

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'SMC-I' BENCH, NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4788/DEL/2019
[Assessment Year: 2009-10]

SMT. MEENA NAYYAR,
2B/12, EAST PUNJABI BAGH,
NEW DELHI – 110 026
(PAN AAFPN7941Q)

Vs. ITO, WARD 41(5),
NEW DELHI – 2

[Appellant]

[RESPONDENT]

Assessee by: Shri Ved Jain, Advocate
Revenue by : Sh. C.P. Singh, Sr. DR.

ORDER

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax [Appeals-34], New Delhi dated 26.4.2019 pertaining to assessment year 2009-10 and raised as many as 08 grounds on legal issue as well as on merit. However, Ld. Counsel for the assessee has only argued the ground no. 7 on the merit and not argued the grounds on the legal issues no. 1 to 6, hence, the same are dismissed as such. Ground NO. 8 is general in nature, hence, do not require adjudication. For the sake of convenience, the sole ground no. 7 argued by the Ld. Counsel for the assessee is reproduced as under:-

- "7. (i) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 7,50,000/- made by AO on account of amount received in the bank account of the assessee treating the same as unexplained credits under Section 68 of the Act.*
- (ii) *That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee to prove the identity and*

creditworthiness of the lenders as well as the genuineness of the transaction.”

2. The brief facts of the case are that the assessee is a Director in M/s R.G. Consultants Private Limited. On 23.11.2010, a survey was conducted at the premises of R.G. Consultants Private Limited. Thereafter, it was observed that there were some cash credits from the related parties, which led the Ld. DCIT, Circle 15(1)) conclude the assessment, by making an addition of Rs 22,70,000/-. On appeal, the Ld. CIT(A), deleted the additions in the hands of the M/s R.G. Consultants Private Limited. But, the CIT(A) directed the AO to verify the source of investment in the hands of the assessee. Subsequently, the AO, vide notice dated 01.06.2016 issued u/s 148 of the Act, reopened the case of the assessee. During the course of assessment proceedings, the assessee vide reply dated 30.11.2016 submitted that the assessee has given a loan of Rs.7,50,000/- to M/s R.G. Consultants Pvt. Ltd. The assessee further submitted that out of Rs. 7,50,000/-, the loan of Rs. 4,00,000/- was obtained from his friend through account payee cheque and the balance loan of Rs. 3,50,000/- was obtained by transfer from assessee's son, Master Vinayak Nayyar's account. However, the AO disregarded the explanations submitted by the assessee and made an addition of Rs. 7,50,000/- in the hands of the assessee and alleged that the assessee has received this amount from M/s Federal Exchange and the amount received in the bank account of the minor son was also received from M/s Federal Exchange and thus, has not established the identity, genuineness and credit worthiness of the person, from whom the loan was received. Against the order of the Assessing Officer, assessee filed an appeal before the Ld. CIT(A), who vide his impugned order dated 26.4.2019 has confirmed the addition in dispute by dismissing the appeal of the assessee. Aggrieved with the impugned order, assessee appealed before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee submitted that Ld. CIT(A) has wrongly confirmed the addition of Rs. 7,50,000/- made by the AO on account of amount received in the bank account of the assessee treating the same as unexplained credits under section 68 of the Act. It was further submitted that Ld. CIT(A) has confirmed the addition in dispute by rejecting the detailed explanation and evidenced brought on record by the assessee to prove the identity and creditworthiness of the lenders as well as the genuineness of the transaction. To support his aforesaid contention, he filed the written submissions as well as Paper Book containing pages 1-100 in which he has attached the various documentary evidence to support the case of the assessee and requested by considering the written submissions as well as the documentary evidences, the addition confirmed by the Ld. CIT(A) may please be deleted.

4. On the contrary, Ld. DR relied upon the order of the Ld. CIT(A).

5. I have heard both the parties and perused the records especially the impugned order of the Ld. CIT(A), written submissions filed by the assessee's counsel and the case laws relied therein and the Paper Book containing pages 1-100 in which the he has attached the copy of acknowledgement of income tax return alongwith computation of income; copy of notice under section 148 of the Act issued by the AO; copy of reply submitted by the assessee; copy of reply submitted by the assessee dated 30.11.2016 enclosing therewith the relevant extract of bank statement of the assessee and the audited financials of RG Consultants; copy of Rule 46A Application submitted before the CIT(A) enclosing therewith the copy of passport of Mr. Babu Jethani, copy of visa of United Arab Emirates of Mr. Babu Jethani, copy of residence identity card of United Arab Emirates of Mr. Babu Jethani, copy of confirmations; copy of written submissions filed before the Ld. CIT(A); copy of remand report, copy of rejoinder filed before the CIT(A) and the copy of order of CIT(A) in the case of Shiv Kumar Nayyar dated 28.5.2019. After perusing the written submissions as well as the documentary evidences, I am of

the view that it is not the case of the AO that the amount received by the assessee is in the nature of accommodation entry. In order to arrive at such a conclusion, the department has to be in possession of sufficient and adequate material. It is noted that assessee has received these amounts from his friend, Sh. Babu Jeethani. The assessee had also submitted the proof of identity of the lender as well as the copy of confirmations, which itself establish the existence of the lender and which has not been doubted by the AO as well as the Ld. CIT(A). Thus, the genuineness of the transactions gets established through the evidences submitted by the assessee. To support this view, I draw my support from the decision of the ITAT, Mumbai Bench in the case of ACIT vs. Calvin Properties, in ITA No. 6561, 6562 & 6564/Mum/2017 dated 3.4.2019 wherein it has been held as under:-

"15. In this case, the creditworthiness of the investors even if is not proved, even then it will not automatically give license to the assessing authority to make additions in the hands of the recipient u/s 68, unless that is proved that it is the unexplained and unaccounted money of the assessee which has been introduced in its books of account in the name of bogus/non-existent entities. In the instant case, the AO had not made any dent on these lines. On the other hand the appellant has filed all the details and supporting documentary evidence to prove the identity, genuineness and creditworthiness of these three unsecured loan parties. 16. Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT

(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these ground raised by the revenue stands dismissed. "

5.1 It is also an undisputed fact that the amount has been received through proper banking channels and for establishing the aforesaid fact, the assessee had also submitted the copy of bank statements. By submitting the aforesaid evidences and explanations, in my view, the assessee has discharged his initial onus for disclosing the identity of the loan provider by submitting the copy of the passport, confirmations, copy of resident identity card of Sh. Babu Jethani. Now the onus shifts on to the department to conduct further enquiries with respect to the unsecure loan and establish that why assessee's case cannot be accepted. However, it is settled law that where the assessee had led evidences in support of the identity of the third party and his capability the initial burden which lies upon him stand discharged. It will not before the assessee thereafter to explain further how or in what circumstances the third party obtained the money and how or why he came to make a deposit of the same with the assessee. In such a situation the burden will shift on to the department to show why the assessee's case cannot be accepted and why it must be held that the entry, for purporting to be in the name of a third party still represents the income of the assessee. This view is supported by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Fair Finvest Ltd., reported in [2013] 357 ITR 146, vide order dated 22.11.2012, wherein it was held as under:

"6. This Court has considered the submissions of the parties. In this case the discussion by the CIT(A) would reveal that the assessee has filed documents including certified copies issued by the Registrar of Companies in relation to the share application, affidavits of the Directors, Form 2 filed with the ROC by such applicants

confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the assessing officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the assessing officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the assessing officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of Section 68.

7. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra)

8. The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence in support of the share application monies, it is open to the assessing officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the

assessee and the alleged hawala operators; such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be understood to convey that in all cases of share capital added under section 68, the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material. No substantial question of law arises. The appeal is accordingly dismissed."

5.2 Thus where in a given case the assessee for his part produced the confirmations and identity proofs of Sh. Babu Jethani, which would be sufficient for the assessee to discharge his initial burden. Then it would be for the AO to bring material if he wants to negate the same.

6. Keeping in view of the facts and circumstances of the case and respectfully following the precedents as aforesaid, the addition in dispute is hereby deleted by allowing the ground no. 7, as argued by the Ld. Counsel for the assessee.

7. In the result, the Appeal of the Assessee is partly allowed.

The order pronounced on 19.03.2020.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated:19-03-2020

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
 ITAT, New Delhi

