

IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
Ms. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.394/Ahd/2016
Assessment Year : 2010-11

The Jt.CIT S.K. Range Himatnagar	Vs	Shree Ganesh Construction 511-B, Sarvodaya Commercial Centre Nr.GPO Mirzapur Ahmedabad-380 001 PAN: ABFFS 3302 P
J ो / (Appellant)		/ (Respondent)
Assessee by :		Shri S.N. Soparkar, Sr.Advocate & Shri Parin Shah, AR
Revenue by :		Shri Shramdeep Sinha, Sr.DR

Date of Hearing : 20/07/2022
Date of Pronouncement: 24/08/2022

ORDER PER

PRAMOD M. JAGTAP, VICE PRESIDENT

This appeal is preferred by the Revenue against the order of Ld. Commissioner of Income-tax (Appeals)-10, Ahmedabad [CIT(A)] dated 10th December-2015.

2. In ground No.1, the Revenue has challenged the action of the Ld.CIT(A) in deleting the addition of Rs.2,88,85,846/- made by the Assessing Officer u/s.68 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) on account of unsecured loans by treating the same as unexplained cash credit.

3. The assessee, in the present case, is a partnership-firm which is engaged in the business of road construction. The return of income for the year under consideration was filed by it on 05/08/2010 declaring total income of Rs.51,58,810/-. The said return was selected for scrutiny through CASS and a notice u/s.143(2) of the Act was issued by the Assessing Officer to the assessee on 30/08/2011.

3.1. As noted by the Assessing Officer, during the course of assessment proceedings, the assessee had received loans/deposits aggregating to Rs.2,88,85,846/- from 28 parties during the year under consideration which were also refunded back. In this regard, he required the assessee to produce the confirmations of the concerned creditors/depositors along with proof showing the availability of funds to give the loans/deposits to the assessee. As noted by the Assessing Officer, the assessee, however, failed to comply with the said requirement, the Assessing Officer therefore treated the loans/deposits aggregating to Rs.2,88,85,846/- as unexplained cash credits and addition to that extent made by him to the total income of the assessee u/s.68 of the Act in the assessment completed u/s.143(3) of the Act vide an order dated 28/03/2013.

3.2. The addition made by the Assessing Officer u/s.68 of the Act was challenged by the assessee in appeal filed before the Ld.CIT(A). During the course of appellate proceedings before the Ld.CIT(A), additional evidence in the form of copies of respective ledger accounts, bank statements and TDS details was filed with a request that there being no proper and sufficient opportunity afforded by the Assessing Officer during the course of assessment proceedings to submit the same, the additional evidences may be admitted. Keeping in view the facts of the case, the Ld.CIT(A)

admitted the additional evidences and the same were forwarded by him to the Assessing Officer for his verification and comments. In the remand report dated 12/10/2015 submitted to the Ld.CIT(A), the Assessing Officer offered his comments on this issue as under:

“In this regard it is submitted that the assessee has submitted all the squared up accounts, provided the copies of respective accounts as per ledger and copy of bank statement from where cheques were issued, TDS deducted wherever applicable in respect of 28 persons from whom the assessee firm has accepted deposits and returned back.

4. Further the assessee was asked to submit the following details vide office letter dated 28/08/2014 of ITO, Ward 9(1) Ahmedabad:-

- a) Details of all bank accounts i.e. name, Branch & A/c No.
- b) Details of all bank accounts of each partner i.e. Name, Branch & A/c No.
- c) Copy of return filed by Shri Dhirubhai Patel, Partner of the firm.
- d) If Shri Dhirubhai Patel is not filed any return & income till date, furnish latest residential address alongwith proof thereof.
- e) It is seen that the following depositors have not filed their return of income and produce the above depositors alongwith copy of their balance sheet, bank book and bank statement.

1. B.M.Patel Ft.	5,73,973/-
2 Chetnaben Pandya	2,00,000/-
3 DM Patel Ft	81,449/-
4. H.M.Patel	10,77,918/-
5. Vijaybhai L pandya	40,152/-

The assessee has submitted all the details called for vide letter dated 28/08/2014. The details are verified and kept on record.

5. Further the assessee was asked to furnish/produce the following information for further verification vide this office letter dated 05/06/2015:-

- (i) Produce the following persons who have advanced loan to you , with their identity proof, the bank statement, return of income and proper confirmation of loan advanced for the relevant assessment year:-

(a) Pankajsinh Natwarsinh Rahevar, (b) Nupur Patel, (c) Chandresh Maheshchandra Jani (d) Kunjan J Patel, (e) Rupal K Patel (f) H.M. Patel

- (ii) Produce the original receipts of donation of Rs. 50,000/- paid for verification,
- (iii) Please produce the evidences such as bills/vouchers etc. regarding the payment of Road side labour expenses of Rs. 1,54,716/-
- (iv) Please produce the evidences such as bills/vouchers, etc. regarding the payment of Road side salary expenses of Rs. 1,57,500/-

1. In response to above, the assessee has produced following persons with their identity proof, the bank statement, return of income and proper confirmation of loan advanced for the relevant, assessment year:-

(a) Pankajsinh Natwarsinh Rajewar, (b) Chandresh Maheshchandra Jani, (c) Kunjan J. Patel (d) H.M. Patel.

In the case of Rupal K.Patel his Husband Shri Parth H. Patel attended the office and gave statement on her behalf due to medical reasons.

In the case of Nupur Patel also, she has submitted medical certificate along with proof such as return of income, bank statement, identity proof and proper confirmation loan advanced to Shree Ganesh Construction.

During the course of assessment proceedings, the A.O. asked specific confirmation in respect of squared up loans. However, the assessee had not submitted the same therefore additional evidences submitted by the assessee before the appellate-proceedings may not be admitted under Rule 46A. Apart from the above, it is also noticed that before issuing cheque to the assessee some of the persons had no balance in their respective account. It is noticed that it has been a common practice that whenever these persons transferred/issued cheques to the assessee, these persons got/received fund from some other account which was subsequently transferred to the assessee as unsecured loan. Therefore, it seems that the transactions are doubtful.

- 2. The assessee has also submitted the evidences such as bills/vouchers regarding the payment of Road side labour expenses of Rs.1,54,716/- and evidence regarding the payment of Road side salary expenses of Rs.1,57,500/- from the evidence submitted by the assessee, it is clear that the bills and vouches were newly created and they are having without serial numbers and it seems that they are cooked documents, there is no justification on both the features as discussed above.
- 3. The assessee has not submitted the original receipt of donation of Rs. 50,000/-

4. *Regarding addition of treating unsecured loan as non-genuine u/s 68 of Rs.10 Lacs from Miss Pooja Manoj Haria on verification of the evidence submitted by the assessee, it is noticed that no affidavit in respect of the same has not been enclosed."*

3.3. The remand report submitted by the Assessing Officer was made available by the Ld.CIT(A) to the assessee and after considering the rejoinder filed by the assessee as well as all the material available on record, the Ld.CIT(A) deleted the addition of Rs.2,88,85,846/- made by the Assessing Officer u/s.68 of the Act for the following reasons given in paragraph No.7.1 of his impugned order.

"7.1 Regarding addition of Rs.2,88,85,846/- , I have gone through the chart furnished in which the details of squared up accounts are given. It is found that the appellant had furnished the confirmation of the creditors in squared up accounts identity, and their income tax returns (except for Chetnaben Pandya Sr No: 4 and V.L.Pandya Sr No. 28 TDS deducted and Form No: 16A also issued). The amounts are all received by account payee cheques and also repaid by similar manner. Wherever applicable, TDS have been deducted as evident by Form No: 16A. Thus the identity and genuineness of the amounts received have been properly and satisfactorily proved. Also the amounts have come from the respective bank accounts of the depositors who have also been filing their income tax returns and are thus on the record of the Department. Thus their creditworthiness stand explained. The initial onus under section 68 is thus discharged and in turn, it was for the AO to verify those evidences. The AO has verified the above documentary evidences and also made inquiry with regard to some of the depositors by calling them in person and examining them by enforcing their attendance with their bank statements and I.T returns. No material is found during such inquiry which can prove that the amounts received was appellant's unexplained income. I am therefore of the opinion that the appellant has satisfactorily explained the receipt of amount-from the depositors in respect of squared up accounts and therefore addition made by the AO cannot be sustained. As rightly submitted 'by the appellant, it is settled position as considered by the jurisdictional ITAT in the case of Smt Mamtadevi L Raol vs ITO ITA No: 3619/Ahd/2007 a copy of which is furnished by the appellant, in which by following judgment of Gujarat High Court in the case of CIT vs Sanjay K.Thakkar Tax Appeal No: 524 of 2007, it is held that where the assessee has shown that creditors have advanced money through bank and placed evidence in this regard on record, and they are assessed to income tax then in

those circumstances, the position of law is well settled that if the AO is not satisfied about capacity or the creditworthiness of the party in question or as to the source from which the creditor has deposited amount, it is open to the AO to make the addition in the hands of respective creditors after making appropriate inquiry. In the judgment of the Gujarat High Court in the case of DCIT v. Rohini Builders 256 ITR 360 [SLP Dismissed by Supreme Court) it has been held that when assessee had discharged initial onus by providing identity of all creditors by giving their complete addresses, GIR numbers/permanent account numbers and copies of assessment orders wherever readily available and also proved capacity of creditors by showing that amounts were received by account payee cheques drawn from bank accounts of creditors, assessee was not expected to prove genuineness of cash deposited in bank accounts of creditors, because under law, assessee can be asked to prove source of credits in its books of account but not source of source. Similarly in the case of CIT vs Ranchhodbhai Nakhava 208 Taxman 35 (Guj) the jurisdictional High Court has held that Once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective return they had shown existence of such amount of money and had further shown that those amount of money had been lent to the assessee. If before verifying of such fact from the Assessing Officer of the lenders of the assessee, the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, in our opinion, the Assessing Officer did not follow the principle laid down under Section 68 of the Income Tax Act.

In the instant case the AO has not even alleged that any cash was deposited in the accounts of the depositors whose accounts were squared up and merely because there is some fund transferred by depositor from another source or investment, the transactions with the appellant cannot be doubted since depositors may have their funds lying elsewhere and such transactions can be explained by them only. No specific instance regarding any such transaction is reported by AO. Moreover, the AO has also examined some of the depositors and is any such transactions are there the same could be inquired from them who alone could explain the entries in their bank accounts. No such transactions are reported by AO and since the initial onus stands discharged by the appellant, no addition can be made in respect of such transactions u/s 68 of the Act. In the Remand Report submitted by the AO, no adverse findings have been mentioned.

In view of above discussion, and considering the totality of facts and the legal position stated above, I hold that the addition of Rs.2,88,85,846/- is not justified. The same is therefore deleted. This ground is allowed."

4. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the loans/deposits aggregating to Rs.2,88,85,846/- received and refunded back by the assessee during the year under consideration were treated by the Assessing Officer as unexplained cash credits and added to the total income of the assessee u/s.68 of the Act on account of failure of the assessee to furnish confirmations of the concerned creditors/depositors. During the course of appellate proceedings before the Ld.CIT(A), the assessee, however, filed the relevant evidences as additional evidences to establish the identity and capacity of the concerned creditors/depositors as well as the genuineness of the relevant loans/deposits/transactions. Keeping in view that there being no proper and sufficient opportunity afforded by the Assessing Officer during the course of assessment proceedings to file the relevant details and documents, the additional evidence filed by the assessee was admitted by the Ld.CIT(A) and the same was forwarded to the Assessing Officer for the latter's verification and comments. As mentioned by the Assessing Officer in the remand report dated 12/10/2015 submitted to the Ld.CIT(A), the details and documents furnished by the assessee in support of its case on this issue were verified by him and even further details and documents as required by him were also furnished by the assessee. As clearly mentioned by the Assessing Officer in the remand report, the same were also verified by him and kept on record without giving any adverse comments/findings. The Assessing Officer also required the assessee to produce some of the creditors/depositors for examination before him which was duly complied with by the assessee. The concerned creditors/depositors who appeared

before the Assessing Officer with the required documentary evidences confirmed having been given the loans/deposits to the assessee. Keeping in view all the facts of this case which were verified by the Assessing Officer and found to be correct as clearly mentioned by the Assessing Officer in the remand report, the Ld.CIT(A) held by relying on the judgement of Hon'ble Gujarat High Court in the case of CIT vs. Sanjay K. Thakkar (Tax Appeal No.524 of 2007) that the assessee having shown that the loans were advanced by the concerned creditors through bank and placed evidences in this regard on record including the income-tax details of the concerned creditors, addition cannot be made in the hands of the assessee u/s.68 of the Act and, if at all the Assessing Officer is not satisfied about the creditworthiness of the parties in question, it is open to him to make the addition in the hands of concerned creditors after making appropriate enquiry. Reliance was also placed by the Ld.CIT(A) in his impugned order on the judgement of Hon'ble Gujarat High Court in the case of DCIT vs. Rohini Builders reported in 256 ITR 360(2002) and in the case of CIT vs. Ranchhod Jivabhai Nakhava reported in 208 Taxman 35 (Guj)[2012] to hold that the assessee having filed the relevant documentary evidences including the confirmations of the creditors giving the required details and proved that amounts were received by A/c. Payee Cheque drawn from bank accounts from creditors, the primary onus that lies on the assessee was duly discharged to explain the cash credits in terms of section 68 of the Act and the addition u/s.68 of the Act was not sustainable.

4.1. At the time of hearing before us, the Ld.DR has not been able to dispute the fact that on verification of relevant details and documents furnished by the assessee, no adverse finding was recorded by the Assessing Officer in the remand report submitted to the Ld.CIT(A). He has

only pointed out that there were credits found in the bank accounts of the concerned creditors/depositors just before giving loans/advances to the assessee in many cases. However, as noted by the Ld.CIT(A) in this regard, there was no allegation made by the Assessing Officer regarding any cash deposits made by the concerned creditors/depositors in their accounts before giving the loans/advances to the assessee in question. As observed by the Ld.CIT(A) in this regard, merely because there were funds transfer by depositors/creditors from another source of investment before giving loans/advances to the assessee, the transactions could not be doubted since depositors might have their funds lying elsewhere which were brought in for giving loans/advances to the assessee. Having regard to all the facts of the case, we therefore find no infirmity in the impugned order of the Ld.CIT(A) deleting the addition made by the Assessing Officer u/s.68 of the Act and upholding the same, we dismiss ground No.1 of Revenue's appeal.

5. In ground No.2, the Revenue has challenged the action of the Ld.CIT(A) in deleting the addition of Rs.10,15,000/- made by the AO u/s.68 of the Act on account of unsecured loan by treating the same as unexplained cash credit.

5.1. During the year under consideration, unsecured loan of Rs.10 lakhs was taken by the assessee from Miss Pooja Manoj Haria and after crediting the interest of Rs.15,000/- a sum of Rs.10,15,000/- was shown as payable. As required by the Assessing Officer, the assessee filed confirmation of Miss Pooja Manoj Haria along with the copy of cheque received from Miss Pooja Manoj Haria as well as copy of form 15G. On perusal of these documents, the Assessing Officer noticed that the signature of Miss Pooja Manoj Haria, as appearing in confirmation letter, differs from the signature made by her

on cheque. He therefore held that the confirmation of Miss Pooja Manoj Haria submitted by the assessee was not genuine. He also found from the copy of 15G furnished by the assessee that Miss Pooja Manoj Haria was a student residing in Mumbai. Keeping in view the same, the Assessing Officer held that the creditworthiness of Miss Pooja Manoj Haria and the genuineness of loan transaction was not established. Accordingly, a sum of Rs.10 lakhs was added to the total income of the assessee u/s.68 of the Act and interest of Rs.15,000/- claimed by the assessee on the unsecured loan was also disallowed by him.

5.2. The addition of Rs.10,00,000/- made by the Assessing Officer on account of unsecured loan received from Miss Pooja Manoj Haria and disallowance of interest of Rs.15,000/- paid thereon were challenged by the assessee in the appeal filed before the Ld.CIT(A) and after considering the submissions made by the assessee and the material available on record including the remand report submitted by the Assessing Officer, the Ld.CIT(A) deleted both the additions vide paragraph No.7.2 of his impugned order as under:

“7.2. Regarding ground No.2 in respect of the addition of Rs.10 lacs along with interest amounting to Rs.15,000/- in the case of Miss Pooja Manoj Haria also, the addition is made on the ground that there was some difference in the signature of the said depositor as found on the cheque issued and Form No.15G. It is seen that full residential address of the depositor along with PAN and Landline and Mobile Telephone Number is provided. She has furnished an affidavit notarized before Notary in which confirmation is given as also the clarification regarding different signature being appended for different purposes is also stated in the said affidavit on oath. The AO has stated in the Remand report that affidavit was not made available. However, neither any notice was given to the appellant nor any attendance of the said depositor was enforced by AO once the confirmation with PAN was furnished and full address was available in terms of the documents like

confirmation, bank cheque copy and Form N: 15G. The addition made on the suspicion that a student filing Form No: 15G cannot make the deposit is untenable as a person can have funds from even non taxable sources and can file Form No.15G as prescribed and permitted by the law itself. No such inquiry has been made by the AO in the Remand Proceedings which he has made in respect of several other depositors by examining them, even after a considerable time and opportunity available for furnishing Remand report. Original affidavit is produced before me in which the depositor has confirmed the fact regarding outstanding amount of Rs.10 lacs and furnished her PAN. She has also given clarification regarding difference in signature being kept by her for banking purposes. Once the confirmation on oath is there along with PAN and also the amount is received by account payee cheque, initial onus stands discharged as held in respect of ground No.1 above. In view of these facts and considering the legal position discussed above, the addition of Rs.10,15,000/- in respect of outstanding amount of loan from Miss Pooja Manoj Haria is not justified. I therefore direct the AO to delete the same. This ground of appeal is accordingly allowed."

5.3. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that Affidavit of Miss Pooja Manjo Haria was filed by the assessee during the course of appellate proceedings before the Ld.CIT(A) and although the same was stated to be not made available by the Assessing Officer in his remand report, the Ld.CIT(A) himself verified the same. On such verification, he found that the unsecured loan of Rs.10 lakhs given to the assessee was confirmed by her and even the difference in signature as noticed by the Assessing Officer from the perusal of the relevant documents was satisfactorily clarified by her. The relevant details giving *inter-alia* her PAN were also furnished by Miss Pooja Manoj Haria which also proved that the loan in question was given by her to the assessee by A/c payee Cheque. Keeping in view all these facts of the case, the Ld.CIT(A) held that the primary onus to establish the identity and creditworthiness of the concerned creditors as well as genuineness of the relevant transaction was duly discharged by the assessee

and having regard to the relevant findings of fact recorded by the Ld.CIT(A) in his impugned order, which have unrebutted by the Ld.DR, we are of the view that the addition made by the Assessing Officer u/s.68 of the Act along with disallowance of corresponding interest of Rs.15,000/- was rightly deleted by the Ld.CIT(A). We therefore find no merit in ground No.2 of Revenue's appeal and hence the same is dismissed.

6. As regards the issue raised in Ground No.3 relating to the deletion by the Ld.CIT(A) of the addition of Rs.25,000/- made by the Assessing Officer on account of disallowance of assessee's claim for deduction u/s.80G of the Act, it is observed that the deduction claimed by the assessee u/s.80G of the Act amounting to Rs.25,000/- in respect of donation of Rs.50,000/- made to Chief Minister Kanya Kelvani Nidhi was disallowed by the Assessing Officer for want of original receipt since the assessee failed to submit the donation receipt. The Ld.CIT(A) however, deleted the disallowance vide paragraph No.7.3 of his impugned order as under:-

"7.3. Regarding ground No.3 in respect of disallowance of deduction u/s 80-G for donation of Rs.50,000/- to Chief Minister Kanya Kelavani Nidhi from the copies of receipts it is apparent that the donation is made by cheque number 902282 and 902284 date 08.03.2010 and 10.03.2010. These are donations to the State Government funds and cheques having been realized as per bank statement is not disputed. Merely because original receipts were not traceable by the appellant, the lawful claim of deduction u/s.80G cannot be denied. The appellant has again procured Donation receipts issued by Executive Engineer Panchayat Department Dahod evidencing payment of Donation towards Chief Minister Relief fund for Kanya Kelavani Contribution. Considering the above facts the fact about donation made to the Government fund cannot be doubted. If original receipts are lost, the AO could have verified the facts from the other corroborative evidence as stated above like bank account and the trace of the payment. Considering the above facts, in my considered opinion the disallowance of deduction under section 80-G is not justified. The AO is directed to allow the deduction as per the provisions of section 80-G. This ground of appeal is allowed."

6.1. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that eventhough the original receipt for payment of donation of Rs.50,000/- made to Chief Minister Kanya Kelvani Nidhi was not produced by the assessee as the same was lost or misplaced, sufficient evidence was produced by the assessee to support and substantiate its claim of having paid the said donation. As noted by the Ld.CIT(A) in his impugned order, the said evidence was sufficient to verify the claim of the assessee regarding payment of donation of Rs.50,000/- to Chief Minister Kanya Kelvani Nidhi. Even the donation receipt issued by the Executive Engineer Panchayat Department Dahod evidencing payment of donation was produced by the assessee. Keeping in view these details and documents furnished by the assessee to support and substantiate its claim of donation of Rs.50,000/- paid to Chief Minister Kanya Kelvani Nidhi, the Ld.CIT(A), in our opinion, has rightly deleted the disallowance of assessee's claim for deduction u/s.80G of the Act made by the Assessing Officer. We, therefore, uphold the impugned order of the Ld.CIT(A) deleting the disallowance made by the Assessing Officer on account of assessee's claim for deduction u/s.80G of the Act and dismiss the ground No.3 of Revenue's appeal.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 24th August, 2022 at Ahmedabad.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(PRAMOD M. JAGTAP)
VICE PRESIDENT

Ahmedabad, Dated 24/08/2022

