

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-II' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-4239/Del/2015
(ASSESSMENT YEAR-2010-11)**

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| Priya Tissue Pvt.Ltd., 13/34, 4 th Floor, W.E.A. Karol Bagh, New Delhi-110005. PAN-AACCP7231P (APPELLANT) | Vs | DCIT, Central Circle-4, New Delhi (RESPONDENT) |
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| Assessee by | Sh. Anunav Kumar, Adv. |
| Revenue by | Ms. Anima Barnwal, Sr. DR |

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| Date of Hearing | 01.08.2016 |
| Date of Pronouncement | 28.10.2016 |

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 11.02.2015 of CIT(A)-30, New Delhi pertaining to 2010-11 assessment year on the following grounds:-

1. *"That the CIT(A) erred in passing the impugned order observing that the company was a dummy / paper company and, therefore, no genuine expenses had been incurred whereas he has confirmed the taxability of interest income observing the same to be real income, which was Rs.24,73,843/- and upholding the taxability of the same without appreciating that above observation of AO / CIT(A) are contradicting to each other.*
2. *That the CIT(A) failed to appreciate that once the applicant had earned the interest income of Rs.24,73,843/-, he would have obviously incurred expenditure on payment of salary etc. and, therefore, there was no basis for disallowing total salary expenses amounting to Rs.23,98,000/- debited to P & L Account.*
3. ***That the CIT(A) also erred in not allowing adjournment in the circumstance when Mr. Tarun Goyal was not available to provide the details when admittedly Tarun Goyal was looking after the affairs of the company and had also appeared before the AO and, accordingly, failed to provide reasonable opportunity to the applicant.***
4. *That the order passed by CIT(A) is unjustifiable, unreasonable and bad in the facts and circumstances of the case and same deserves to be set aside and matter may be restored to the file of AO / CIT(A) to decide afresh after providing an opportunity to the appellant.*
5. *That the appellant craves the leave to add, amend, withdraw, modify or vary any of the grounds rose above on or before the date of hearing."*

2. Both parties have been heard. The record shows that the AO required the assessee to support its salary expenses of Rs.23,98,000/-. The AO held that despite opportunity the assessee could not produce supporting documents. Accordingly disallowance of expenses claimed was made holding that the said company was one of the companies floated by Sh. Tarun Goyal as *“one of the many paper companies who owned no physical assets”*.

3. The issue travelled in appeal to the CIT(A). Even before the CIT(A), it was found that despite seeking adjournments, Sh. Anunav Kumar, appearing on behalf of the assessee failed to put up any argument leading to confirming of the addition made. The relevant extract from the impugned order is reproduced hereunder:-

5.2. *Decision*

“I have considered the assessment order facts of the case & ground of appeal. The assessing officer has made the addition mainly on three grounds namely:-

- i) In preceding financial year 2008-09, there was no Claim of expense under this head.*
- ii) **It has already been proved that the companies floated by SH. Taran Goyal are only paper companies & no actual business is carried out by these paper companies. Hence question of incurring expense does not arise.***
- iii) During the assessments proceedings the appellant could not produce any evidence to substantiate this expense.*

During the appellate proceeding no new facts have been brought in spite of various opportunities given to the appellant.

*I have passed appeal order in various cases of Tarun Goyal group of companies. **Sh. Tarun Goyal himself has admitted that he is providing accommodation entries through various dummy/paper companies.** The present appellant is also one of such dummy concern. In the statement of facts filed alongwith form No. 35, argument is taken **that after search only genuine business activity is carried out i.e. business of investment.** I do not agree with the above argument. Once a company was acceptedly a dummy/paper company. Its entire balance sheet i.e. asset & liability *“was fictitious.”* Unless entire balance sheet as on date of search is recasted after the removal of those accommodation entries, how it can be presumed that subsequent activity on basis of earlier balance sheet can be treated as genuine business actively. In view of the above, I agree with the conclusion of the assessing officer that there cannot be any genuine expense. However, since the appellant has earned real income by-way of interest, these interest income has to be taxed. Considering the entire facts & circumstance of the case, addition made on account of disallowance of salary expense of Rs. 23,98,000/- is hereby confirmed. This ground of appeal is hereby dismissed.”*

(emphasis provided)

4. The Ld.AR filing a Paper Book submitted that it contains evidences in the form of affidavits from each of the employees which had been obtained for filing before the CIT(A) and for the said purposes, time had been sought. Accordingly, it was his submission that the conclusions drawn in haste by the CIT(A) lead to the passing of the order. Addressing Ground No.3 raised, it was submitted that the evidences which the assessee wanted to place before the CIT(A) for which purposes time had been sought are crucial for deciding the issue and the opportunity to place them on record has been denied by the CIT(A).

4.1. Considering that these documents were not before the AO nor were they before the CIT(A) thus admittedly these would constitute fresh evidences accordingly the Ld.AR was required to show why they should be admitted without a petition under Rule 29.

4.2. The Ld.AR submitted that opportunity to place them before the CIT(A) had been sought and time as per record had been sought from the said authority. Thus it was his prayer that they may be considered for granting relief as the assessee as per record has stated that he has started doing legitimate business. The evidences it was elaborated consist of Affidavits of the employees and copies of their PAN Card at pages 52 to 73; and 74 to 77 of the Paper Book which would establish that the assessee company was not a paper company. In these circumstances, it was submitted the addition on facts was not warranted.

5. The Ld.Sr.DR submitted that the addition deserves to be confirmed and at best the evidences can be restored to the AO and not to the CIT(A) as these are evidences which were never made available to the AO. However it was submitted they may not now be considered at this stage for grant of any relief.

6. Both the parties have been heard. Considering the respective stands, I am of the view that in the peculiar facts and circumstances of the case the evidences which the

assessee states it had wanted to place before the CIT(A) and are now placed in the Paper Book filed may be admitted in the interests of justice. However, accepting the departmental request the evidences admittedly not available to the AO are restored to the AO for his consideration without any comment on their genuineness or otherwise.

6.1. While so directing it may not be out of place to sum up the claim put forth by the Id.AR namely that the assessee was engaged in the activity of share capital. Considering the said claim put forth in the course of the arguments, I find that the tax authorities have not made any effort to refer anywhere in the impugned order as to what was the stated business of the company as per its constitution. Further, it is seen that nothing has been placed on record by the Ld.AR also to support the oral assertion. The issue needs to be addressed on facts and not as per conjectures and surmises. The Ld.AR as per record it is seen has taken two pleas; the first prayer being that legitimate business was being done by the assessee stated to be evidenced by affidavits of employees whose identity is sought to be established by PAN cards etc; and secondly as an alternate argument without prejudice that subsequently genuine business was conducted. I find that in order to address the arguments it would be necessary to first address on facts what was the stated business of the assessee company as per independent third party evidences by way of documents filed by the assessee before the ROC. It is necessary to call for and examine the Memorandum and/or Article of Association especially the Objects clause of the assessee which would throw light on what was the business of the assessee. It is only then the supporting evidences would be capable of throwing light on the stated claim that the business was carried on. It is seen that none of these facts are available on record.

6.2. It may also not be out of place to take note of the prevalent public perceptions that the filing of affidavits by the parties is a routine exercise wherein perceived minor deviations from truth are minor transgressions with no serious consequences for the deponent.

The general perception that careless or deliberate mis-statement of facts and placing on record misleading statement of facts is a routine harmless exercise with no consequences is an incorrect appreciation of law. The incorrect and erroneous belief that no serious consequences are visited upon such deponents may have its seed in examples in the social milieu where persons appear to go scot-free despite having dangerously flirted with the truth. These social perceptions referred to in media may have lent a semblance of approval to the credence that false statements is a routine casual exercise which is generally over-looked by the Authorities. However, I find it may not be out of place to highlight the fact that just because the Authorities do not address the incorrect assertions in an affidavit by carrying the wrong affidavits to their logical conclusion does not lay down the law that filing of false affidavits is a harmless exercise. The fact that the State may be overburdened with meeting the daily, monthly targets of their assigned task does not absolve the crime of false affidavit as the inaction by the Quasi Judicial Authorities does not protect a person found to have committed perjury from prosecution. For the purposes of the present case it may also not be out of place to state that the filing of such an affidavit is not a requirement of law as there is no such statutory requirement to do so. In strict terms, it may not constitute an evidence. The affidavit is only in substitution of a direct primary evidence which has not been filed. If a fact which is capable of being demonstrated by an evidence by way of a document or fact then an affidavit cannot be considered to be acceptable evidence for such document. In the facts of the present case, it can be at best considered to be a written statement of facts voluntarily made by an affiant or deponent under an oath or affirmation administered by a person authorized to do so by law. Since the affidavits filed in the present case are at the instance of the tax payer and not mandated under any law, the Assessing Officer in order to highlight the serious consequences which may follow a false affidavit or statement under oath referring to sections 191, 193, 195, 199 of the India

Penal Code which makes filing a false affidavit a criminal offence, may require the assessee in its own self interest to ensure that the deponents are aware that filing of false affidavits has serious consequences. The claim of any fact or knowledge known to the deponent to be false which he believe to be false and/or atleast did not know to be true is open to the challenge of perjury which though traditionally may not be invoked by the law enforcement agencies in every situation does not mean that it is legally acceptable to file irresponsible affidavits. Assertion of false facts knowingly is a criminal offence.

6.3. Accordingly considering the submissions of the parties, the issue is set aside and restored back to the AO permitting the assessee for filing fresh evidences on support of the claim. Needless to state that the AO shall pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard..

7. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 28th October 2016.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR, ITAT NEW DELHI