

(2024) 06 ITAT CK 0016

Income Tax Appellate Tribunal (Delhi C Bench)

Case No: Income Tax Appeal No. 1187/DEL/2019

M/S. Ganga Cotton & Allied
Industries Ltd

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision: June 6, 2024

Acts Referred:

- Income Tax Rules, 1962 - Rule 46A
- Income Tax Act, 1961 - Section 68, 106, 143(3), 144

Hon'ble Judges: M Balaganesh, (AM); Vimal Kumar, J

Bench: Division Bench

Advocate: Pulkit Saini, Jalaj Prakash Kant, Sandeep Kr. Mishra

Final Decision: Allowed

Judgement

1. The appeal is against order dated 26.11.2018 of the Learned Commissioner of Income Tax (Appeals) [Learned "CIT(A)"] through which assessment order dated 05.12.2016 by the Learned Assessing Officer (Learned "AO") for the assessment year 2014-15 through which additional evidence was admitted under Rule 46A of Income Tax Act, 1961 and deleted the addition of Rs. 41,43,974/- representing alleged excess trade payable and held as bogus liability on presumptive and derived basis and disallowance of Rs. 15,09,348/- representing adhoc disallowance and upheld addition of Rs. 4,19,90,000/- under section 68 of the Act vide assessment order dated 5.12.2016.

2. Brief facts of case are that appellant / assessee is a company incorporated on 15th April, 1987 under the Companies Act, 1956 is engaged in the manufacturing and trading of cotton, cotton seed oil, cotton seed cake and allied products. There was no trading of cigarettes during the instant year as wrongly alleged in the assessment

order. The assessee filed return of income of Rs. 1,36,800/- for the assessment year 2014-15. The return of income was duly supported by an audited balance sheet profit and loss account and tax audit report for the financial year 2013-14 relevant to the instant assessment year. The case was selected for scrutiny assessment under CASS. The assessment of the same was completed under section 144 of the Act dated 5.12.2016 by making an addition of Rs. 4,76,43,320/- without giving adequate opportunity of being heard and disregarding the response and evidence filed by the assessee.

3. Appellant / assessee preferred appeal before Learned CIT(A) which was partly allowed and upheld the addition of Rs. 4,19,90,000/-.

4. Being aggrieved appellant / assessee preferred present appeal with following grounds:-

1. "That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding addition made on account of unsecured loans raised by the appellant from the following parties and brought to tax under section 68 of the Act:

Sr. No.	Name of the lender	Amount (Rs.)
1)	M/s Jagannath Enterprises	1,30,00,000
II)	M/s Krishan Traders	3,40,000
III)	M/s Deepak Sales Corporation	2,86,50,000
Total	4,19,90,000	

1.1 That since the creditors have duly been assessed to tax u/s 143(3) of the Act wherein the loans made stood accepted the addition made and sustained is wholly invalid.

1.2 That while upholding the addition, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the appellant had placed on record confirmation alongwith income tax particulars and, the loans had been raised by account payee cheques and interest thereon had already been duly credited to the account of the payees, the initial burden of the appellant stood discharged and therefore, addition sustained on the ground that the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee for that previous

year.

1.3 That various adverse findings and conclusions recorded by the learned Commissioner of Income Tax (Appeals) are factually incorrect and contrary to record, legally misconceived and untenable.

1.4 That further more the learned Commissioner of Income Tax (Appeals) has sustained the addition on mere speculation, generalized statements, theoretical assumptions and allegations and assertions, without there being any supporting evidence and is therefore not in accordance with law.

1.5 That low income of the creditors who have duly confirmed the loan and assessed to tax u/s 143(3) of the Act could not be a basis to make the addition.

1.6 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that non production of the bank statements of creditor also not be a ground to denominate a genuine transaction as an unexplained cash credit under section 68 of the Act.

2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that order of assessment has been framed without granting sufficient proper opportunity to the appellant company and therefore the same is contrary to principles of natural justice and hence vitiated, apart from being not in accordance with the conditions prescribed under section 144 of the Act.”

5. Learned representative for assessee submitted that addition of Rs. 4,19,90,000/- has been made on basis of suspicion without any substantiating material. Assessee had raised loan in the ordinary course of business and identical loans were also raised in the preceding years. The position of unsecured loan for the relevant assessment year was as under:-

Name	Opening Balance	Addition	Repayment	Closing Balance
Deepak Sales Corporation Jagan Nath Enterprises Krishan Traders	95,00,000	3,49,00,000	62,50,000	3,81,50,000
	-----	1,30,00,0000	-----	1,30,00,000
	81,60,000	1,65,00,000	1,61,60,000	85,00,000

Saroj Rani Bahiya and Co.	1,43,000	-----	-----	1,43,000
	2,50,000	-----	-----	2,50,000
Total	1,80,53,000	6,44,00,000	2,24,10,000	6,00,43,000

6. Learned representative for appellant/assessee submitted that in the assessment proceedings the Learned AO has accepted the opening balances of the unsecured loan as well as the repayment made during the relevant AY. However, in respect of the net amount of loan raised during the year as reduced by the repayment made during the year, the Learned AO has invoked the provisions of section 68 of the Act putting the onus on the assessee to prove the identity, creditworthiness and genuineness of the transaction. The Learned AO disregarded the reply of the assessee dated 02.12.2016, along with evidence, to prove the identity, creditworthiness and genuineness of the transaction and made the addition of Rs. 4,19,90,000/-.

7. Learned representative for assessee submitted that since assessee was prevented on account of sufficient cause from filing the evidence during assessment proceedings which go to the root of issue involved, Learned CIT(A) admitted the following evidences under Rule 46A of the Income Tax Rules, 1962 as below:-

Sr. No	Name of Party	Amount (In Rs.)	Evidence (pages of Paper Book)
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i)

M/s Deepak
Corporation
Sales
Proprietor:
Sh. Deepak
Bansal
PAN No.
AIBPB2616A
ITO-Ward-1,
Sirsa

2,86,50,000

- i) Copy of acknowledgement of return of income dated 28.11.2014 alongwith computation of income in the case of Shri Deepak Bansal for Assessment year 2014-15 (137-139)
- ii) Copy of loan account showing the repaying of loans transaction (140)
- iii) Copy of bank statement of the appellant company (141-150)
- iv) Copy of conformation in shape of ledger account (131- 132)
Alongwith rejoinder to remand report
- v.) Copy of acknowledgement of return of income alongwith computation of income, audited financial statement and tax audit report in the case of Sh. Deepak Bansal, proprietor, for the financial year 2013-14 relevant to assessment year 2014-15 (314-329)
- vi) Copy of order of assessment dated 30.11.2016 u/s 143(3) of the Act in the case of Sh. Deepak Bansal for the Assessment year 2014-15 (330-331)

ii)

M/s Jagan
Nath
Enterprises
PAN No.
ATFPB852H
TIN No.
03642097617
Address:
Shop No. 29,
New Grain
Market,
Budhladha

1,30,00,000

- i) Copy of acknowledgement of return of income dated 27.11.2014 in the case of Shri Ankush Bansal for AY 2014-15 (151-153)
- ii) Copy of ledger account of M/s Jagan Nath Enterprises in the books of appellant company (154)
- iii) Copy of bank statement of the appellant company (155-159)
- iv) Copy of confirmation from M/s Jagan. Nath(133) Alongwith rejoinder to remand report
- v) Copy of acknowledgement of return of income alongwith computation of income, audited financial statement and tax audit report in the case of Sh. Ankush Bansal, proprietor, for the financial year 2013-14 relevant to assessment year 2014-15 (332-345)
- vi) Copy of order of assessment dated 3.5.2016 u/s 143(3) of the Act in the case of Sh. Ankush Bansal for the Assessment year 2014-15 (346)

			1) Copy of return of income of Smt. Saroj Rani, proprietor of M/s. Krishna Traders (160-162)
			ii) Copy of confirmation (134)
			iii) Copy of ledger account of M/s Krishan Traders Enterprises in the books of appellant company (163)
iii)	Krishan Traders PAN No. AABMPR5913Q TIN No. 03962160297 Address: Shop No. 197, New Grain Market, Budhladha	3,40,000	iv) Copy of bank statement of the appellant company (164-177)
			v) Copy of bank statement of Krishan Traders (178) Alongwith rejoinder to remand report
			vi) Copy of Form no. 3CB and audited financial statements for the AY 2014-15.
	Total	4,19,90,000	

8. Learned representative for appellant/assessee submitted that the Learned CIT(A) upheld the addition on the basis of observation of the Learned AO that the income reported in ITR is too low of few lakhs to advance such a high amount and therefore, creditworthiness is not established of the lenders. Learned AO had neither rejected books of accounts nor doubted the genuineness of any document furnished during the appellate proceedings. For the assessment year 2014-15 the Learned AO had partly accepted the transaction as much as opening balance and repayment is concerned and partly denied the creditworthiness of the parties to lend the money for the amount raised during the relevant financial year as reduced by the repayment made during the relevant financial year. Status in respect of other assessment years was as under:-

Sr. No.	Assessment year	Original return of income	Assessment Remarks				
		Filed on	Income declared	Date of order of assessment	Addition if any	Under Section	
i)	2011-12	25.9.2011	3,31,000	7.1.2014	50,000	143(3)	---
ii)	2012-13	28.9.2012	3,73,970	20.3.2015	50,000	143(3)	----
iii)	2013-14	30.9.2012	4,13,620	30.3.2015	Nil	143(3)	-----
iv)	2014-15	24.11.2014	1,36,800	5.12.2016	4,76,43,322	U/s 144	Disputed in appeal
v)	2015-16	24.9.2015	4,17,170	0	0	----	-----

9. Learned representative for appellant/assessee submitted that as per section 68 the onus was placed upon the assessee to explain the nature and source of the credit has been discharged by the assessee. The creditors are regularly assessed to tax and the assessee had furnished their ITR, scrutiny assessment order, audited balance sheet, profit and loss account, tax audit report and confirmation for the transaction. All the transactions of lending as well as repayment was by proper banking channels. The creditworthiness of the parties cannot be questioned only on account of low income reported in ITRs. The audited balance sheet, profit and loss account and tax audit report reflected that the parties had sufficient capital balance as well as high turnover to make advance to the assessee:-

Sr. No.	Particulars	Capital 31/03/2014	Turnover for the Addition us AY 68	Addition u/s 68
1.	M/s Deepak Corporation	1,49,05,622	11,05,23,280	2,86,50,000
2.	M/s Jagan Enterprises	1,35,29,095	7,56,58,049	1,30,00,000
3.	Krishan Traders	79,36,656	5,16,36,611	3,40,000

10. The turnover, capital balance and amount lent by the lenders is accepted by the department in scrutiny assessment order of the creditors. These trading concerns are proprietorship concerns owned by the family members of the director of the company.

11. Learned representative for appellant/assessee submitted that ITAT Delhi in ITA No. 71/2015 decided on dated 12.8.2015 titled as CIT v. Vrindavan Farms(P) Ltd. held as under:-

"3.The ITAT has in the impugned order noticed that in the present case the Revenue has not doubted the identity of the share applicants. The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their Income Tax Returns. The entire details of the share applicants were made available to the AO by the Assessee. This included their PAN numbers, confirmations, their bank statements, their balance sheets and profit and loss accounts and the certificates of incorporation etc. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the above documents submitted to him. It has been rightly commented by the ITAT that without doubting the documents, the AO completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the share holders."

12. Learned representative for appellant/assessee submitted that quantum of income declared by creditor is not a relevant consideration as judgment of Hon'ble High Court of Calcutta in case of CIT vs. Dataware (P) Ltd. ITA No. 263 of 2011 wherein it was held as under:-

"In our opinion, in such circumstances, the Assessing Officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor

when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing Officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing Officer of the creditor but instead of adopting such course, the Assessing Officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor and genuineness" of transaction through account payee cheque has been established."

13. Learned representative for appellant/assessee submitted that as per proviso to section 68 the onus cannot be placed upon the assessee to explain the source of source unless the credit is of investment in share capital of a private company which is not the case. In the case of CIT vs. Shiv Dhooti Pearls & Investment Ltd. reported in 237 Taxman 104 (Del) it was held as under:-

"If Section 106 and Section 68 are to stand together, which they must, then, the interpretation of Section 68 has to be in such a way that it does not make Section 106 redundant. Hence, the harmonious construction of Section 106 of the Evidence Act and Section 68 of the Income Tax Act will be that though apart from establishing the identity of the creditor, the Assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the Assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the Assessee and the creditor, What follows, as a corollary, is that it is not the burden of the Assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the Assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the Assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be judged vis-a-vis the transactions, which have taken place between the Assessee and the creditor, and it is not the business of the Assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the Assessee."

14. Learned representative for appellant/assessee submitted that Hon'ble Supreme Court in CIT vs. Lovely Exports (P) Ltd. [2008] 216 CTR 195 (SC) it has held that if the

share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income of assessee company under section 68. The case law relied by Learned CIT(A) to dismiss appeal are on completely different fact and not relating to present case. So appeal may be accepted.

15. Learned representative for department submitted that the additional evidence was filed in appeal. Bank statements of lenders were not provided by the assessee. The assessee had failed to submit detail of bank account, PAN Number of the creditors. Circular No. 23/2022 dated 3.11.2022 provides:

“16.5 Therefore, the provisions of section 68 of the Act have been amended so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a Venture Capital Fund, Venture Capital Company registered with SEBI.

16.6 Applicability: This amendment is effective from the 1st April, 2023 and, accordingly applies in relation to the assessment year 2023-24 and subsequent assessment years.”

Therefore appeal may be rejected.

16. From examination of record in light of aforesaid rival contention it is crystal clear that para No. 4.12 of the assessment order mentions:-

“4.12 As explained above in the body of this order, the assessee has failed to discharge the onus which lay on him and has miserably failed to justify the identity of the investor parties, prove genuineness of transaction entered, as well as creditworthiness of the parties. Accordingly, the net amount of Rs. 4,19,90,000/- received in disguise of unsecured loans from three non related parties, on which even no interest has been paid is treated as unexplained. Accordingly, the amount of Rs. 4,19,90,000/-is hereby added to the income of assessee under the provisions of section 68 of the Income Tax Act, 1961.....”

17. In appeal appellant / assessee submitted additional evidence. Learned CIT(A) after discussing the documents especially their ITR, scrutiny assessment order, audited balance sheet, profit and loss account, tax audit report and confirmation for the transaction concluded that three lenders had very low income in the ITR. Therefore, allegedly creditworthiness of the lenders cannot be established.

18. In view of above material facts it is apparent on record that Learned AO and Learned CIT(A) had not disputed that the amounts lent to appellant/assessee were duly reflected in the financial statement of the creditors. Appellant / assessee had established the identity, creditworthiness of lenders and genuineness of the transactions. All the transactions were through proper banking channel. Source of source need not be proved for unsecured loan for the year under consideration. Further the lender had made cash deposits out of available cash balances. No adverse comments were given by Tax Auditor of the lender in the tax audit report in this regard. The loan given to assessee is duly reflected in audited balance sheet of the lender. Copies of acknowledgement of return of income of three lenders were filed. Copies of scrutiny assessment orders under section 143(3) of M/s Deepak Sales Corporation and M/s Jagan Nath Enterprises were placed on record, where no adverse inference was drawn on these lendings. In view of the above, genuineness of transaction and credit worthiness of the lender stands established. Therefore the appellant / assessee had proved identity, creditworthiness of lender and genuineness of transaction to show that the case comes within the purview of provisions of section 68 of the Income Tax Act, 1961. Accordingly levy of Rs. 4,76,43,320/- is not sustainable.

19. No other point was argued.

20. In the result, the appeal of the assessee is allowed. Both the impugned orders are set aside.