

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. MAHAVIR PRASAD, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.759/Del/2018
Assessment Year: 2012-13

Rajesh Katyal C-654, New Friends Colony, New Delhi-110065 PAN No. AAEPK4668G (APPELLANT)	Vs	DCIT Central Circle -1 Gurgaon (RESPONDENT)
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Appellant by	Sh. V. K. Bindal, CA
Respondent by	Sh. Sushma Singh, CIT DR

Date of hearing:	13/07/2021
Date of Pronouncement:	20/07/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-3, Gurgaon dated 24.11.2017 pertaining to A.Y. 2012-13.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs. 1.50 crores u/s. 68 of the Act.

3. Briefly stated the facts of the case are that the residential as well as office premises of M/s. Krrish Group of cases were subjected to search and seizure operations on 09.11.2011 accordingly assessment jurisdiction over the assessee has been transferred to the circle Gurgaon. Statutory notices were issued and served upon the assessee and the assessee filed his return of income declared total income of Rs.12573480/-.

4. While scrutinizing the return of income the AO noticed that the assessee has received unsecured loan of Rs.1.50 crores from Pankaj Kapoor. On the basis of the incriminating material found during the course of search operations the AO formed a belief that Pankaj Kapoor is routing the unaccounted money of the M/s. Krrish Group Companies and its directors back to the group in the form of share in the companies and unsecured loans in the individuals and the group companies.

5. Accordingly, the assessee was asked to explain the loan transaction from Pankaj Kapoor in the light of the provisions of section 68 of the Act.

6. Assessee furnished the copy of account, confirmation, income tax details and bank statements.

7. After observing the details furnished by the assessee and after discussing various judicial decision the AO came to the conclusion that Rs.1.50 crores taken from Pankaj Kapoor is unexplained cash credit and accordingly made the addition u/s.68 of the Act.

8. Assessee carried the matter before the CIT(A) but without any success.

9. Before us the counsel for the assessee reiterated what has been stated before the lower authorities. The counsel vehemently stated that the assessee has furnished all the documentary evidences which he could have furnished to explain the transaction in the light of section 68 of the Act. The counsel further stated that in earlier years also the assessee has taken loan from Pankaj Kapoor which have been accepted by the AO under scrutiny assessment, therefore, the identity and the capacity cannot be doubted during the year under consideration.

10. The counsel further referred to the documents which were in the public domain. The counsel further brought to our notice the news report from the Times of India dated 13.08.2011 which relates to the search operations conducted by the enforcement

directorate. The said news item shows the net worth of Pankaj Kapoor by more than Rs.1000/- crores. The counsel concluded by saying that the assessee has discharged the onus cast upon him by provision of section 68 of the Act, and, therefore, the addition should be deleted.

11. Per contra the DR strongly supported the findings of the AO and the CIT(A) and read the relevant portion of assessment order as well as the order of the first appellate authority.

12. We have carefully considered the orders of the authorities below. We have also carefully perused the documentary evidences brought on record in the form of paper book in the light of rule 18 (6) of the ITAT rules. It is true that the assessee has taken loan from Pankaj Kapoor in earlier assessment years the same can be seen from the following ledger account in page-63 of the paper book :-

Pankaj Kapoor (Advance for Share)
Ledger Account

1-Apr-2006 to 10-Feb-2021

Date	Particulars	Vch Type	Debit	Page Credi
19-10-2007	By PNB, A/c No. - 2164000100005221 Ch. No. :421468	Receipt		54,00,000.00
26-11-2007	By PNB, A/c No. - 2164000100005221 Ch. No. :RECD FROM RTGS	Receipt		50,00,000.00
30-11-2007	To (as per details) FFDL-SHARES. 1,16,05,000.00 Cr Profit on Sale of FFDL Shares 58,02,500.00 Cr BEING SALE OF 232100 SHARES RS.75(DOP FOR 84100 SHARES,30.6.97FOR RS. 42.05 LACS,FOR 10000 SHARES ,20.03. 2000 FOR RS.5 LACS,FOR72000 SHARES, 29.3.2000 FOR RS36 LACS AND FOR 66000 SHARES,31.3.2000 FOR RS.33 LACS,INDEXCOST75.32	Journal	1,74,07,500.00	
24-12-2007	By PNB, A/c No. - 2164000100005221 Ch. No. :822595	Receipt		25,00,000.00
14-1-2008	By PNB, A/c No. - 2164000100005221 Ch. No. :832780	Receipt		25,00,000.00
15-1-2008	By PNB, A/c No. - 2164000100005221 Ch. No. :832782	Receipt		25,00,000.00
23-1-2008	By PNB, A/c No. - 2164000100005221 Ch. No. :	Receipt		24,00,000.00
	To Closing Balance		1,74,07,500.00 28,92,500.00	2,03,00,000.00
			2,03,00,000.00	2,03,00,000.00
1-4-2010	By Opening Balance			28,92,500.00
17-8-2010	By PNB, A/c No. - 2164000100005221 Amount, T/F RTGS	Receipt		50,00,000.00
16-9-2010	By PNB, A/c No. - 2164000100005221 Ch. No. :amount transfer through rtgs	Receipt		50,00,000.00
	To Closing Balance		1,28,92,500.00	1,28,92,500.00
			1,28,92,500.00	1,28,92,500.00

13. The transaction pertain to F.Y. 2007-08 relevant to A.Y.2008-09. In A.Y. 2008-09 the assessment was framed u/s. 153 A of the Act vide order dated 24.03.2014 by the same AO i.e. Pratibha Meena. The assessment order for the year under consideration is also framed on 24.03.2014 which means that the AO knew the transactions of A.Y.2008-09. When the same AO has accepted the transaction for A.Y.2008-09 than the same AO cannot and should not question the identity of the lender in the year under consideration. Since the loan amount of Rs.1.74

crores was accepted in A.Y.2008-09 this means that the capacity was also accepted by the AO. We fail to understand why the capacity of the same person have been questioned during the year under consideration. Moreover as per the news report in the public domain when the enforcement director itself is saying that the net worth of the Pankaj Kapoor is more than Rs.1000 crores the capacity of Pankaj to lend Rs.1.50 crores should not be questioned. Be that as it may, considering facts in totality the assessee has successfully proved the identity genuineness of the transactions prima facie, capacity of the lender prima facie, and has successfully discharged the initial onus cast upon him by the provisions of the 68 of the Act. We accordingly direct the AO to delete the addition of Rs.1.50 crores..

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.07.2021.

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-20.07.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	13.07.2021
Date on which the typed draft is placed before the dictating Member	20.07.2021
Date on which the typed draft is placed before the Other member	20.07.2021
Date on which the approved draft comes to the Sr.PS/PS	20.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	20.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	20.07.2021
Date on which the final order is uploaded on the website of ITAT	20.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	