

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.6252/Del./2014
Assessment Year 2009-2010

Shri Kanwaljeet Singh Toor, House No.1026, Phase-X, Mohali. (Punjab). PAN AAQPT2132C	VS	The DCIT, Central Circle-4, Jhandewalan Extension, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri M.R. Sharma, Advocate.
For Revenue :	Shri A Vijay Varma, CIT-D.R.

Date of Hearing :	09.05.2018
Date of Pronouncement :	14.05.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of the Ld. CIT(A)-XXXIII, New Delhi, dated 14th July, 2014, for the A.Y. 2009-2010, challenging the addition of Rs.90,43,140/- on account of unexplained cash credit.

2. We have heard the learned Representatives of both the parties and perused the material on record.

3. The office reported that appeal is time barred by 03 days. The assessee filed application for condonation of delay and it is explained that assessee has signed the appeal paper on 29.10.2014 and appeal fees were deposited on 05.11.2014. The same was handed over to the Counsel to file appeal before the Tribunal on 14.11.2014. It is, therefore, submitted that nominal delay may be condoned. Considering the explanation of assessee, the nominal delay in filing the appeal is condoned.

4. Briefly, the facts of the case are that search and seizure operation under section 132 of the I.T. Act was carried out at various business and residential premises of the Directors and important employees of Pearl Group on 22nd March, 2010. The A.O. issued notice under section 153A of the I.T. Act on 30th December, 2010 and assessee filed return of income declaring income of Rs.18,33,850/- and an agricultural income of Rs.2,32,500/-. The assessee has earned income chargeable to tax under the Heads "Income from Salary", "Income from House Property" and "Income from Business or

Profession". It was noticed that assessee has shown loan of Rs.90,43,140/- from M/s. PP Syntex (P) Ltd. Confirmation of the loan was filed by the assessee. In order to ascertain the genuineness of the loan transaction and creditworthiness of the lender, information under section 133(6) of the I.T. Act was sought from the creditor, who has filed information to the A.O. at Dak Counter in which the creditor has confirmed the advancing monies to the assessee. The lender company filed its copy of Income Tax Return for assessment year under appeal. On perusal of the balance-sheet of the lender company, it was noticed that it did not have adequate means to advance such huge loan to the assessee. The creditor has shown NIL taxable income in the return of income. In the P & L A/c it has shown sales and other receipts of Rs.4,67,521/-. The lender has not supplied copy of its bank account though it was specifically asked for in the notice under section 133(6) of the I.T. Act. The A.O, therefore, doubted the creditworthiness of the lender company and asked the assessee to produce the lender company for examination. However, the assessee did not

produce the lender company before A.O. The A.O, therefore, held the same to be unexplained credit and made the addition under section 68 of the I.T. Act.

5. The assessee challenged the addition before the Ld. CIT(A) and it was submitted that during the course of search no incriminating material was found against the assessee. Therefore, no assessment could be made under section 153A of the I.T. Act. Ld. CIT(A), however, rejected such contention of the assessee. The Ld. CIT(A) also noted that assessee made request for production of the creditor to prove the genuineness of the transaction and creditworthiness which were not done at the assessment stage. The A.O. was, therefore, directed to give opportunity to the assessee to produce all the creditors in respect of which additions have been made under section 68 of the I.T. Act in various years. However, A.O. reported that assessee has not produced the creditor for examination. The Ld. CIT(A) also noted that assessee has made disclosure of Rs.2 crores to cover undisclosed income in A.Y. 2010-2011. Since the

assessee failed to produce the lender/creditor for examination, therefore, addition was confirmed and appeal of assessee has been dismissed.

6. It may be noted that Ld. CIT(A) decided similar issue in the common consolidated order for A.Ys. 2005-2006 to 2007-2008 and A.Y. 2009-2010.

7. Learned Counsel for the Assessee submitted that in A.Ys. 2005-2006, 2006-2007 and 2007-2008, the Tribunal vide order dated 21.11.2017 allowed the appeals of the assessee on legal ground because in all these years no assessments were pending and since no incriminating material was recovered during the course of search, therefore, following the decision of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 the orders of the authorities below were set aside and additions have been deleted. Copy of the order is placed on record.

7.1. Learned Counsel for the Assessee submitted that search was conducted on 22nd March, 2010 and for assessment

year under appeal i.e., 2009-2010 assessee filed return of income on 31.07.2009. Initially he has submitted that the issue is covered by earlier order of the Tribunal dated 21.11.2017 because no incriminating material was found during the course of search against the assessee. He has fairly stated that original assessment in this year was not completed on the date of the search, therefore, it may not be a covered matter in favour of the assessee.

8. Ld. D.R. contended that since return was filed for A.Y. 2009-2010 originally on 31st July, 2009 and search was conducted on 22nd March, 2010 and on that date, limitation to issue notice under section 143(2) was available to A.O, therefore, assessment was not completed on the date of the search. Therefore, assessment was rightly framed under section 153A of the I.T. Act.

9. After considering the submissions of the parties in the light of above facts, it is clear that in this case assessment was not completed on the date of the search. Therefore, the

issue is not covered by earlier order of the Tribunal dated 21.11.2017 (supra). This ground of appeal of assessee is accordingly rejected.

10. Learned Counsel for the Assessee on merits submitted that assessee filed confirmation of the lender before A.O. along with copy of the ITR and their balance-sheet. The lender company also confirmed giving of loan to assessee in the information under section 133(6) of the I.T. Act. He has, therefore, submitted that onus upon the assessee to prove genuine credit have been discharged. He has, however, submitted that assessee is willing to file copy of the bank statement of the lender company as well as willing to produce the creditor before A.O. for examination under section 131 of the I.T. Act.

11. On the other hand, Ld. D.R. submitted that the Ld. CIT(A) accepted the request of the assessee to produce the creditor at the appellate stage, which, assessee failed to do so.

Therefore, no further chance may be given to the assessee and appeal of the assessee may be dismissed.

12. We have considered the rival submissions. It is an admitted fact that during the course of search no incriminating material was found to prove that assessee received any bogus credit of the impugned amount. The assessee claimed it to be a genuine loan and filed confirmation of the loan before A.O. which is supported by copy of the ITR of the lender company and their audit report containing P & L A/c and balance-sheet. The A.O. sought information directly from the lender under section 133(6) of the I.T. Act which was responded by the lender company by filing their reply directly to the A.O. in which the creditor has confirmed giving money to the assessee. However, according to A.O, copy of the bank statement of the lender company was not filed and the lender company was not produced for examination before him. The A.O. also noted that lender company has declared NIL income in their return of income and sales and other receipts are very meagre and has

no adequate means to advance loan to the assessee. However, the balance-sheet of the lender company shows that it has sufficient share capital, reserves and surplus to advance loan to the assessee. The loan amount given to the assessee is also entered into the balance-sheet. Therefore, findings of the A.O. to that extent are not correct. The Hon'ble Delhi High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12th August, 2015 (Del.), in which it was held as under :

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High Court.

13.1. The Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) 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.”

13.2. Therefore, in the light of above decisions, the findings of the A.O. may not be appropriate to reject the explanation of assessee particularly when the lender has confirmed the transaction with the assessee directly to the A.O. in response to the notice under section 133(6) of the I.T. Act. These facts, therefore, shows that one more opportunity could be given to the assessee to produce the creditor before A.O. for examination. We, accordingly, set aside the orders of the authorities below and restore the matter in issue to the file of A.O. with a direction to redecide the issue on merits in accordance with law, considering the evidence and material

produced by assessee on record. The assessee is directed to produce the creditor before A.O. along with bank statement. In case, assessee makes a request to the A.O. to summon creditor under section 131 of the I.T. Act for his examination, A.O. shall issue summon under section 131 of the I.T. Act for production and examination of M/s. PP Syntex (P) Ltd., along with their bank statements or A.O. shall call for the bank statement directly from the banker of the lender company in order to do substantial justice between the parties. With these observations and directions, this ground of appeal of assessee is allowed for statistical purposes. A.O. shall give reasonable, sufficient opportunity of being heard to the assessee.

14. In the result, appeal of assessee is allowed partly for statistical purposes.

Order pronounced in the open Court.

Sd/-
(LP SAHU)
ACCOUNTANT MEMBER
Delhi, Dated 14th May, 2018
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The applicant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.

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