

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON: 31.07.2012

+ ITA 418/2012

CIT Appellant
Through: Mr. Sanjeev Sabharwal,
Sr. Standing Counsel.

versus

H A MANAGEMENT CONSULTANTS PVT LTD Respondent
Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. The Revenue in its appeal while challenging the order of the Income Tax Appellate Tribunal (ITAT) dated 04.11.2011 in ITA No.1852/DEL/2011, urged that the Tribunal fell into error in upholding the deletion of certain amounts which had been directed originally by the Assessing Officer (AO) in the assessment orders passed on 18.12.2008.

2. The brief facts of the case are that for the assessment years 2006-07, while considering the returns of the assessee, the AO formed an opinion that the assessee had taken unsecured loan to the extent of ₹ 41,50,000/-.

3. The assessee's return was not accepted to the extent that the addition of ₹ 39,00,000/- was made. The Assessing Officer himself had accepted the assessee's contention about repayment of ₹ 2,50,000/- in his order within

the year. The CIT (A) confirmed the addition and rejected the assessee's appeal. The Tribunal after considering the submissions and the documents which included the various materials such as affidavits of the assessee, bank statements, confirmations of accounts, copy of ledger account of creditors etc, held that the additions to the income of the assessee were not justified. The findings of the Tribunal are as follows: -

“15. We shall first deal with the issue regarding addition of Rs. 39 lakh on account of alleged unexplained loan taken from M/s H.G. Exim P. Ltd. The assessee is maintaining two ledger accounts in the name of H.G. Exim P. Ltd. in its books, namely loan account and current account. In the loan account for the period from 01.04.2005 to 31.03.2006, the assessee has shown the receipt of Rs. 41,50,000/- by banking channels on the following dates: -

*14.03.2006 - Rs. 2,50,000/-
24.03.2006 - Rs. 20,00,000/-
30.03.2006 - Rs. 19,00,000/-*

Total Rs. 41,50,000/-

Out of this credit of Rs. 41,50,000/-, the assessee had shown the repayment of Rs. 2,50,000/- on 16.03.2006 leaving a balance of Rs. 39 lakh as on 31.03.2006. The addition made by the AO is only in respect of the closing balance of Rs. 39 lakh representing two credits received on 24.03.2006 and 30.03.2006. The receipt of Rs. 2,50,000/- on 14.03.2006 from the same party has not been considered to be the unexplained credit in the hands of the assessee. The credit of Rs. 2,50,000/- received on 14.03.2006 were repaid on 16.03.2006 during the same year itself, and the same has not been doubted by the AO. The closing balance of Rs. 39 lakh as on 31.03.2006 has been carried forward to the next year as opening balance as on 01.04.2006. This aforesaid amount of Rs. 39 lakh carry forward

from earlier year has been shown as liquidated in the F.Y. 2006-07 by showing the payments on following dates: -

- (i) 1.12.2006 by cheque Rs.9,00,000/-*
- (ii) 23.12.2006 by cheque Rs.25,00,000/-*
- (iii) Transfer to current account Rs.2,15,000/-*
- (iv) 26.12.2006 by cheque Rs.2,85,000/-*

Total Rs.39,00,000/-

From the said details, it is seen that the assessee has repaid the amount of Rs. 9,00,000/-, Rs. 25,00,000/- & Rs. 2,85,000/- by cheque drawn on HDFC Bank on 1.12.2006, 23.12.2006 & 26.12.2006 respectively and debited the same to the creditors account. The assessee has produced before us the bank statement of the assessee with HDFC Bank showing that the aforesaid amount of Rs. 9,00,000/-, Rs. 25,00,000/- & Rs. 2,85,000/- were transferred from assessee's bank account through cheque to the Account No. 3142320001088 of Daryaganj Branch. The amount of Rs. 2,50,000/- received by the assessee on 14.03.2006 and then repaid on 16.03.2006 was also transferred from and to the Account No.3142320001088 of Daryaganj. It is also seen that the amount of Rs. 20,00,000/- and Rs. 19,00,000/- received by the assessee on 24.03.2006 and 30.03.2006 is also received from Account No. 3142320001088 of Daryaganj. The amount of Rs. 2,50,000/- received on 14.03.2006 and then repaid on 16.03.2006 through the Account No. 3142320001088 is not in dispute as no addition has been made by the AO on account of credit of Rs. 2,50,000/- received by the assessee on 14.03.2006 from Account no. 3142320001088. From the discussion made above, it is thus, clear that the assessee received the amount from Account No. 3142320001088 and thereafter, repaid the amount, which has been transferred to the Account No. 3142320001088. From the aforesaid transactions it is thus, clear that the amount of Rs. 39,00,000/- remaining outstanding as on 31.03.2006 has been repaid by the assessee in the subsequent F.Y. 2006-07 except by

an amount of Rs. 2,15,000/- transferred to current account of the creditor.

16. We have also examined the current account of the creditor H.G. Exim Pvt. Ltd. for the year from 01.04.2005 to 31.03.2007 summary of which is reproduced below: -

<u>01.04.2005 to 31.03.2006)</u>	
<u>Particulars</u>	<u>Credit Amount</u>
<i>By DD on account of Sale tax</i>	<i>Rs.78,336.00</i>
<i>By DD on account of Sale tax</i>	<i>Rs.1,80,000.00</i>
<i>By Cheque</i>	<i>Rs.5,52,115.00</i>
<i>By Rebate & Discount</i>	<i>Rs.468.20</i>
<i>Total</i>	<u><i>Rs.8,10,919.20</i></u>

<u>Particulars</u>	<u>Debit Amount</u>
<i>To Sales</i>	<i>Rs.5,52,115.20</i>
<i>To Sales</i>	<i>Rs.2,58,804.00</i>
<i>Total</i>	<u><i>Rs.8,10,919.20</i></u>

<u>(01.04.2006 to 31.03.2007)</u>	
<u>Particulars</u>	<u>Credit Amount</u>
<i>By Cheque on 17.04.2006</i>	<i>Rs.6,50,000/-</i>
<i>By Cheque on 18.04.2006</i>	<i>Rs.7,20,000/-</i>
<i>By Cheque on 19.04.2006</i>	<i>Rs.6,00,000/-</i>
<i>By 23.12.2006 transfer from Loan account</i>	<i>Rs.2,15,000/-</i>
<i>Total</i>	<u><i>Rs.21,85,000/-</i></u>

<u>Particulars</u>	<u>Debit Amount</u>
<i>To cheque on 07.09.2006</i>	<i>Rs.3,50,000/-</i>
<i>To cheque on 07.11.2006</i>	<i>Rs.5,00,000/-</i>
<i>To cheque on 11.11.06</i>	<u><i>Rs.5,02,000/-</i></u>

To cheque on 17.11.06

Rs.8,33,000/-

Total

Rs. 21,85,000/-

17. From the aforesaid ledger account, it is seen that assessee had made sales of Rs. 8,10,919.20 in the F.Y. 2005-06 to M/s H.G. Exim P. Ltd. and received the payment in that year itself on various dates as noted above. In the next F.Y. 2006-07 the assessee received certain payments from H.G. Exim P. Ltd. and repaid the same during the year itself. All these transactions made by the assessee with M/s H.G. Exim P. Ltd. have not been found to be bogus. The AO has made the addition merely because M/s H.G. Exim P. Ltd. had failed to appear before him and file documents in response to the summon issued u/s 131 of the Act. In this connection, the assessee has produced all the relevant details before the AO and has also supplied the address of H.G. Exim P. Ltd. vide assessee's letter dated 8.12.08, where the permanent account number of H.G. Exim Ltd. was also supplied as PAN Number AABCI3072R. The present assessee is assessed by the Income Tax Officer, Ward 12(3), New Delhi. The creditor M/s H.G. Exim Ltd. is also assessed by ITO, Ward 12(3), New Delhi. The AO could have verified the assessment records of the creditor, namely, H.G. Exim P. Ltd., which is registered Company having registered office at first floor, Krishna-A, Extn., Tilak Nagar, New Delhi with Registration No. 118856 with the Registrar of the companies. As per the company master details available as on 6.12.2008, the company furnished its last balance sheet as on 31.3.07 before the Registrar of Companies and Company's status has been shown as Active.

18. In the light of the discussions made above, it is thus, clear that the assessee has been able to prove the identity of the creditor as well the credit worthiness of the creditor and genuineness of the transaction. Therefore, the addition of Rs.39 lakh made by the AO on account of loan taken from H.G. Exim P. Ltd. stands deleted."

4. We have carefully considered the Revenue's submissions. As is evident from the Tribunal's order, it premised its reasoning entirely on a factual analysis of the materials on record. We find no unreasonableness or manifest error of law in its approach. Consequently, we are of the opinion that no substantial question of law arises, for consideration.

5. The Appeal is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**R.V. EASWAR
(JUDGE)**

JULY 31, 2012
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