

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER

ITA No.1634/Del/2013
Assessment Year : 2009-10

Shri Arihant Jain,
Prop. M/s Kuber Metal,
C/o Shri Raj Kumar Batra,
Advocate,
310-A, Ranjit Mohalla,
Rohtak.
PAN : ADPPJ3691N.
(Appellant)

Vs. Income Tax Officer,
Ward-4,
Sonepat Hq. at Rohtak.

(Respondent)

Appellant by : Shri Shiv Raj Kumar Batra,
Advocate.
Respondent by : Ms. Y.Kakkar, Sr.DR.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the assessee is directed against the order of learned CIT(A), Rohtak dated 22nd February, 2013 for the AY 2009-10.

2. Ground No.1 of the assessee's appeal is of general nature by which the assessee challenged the total disallowance/addition sustained by the CIT(A). However, he has raised the separate ground with regard to each addition/disallowance. Therefore, in our opinion, no separate adjudication of ground No.1 is required. That would be consequential to disposal of other grounds.

3. Ground Nos.2 to 6 of the assessee's appeal are against the addition of ₹7,00,000/- sustained by learned CIT(A) in respect of unexplained cash credit.

4. The facts of the case are that during assessment proceedings, the Assessing Officer noticed that there was credit of ₹8 lakhs in the account of following three parties:-

- | | | |
|-------|-------------|-------------|
| (i) | Anu Singhal | ₹3,00,000/- |
| (ii) | Sippy Jain | ₹2,00,000/- |
| (iii) | Sonia Jain | ₹3,00,000/- |

5. The Assessing Officer was of the opinion that the onus is upon the assessee to prove the cash credit. He held that the assessee was unable to establish the creditworthiness of the persons as well as the genuineness of the transaction. He, therefore, made the addition of ₹8 lakhs as unexplained credit. On appeal, learned CIT(A) accepted the creditworthiness of ₹1 lakh in the name of Anu Singhal and accordingly, he sustained the addition under Section 68 of the Income-tax Act, 1961 to the extent of ₹7 lakhs. The assessee, aggrieved with the order of CIT(A), is in appeal before us.

6. We have heard both the sides and perused the material placed before us. In addition to the oral arguments, the assessee has furnished written submissions explaining the evidences furnished with regard to each and every creditor. The same is reproduced below for ready reference:-

"1) Anu Singhal :- Rs.200000/-

She is regular income tax assessee having PAN AIBPS2918L for A.Y. 2009-10. She has filed return of income at Rs.182580/-. She has saving bank a/c No.36993 with PNB GT Road Panipat. She has advanced Rs.200000/- to the appellant on dt. 10-11-2008 vide Ch.no.245488 further she has advanced Rs.100000/- to the appellant on

dt. 12-11-2008 vide Cheque no.245489. The said amount has been duly shown in her return of income as interest from the advanced at Rs.14038/- and TDS of Rs.1448/- deducted on this interest income has duly been declared in the return of income. Even copy of A/c with the appellant along with confirmation has been submitted during assessment proceedings. That the source of deposit of Rs.300000/- is as under:-

a) Rs.200000/- By cash deposit out of old cash in hand i.e. Rs.235497/- available as on 31-03-2008. Photocopy of income tax return & notes/balance sheet attached.

b) Rs.100000/- Rs.97190/- Amount due from M/s Ganpati Fabrics received by bank trf. Dt. 10-11-2008 in PNB GT Road Panipat.

Rs.3000/- By cash deposit out of cash in hand on dt 10-11-2008.

The appellant has duly submitted before the Assessing Officer all these documents which includes copy of acknowledgement of return, copy of bank a/c, copy of a/c along with confirmation etc. Even all these documents have been placed in Paper Book before this Hon'ble Bench.

Thus the appellant has proved the identity, capacity of creditor, genuineness of transaction. Thus the appellant has duly discharged the initial burden lied on him. But the Id.CIT(Appeals) has allowed relief of Rs.100000/- as accepting the source of income. However the department has failed miserably to discharge the burden shifted on it. Therefore, the addition sustained on a/c of unsecured loan of Rs.200000/- of Smt. Anu Singhal is totally wrong, illegal and excessive in nature which may kindly be deleted.

2) Sippy Jain :-Rs.200000/-

That Smt. Sippy Jain is regular income tax assessee having PAN :- AIUPJ8437A. She has filed return of income at Rs.190000/- for A.Y. 2009-10. She has saving bank a/c with Canara Bank, Rohini Delhi vide A/c no.20711. She has advanced Cheque of Rs.200000/- to the appellant on dt. 01-11-2008 vide Cheque no.00832371. The source of the amount is cash deposit of Rs.200000/- on dt. 31-10-2008 out of her old cash balance i.e. Rs.208300/- which was shown in the earlier balance as on 31-03-2008. In

evidence copy of income tax return, computation of income, capital a/c & balance sheet for A.Y. 2008-09 has been submitted before lower authorities. She has earned interest of Rs.10060/- on which TDS of Rs.1036/- has been deducted and has been duly shown in her return of income. Further the appellant has duly submitted before Assessing Officer copy of acknowledgement of return, copy of bank a/c, copy of a/c cum confirmation letter and B/sheet. Thus the appellant has duly discharged the initial burden of Rs.200000/- lied on him. However department has failed miserably to discharge the burden shifted on it. It is therefore prayed that the addition of Rs.200000/- may kindly be deleted.

3) *Sonia Jain :- Rs.300000/-*

She is regular income tax assessee having PAN :- AIUPJ8436B. She has filed return of income for A.Y. 2009-10 showing total income of Rs.195070/-. She has advanced Rs.300000/- to the appellant detail of which is as under:-

Rs.300000/- Dt. 01-11-2008 Cheque no.00572310 Canara Bank Rohini. Delhi SB A/c no.17938.

The source of the advance is the cash available with the assessee at Rs.343093/- on dt. 31-03-2008 which was deposited in the bank. In evidence copy of income tax return, computation of income, capital a/c & balance sheet for A.Y. 2008-09 has been submitted before lower authorities. The appellant has duly submitted the copy of acknowledgement of return for A.Y. 2009-10, copy of bank a/c, copy of a/c cum confirmation letter, copy of B/sheet to the Assessing Officer. The said creditor Smt. Sonia Jain has duly shown interest of Rs.15090/- on which TDS of Rs.1554/- was deducted. Thus the appellant has discharged initial burden lied on him. However the department has failed miserably to discharge burden shifted on it. It is therefore prayed that addition of Rs.300000/- may kindly be deleted.

All the above persons are regular income tax assessee. They have shown this credit amount in their B/sheet and debit amount in the name of the appellant. To establish the identify capacity and genuineness of transaction, the appellant has submitted the following evidences :-

- 1) *Copy of acknowledgement of returns & their PAN No. along with copy of A/c cum confirmation letter.*
- 2) *Copy of their Bank A/c's shown debit of loan given to the appellant by A/c payee cheques.*
- 3) *That copy of B/sheet of these persons shown debit balance in the name of the appellant.*
- 4) *Copy of return & B/sheet for A.Y. 2008-09 showing cash in hand available as on 31-3-2008.*

Thus the onus of proving the source of money credited in the books of the appellant has been duly discharged.

Further the A.O. has failed miserably to discharge the onus shifted on him to prove that the sums credited in the A/c books is the income of the appellant."

7. In support of his contention, he relied upon the decision of Hon'ble Apex Court in the case of CIT, Orissa Vs. Orissa Corporation P.Ltd. – [1986] 159 ITR 78. He, therefore, submitted that the addition of ₹7 lakhs sustained by the learned CIT(A) as unexplained cash credit may be deleted.

8. Learned DR, on the other hand, relied upon the orders of authorities below and he stated that the creditors have deposited exact amount of cash before issuing the cheque in the name of the assessee. Moreover, the creditors were not produced before the Assessing Officer despite the specific direction from the Assessing Officer. He stated that the onus is upon the assessee to prove the cash credit and the assessee has failed to discharge the onus. Therefore, the addition of ₹7 lakhs was rightly sustained by the CIT(A). His order should be upheld.

9. In the rejoinder, it is stated by the assessee's counsel that the Assessing Officer did not allow adequate opportunity to the assessee to produce the creditors. He further submitted that even without the creditors, the assessee has duly discharged the onus which lay upon him because all the creditors are assessed to income tax, the amount advanced to the assessee is duly shown in the balance sheet, cash deposited in the bank by the creditors was out of cash in hand with them and which was duly shown in their balance sheet of 31st March, 2008.

10. We have carefully considered the arguments of both the sides and perused the material placed before us. It is a settled law that onus is upon the assessee to prove the cash credit lying in his books of account. To discharge such onus, the assessee has to establish the identity of the creditor, creditworthiness of the creditor and the genuineness of the transaction. The Assessing Officer has doubted the creditworthiness of the creditor as well as genuineness of the transaction. We find that all the three creditors are assessed to income tax and the amount advanced was given by account payee cheque and the confirmation of all the three creditors along with their balance sheet of 31st March, 2008 as well as 31st March, 2009 was duly furnished before the Assessing Officer. In the case of Anu Singhal, she filed the return for AY 2009-10 declaring income of ₹1,82,580/-. The Assessing Officer has doubted her creditworthiness because the sum of ₹2 lakhs was deposited in the bank account before issuing the cheque of ₹2 lakhs to the assessee. However, the assessee has furnished the balance sheet of Anu Singhal for the year ended on 31st March, 2008 in which cash in hand of ₹2,35,497/- was disclosed. Therefore, she had a capacity of depositing ₹2 lakhs in the cash in her bank account during the FY 1.4.2008 to 31.3.2009. Similar are the facts with regard to Sippy Jain and Sonia Jain. In these two cases also, the assessee has

furnished the income tax return, confirmation, bank account as well as balance sheet for the year ended on 31st March, 2008 and 31st March, 2009. Cash deposited in the bank account was out of cash in hand disclosed on 31st March, 2008. That the Hon'ble Apex Court in the case of Orissa Corporation (supra) held as under:-

“In the case, the assessee 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 assessee. Their index numbers were in the file of the revenue. The Revenue apart from issuing notices under s. 131 of the instances of the assessee, 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, or were such who could advance the alleged loans. There was no effort to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further, in the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such conclusion was unreasonable or perverse or based on no evidence.”

11. The facts of the assessee's case are better than the facts before the Hon'ble Apex Court in the case of Orissa Corporation (supra). In this case, the assessee, apart from furnishing the permanent account number of the creditor, has also furnished their balance sheet, copy of income tax return, confirmation, bank account etc. The amount advanced to the assessee is duly disclosed in the balance sheet of all the creditors. Even the assessee has also explained the source of cash deposited in the bank account of the creditors. On these facts, in our opinion, the initial onus which lay upon the assessee was duly discharged. If the Assessing Officer wanted to examine the issue further, he could have very well issued notice under Section 131 to the creditors which has not been done by the Revenue. Considering the totality of above facts, in our opinion, the assessee has duly

discharged the onus of proving the cash credit in the name of all the three creditors viz., Anu Singhal, Sippy Jain and Sonia Jain. We, therefore, respectfully relying upon the decision of Hon'ble Apex Court in the case of Orissa Corporation (supra), delete the addition of ₹7,00,000/- sustained by the learned CIT(A) for unexplained cash credit.

12. Ground No.7 of the assessee's appeal reads as under:-

"That the learned CIT(Appeals) has further erred in confirming adhoc disallowances of following expenses-

- a) Car & conveyance exp. 1/5th Rs.19980/-*
- b) Diwali & Misc. exp. 1/5th Rs.9660/-*

No specific defect has been pointed out before confirming adhoc disallowance. Thus the said disallowance is totally wrong and illegal."

13. We have heard both the sides and perused the material placed before us. The assessee is an individual and the personal use of vehicle by the assessee and his family members cannot be ruled out. Similarly, the Assessing Officer has disallowed 1/5th out of diwali expenses, telephone expenses, sales promotion expenses and miscellaneous expenses. The Assessing Officer has pointed out that these expenses are supported by self made vouchers only which are not verifiable. He, therefore, disallowed 1/5th out of these unvouched/unverifiable expenses. Considering the facts of the case and arguments of both the sides, in our opinion, 1/5th disallowance out of car and conveyance expenses as well as diwali, telephone, sales promotion and miscellaneous expenses is fair and reasonable. The same is sustained.

14. Ground No.8 is against the addition of ₹32,422/- for low household expenses.

15. We have heard both the sides and perused the material placed before us. The Assessing Officer has found that the total withdrawal for household by the assessee and his wife was only ₹1,11,578/-. He estimated the household expenses at ₹12,000/- per month. Apart from husband and wife, the assessee has one school going child also. Considering the totality of facts, in our opinion, the estimate of ₹12,000/- per month for household expenses is quite fair and reasonable. The same is sustained and, accordingly, ground No.8 is rejected.

16. In the result, the appeal of the assessee is partly allowed.

Decision pronounced in the open Court on 27th September, 2013.

Sd/-

(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-

(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 27.09.2013

VK.

Copy forwarded to: -

1. Appellant : Shri Arihant Jain,
Prop. M/s Kuber Metal,
C/o Shri Raj Kumar Batra, Advocate,
310-A, Ranjit Mohalla, Rohtak.
2. Respondent : Income Tax Officer,
Ward-4, Sonapat Hq. at Rohtak.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar