

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

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 5936/DEL/2017 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

BMR Polymers (P) Ltd. Flat No. 42, Bank Apartments, Plot No. 22, Sector-4, Dwarka, New Delhi AABCB4954E (APPELLANT)	Vs	ITO Ward-1(3) Gurgaon, Haryana (RESPONDENT)
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Appellant by	Sh. Rajiv Saxena & Sh. Shyam Sunder, Advs
Respondent by	Sh. R. K. Gupta, Sr. DR

Date of Hearing	07.10.2020
Date of Pronouncement	06.11.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 28/7/2017 passed by CIT(A)- 1, Gurgaon, Haryana, for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

“1.The learned Commissioner of Income Tax (Appeals) have grossly erred both in law and on facts in sustaining the addition made by the learned AO of Rs. 68,72,311/- being the unsecured loan received by the appellant from the directors of the appellant company because:

i. *Unsecured loan of Rs. 24,00,000/- from Smt. Manju Sahu and Rs.*

44,72,371/- from Shri. Sanjay Sahu has been received and both the aforesaid persons were directors of the appellant company and has duly confirmed the factum of grant of loan to the appellant company;

ii. Unsecured loan has been granted to the appellant from the credit balance lying in the bank account of the respective directors;

iii. Appellant has filed the confirmation, copy of PAN, bank statement and ledger accounts to discharge its burden u/s 68 of the Act thus identity of creditor having not been disputed, and both the directors have confirmed the fact of grant of loan to the assessee and loan has been granted through banking channels, appellant has duly discharged its burden u/s 68 of the Act;

iv. In the remand proceedings, both the directors duly appeared before the learned AO and the finding that Smt. Manju Sahu did not appear is factually incorrect as AO internally not recorded ;

v. Once it is undisputed that unsecured loan has been received through the respective bank account of the directors, merely because, sum is credited in the bank account of directors immediately before the issue of cheque to the appellant is not a ground to hold that sum received is unaccounted income of the appellant as appellant is not required to prove the source of source.

vi. No adverse material has been brought on record to even remotely suggest that sum deposited in the bank account of the creditors has come from the coffers of the appellant.

vii. That merely because the notice issued u/s 133(6) to examine the source of source remained uncomplied no adverse inference can be drawn as powers to

enforce the attendance/furnishing of documents are vested with the revenue and non exercise of such powers cannot be in the detriment of the assessee.

2. That both the lower authorities have failed to appreciate that once appellant has disclosed its source and also source of the directors no addition can be made in the hands of appellant even after amendment through the same is not applicable in the present case.

It is therefore, submitted that addition sustained of Rs. 68,72,311/- by the learned CIT(A) being not in accordance with law, it is prayed that the addition so made along-with interest levied be kindly deleted and appeal of the appellant be kindly allowed.”

3. The assessee is engaged in the business of manufacturing unsaturated Polymers raising. The assessee filed return declaring loss of Rs. 1,65,250/- on 30/09/2012 which was subsequently revised on 16/10/2012. The Assessing Officer completed the assessment on 27/3/2015 thereby arising the income of Rs. 67,07,061/- as against return loss of Rs. 1,65,250/- by making addition of Rs. 44,74,311/- on account of unsecured loan received from the two Directors of assessee company namely Smt. Manju Sahu & Sh. Sanjay Sahu respectively.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that before the Assessing Officer complete books of accounts of the assessee was furnished and at that time no defects whatsoever was pointed out by the Assessing Officer in regular books of account maintained by the assessee. In-fact there is no whisper in the assessment order that the assessee has any sale outside its books of account or there is any unaccounted sale. The Ld. AR further submitted that in such circumstances, the finding that unsecured loans received by the assessee from

its Directors is wholly erroneous and based purely on suspicious, surmises and conjectures. In-fact, the assessee has given complete documentary evidence thereby establishing that sum was received from Smt. Manju Sahu and Sh. Sanjay Sahu through their bank account not a single evidence or material has been brought on record by the Revenue to controvert the evidences furnished by the assessee and the Assessing Officer merely on his own assumptions and presumptions held that unsecured loans received by the assessee as its own money. The Ld. AR further submitted that before recording such findings the Assessing Officer has lead evidences to show that the money has eroded from the coffers of the assessee and such burden has not been discharged and aforesaid finding has been recorded as without any material and hence the addition made is unsustainable in law. The assessee relied upon the decision of the Hon'ble Delhi High Court in case of CIT(A) Vs. Value Capital Services Pvt. Ltd. 307 ITR 334 and also the decision of the Hon'ble Delhi High Court in case of CIT(A) Vs. Real Time Marketing Pvt. Ltd. 306 ITR 55. The Ld. AR also relied upon the decision of the Hon'ble Gujrat High Court in case of DCIT Vs. Rohini Builders 256 ITR 316 thereby following the judgment of Hon'ble Apex Court in case of Orissa Corporations 159 ITR 78. The Ld. AR further submitted that during the course of assessment proceedings copy of confirmation of account along with copy of bank statement of Smt. Manju Sahu and Sh. Sanjay Sahu thereby depicting transfer of account from the bank account of the Directors. The Ld. AR submitted that once the aforesaid two persons had confirmed about the sums which were given by them as unsecured loan from their bank account, no addition can be made in the hands of the assessee and if the Assessing Officer was not satisfied about the source of sum paid to the assessee then he could have examined such sums in their hand by reopening their assessment. As can be seen from the documents relating to Smt. Manju Sahu it is evident that the balance as on 8/10/2011 was Rs. 25,20,000/- out of which money was given to the assessee as unsecured loan in two installments as below. One Rs.4 lacs on 31/10/2011 through RTGS and Rs. 20, 40,000/- on 4/11/2011 through RTGS. As regards to the Assessing

Officer's observation that cash was deposited before transferring money to the assessee of Rs. 4 lacs on 29/10/2011 and Rs. 6 lacs on 9/11/2011 before transferring amount to Sh. Sanjay Sahu. The Assessing Officer failed to notice that on 10/11/2011 there was a cash withdrawal of Rs. 10 lacs out of the balance outstanding in the account. Thus, cash deposit within a short span of time was deposited out of the cash available from withdrawal made by the assessee on 10/10/2011. The Ld. AR submitted that the sum was found to be credited in the books of the assessee where as explained by the assessee through its authorized representative where in the form of unsecured loans to the assessee from its Directors, Smt. Manju Sahu and Sh. Sanjay Sahu. The genuineness and creditworthiness of the creditors as well as the transactions have been proved beyond reasonable doubt by providing documentary evidences relating to the transactions and the Directors. However, the Assessing Officer not being satisfied regarding the sum added the said amounts to the income of the assessee company. The additional evidence were filed before the CIT(A) and the same was accepted. However, despite filing of the required detailed documents by way of ITR of Smt. Manju Sahu and Sh. Sanjay Sahu. These documents were not considered while arriving at the final decision by the CIT(A). The Ld. AR further submitted that the remand report also has not highlighted as to why the additional evidence should not be admitted. Thus, the Ld. AR submitted that the appeal of the assessee be allowed.

6. The Ld. DR relied upon the order of the Assessing Officer and the CIT(A).

7. We have heard both the parties and perused the material available on record. In respect of the loans taken from the Directors of the Company, the assessee has submitted the relevant documentary evidences to establish the genuineness, creditworthiness and capacity of these loanee. Section 68 is applicable in the case where the assessee offers no explanation about the nature and source therewith or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory in respect of the sum so credited

which may be charged to income tax. But in the present case, the Assessing Officer failed to record his opinion and satisfaction as to why the sum credited in the books of account of the assessee is coming under the purview of Section 68. The explanation offered by the assessee that the bank account and the capacity of the creditor who have given the loan amount was proved through ITR details of the said parties along with bank statements and confirmations which clearly shows the proper balance in their respective bank accounts and their capacity to loan the amount to any other party as well. Thus, all these factor were ignored by the CIT(A) as well as the Assessing Officer. Therefore, the CIT (A) was not right in dismissing the plea of the assessee and sustaining the addition. Hence, appeal of the assessee is allowed.

8. In result, appeal of the assessee is allowed.

Order pronounced in the Open Court on this 06th Day of November, 2020

**Sd/-
(G. S. PANNU)
VICE PRESIDENT**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 06/11/2020
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	28.10.2020
Date on which the typed draft is placed before the dictating Member	28.10.2020
Date on which the typed draft is placed before the Other Member	06.11.2020
Date on which the approved draft comes to the Sr. PS/PS	06.11.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	06.11.2020
Date on which the fair order comes back to the Sr. PS/PS	06.11.2020
Date on which the final order is uploaded on the website of ITAT	06.11.2020
Date on which the file goes to the Bench Clerk	06.11.2020
Date on which the file goes to the Head Clerk	