



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**S.P.No.07/CTK/2018
ITA No. 517/CTK/2017
Assessment Year : 2012-2013**

Gunvantrai Seth, Prop. Babulal & Co., Naya Sarak, Cuttack-753002	Vs.	The ACIT, Circle 2(1), Cuttack
PAN/GIR No.ACRPS 1364 E		
(Appellant)	..	(Respondent)

Assessee by : Shri D.K.Sheth, AR
Revenue by : Shri Suwendu Datta, DR

**Date of Hearing : 06/08/ 2018
Date of Pronouncement : 6/08/ 2018**

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT(A)- Cuttack, dated 25.10.2017 for the assessment year 2012-2013.

2. The assessee has raised the following grounds of appeal:

"1. For that under the facts and circumstances of the case assessment as made is unjustified and unlawful .

2. For that the learned AO is wholly unjustified to make an addition of Rs.1,82,00,000/- (wrongly typed 1,80,00,000/-) merely on suspicion and surmises .

3. For that the loan creditor, a registered Private Limited Company, being a genuine and identifiable person should not have been treated as unreal and un-genuine or in other words the transaction being a loan transaction should not have been disbelieved .

4. For that the learned AO erred in arriving at a conclusion that " the loan transaction was in fact not Real Loan but a Gift " .

5. For that in any view of the case the addition of Rs.1,82,000/- (wrongly typed Rs.1,80,00,000/-) under head Income from other Sources as made is arbitrary and unjustified .

6. For that the addition of Rs.3,70,000/- by disallowing claim of Interest is also uncalled for as the appellant duly deducted tax (TDS) from the same.

7. For that the learned Commissioner is wholly unjustified to confirm the assessment and dismiss the appeal and the contentions of the appellant should have been accepted ."

3. As all the grounds of appeal are interconnected, they are being disposed of together as under:

4. The undisputed facts of the case are that the assessee claimed to have received loan of Rs.1,82,00,000/- from M/s. Pyramid Suppliers (P) Ltd. The Assessing Officer observed that M/s. Pyramid Suppliers (P) Ltd. has shown meagre sum as income and that the said loan creditor failed to reply to the notice issued u/s.133(6) of the Act. Therefore, he inferred that the loan claimed to have taken by the assessee from the said loan creditor is not genuine and made addition of the same to the income of the assessee u/s.68 of the Act.

5. On appeal, the CIT(A) observed from the remand report of the Assessing Officer that one of the promoters of the said company namely; Shri Raj Kumar Tharad in his statement given to the Investigation Wing at Kolkata has stated that he was providing accommodation entries through five Shell Companies. Therefore, the CIT(A) confirmed the action of the Assessing Officer.

6. Being aggrieved by the said order of the CIT(A), the assessee is in appeal before us.

7. Ld A.R. of the assessee submitted before us that he filed confirmation of loan from M/s. Pyramid Suppliers (P) Ltd., alongwith PAN No., bank statement of the loan creditor and audited accounts, wherein, loan advanced to the assessee is reflected. Further, it was submitted that the assessee also filed audited accounts of the assessee company and its bank statement, which shows that the entire loan amount was received by cheques through banking channel and has been duly shown by the assessee. The assessee has paid interest on the loan to the said loan creditor and has also deducted tax at source from the said interest payment. He submitted that the Assessing officer wanted to confirm the transaction directly from the loan creditor M/s. Pyramid Suppliers (P) Ltd., therefore, he sent notice u/s.133(6) of the Act, which was not returned unserved. Hence, it was submitted that the said loan creditor having received notice was in existence. He submitted that the submission of the reply by the said loan creditor to the notice issued by the Assessing Officer was not within the realm of his control and for this no adverse inference could be drawn against the assessee. It was further submitted that from the bank statement of the said loan creditor, it will be seen that there is no deposit of cash before issuance of cheque for advancement of loan to the assessee. Thus, the voluminous evidences produced by the assessee goes to show that the loan taken by the assessee from M/s.

Pyramid Suppliers (P) Ltd., is genuine and the identity is proved from the PAN No. and the creditworthiness of the said loan creditor is proved from his bank statement from where the cheques have been issued to the assessee for advancement of the said loan. In view of these voluminous documents produced by the assessee, which are not disputed by the revenue by bringing any cogent and relevant material on record, it cannot be said that the loan taken by the assessee is not genuine. It was submitted that in the statement given by Shri Raj Kumar Tharad to the Investigation Wing, neither the name of the loan creditor nor the name of the assessee appeared and, therefore, it cannot be said on the basis of his statement that the loan advanced to the assessee was an accommodation entry. Therefore, no adverse inference can be drawn from the statement of Shri Raj Kumar Tharad given to the Investigation Wing. Further, it was also pointed out that a further loan of Rs.2,62,00,000/- in the assessment year 2013-14 and Rs.1,20,00,000/- in the assessment year 2014-15 was received by the assessee's successor firm in the hands of the said successor firm. These subsequent loans were duly accepted by the Assessing Officer in an assessment made u/s.143(3) of the Act. Hence, it was prayed that the addition made should be deleted.

8. On the other hand, Id D.R. supported the orders of lower authorities but could not controvert the submissions of Id A.R. of the assessee

9. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessee claimed to have received loan of Rs.1,82,00,000/- from M/s. Pyramid Suppliers (P) Ltd., during the year under consideration. The assessee has also claimed to have paid interest of Rs.3,70,000/- after deduction of ITDS of Rs.37,000/- to the said loan creditor.

10. The Assessing Officer observed that no reply was received by him from the said loan creditor in response to notice issued by him u/s.133(6) of the Act. He, therefore, treated the said loan as not genuine and added Rs.1,82,00,000/- to the income of the assessee u/s.68 of the Act and also disallowed the claim of interest of Rs.3,70,000/-.

11. On appeal, the CIT(A) observed from the remand report submitted by the Assessing Officer that one of the promoters of the said loan creditor namely Shri Raj Kumar Tharad has, in his statement given to the Investigation Wing, accepted of providing accommodation entries through five Shell companies. In view thereof, the CIT(A) confirmed the action of the Assessing Officer.

12. Before us, Id A.R. submitted that confirmation of said loan creditor alongwith its PAN, copy of bank statement of the loan creditor and copy of audited balance sheet of the said loan creditor were filed before the Assessing Officer. No defect in the above documents could be pointed out by the Assessing Officer. Thus, the initial onus which was on the

assessee to prove the identity of the loan creditor, genuineness of the loan transaction and creditworthiness of the loan creditor were discharged by submitting the above documents. He pointed out that PAN was allotted by the Income tax Department to the said loan creditor. Thus, the identity of the said loan creditor is not in doubt. Further, confirmation from the said loan creditor as well as copy of the bank statement where from loan was advanced by the said loan creditor establishes the genuineness of the loan transaction. Further, no cash was deposited in the bank account of the loan creditor before advancing the loan to the assessee. The availability of fund in the bank account of the loan creditor and the reflection of the said loan amount in the audited balance sheet of the said loan creditor shows the creditworthiness of the loan creditor. He submitted that merely because no reply was given by the loan creditor to the notice issued u/s.133(6) of the Act by the Assessing Officer to the said loan creditor cannot be taken as a reason to draw adverse inference against the assessee. On the other hand, non-return of the notice issued u/s.133(6) shows that the said notice was duly served upon the loan creditor. It was not within the control of the assessee to compel the loan creditor to respond to the said notice.

13. We find that the above contention of the assessee is supported by the decision dated 23.2.2018 of the Delhi Bench of the Tribunal in the case of **M/S. Umbrella Projects Pvt. Ltd., vs ITO**, ITA No.

5955/DEL/2014 [Assessment Year: 2010-11, wherein, it has been held as under:

"The AO has drawn adverse inference as he did not receive reply from the 4 aforesaid shareholders in response to notice issued by him under Section 133(6). On this issue, firstly, the Ld. AR has drawn our attention to the replies along with evidences submitted by these 4 shareholders to the AO to discredit the allegation of the AO that he did not receive reply in response to notice issued by him under Section 133(6). De horse the non-receipt of the reply, even for the sake of argument we assume that the AO has not received the reply, still the fact remains that 133(6) notice were served on these four shareholders. On going through the assessment order we note that it is not the case of the AO that notices have come back unserved or these shareholders were not available at the address given by the assessee. If that be so, we are of the view that no adverse inference can be drawn against the assessee merely because reply has not been received by the AO in response to notice issued under Section 133(6). The AO having issue the notice and such notice having been served on the person concerned, the AO has to take the process to the logical end. He cannot draw adverse inference merely because reply has not been received. Submission of the reply in an independent enquiry being carried out by the AO by issue of notice under Section 133(6) from the person concerned directly is not in the hands of the assessee. The AO may be justified in certain circumstances when notice is not served or when an adverse reply is received in response to notice issued by him under Section 133(6), but merely non- receipt of reply can be a justification for drawing adverse inference. Our this view is supported by the judgment of the Hon'ble Supreme Court in the case of [CIT vs. Orissa Corporation](#) 159 ITR 78 where a similar issue has come up. The finding of the Hon'ble Court in this regard reads as under:

"In this 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 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 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 made 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 a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

14. In respect of the statement of Shri Raj Kumar Tharad, assessee filed a copy of the same before us and pointed out that nowhere therein neither the name of the loan creditor from M/s. Pyramid Suppliers (P) Ltd., nor the name of the assessee is appearing. Thus, we find force in the submission of the assessee that the said statement cannot be relied against the assessee as it no way impeaches the transaction in question.

15. Further, the assessee also pointed out that a further loan of Rs.2,62,00,000/- in the assessment year 2013-14 and Rs.1,20,00,000/- in the assessment year 2014-15 was received by the assessee's successor firm in the hands of the said successor firm. These subsequent loans were duly accepted by the Assessing Officer in an assessment made u/s.143(3) of the Act.

16. It was also pointed out that the entire loan alongwith interest thereon was duly repaid by the assessee's successor firm in the assessment year 2016-17. Thus, as the identity and creditworthiness of the said loan creditor was accepted by the department in subsequent

years, there remains no basis to refuse the same in the assessment year under appeal.

17. Ld D.R. could not controvert the above facts.

18. We find that no defect in the various documentary evidences filed by the assessee to discharge his initial onus could be pointed out by the revenue. The service of notice u/s.133(6) of the Act on the loan creditor proves the existence of the said loan creditor and merely because of not receiving of response from the said loan creditor cannot be taken as an evidence against the assessee.

19. Further in the statement of said Shri Raj Kumar Tharad, neither the name of the said loan creditor nor the name of the assessee is appearing. Thus, the said statement cannot be a basis to draw an adverse inference against the assessee. Thus, we find that in the instant case, the initial onus which was on the assessee was duly discharged by the assessee and, thereafter the department could not bring any cogent material on the basis of which, the addition or disallowance made could be sustained. We, therefore, delete the addition of Rs.1,82,00,000/- made u/s.68 of the Act and consequently, we also delete the disallowance of interest of Rs.3,70,000/-. Thus, the grounds of appeal of the assessee are allowed.

20. The assessee had filed stay petition for stay of demand. As we have heard and decided the appeal of the assessee, the stay petition of



the assessee had become infructuous and, accordingly, same is dismissed.

21. In the result, appeal of the assessee is allowed and the stay petition is dismissed.

Order pronounced on 6 /08/2018.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 6/08/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Gunvantrai Seth, Prop.
Babulal & Co., Naya Sarak, Cuttack 753002
2. The Respondent. The ACIT, Circle 2(1),
Cuttack
3. The CIT(A)- Cuttack
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack