INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D+SMC": NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No.:- 860/Del/2018
Assessment Year: 2009-10

Neelkanth Associates, C/o Manish Rakesh and Co., CAs, B-205, 2nd Floor, Metro Plaza, Delhi Road, Meerut Uttar Pradesh	Vs.	ITO, Ward -2(1) Meerut PAN AAGFN3306E
(Appellant)		**(Respondent)**

Assessee by:	Shri Manish Kumar, CA
Department by :	Shri Koushlendra Tiwari, Sr. DR
Date of Hearing	14/08/2018
Date of pronouncement	29/08/2018

O R D E R

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against impugned order dated 19.12.2017, passed by Ld. CIT (Appeals), Meerut for the quantum of assessment passed u/s 143(3)/147 for the assessment year 2009-10. In the grounds of appeal, assessee is mainly aggrieved by addition of Rs. 19 lacs made u/s 68 on account of unsecured loans taken from five persons.

2. The facts in brief are that assessee is engaged in the business of sale and purchase of properties. Ld. AO on the perusal of the balance sheet noted that assessee has taken unsecured loans for sums aggregating to Rs. 43,50,443/-. After calling for the assessee's explanation alongwith the documentary evidences to prove the genuineness of the loan, the Ld. AO noted that in case of five persons the assessee could not prove the cash credit appearing in the books of accounts of the assessee satisfactorily. The relevant discussions of the AO qua these creditors are as under:-

> ***Shri Dev Raj Singh*** *: Amount of Rs. 4,00,000/- has been shown as unsecured loan from this person. Nothing has been filed, which could explain the identity and creditworthiness of the lender as well the genuineness of the transaction made with the assessee. Therefore, the amount of Rs. 2,00,000/- claimed as unsecured loan from this person remains unexplained cash credit appearing in the Books of Accounts of the assessee for the purpose of section 68 of the Income Tax Act, 1961.*
>
> ***Shri Dhanpal Tomar*** *: Amount of Rs. 2,00,000/- has been shown as unsecured loan from this person. The copy of bank account number SB 236 with Punjab & Sindh Bank shows that the balance in this account on 22.12.2008 was Rs. 26,139/- only. On 22.12.2008, amount of Rs. 3,01,000/- has been deposited in cash. On 23.12.2008, amount of Rs. 2,00,000/- has been advanced to the assessee. The assessee has not filed the copy of ITR of this person. It is not known as to whether this person is showing any income or not. As the assessee could not produce this person, there is nothing on record, which could explain the source of cash deposit, made by this person in his bank account on 22.12.2008. In these circumstances, the creditworthiness of*

this person and genuineness of transaction made with the assessee is not established and the amount of Rs. 2,00,000/- claimed as unsecured loan from this person remains unexplained cash credit appearing in the Books of Accounts of the assessee for the purpose of section 68 of the Income Tax Act, 1961.

<u>Shri Dharmendra Rana</u> *: Amount of Rs. 5,00,0000/- has been shown as unsecured loan from this person. The assessee and has not produced the copy of bank account and ITR of this person. Therefore, the source of income of this person is not known. In absence of the copy of bank statement of this person, genuineness of transaction can also not be ascertained. The assessee could not produce this person for examination. In these circumstances, the creditworthiness of this person and genuineness of transaction made with the assessee is not established and the amount of Rs. 5,00,000/- claimed as unsecured loan from this person remains unexplained, cash credit appearing in the Books of Accounts of the assesee for the purpose of section 68 of the Income Tax Act, 1961.*

<u>Dr. D.K. Jain & Sons, HUF</u> *Amount of Rs. 5,00,000/- has been shown as unsecured loan from this person. The copy of bank account of the lender has not been produced. From the ITR for AY 2009-10, it is found that the income shown is only Rs. 1,49,525/-. In absence of the copy of bank statement of this person, genuineness of transaction can also not be ascertained. The assessee could not produce this person for examination. In these circumstances, the creditworthiness of this person and genuineness of transaction made with the assessee is not established and the amount of Rs. 5,00,000/- claimed as unsecured loan from this person remains unexplained cash credit* *appearing in the Books of Accounts of the assessee for the purpose of section 69 of the Income Tax Act, 1961.*

<u>Shri Inder Pal Singh</u> *: In the confirmation filed by the assessee amount of Rs. 4,81,361/- has been shown as Inder Pal Singh Capital A/c amt. trf. However, from the partner capital account, it is found that this person is not one of the partners of the assessee firm. From the ITR for AY 2009-10, it is found that the income shown is only Rs. 1,87,886/-. In absence of the copy of bank statement of this person, genuineness of transaction can also not be ascertained. The assessee could not produce this person for examination. In these circumstances, the creditworthiness of this person and genuineness of transaction made with the assessee is not established and the amount of Rs. 1,87,886/- claimed as unsecured loan from this person remains unexplained, cash credit appearing in the Books of Accounts of the assessee for the purpose of section 68 of the Income Tax Act, 1961.*

<u>Smt. Savita Singh</u> *The assessee has shown unsecured loan of Rs. 3,00,000/- from this person. Her PAN has been intimated which is AWMPS5052J. The assessee has submitted the copy of confirmation and bank statement of this person. However, complete copy of the bank account has not been filed. It starts from the date 27.11.2016 when cheque of Rs. 3,00,000/- has been issued to the assessee, leaving the balance in this account at Rs. 14,459/- only. There is nothing to show as to whether the lender was having sufficient balance available with her to advance the money to the assessee or she just gave accommodation entry by depositing the unaccounted money of the assessee in her bank account and returning it through cheque. The copy of ITR of this person has not been filed, which could* *show as to whether she had earned any income during this year under consideration. The assessee could not produce this person for examination. In these circumstances, the creditworthiness of this person and genuineness of transaction made with the assessee is not established and the amount of Rs. 3,00,000/- claimed as unsecured loan from this person remains unexplained cash credit appearing in the Books of Account s of the assessee for the purpose of section 68 of the Income Tax Act, 1961.*

Accordingly, an addition for sums aggregating to Rs. 19 lacs was made.

3. Ld. CIT (A) by and large has confirmed the addition made by the AO, except for in the case of Shri Inder Pal Singh for sums amounting to Rs.4,81,361/- which has been deleted. Now only five creditors remain for adjudication.

4. Before us, Ld. Counsel submitted that all unsecured loans were taken through banking channels which have been repaid subsequently through banking channel only in the next year with interest after deducting TDS. The names of these parties are clearly reflected in the bank statement and the transaction of receiving the loan and repayment of loan is not in dispute. Apart from that, assessee had filed relevant information and documents like PAN, complete address, bank statement, income tax returns, confirmation ledger and other details partly before AO and partly before CIT(A). After submitting all those evidences, no inquiry whatsoever has been done by the department and addition has been made. With regard to each and every creditor the Ld. Counsel had submitted as under:-

I. <u>SAVITASINGH: RS. 3.00 Lacs</u>

- PAN Number, Complete Address, Copy of Income Tax return indicating Sale of 1and of Rs 62.50 Lacs, Copy of confirmation, Copy of Bank statements, Copy of ledger account were submitted.

No cash was deposited before making payment to assessee in the bank account of Lender. This amount was returned on 26.11.2010 through account payee cheque.

II. <u>D K JAIN AND SONS (HUF) JAIN: RS. 5.00 Lacs</u>

- PAN Number, Complete Address, Copy of Income Tax return, TDS deducted, Copy of confirmation, Copy of ledger account, Bank Statements were submitted during the course of assessment/appeal proceedings.
- No cash was deposited before making payment to assessee in the account of Lender. This amount was returned on 10.10.2009 through account payee cheque along with interest after deducting TDS.

III. <u>DHANPAL SINGH TOMAR: RS. 2.00 Lacs</u>

- PAN Number, Complete Address, Copy of Income Tax return indicating Total income of Rs. 287787.00, Copy of confirmation, Copy of ledger account, Copy of Agriculture Land records/Khasra-Khatauni were submitted during the course of assessment/appeal proceedings. Lender is having Income from Agriculture activities. The lender has deposited Rs. 301000.00 in his bank account on 22.12.2008 which got accrued to him on sale of agriculture crops, out of which he has given a sum of Rs. 200000.00 through account payee cheque to assessee. Affidavit of the lender was submitted during appeal proceedings but Ld. CIT (A) ignored the same.
- This amount was returned on 16.09.2010 through account payee cheque.

IV. <u>DHARMENDRA RANA: RS. 5.00 Lacs</u>

- Shri Dharmendra Rana is paralyzed since 2014 and he is not able to hear and speak and it was impossible for the Assessee to produce the bank statement of lender, however it has been confirmed from the ledger account that assessee has taken Rs. 500000 as loan from lender on 07.03.2009 for a short period and the same has been returned on 16.04.2009 through banking channels. Copies of his medical history with PAN CARD were submitted during assessment/appeal proceedings. Lender was taking treatment Under Supervision of DR. Rajasekhar Reddi of Max Hospital Saket. New delhi.

- PAN Number, Complete Address, Copy of confirmation, Copy of ledger account were submitted during the course of assessment/appeal proceedings. This amount was returned on 16.04.2009 through account payee cheque along with interest after deducting TDS.

V. <u>DEVRAl SINGH: RS. 4.00 Lacs:</u>

- That Dev Raj Singh is about 72 years of a and it has come to the knowledge of the assessee that he is residing in Jammu And Kashmir with his son who is an Army Officer and posted in J&K but the assessee was unable to contact him, to produce his confirmation in short period of 3 days. But the copy of Ledger account which crystal clear showed that the assessee has taken the loan and this amount was returned on 10.05.2011 through account payee cheque alongwith interest after deducting TDS."

5. Thus, he submitted that the onus which was cast upon the assessee has been discharged and once AO has made an inquiry to disprove the said transaction or the evidences addition could not be made. In support he relied upon various decisions like:

i) Hon'ble Supreme Court in the case of CIT vs. Orissa Corpn. (P.) Ltd.;

ii) [2012] 25 taxmann.com.426(Ahmedabad-Trib) in the ITAT Ahmedabad Bench D Sarjan Corporation vs. Assistance Commissioner of Income-tax;

iii) Hon'ble Gujarat High Court in the case of DCIT vs. Rohini Builders (356 ITR).

iv) The Hon'ble Gauhati High Court in the case of Nemi Chand Kothari vs. CIT.

6. On the other hand, Ld. DR strongly relied upon the orders of authorities below and submitted that the Ld. CIT (A) has examined all the evidences and has given a categorical finding that these creditors where neither produced nor their creditworthiness could be examined. Hence, in absence of creditworthiness being proved, the additions have rightly been made. He further submitted that, returning of loan does not make the credit as genuine, because assessee had to satisfy the entire source of the credit appearing in the books of account by proving the creditworthiness and genuineness of the transaction which here in this case the Ld. CIT (A) has given a finding that both these limbs have not been satisfied.

7. We have heard the rival submissions and perused the relevant finding given in the impugned orders as well as material placed on record. Here in this case, the nature of credit appearing in the books of accounts of the assessee is in the form of loan on which assessee has paid interest to the creditors and also deducted TDS. These loans have come through banking channels i.e., which has been received through account payee cheque in the bank account of the assessee through clearing and the same has been recorded in the books of accounts. To prove the prima facie source of such credits the assessee had filed; i) PAN and income tax returns alongwith complete address; ii) bank statement of the creditors and that of the assessee; iii) ledger account and other details. Now based on these documents, we have to see whether the credit of loan is genuine or not.

i) Savita - Rs. 3 lacs;

8. With regard to this lender, the assessee has filed all the details as mentioned above and also filed a copy of sale of land which was sold by the lender for Rs. 62.50 lacs to prove that she had the creditworthiness to give loan. It is also stated that there is no prior

deposit of cash before making the payment to the assessee and the amount of loan has been returned back through account payee cheque. Ld. CIT(A) has noted that the before transferring the amount as a loan to the assessee there were two transfer entries of Rs. 2 lacs on 21.10.2008 and on 21.11.2008 Rs.1 lac. From this he presumed that this lender does not have the capacity and bank account has been used as conduit for assessee's own unaccounted money. We are unable to sustain such a finding of the Ld. CIT(A), because if the source of money is from the bank account of the lender and she has categorically stated that the amount in her bank account has come through clearing in her bank account from which she has given the loan and receiving interest, then in absence of any other corroborative material to disprove all material filed by the assessee, it cannot be held that the assessee is unable to prove the source of the loan including the creditworthiness of the lender, especially when the lender is assessed to tax and has given her entire particulars of PAN and ITR. Thus, loan amount of Rs. 3 lacs as has been confirmed by the Ld. CIT (A) is directed to be deleted.

ii) M/s. D.K. Jain & Sons, HUF Rs. 5 lacs;

9. For this lender also the assessee has submitted PAN, ITR, copy of confirmation, copy of ledger account, bank statement etc. and also shown from the bank account of the lender that no cash was deposited before making the payment to the assessee. Ld. CIT(A) had observed that the bank account in the name of D.K. Jain & Sons, HUF for which no clarification is given and the bank statement extract is of 1 page only reflect transaction from 13.12.2008 to 7.1.2009 and from this he inferred that this party did not have the capacity and creditworthiness to given the loan. On perusal of the entire material placed before us, we find that this party has given the confirmation

alongwith his income tax return and bank statement. The said bank statement reveals that there was a sufficient balance before giving the loan to the assessee and no cash has been deposited in the bank account. The assessee has also enclosed the copy of account for the period 1.4.2008 to 31.3.2010 to show that the said amount has been returned back through cheque. Thus, in wake of such evidences, the source stands proved and the reasoning given by the Ld. CIT (A) cannot be held. Accordingly, the same is directed to be deleted.

iii) Dhanpal Tomar Rs. 2 lacs;

10. For this lender the assessee has given the PAN number alongwith copy of income tax return, copy of confirmation, copy of ledger account and also copy of agricultural land records of the said creditor. It has been shown that the lender was having an agricultural income which he had had deposited in the bank account on 22.12.2008, out of which he has given sum of Rs. 2 lacs as an account payee cheque to the assessee. Affidavit of the lender has also been filed before the Ld. CIT (A) alongwith other documents. However the Ld. CIT (A) has held that this person did not had the capacity, because amount has been deposited in cash before giving loan to the assessee. If the assessee has been able to prove that this lender had agricultural income and is also separately assessed to tax and all his agricultural land revenue records has been furnished, then it cannot be disbelieved that agricultural income deposited in the bank account is the unaccounted money of the assessee and the said lender did not have the capacity to give the loan. All other documents filed by the assessee has neither been rebutted nor has been inquired upon by the departmental authorities, therefore, we do not find any reason as to why addition of Rs. 2 lacs given by this lender should be added and the same is directed to be deleted.

iv) Devraj Singh Rs. 4 lacs;

11. It has been stated that this person has been residing in Jammu and Kashmir whose son is an Army Officer and assessee was unable to contact him. However, the assessee has filed copy of ledger account to show that though amount was taken through account payee cheque and was also been returned back the amount through account payee cheque alongwith interest after deducting with TDS. Ld. CIT (A) on the same reasoning has confirmed the addition on the ground that capacity and creditworthiness of the loan lender is in doubt. Though, in this particular case assessee could not produce other documents as it was given in the case of other lender, however looking to the fact that the person who was given the loan was the aged person and staying in Jammu and Kashmir, hence assessee was unable to contact him for furnishing all the relevant documents after lapse of substantial time from the date of returning of the loan. To prove the genuineness the assessee has filed a copy of ledger account and his bank statement showing that the amount has been received through account payee cheque which has been returned back on 10.5.2011 alongwith the interest and after deducting TDS. Since transaction has been carried out through banking channel and interest has been paid after deducting TDS, it cannot be held that the loan transaction is not genuine. Therefore, we are deleting this addition also made on account of this lender.

(v) Dharmendra Rana – Rs. 5 lacs;

12. Assessee has submitted that this person got paralyzed in 2014 and is unable to hear or speak. It was impossible for the assessee to produce all the documents from the said person, especially after lapse of substantial time after the transaction of loan and repayment. However, to prima facie prove the genuineness the assessee has

produced ledger account to show that the amount was taken only for a short period i.e., it was taken on 7.3.2009 and was returned back on 16.4.2009. Both these transactions were through account payee cheque. Apart from that PAN, copy of confirmation, copy of ledger account was filed during the course of the appellate proceedings. Ld. CIT (A) has confirmed this amount on the ground that bank statement of this said person has been produced and there is no copy of ITR. Once the assessee has given the circumstances in which some of the documents could not be furnished and it has been shown that amount received through account payee cheque has been returned back within a month through banking channels and the same has been confirmed by the lender alongwith this complete PAN number, then under these circumstances, we do not find any reason to sustain the addition. Thus, the addition made is directed to be deleted.

13. Accordingly, in view of our finding given above the addition aggregating to Rs. 19 lacs made on account of unsecured loans u/s 68 is directed to be deleted.

14. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 29th August, 2018.

sd/- **sd/-**

(L.P. SAHU)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 29.8.2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi