

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**Before Shri Challa Nagendra Prasad, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 9121/Del/2019
Asstt. Year: 2012-13**

The ACIT, Circle -7(1), New Delhi	Vs	M/s. Dayal Steel P. Ltd., D-1072, New Friends Colony, New Delhi 110032
(APPELLANT)		(RESPONDENT)
PAN No. AAACD 1063 F		

Assessee by : Sh. Sampath, Adv.

Sh. V. Rajkumar, Adv.

Revenue by : Sh. Vivek Kumar Upadhyay, Sr.DR

Date of Hearing: 27.12.2023

Date of Pronouncement: 11.01.2024

ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the revenue against the order of Id. CIT-34, Delhi dated 30.07.2019 for the A.Y. 2012-13.

2. The Revenue has raised the following ground of appeal:-

1. *"On the facts and in circumstances of the case and in law, the Id. CIT(A) has erred in deleted the addition made by the AO of Rs. 2,25,40,000/- u/s. 68 on account of unsecured loans"*

3. The brief facts of the case are that return declaring an income of Rs. 11,28,235/- was filed on 17.09.2012. The case was selected for scrutiny under CASS. During the year the assessee received unsecured loan from twenty two individuals and three HUF to the tune of Rs. 2,25,40,000/-. The Assessing

Officer issued notice u/s. 133(6) to all the parties and only five parties have replied. The AO held that, the parties do not have creditworthiness to extend unsecured loans to the assessee. Hence, relying on the judgment of the Hon'ble High Court of Delhi in the case of Titan Securities Ltd. in ITA No. 263/2012 the Assessing Officer held that, the assessee failed to establish the creditworthiness of the parties and made addition of Rs.2,25,40,000/- u/s 68 of I.T Act.

4. Aggrieved, the assessee filed appeal before the Id. CIT(A), who deleted the addition made by the AO.

5. Aggrieved with the order of the Id. CIT(A), the Revenue filed before the Tribunal.

6. During the arguments before us, the Id. DR referred to para 2 of the Assessment Order page no. 1,2 & 3 and argued that it is responsibility of the assessee to prove identity, genuineness and creditworthiness of the loan parties failing which the amount be treated as undisclosed income of the assessee. The money is being credited to their account either by depositing cash or through RTGS from unexplained sources and money is being immediately transferred to the appellant which reflects that these are merely accommodation entries and lack genuineness. The Id. DR argued that the notices issued by the Revenue Authorities have not been complied by the loan parties and hence there is an absolute failure on the part of the assessee to prove the credential of the loan parties.

7. On the other hand, the Id. AR submitted that they have provided each and every detail before the Revenue Authorities based on which the remission has been given by the Id. CIT(A). The Id. AR argued based on the order of the Id. CIT(A) page no. 4 to 46.

8. Heard the arguments of both the parties and perused the material available on record.

9. The appellant has filed the confirmation of few parties and copy of acknowledgement of their income tax return for various assessment year to prove the genuineness of the transaction and creditworthiness of the parties. The Id. CIT(A) called remand report from the Assessing Officer on the additional evidences filed and also examined the submission of the assessee on the comments of the Assessing Officer on the remand report.

10. The evidences filed comments of the AO and the submissions of the assessee with regard to all the twenty five parties are as under:

S No.	Name of the lender	Amount received	Comments from AO	Assessee's submission
PARTIES WHERE AO HIMSELF AGREES ABOUT TIL CREDITWORTHINESS				
1	Abhinav Kumar HUF (Family HUF)	6,50,000	ITR for AY 2011-12, 2012-13 and 2013-14. As per ITR, the party has creditworthiness however, no legible copy of bank statement has been provided to	The AO himself has stated that the party has creditworthiness And has still disallowed the loan amount which is entirely prejudicial to the assessee. The AO has erred in

			ascertain the amount of transfer of unsecured loan to the assessee company. No confirmation from party.	matter of fact in stating that no confirmation was provided when the same has duly been provided as additional evidence filed on 25.03.2019.
2	Udai Agarwal HUF (Family HUF)	6,90,000	As per ITR for AY 2012-13 and AY 2013-14, the party has income Of Rs 8,96,668/- and Rs 9,04,580/- respectively. No legible copy of bank statement provided to ascertain the name of account holder and amount transferred to the assessee company.	The Ld AO has followed a skewed approach in his own analysis. In the case of this party, the Ld AO himself states the taxable income of R\$ 8,96,668 for AY 2012-13 which is much more than the loan disbursed and has still disallowed the loan amount. Such an approach is blatantly contradictory and prejudicial.
PARTIES WHO HAVE ADVANCED LOANS OF LESS THAN RS 7,50,000/-				
3	Bhavabhai Trikmaji Chaudhari	5,00,000	As per the only ITR, for AY 2011-12 the party has shown income at Rs 1,42,575. No legible copy of bank statement to ascertain whether, the bank statement pertains to him. The party has creditworthiness to extend such amount of loan to the assessee company	The Ld Assessing officer has erred in matter of fact by stating that bank statements or confirmations were not provided. All the documents including bank statements and confirmation were duly provided either to the AO during assessment proceedings vide submission dated 19.02.2015 or through additional evidence.
4	Bhaveshb hai Talshaji	5,00,000	As per ITR for AY 2010-11 and 2011-12, the party has	

	Patel		shown income at Rs 1,55,000 and Rs 1,56,655 respectively. The party has no creditworthiness and even no bank statement or confirmation provided.	The Ld Assessing Officer has erroneously relied only on taxable income for evaluating the creditworthiness. Taxable income of the assessee is arrived at after giving effect to various exemptions and allowances and does not in any manner depict the funding capacity of a creditor. The Ld Assessing Officer has himself without complete information attempted to
5	Geetaben Chiragbhai Patel	5,00,000	Only ITR provided for AY 2010-11, the party has filed income at Rs 1,28,905. No bank statement or confirmation provided. The party has no creditworthiness to extend such amount of loan.	make a fund flow of the creditors which is completely based on surmises and conjectures.
6	Govabhai Harchandbhai Choudhari	5,00,000	As per ITR of AY 2011-12 and 2012-13, the party has shown income at Rs 1,56,375 and 1,78,129 respectively. The assessee Has no creditworthiness to extend such amount of loan. As per bank statement, most of the amount has been deposited in bank through the cash deposit or received from third party and transferred to the assessee company.	Funding capacity of a creditor is much beyond taxable income and is also a function of assets, access to funds on demand. Restricting analysis to only taxable income is a skewed approach and not justifiable. Even if one was to adopt the
7	Laljibhai Sagarbhai Trambadia	5,00,000	As per ITR for AY 2011-12 and 2012-13, the party has shown income at Rs 1,56,706 and Rs 1,78,050 respectively. As per bank statement an amount of Rs 5,00,000 has been received on	approach of the Ld Assessing Officer, a sum up of last 5 years taxable income will make it amply clear that the creditors did have capacity to advance the amount of loan.

			19.10.2011 and on the same date the amount has been transferred to the assessee company.	In most of these cases, the Id. Assessing Officer has relied on the ground that the money was received by the creditor and the transfer made to the assessee were in close proximity of time, some even on the very next day. This is a factual matter and there is nothing in law barring a person to transfer money even on the very same day as is received by them
8	Mahendra Kumar Ganpatram Raval	5,00,000	As per ITR for AY 2011-12 and 2012-13, the party has shown income at Rs 1,57,603 and Rs 1,78,600 respectively. No legible copy of bank statement has been provided. Confirmation accounts of both the parties were provided. As per ITR, the party has no creditworthiness to extend such amount of loan.	
9	Prakashbhai Ishvarbhai lad	5,00,000	As per the only ITR provided for AY 2011-12, the party has shown income at Rs 1,57,153. As per the bank statement the party has received money on 18.10.2011 from unknown entity and transferred the entire amount on 19.12.2011.	
10	Ramesh Kumpaji Patekl	50,00,000	As per ITR for AY 2011-12, 2012-13 and 2013-14, the party has shown income at Rs 1,51,635, Rs 1,78,250 and Rs 1,98,100 respectively. As per bank statement, party has received money of Rs 5,00,000 transfer from unknown entity and transferred the entire amount to the assessee company	Income of the depositor are mainly interest income on money advance.

11	Shivrambjha i Chamanji Patel	5,00,000	As per the only ITR provided for AY 2012-13, he shown income at Rs 1,76,934. As per bank statement, the party has received money of Rs 5,00,000 through RTGS to unknown entities on 18.10.2011 and transferred the entire amount to the assessee company on 19.10.2011. The party has no creditworthiness to extend such amount of loan to the assessee company.	
12	Vaghabhai Ratnabhai Patel	5,00,000	As per ITR provided for AY 2011-12 and 2012-13 the party has shown income at Rs 1,54,709, Rs 1,78,640. As per Bank statement Legible (no copy), appears that the party has received money of Rs 5,00,000 unknown From entity and transferred next day to the company. The party has no creditworthiness to extend such amount of loan to the assessee company.	
13	Ramesh bhai Hiralal Mandaliya	4,50,000	As per the only ITR provided for AY 2012-13, the party has shown income at Rs 1,53,910. As per bank statement, the party has received money from unknown entity on 21.12.2011 and transferred the	

			entire amount of Rs 4,50,000 the assessee company on 22.12.2011. The party has no creditworthiness to extend such amount of loan to the assessee company.	
14	Geetika Gupta (Relative)	7,50,000	ITRs have been provided for 2009-10, 2010-11. The party has shown net income at Rs 4,11,850 and Rs 4,94,200/-. No legible copy of ITR for AY 2011-12. As per bank statement, the party has transferred Rs 2,10,000 on 21.09.2011. Therefore it may be construed that the rest amount has been given in cash.	
15	Jaimin Mahindra Kumar Shah	7,00,000	As per ITR for AY 2010-11 and 2011-12, the party has shown income at Rs 1,31,419 and Rs 1,52,900 respectively. This shows that the party has no creditworthiness to extend such amount *of loan. Also, no legible copy of bank statement has been provided	
HIGH LOAN PARTIES				
16	Arvind Pukhran Jain	11,08,000	As per ITR provided for AY 2010-11 and 2013-14, the income is shown at Rs 1,55,619 and Rs 3,04,120. This shows that the party has no creditworthiness to extend such amount	The assessee provided ITR for AY 2010-11, 2011-12, 2012-13 and 2013-14. The Ld AO has only stated income of AY 2010-11 and 2013-14 while the income for the relevant assessment year which is Rs 2,90,422 has been conveniently missed out

			of loan. No legible copy of ITR has been provided for AY 2012-13. As per bank statement, the assessee company has received money on 08.10.2011. The major amount of money has been credited to the account of Mr Arvind Pukhran Jain through cash deposit on 05.10.2010 and through RTGS from the unknown entity.	which was filed before A.O. vide submission dated 19.02.2015. Not only that, the Assessing Office has also disregarded that this is only taxable income which IS computed after certain deductions and allowances. The Ld AO has also relied on the fact that the amount was received by the creditor through cash deposit or RTGS from unknown entity. This reliance does not justify an addition in the case of the assessee. If the Ld AO had doubts about the source of source, nothing in law precludes him from using his powers to verify the creditor directly.
17	Mahasukh Jayantibhai Rohit	10,00,000	No details filed	The Ld AO has completely erred in matter of fact in this case, the assessee has submitted ITR for AY 2012-13, 2013-14 and 2014-15, relevant bank statement and confirmation vide submission dated 19.02.2015. Without providing any specific basis, the Ld AO has simply disallowed the amount arbitrarily.
18	Manjitbhai Dondabhai Gamit	10,00,000	As per ITR for AY 2011-12, 2013-14 and 2014-15, the party has shown income at Rs 1,61,048, Rs 1,94,580 and Rs 1,98,244 respectively. As per the bank statement, the party has received Rs 10,00,000 through RTGS from Raju enterprise and R Bariya Exports and On 22.12.2011, the whole amount of Rs 10,00,000 was transferred to the assessee	The disallowance in this case is simply arbitrary and without any basis. The La AO himself provides the source of the creditor being amount received from Raju Enterprise and Bariya exports. If the La AO is attempting to go into source of source of source, it is a never ending process and highly prejudicial to the assessee company who has no knowledge of the funding of the creditor.

			company. This shows that the party has no creditworthiness to extend such amount of loan and money received by him were from unknown entities.	
19.	Nilesh Rasikbhai Bariya HUF	10,00,000	As per ITR filed for AY 2011-12, and AY 2013- 14 the HUF has shown income at Rs 1,54,080 and Rs 1,85,690 respectively. As per the bank statement the party has received money through RTGS 3199 (Ranjit Corporation and R Bariya Exports) amounting to Rs10,00,000 on 21.12.2011 and transferred the entire amount on 22.12.2011. The HUF has creditworthiness. to extend such amount of loan to the assessee.	The disallowance in this case is simply arbitrary and without any basis. The Ld AO himself provides the source of the creditor Being amount received by RTGS from Ranjit Corporation and R Bariya Exports. If the Ld AO is attempting to go into source of source of source, it is a never ending process and highly prejudicial to the assessee company who has no knowledge of the funding of the creditor.
20	Hardik Kumar Kitilal Morvadiya	15,00,0000	As per ITR for AY 2010-11 and 2013-14, the party has shown income at Rs 1,52,440 and 2,20,340 respectively. The party has no creditworthiness to extend such amount of loan to the assessee company.	The Ld Assessing officer has erred in matter of fact by stating that bank statements or confirmations were not provided. All the documents including bank statements and confirmation were duly provided either to the AO during assessment proceedings vide submission dated 19.02.2015 or through additional evidence.
21	Mukesh Rajendra PRasad	10,00,000	As per ITR for AY 2013-14 and 2014-15 provided, the party has shown income at Rs 1,73,290 and Rs 1,93,290 respectively. No other details have been provided. The party has no creditworthiness extend such amount of loan to the	The disallowance made by Id. AO is simply arbitrary and without any basis. In most

			assessee company.	cases, the AO himself provides the source of the creditor being amount received from RTGS. There is nothing in law precluding the AO to enquiring the creditor about his source but if the Ld AO is expecting the assessee to know the source of source of source, it is a never ending process and highly prejudicial to the assessee company who has no knowledge of the funding of the creditor.
22	Narpit Mahipat Chodhri		As per ITR for AY 2012-13, AY2013-14 and 2014-15, the party has shown income at Rs 1,60,411, Rs 1,93,280 and Rs 1,94,580 respectively. As per bank statement the party has received money through RTGS/transfer from unknown entity on 21.12.2011 and on 22.12.2011 the money was transferred to the assessee company. The party has creditworthiness to extend such amount of loan to the assessee company.	
23	Narsibhai Ravdabhai Patel	25,00,000	The only ITR provided by the assessee for AY 2013-14 shows that the party has filed income at Rs 1,97,282. No other details have been provided. The party has creditworthiness to extend such amount of loan to the assessee company. The only ITR provided by the assessee for AY 2013-14 shows that the party has filed income at Rs 1,97,282. No other details have been provided. The party has creditworthiness to extend such amount of loan to the assessee company.	The Ld Assessing Office has erroneously only used taxable income for his analysis which is computed after certain deductions and allowances and the financial capacity of the creditor is based on factors more than taxable income. The credit capacity of a creditor cannot appropriately judged from the taxable income of the creditor.
24	Pankaj Kumar Chaandulal Gandhi	16,92,000	As per ITR for AY 2012-13 and 2013-14, the party has shown income at Rs	

			2,49,292 and Rs 2,91,000 respectively. As per the bank statement the party has received money Rs 17,00,000 from Citi Co-operative Bank Ltd through unknown entity and transferred an amount of Rs 16,92,000 to the assessee company. The party has creditworthiness extend such amount of loan to the assessee company.	
25	Vikas Naginbhai Barot	25,00,000	As per only ITR provided for AY 2010-11, the party has shown income at Rs 1,60,216. No bank statement has been provided or copy of confirmation has been provided. The party has no creditworthiness to extend such amount loan to the assessee company. This shows that the assessee company through cash or through unknown third party.	

11. In this background, we have examined the decision of the Id. CIT(A). The Id. CIT(A) held that, *"the appellant has filed the confirmations, copy of bank accounts and ITRs etc. during the assessment proceedings and certain documents related to unsecured loan during the appellate proceedings as additional evidences. The AO has disallowed the unsecured loan as appellant failed to establish genuineness of the transaction and creditworthiness of all the parties from whom loans have been received by the appellant during the year. During the course of appellate proceedings, appellant has submitted that appellant had*

submitted the copy of accounts, ITR acknowledgement and bank statement of all the parties. The bank accounts of the lenders showed sufficient transactions to be able to lend it to other parties. The appellant has discharged its onus by furnishing necessary evidences to prove the identity and creditworthiness of the persons with whom the transactions have been entered into”.

12. The Id. CIT(A) categorically held that, the assessee has explained in respect of each unsecured loan.

13. On going through the entire details, we find that the assessee has furnished all the required documents during the course of assessment proceedings and additional evidences in appellate proceedings. The AO has disregarded the creditworthiness of the lenders stating that they did not have sufficient sources or that their income is disproportionate to the loan advanced without making any verification in the case of the depositors. During the course of assessment proceedings and through additional evidence, the appellant has submitted the ITR reflecting the PAN and address details, relevant bank statement and confirmation of the creditors. Thus the assessee can be said to have discharged the onus laid upon them. The Id. CIT(A) has rightly held that, AO has rejected the evidences furnished by the appellant without establishing falsity of the documents filed by the assessee. The personal identities of these investors were proved, the sources have been proved, the ITRs and the subsequent repayments has been examined. Having so examined the Id.CIT(A) came to a conclusion that the AO is not justified treating the unsecured loans received u/s. 68

of I.T Act 1961. Hence, we decline to interfere with the order of the Id. CIT(A).

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

Order Pronounced in the Open Court on 11/01/2024.

Sd/-
(C.N Prasad)
Judicial Member
Dated: 11/01/2024
NV, Sr. PS

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Copy forwarded to:

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2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI