find out whether they were creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case.”

6.4. The Hon’ble Gujarat High Court in the case of DCIT vs., Rohini Builders [2002] 256 ITR 360 (Guj.) held as under :

“The assessee was a firm engaged in the business of dealings in land. During the assessment year under consideration, the assessee has taken loans from various parties and during the course of assessment

proceedings, the assessee has furnished the loan confirmations giving full addresses, GIR numbers/permanent account numbers, etc., of all the depositors. The Assessing Officer, however, issued summons to some of the creditors and also conducted inquiries about the genuineness or otherwise of the loans taken by the assessee. After considering the evidence, the Assessing Officer made an addition of Rs.12,85,000 to the returned income of the assessee. This was confirmed by the Commissioner of Income-tax (Appeals). On further appeal to Tribunal the Tribunal held that the phraseology of section 68 of the Income-tax Act, 1961, was clear, that the Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year, that the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year", that the un-satisfactoriness of the explanation does not and need not automatically result

in deeming the amount credited in the books as income of the assessee. The Tribunal found that the assessee had discharged the initial onus which lay on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/permanent account numbers and the copies of assessment orders wherever readily available, that it had also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee was not expected to prove the genuineness of the cash deposited in the bank account of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source. Thus taking into consideration the totality of the facts and circumstances of the case, and, in particular the fact that the Assessing Officer had not disallowed the interest claimed/paid in relation to these credits in the assessment year under consideration or

even in the subsequent years, and tax had been deducted at source out of the interest paid/credited to creditors, the Tribunal held that the Departmental authorities were not justified in making the addition of Rs. 12,85,000. On appeal to the High Court :

*Held, that considering the facts and circumstances of the case narrated by the Tribunal and the law explained by it, the appeal was liable to be dismissed^:
[The Supreme Court has dismissed.]”*

6.5. The Hon’ble Supreme Court has dismissed the special leave petition filed by the Revenue against this Judgment reported in [2002] 254 ITR (St.) 275.

6.6. The Hon’ble Gauhati High Court in the case of P.K. Sethi vs., CIT [2006] 286 ITR 318 (Gauhati) held as under :

“For the assessment year 1989-90, the assessee filed a return showing, inter alia, certain amounts received as loan from family members and

relatives. The Assessing Officer held an enquiry to find out the identity of the creditors, their creditworthiness and the genuineness of the transactions. It was found that all the creditors were assessees on the file of the same Income-tax Officer and their file numbers were reflected in the order. The amounts in question were shown to be withdrawn from accounts held by them and shown in their income-tax files. All the amounts were paid by account payee cheques. However five of the accounts were opened in the same branch of a bank between July 18 and July 26, 1988. Therefore, doubting the genuineness of the transactions, the Assessing Officer held that a sum of Rs.8,35,000 was not genuine and added it as income of the assessee. The Tribunal affirmed this.

On appeal :

Held, that out of the three requirements, the first two, namely, the identity of the creditors and their creditworthiness had been established. In respect

of the genuineness of the transactions, as far as the assessee was concerned he had proved that the entire amount involved was received by way of account payee cheques. The Assessing Officer had accepted them as genuine on the part of the creditors, but in the case of the assessee he held them not genuine. There were as many as twelve creditors and the allegations as regards opening of the bank accounts within a particular period was in the case of five creditors only. No inference could have been drawn that these were fake transactions. Admittedly there was no other evidence or material in support of the finding of the Tribunal that the cash credits were not genuine. The order of the Tribunal was not justified.”

6.7. Considering the above discussion in the light of totality of the facts and evidences on record, it is clear that assessee produced sufficient documentary evidences on record to prove identity of the creditors, their creditworthiness and genuineness of the transaction. The

A.O. did not make any enquiry with regard to asset and amount held by the creditors in their bank accounts with their source. Therefore, A.O. could not draw any adverse inference against the assessee. We may also note here that in the Law assessee need not to prove source of the source as is held by Hon'ble Delhi High Court in the case of CIT vs., Dwarakadhish Investment P. Ltd., [211] 330 ITR 298 (Del.) and Judgment of Hon'ble Allahabad High Court in the case of Zaffar Ahmed & Co. 30 taxmann.com 269 (All.). The assessee however, in the present case has even proved source of the source of the creditors. Therefore, there is no question of considering it to be unexplained credits in the hands of the assessee. The A.O. suspected the loan amount because the assessee filed return of income at Rs.30 lakhs only and made investment of Rs.11.65 crores. Since the assessee explained that sufficient loan amount have been taken from the family for purchase of property for family, ten in that event, A.O. shall have to consider the explanation of assessee in the light of fact that assessee made investment in purchase of property from the family

source. In the absence of any investigation from the side of the A.O. on the documentary evidences filed on record, there were no justification to make the addition. We, accordingly, set aside the Orders of the authorities below and delete the entire addition.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 25th February, 2020

VBP/-

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.