IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH **'J'** : MUMBAI

BEFORE SHRI D.K. AGARWAL, (JM) AND SHRI PRAMOD KUMAR,(AM)

ITA No.6401/Mum/2009
Assessment Year : 2006-07

Bhanwarlal G. Chaudhary
C/o., M.N. Vaishnav & Co.
Chartered Accountants
21 Anant Building 2nd Floor
217 Princess Street
Mumbai-2. …..(*Appellant*)
P.A. No.**(ADYPC 4271 A)**

Vs.

Income tax Officer
Ward 24(1)3
Pratyakshkar Bhawan
B.K.C. Bandra (E)
Mumbai-51. …..(*Respondent*)

Appellant by : Shri M.N. Vaishnav
Respondent by : Shri Surendra Kumar

O R D E R

Per D.K. AGARWAL (JM).

This appeal preferred by the assessee is directed against the order dated 14.10.2009 passed by the ld. CIT(A) for the Assessment Year 2006-07.

2. Briefly stated facts of the case are that the assessee an individual derives income from manufacturing and packing imitation jewellery, filed return declaring total income of Rs.1,11,430/-. During the course of assessment it was *interalia* observed by the Assessing Officer that on verification of books of account M/s. Winner Immitation

Jewellers, of which the assessee is a proprietor, the assessee has taken a loan of Rs.1,88,000/- from Shri Durgaram Choudhary. On being asked the assessee filed loan confirmation and also produced the bank pass book of the depositor. However, according to the Assessing Officer the assessee failed to explain the various deposits in the bank account of Mr. Choudhury and also failed to establish genuineness of transaction and creditworthiness, therefore the Assessing Officer treated the entire amount of Rs.1,88,000/- as unexplained cash credit u/s.68 of the I.T. Act, 1961 (the Act) and added the same to the income of the assessee. Besides this, the Assessing Officer also added the interest of the above amount Rs.4,459/- and accordingly completed the assessment at an income of Rs.5,43,650/-, vide order dated 17.5.2008 passed u/s.144 of the Act. On appeal, the ld. CIT(A) while observing that it was noticed from the bank pass book of the creditor that the creditor has deposited similar amount of cash just before the issuance of cheque and the income of the creditor is only Rs.96,187/- and that too below the table limit, therefore, though, the appellant had proved the identity of the lender but has failed to prove the capacity of the lender and genuineness of the transaction, confirmed the addition made by the Assessing Officer.

3. Being aggrieved by the order of the ld. CIT(A) the assessee is in appeal before us challenging in both the grounds the sustenance of addition of Rs.1,88,000/- plus interest Rs.4,459/-.

4. At the time of hearing the ld. Counsel for the assessee while reiterating the same submissions as submitted before the Assessing Officer and the ld. CIT(A) , refers to the confirmation of account, copy of acknowledgement of the return, chart of income, copy of trading and P&L account, Capital account and Balance sheet of the depositor

appearing at page 8 to 11 of the assessee's paper book to show that the amount advanced to the assessee is duly reflected in the Balance sheet of the depositor. He also filed copy of assessee's financial statements to show the corresponding entries in the assessee's books of account appearing at page 12 to 16 of assessee's paper book. He also filed copy of bank pass book of Shri Durgaram Choudhary to show the relevant withdrawls from the bank account. In the light of the above, he submits that since the assessee has discharged his burden and it is not the business of the assessee to find out the source of source of the lender, therefore, the addition made by the Assessing Officer and sustained by the Ld. CIT(A) be deleted. The reliance was also placed on the following decisions:-

1. Sarogi Credit Corporation vs. CIT 103 ITR 344(Patna),
2. Orient Trading Co. Ltd., vs. CIT 49 ITR 723 (Bom.),
3. Nemichand Kothari vs. CIT and Another 264 ITR 254(Gau.),
4. CIT vs. Orissa Corporate Pvt. Ltd. 156 ITR 78(SC), and
5. CIT vs. Diamond Products 21 DTR 1 Del.

5. On the other hand the ld. DR supports the order of the Assessing Officer and the ld. CIT(A) .

6. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that the facts are not in dispute inasmuch as it is also not in dispute that the assessee has proved the identity of the depositor and has also filed the financial statements of the depositor and the assessee to show that the amount was advanced by the depositor to the assessee on interest which has been credited by the assessee in his books of account. According to the assessee the assessee has discharged his onus and the assessee is not required to prove the source of source of the

deposits. Per contra, according to the revenue the assessee has not proved the capacity of the depositor and genuineness of the transaction inasmuch as on verification of the pass book of the depositor it was found that the depositor has deposited similar amount of cash just before the issuance of cheque. After considering the totality of the facts and circumstances of the case we are of the opinion that the Assessing Officer and the ld. CIT(A) while considering the bank pass book of the depositor showing the similar amount of cash deposit just before the issuance of cheque have neither examined the depositor when the assessee has filed confirmation and financial statements along with bank account of the depositor nor has provided any opportunity of being heard to the assessee in this regard. In this view of the matter we are of the view that in the interest of justice the matter should go back to the file of the Assessing Officer and accordingly we set aside the orders passed by the revenue authorities on this account and send back the matter to the file of the Assessing Officer who shall examine the same afresh in the light of our observations hereinabove and according to law including the decisions relied on by the ld. Counsel for the assessee after providing reasonable opportunity of being heard to the assessee. The grounds taken by the assessee are, therefore, partly allowed for statistical purposes.

7. In the result, the assessee's appeal stands partly allowed for statistical purposes.

Order pronounced in the open court on 23.12.2010.

Sd/-	**Sd/-**
(PRAMOD KUMAR)	**(D.K. AGARWAL)**
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 23.12.2010.
Jv.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR " " Bench

True Copy

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.