

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

SMT. DIVA SINGH, JUDICIAL MEMBER

**I.T.A No. 8280/Del/2019
(ASSESSMENT YEAR: 2015-16)**

Kiran Sales Private Limited 12/42, Rajauri Garden, New Delhi. PAN No. AABCK6413F	Vs.	INCOME TAX OFFICER Ward 14(3) New Delhi.
(Appellant)		(Respondent)

Appellant By	None
Respondent by	Shri Sanjiv Mahajan, Sr. DR

Date of Hearing	18.10.2021
Date of Pronouncement	22.10.2021

Hearing conducted via Webex

ORDER

The present appeal has been filed by the assessee, wherein the correctness of the order dated 22.03.2019 of CIT(Appeals), New Delhi pertaining to 2015-16 assessment year is assailed.

2. At the time of hearing, no one was present on behalf of the assessee. The appeal was passed over. In the next round also the assessee remained unrepresented. A perusal of the record shows that on each of the dates the appeal came up for hearing before the ITAT i.e. 20.02.2021; 18.05.2021; 22.07.2021 and now on 18.10.2021 the assessee has repeatedly remained unrepresented. However, considering the material on record it was submitted by the Ld. Sr. DR that the appeal of the assessee could be decided on the basis of material available on record.

3. Accordingly the appeal of the assessee was taken up for hearing. In the present proceedings the assessee has raised the following grounds before the ITAT which read as under:

1. *"That the judgment is against the facts and law of the case.*
2. *That the Ld. CIT has erred in confirming the addition of Rs. 29,00,000/- by the Assessing Officer u/s 68 of Loan Taken whereas all the details and documents were produced before the Ld. AO as well as before the CIT(A).*

3. *That the appellant prays to leave, add or otherwise amend any or all grounds of appeal before or after the hearing of the appeal.*
4. *That the appellant prays to delete the additions as per the order of the ld. AO which is based on unjustified and baseless grounds."*

4. Ld. Sr. DR addressing the grounds and the facts on record submitted that the additions sustained by the CIT(Appeals) on merits may be confirmed. Referring to the impugned order it was his submission that whatever relief maintainable to the assessee has already been granted by the CIT(A). Addressing para 5.2 of the order it was submitted considering the addition of Rs. 10 lakhs made by the AO the Ld. CIT(A) accepting the evidences filed ultimately deleted the addition. Thus, the addition of Rs. 29 lakhs, it was submitted considering the facts had to be confirmed as only general arguments were raised and no supporting facts for deleting the addition could be filed. The addition it was his prayer on facts may be confirmed on merits. Relying upon the case law, as canvassed by the assessee extracted in the submissions recorded by the CIT(Appeals) it was his submission that only identity of the party stood proved. The creditworthiness and the genuineness of the transaction consistently could not be proved by the assessee. Referring to the impugned order it was his submission that fresh evidences relying upon Rule 46A of the IT Rules as desired by the assessee were entertained by the Commissioner (Appeals) and wherein only affidavit of Shri Suraj Pal Bhatia explaining the deposits of Rs. 10 lakhs stood made available which was considered. However, qua Shri Balaji timber and Plywood aka M/s Sai Kirpa no evidences were made available. Thus, the principles of law as held applicable in the case of Nova Promoters and Finlease Pvt. Ltd. and the other decisions cited were fully applicable. It was his submission that this decision has been referred to in para 5.7 by the Commissioner (Appeals) and hence it was his prayer that the addition sustained may be upheld.

5. I have heard the submissions and perused the material available on record. A perusal of the record shows that the assessee declared a loss of Rs. 3,88,440/- in the year under consideration. The assessee as per record was stated to be engaged in the business of manufacturing of plastic injection moulding components and steel components. The addition of Rs. 39 lakhs was made on account of the assessee's claim that unsecured loans of Rs. 39 lakhs received from Mr. Suraj Pal Bhatia (Rs. 10 lakhs); and Shri Balaji timber and Plywood aka M/s Sai Kirpa (29 lakhs) despite opportunity could not be explained.

6. The additions made were challenged before the First Appellate Authority claiming that these were business loans. It is seen that on considering the following submissions part relief was granted by the CIT(A) to the assessee:

"4.2 On going through the above submission, it is observed that there is no additional ground of appeal but just an elaboration of the ground of appeal taken earlier with regard to the addition of Rs. 39,00,000/- as unexplained cash credit u/s 68 of the Act. The appellant relied upon the various case laws to further substantiate its arguments towards grounds of appeal, especially towards ground no. 2. Since no additional ground or new ground has been preferred, this submission is considered while deciding the issue involved.

4.3 The appellant vide letter dated 27.02.2019 submitted additional evidence as per Rule 46A of the I.T. Rules as follows:

"Most respectfully it is submitted that the assessee was assessed u/s 143(3) by the Ld. AO Ward 14(3) by making an addition to the income u/s 68 of Rs. 39,00,000/- on account of non confirmation of advances received. These confirmation and other documents were not available at the time of assessment due to some personal dispute between the lender and the appellant assessee.

Now at present the confirmation on affidavit along with bank statement and other details are available and are being submitted for rs. 10,00,000/- from Sh. Suraj Pal Bhatia and the balance confirmation for Rs. 29,00,000/- shall be available in due course. That these documents could not be submitted before the Ld. AO for the reason as explained above and therefore, prevented with a sufficient cause to submit the same at the time of assessment."

4.4 Since this additional evidence was submitted during appeal where Rs. 10,00,000/- given by Mr. Suraj Pal Bhatia has been confirmed on affidavit and its source is stated to be out of retirement benefits received by him, therefore, the same was sent to the AO for his comments. The AO i.e. ITO Ward 14(3) New Delhi replied that: -

"It is submitted that in the affidavit of Sh. Suraj Pal Bhatia R/o 2E/138, NIT, Faridabad, Haryana it has been undertaken by him that he has given loan to M/s Kiran Sales P. Ltd. as he received retirement benefits from Escorts Limited. In the statement of financial company "Finacle" it is shown that the received employees provident fund on 11.12.2014 and on 11.12.2014 he has given Rs. 10,00,000/- to Kiran Sales P. Ltd. which he received back on 26.05.2015 as per the statement. Hence it is submitted that this transaction of advance given by Sh. Suraj Pal Bhatia is satisfactory."

4.5 The appellant was provided a copy of the report of AO and it was submitted by the appellant vide letter dated 14.03.2019 that: -

"With respect to remand report (copy enclosed) submit vide letter F.No.ITO-W-14(3)/Report/2018-19/760 dated 27.02.2019 with you by the Ld. Assessing Officer of Ward 14(3).

The Ld. AO has accepted the transaction of Rs. 10,00,000/- (Ten Lakh Only) as satisfactory loan from Sh. Suraj Pal Bhatia in the herein above mentioned appeal. Thereby we pray that the demand of Rs. 10,00,000/- may be deleted."

7. Consequently the part relief was granted holding as under: -

"5. Findings & determination:-

5.1 I have considered the assessment order, submissions and the details provided by the appellant, the additional evidence provided and report of the AO. This additional evidence is considered, looking to the AO's report and also the same goes to the root cause of this addition and to follow the principle of natural justice. **Ground No. 1** is general in nature and subsumes with the specific grounds for addition therefore no separate findings are required.

5.2 In **ground no. 2**, the appellant challenged the total additions of Rs. 39,00,000/- as loans received from two parties were not satisfactorily explained by the appellant. The addition of Rs. 10,00,000/- was made u/s 68 of the Act due to the reasons that appellant has shown this amount as loan received from Mr. Suraj Pal Bhatia (In assessment order this appears to have been wrongly mentioned as 29,00,000/-) but could not established the identity, creditworthiness and genuineness of transactions. No due confirmation has been received to the satisfaction of AO to prove this as genuine."

8. The additions sustained under challenge were confirmed in view of the following facts and reasoning: -

"5.3 As evident from above, during appellate proceedings, in response to the additional evidence regarding loans received from Sh. Suraj Pal Bhatia of Rs. 10,00,000/- has been found satisfactory by the AO, therefore, this additional evidence is considered and looking to the facts and circumstances of this case, considering the evidence filed and the report of the AO, the source of funds received from Mr. Suraj Pal Bhatia was found genuine and his capacity is also substantiate, therefore, this addition of Rs. 10,00,000/- is not warranted and directed to be deleted.

5.4 With regard to the addition of Rs. 29,00,000/- for the loan received from Sh. Balaji Timber and Plywood aka M/s Sai Kripa, it is seen that genuineness and correctness of transaction and their creditworthiness is not duly explained and hence this addition was made.

5.5 It is contended by the appellant, as reproduced above, that payments have been received through banking channels and the amount was returned back subsequently. Therefore, upon relying various decisions by different jurisdictions, it is stated that the said loan/advance received is duly explained.

5.6 It is observed from the assessment order as well as submissions during appellate proceedings that appellant failed to provide the confirmation from the said party and no proof for such payment received has been brought on record. It is only stated that the payment has been received and repaid through account payee cheques. Here it is pertinent to mention that the amount received and repaid subsequently will not effect the applicability of section 68 of the Act. As per the provisions of section 68, if any sum is found credited in the books of appellant and the identity, creditworthiness of the lender and genuineness of transaction is not proved, the sum so credited is liable to be taxed as income of appellant for the year under consideration. Therefore, this being a deeming provisions, related to the credit of the amount and hence the repayment is not material. The credits are to be taxed, irrespective of any subsequent payment or not.

5.7. Further, the transactions are routed through banking channels is not itself substantiation to prove that this loan is genuine. Support is drawn from the decision by Hon'ble Delhi High Court in the case of Nova Promoters and Finlease Pvt. Ltd. ITA No. 342 of 2011 and various other cases wherein it is held that even if transaction are through banking channels, that cannot be considered sufficient to prove the creditworthiness or genuineness of transaction. The appellant has neither provided the source of the lender or the source of source, which is envisaged as per the provisions of section 68 of the Act. No confirmation or any evidence has been provided.

5.8 It is also observed that no interest in these loans have been given by the appellant. Any prudent person, not known or related to the appellant will not lend his hard earn money, without any consideration of interest. Further, it will not abstain from giving confirmation regarding having given such money to the appellant.

5.9 Therefore, looking to the facts and circumstances of this case and in law, and considering that neither any confirmation nor the source of funds have been provided, as discussed in the foregoing paragraphs, there is no reason to interfere in the findings of AO towards this addition. Thus, this addition of Rs. 29,00,000/- is confirmed. Ground no. 2 is partly allowed."

9. Considering the submissions advanced by the Ld. Sr. DR who at great length highlighted the relevant and applicable facts and relied on

the judicial position as applicable there to I find that the addition sustained on facts deserves to be confirmed. I have taken into consideration the position of law as referred to in para 5.7 of the impugned order and specifically highlighted by the Ld. Sr. DR and on consideration of facts on record I am of the view that the decision is fully applicable on all facts. It is seen that as per record more than adequate opportunity had been made available to the assessee before the Assessing Officer and similarly even before the Ld. CIT(A) there was adequate opportunity and now even before the ITAT the assessee has been given more than adequate opportunity and still no evidence has been placed by the assessee to assail let alone effectively assail the findings arrived at. Accordingly, considering the facts as available and the position of law I am of the view that no interference in the impugned order is warranted. The grounds raised are dismissed.

10. Said order was pronounced in the open court at the time of hearing itself.

11. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 22/10/2021

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

**Kavita Arora, SPS*

Copy to

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

// BY Order //

Assistant Registrar, ITAT Delhi Benches:
Delhi.