

## **Additions affirmed for loans given to parties with dubious identity and credit worthiness**

**Summary – The High Court of Delhi in a recent case of T.S. Kishan & Co. Ltd., (the Assessee) held that where assessee-company had given loans to parties whose identity had not been proved, their creditworthiness not established and genuineness of transactions not demonstrated, addition made was justified.**

### **Facts**

- The assessee-company filed its return of income declaring a loss of Rs. 44,70,307. The Assessing Officer assessed the total loss of Rs. 16,70,307, while reducing the returned loss by making an addition of Rs. 28,00,000 pertaining to unsecured loans credited in the books of account of the assessee being income from undisclosed sources under section 68.
- On appeal, the Commissioner (Appeals) allowed said appeal by holding that though assessee was not able to provide the PAN of the parties who have lent the money but had been able to provide all the other material to prove the identity of the party by furnishing the account opening form mentioning the address, photo of one of the lender and the PAN of the introducer of the account. The address as given by the assessee was same as had mentioned in the bank account opening form and all the parties did exist at these address though it had been denied to the inspectors who had gone for the inspection.
- Further the genuineness of the transaction was proved by the fact that the money had been received by the assessee from the bank account of the lenders by account payee cheque only as evident from the bank statement of both the parties and assessee. A certificate from the bank had also been submitted before the Assessing Officer which was a part of the affidavit submitted by the assessee.
- Therefore, addition on account of unexplained credits under section 68 was deleted.
- On appeal, Tribunal dismissed the appeal of the revenue while affirming the findings of the Commissioner (Appeals) in its order.
- On appeal:

### **Held**

- In the instant case, it is seen insofar as the identity is concerned, the assessee could not produce the PAN Number of both the parties. The Assessing Officer, using his power under section 131, had called upon the bankers of the parties to produce the necessary particulars. The banks could only produce the account opening forms and bank statements of the parties. The efforts made by the Assessing Officer and the fact that he was able to procure the bank statement would not justify the finding and conclusion that identity, creditworthiness and genuineness of the transactions stands established.

- 'B', who acted as an introducer while opening the accounts and who is said to be the son of an old friend and was instrumental for arranging funds, was not produced on the pretext that the assessee was not in best relations with him. This appears to be a ploy for not producing him. His presence definitely would have thrown light on the identity of the parties. At the same time, the Assessing Officer should have invoked section 131 to ensure his presence. The parties who had given loans were not produced. That apart, the Account Numbers being 51706, 51921 are in close proximity and have been opened around the same time. It is surprising that the bank had not even cared to seek the complete details of the parties at the time of the opening of the account like their PAN Number. It is also not disputed by the assessee that the assessee had not paid any interest to the parties for advancing such huge loans. It has also come on record that the parties were not known to the assessee so as to oblige the assessee by advancing interest free loan of substantial amounts. The purpose for which the loans were taken, have not been spelt out by the assessee in his affidavit or otherwise. The Paying back of the so-called loans by way of an account payee cheque is not conclusive, more so, if the aspects narrated above, are considered cumulatively. The facts have to be seen in the context of section 68. Suffice to state, the identity of the parties have not been proved, their creditworthiness not established and genuineness of transactions not demonstrated. In this context the assessee was unable to file/give PAN number, details of income tax returns etc.
- The Commissioner (Appeals) and the Tribunal, have committed an error in not properly approaching the issue which fell for their consideration out of the findings rendered by the Assessing Officer.
- Accordingly the order of the Tribunal is set aside and restore the order of the Assessing Officer. The question of law is accordingly decided in favour of the revenue and against the respondent- assessee.