

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH ; AMRITSAR.**

**BEFORE SH. A.D. JAIN, JUDICIAL MEMEBR
AND SH. T.S. KAPOOR, ACCOUNTANT MEMBER**

I.T.A. No.39(Asr)/2014
Assessment year:2010-11
PAN :ALMPS3194E

Dy. Commr. of Income Tax, vs. Sh.Dhanraj Singh
Circle-1, Amritsar. Prop. M/s. Prince Fabrics,
Shastri Market, Amritsar.
(Appellant) (Respondent)

Department by:Sh. Tarsem Lal, DR
Assessee by: Sh.Padam Bahl, CA

Date of hearing:05/10/2015
Date of pronouncement: 06/10/2015

ORDER

Per A.D.Jain, JM

This is Department's appeal for the assessment year 2010-11 against the order dated 13.11.2013 passed by the CIT(A), Amritsar. The Department has raised the following grounds of appeal:

“1. On the facts & in the circumstances of the case, the Ld. CIT (Appeals) erred in law while deleting the addition of Rs.20,00,000/- on account of unexplained cash credits u/s 68 of the I.T. Act, 1961, ignoring the fact hat creditworthiness of the lenders was suspicious.

2. On the facts & in the circumstances of the case, the Ld. CIT (Appeals) erred in law while holding that it is not required for the assessee to explain the source of the investment, ignoring various inconsistencies & contradictions made by the assessee in explaining the creditworthiness of the lenders.”

2. The facts are that the assessee a firm is trading in cloth on wholesale basis. For the year, it declared an income of Rs.1,21,39,550/-. The AO noted the following facts about unsecured loans taken by the assessee:

Name of the person who gave the loan to Sh. Dhanraj Singh	Name of the Bank & Bank A/c No. through which money came to Sh. Dhanraj Singh	Cash deposit	Date on which cash deposited	Date on which money transferred to Sh. Dhanraj Singh
Rupinder Kaur	00660514102	300000/-	27.06.2009	27.06.2009
	ICICI	200000/-	29.06.2009	29.06.2009
Dhanraj Singh HUF	0200100304	200000/-	02.04.2009	02.04.2009
	Dena Bank	100000/-	04.04.2009	06.04.2009
	006606000066	200000/-	22.06.2009	22.06.2009
	ICICI			
Harinder Kaur	020011003076	200000/-	02.04.2009	04.04.2009
	Dena Bank			
Ravi Raj Singh	13131000056249	200000/-	27.06.2009	(400000/-)
		200000/-	29.06.2009	Transfer 30.06.2009

Harjot Singh	020010005364	200000/-	02.04.2009	02/04/2009
	Dena Bank	100000/-	04.04.2009	07.04.2009
		100000/-	28.05.2009	28.05.2009

3. From the above facts, the AO observed as follows regarding each of the loans:

“From this table it is clear that Smt. Rupinder Kaur got cash deposit of Rs.3,00,000/- in her bank account on 27.06.2009 which was transferred in the account of Sh. Dhanraj Singh on the same date. On 29.06.2009 she again got cash deposit of Rs.2,00,000/- in her account which was again transferred in the bank of Sh. Dhanraj Singh on the same date.

Dhanraj Singh HUF got cash deposit of Rs.2,00,000/- each on 2.04.2009 and 22.06.2009 in his bank account no.02001003064 which again transferred to the account of Sh. Dhanraj Singh on the same date. Cash deposit of Rs.1,00,000/- on 04.04.2009 in the bank account of Dhanraj Singh HUF was transferred to Sh. Dhanraj Singh’s bank account on 6.04.2009.

“Smt. Harinder Kaur got cash deposit of Rs.2,00,000/- in her bank account 020011003076 on 2.04.2009 in her bank account of Sh. Dhanraj Singh on the same date.

Sh.Dev Raj Singh got cash deposit of Rs.2,00,000/- each in his bank account No.13131000056249 on 27.06.2009 respectively which were transferred in the bank account of Sh.Dhanraj Singh on 30.06.2009.

Sh.Harjot Singh got cash deposit of Rs.2,00,000/- in his bank account number 020010005364 on 2.04.2009 which was transferred on the same date of Sh. Dhanraj Singh’s bank account. 100000/- cash deposit he got on 4.04.2009 was transferred to the bank account of

Sh. Dhanraj Singh on 7.04.2009. 100000/- cash deposit he got on 28.05.2009 was transferred in the bank account of Sh. Dhanraj Singh on the same date.”

4. Accordingly, the AO asked the assessee to explain the source of all these cash deposits in the bank accounts of Smt. Rupinder Kaur, Dhanraj Singh HUF, Smt. Harinder Kaur, Sh. Ravi Raj Singh and Sh. Harjot Singh, which ultimately landed in the bank account of Sh. Dhanraj Singh to determine the genuineness of the transactions. The assessee was also asked to explain why these cash deposits should not be treated as his income.

5. The assessee filed the following explanation before the A.O.:

“Explanation in respect of amount received from depositors:

That in this respect it is hereby stated that copy of A/c's duly confirmed by depositors have already been furnished. Their income tax particulars have also been furnished. However, explanation in respect of cash deposits by family members of S. Dhanraj Singh Prop. M/s. Prince Fabrics and transfer of these deposits into books of M/s. Prince Fabrics is also furnished as under:

Whereas it is stated that at the time of death of S.Prem Singh father of S.Dhanraj Singh and Smt. Surjit Kaur mother of S.Dhanraj hey left some funds which were lying with different relatives and friends. Moreover, at the time of death both have asked S. Dhanraj Singh to distribute the said funds between the family members as these are received.

However, as and when these funds were received they were distributed as per verbal will of parents, whereas these funds were not taxable in hands of recipients because these were received at death as per will. However, there was no legal document signed by parents was available. It was decided to show these funds as income in hands of recipients hence income tax return of all the members

were filed and tax was duly deposited. However, these funds were transferred to bank account of M/s. Prince Fabrics Prop. S. Dhanraj Singh. As income tax due on these funds has already been paid and deposits are duly explained.”

6. The AO rejected assessee’s explanation, observing that:

“Explanation given by the assessee is not acceptable. He has failed to prove the genuineness of these transactions. Argument that at the time of death of S. Prem Singh father of S. Dhanraj Singh and Smt. Surjit Kaur mother of S. Dhanraj Singh they left some funds which were lying with different relatives and friends and same were distributed between the family members as these are received can not be accepted since there is no evidence produced by the assessee to prove the same. [Similarly assessee have failed to produce any evidence that income tax has already been paid on these deposits.]”

7. In this manner, the AO made an addition of Rs.20 lacs to the assessee’s income, holding that the assessee’s explanation was not satisfactory and that the assessee had failed to prove the genuineness of the transactions.

8. The Id. CIT(A) deleted the addition.

9. Aggrieved, the present appeal has been filed before us by the Department.

10. The Ld. DR has contended that the Id. CIT(A) has erred in deleting the addition of Rs. 20 lacs made by the AO on account of unexplained cash credits u/s 68 of the Income-tax Act, 1961, ignoring fact that the credit-worthiness of the lenders was suspicious and holding that it was not required by the assessee to explain the source of the source of the investment,

ignoring various inconsistencies and contradictions made by the assessee in explaining the creditworthiness of the lenders.

11. It has been contended that as available from the table recorded by the AO at page 3 of the assessment order, the amounts were transferred within a day or so of their having been deposited in the bank accounts of the creditors; that moreover, no evidence was brought by the assessee regarding the relatives and friends to whom money had been given by the deceased parents of the assessee; that the onus has wrongly been shifted by the Id. CIT(A) from the assessee to the AO. Reliance has been placed on “Som Nath Maini vs. CIT”, 306 ITR 414 (P&H), according to which the plea of genuineness the transaction can be rejected, if the evidence of the assessee is not trust-worthy and the department does not lead any evidence against the assessee. It has also been contended that the Id. CIT(A) has wrongly placed reliance on the fact that due tax was paid on the amounts by the creditors. It is submitted that if it has been taxed in the wrong hands, the amount requires to be taxed in the right hands. Reliance has been placed on “Smt. Tara Devi Aggarwal vs. CIT”, 88 ITR 323 (SC). Further, to buttress the argument that if the amount is transferred on the same day as on which it is deposited in the creditor’s account and the source thereof is not known, addition is called

for, reliance has been placed on “Dayal Singh & Sons vs. CIT”, 335 ITR 90 (P&H).

12. The Ld. Counsel for the assessee, on the other hand, has placed strong reliance on the impugned order. Our attention has been drawn to assessee’s submission/explanation before the AO as reproduced hereinabove.

13. The Ld. Counsel for the assessee has also read out the AO’s findings which have already been reproduced in the preceding portion of this order. It has been argued that the assessee’s onus stood duly discharged. Confirmations were filed. Income tax returns and bank statements of the creditors were also filed. The AO asked the assessee to prove the source of the source, which is not permissible under the law. It was the AO’s burden which he miserably failed to discharge. Apropos the proposition that the assessee is not supposed to prove the source of the source of the credits, reliance has been placed on the following case laws:

- i) “CIT vs. Shri Ram Narain Goel”, 244 ITR 180 (P&H)
- ii) “Saroji Credit Corporation vs. CIT”, 103 ITR 344 (Patna)
- iii) “Aravali Trading Co. vs. ITO”, 220 CTR (Raj.) 622

14. Our attention has been drawn to pages 1 to 4, 5 to 12, 13 to 18, 19 to 23 and 24 to 29 of assessee’s paper book, which are copies of

acknowledgment of the Income tax returns for the year under consideration, statement of taxable income, saving bank account and personal balance sheet of each of the creditors of the assessee. It has been requested that there being no merit therein, the appeal be dismissed.

15. Having heard the rival contentions in the light of the material available on record, we find that as per the assessment order (page-2), the specific information asked for by the AO was as follows:

“Please prove credit-worthiness of persons from whom fresh unsecured loan taken. Furnish bank accounts statements from which money given to assessee.”

16. So, the assessee was asked by the AO to prove the credit-worthiness of each of his creditors. However, from the bank statement of the creditor, as filed by the assessee before the AO and the Id. CIT(A) and also filed before us, the following facts are discernible:

- i) Smt. Rupinder Kaur lent Rs.5 lacs to assessee by cheque. As per her return of income for the year under consideration, she had total income of Rs.700500/- to her credit, as income from other sources.
- ii) Sh.Dhanraj Singh gave loan of Rs. 5 lac to assessee by cheques. His return of income for the year under consideration shows gross total income of Rs.571334/-, as income from other sources.

- iii) An amount of 2 lacs was lent to the assessee by Smt. Harinder Kaur. Her return of income for the year depicts a sum of Rs.1163913/- as her gross total income. As per the computation of income, she earned Rs.1166335/- as income from capital gain.
- iv) Sh.Ravi Raj Singh gave Rs.4 lacs to the assessee by cheques. Rs.600698/- has been shown as his gross total income in his return of income, as income from other sources.
- v) Rs. 4 lacs was given to the assessee by Harjot Singh. As per his return, his gross total income is Rs.700342/-, as income from other sources.

17. From the above, it is obvious that each of these creditors did have the capacity to pay the sums given by them to the assessee. This can be tabulated as follows:

Sl. No.	Creditor	Amount available as gross total income	Amount lent to assessee
1.	Rupinder Jit Kaur	7,00,496/-	5,00,000/-
2.	Dhanraj Singh, HUF	5,71,334/0	5,00,000/-
3.	Harinder Kaur	11,63,913/-	2,00,000/-
4.	Ravi Raj Singh	6,00,698/-	4,00,000/-

5.	Harjot Singh	7,00,342/-	4,00,000/-
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16. Thus, evidently, the creditworthiness was of each one of these creditors of the assessee stands proved beyond the pale of a doubt.

17. The AO, however, without taking into consideration the above availability of funds with the creditors, merely based the addition on the fact that the money in all these cases was transferred to the assessee's account either on the same date, or within one or two days of it having been deposited in the creditors' accounts. This is precisely what has been stressed by the Id. DR before us also. However, this fact, by itself cannot and does not lead to the inexorable conclusion that the credits in the assessee's account do not stand explained. The material factor is that amounts more than these credits stood available to the creditors at the time of advancing them to the assessee. For these reasons, the cases relied on by the Id. DR are not relevant to the facts of the present case.

18. Hence, by producing, inter-alia, the returns of income and bank accounts of all his creditors before the AO, the assessee amply discharged his onus. Ergo, the addition could not stand. It has rightly been deleted by the Id. CIT(A).

19. Besides, it is note-worthy, that the creditors have paid the tax due on these amounts.

20. For the above discussion, finding no error in the order of the ld. CIT(A), the same is confirmed.

21. In the result, the appeal is dismissed.

Order pronounced in the open court on 6th October, 2015

Sd/-
(T.S. KAPOOR)
ACCOUNTANT MEMBER
/SKR/

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

Dated: 06/10/2015

Copy of the order, forwarded to:

1. The Assessee:Sh.Dhanraj Singh Prop. Prince Fabrics, Amritsar.
2. The DCIT, Amritsar.
3. The CIT(A),Asr
4. The CIT, Asr.
5. The SR DR ITAT, Amritsar.

True copy

By Order

(Assistant Registrar)