

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA**

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.917/Kol/2013 Assessment Year :204-05

DCIT Central Circle-XX, 110, Shantipalli, Aayakar Bhavan Poorva, 5 th Floor, Kolkata-107	V/s.	M/s Arjun Associates Pvt. Ltd., 9/1, Middleton Street, Kolkata-700 071 [PAN No.AABCA 9223 F]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri G.Mallikarjuna, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri S.K.Tulsiyan, Advocate
सुनवाई की तारीख/Date of Hearing	28-03-2016
घोषणा की तारीख/Date of Pronouncement	27-04-2016

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals), Central-III, Kolkata dated 24.12.2012. Assessment was framed by JCIT(OSD), CC-XX, Kolkata u/s 143(3)/153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 02.12.2011 for assessment year 2004-05. Effective grounds raised by Revenue are reproduced below:-

"1. On the facts and circumstances of the case Ld. CIT(A) erred in deleting the addition of Rs.1,64,117/- on account of short credit of income as the assessee had failed to substantiate the claim of related expenditure by producing written agreement for car-parking space and maintenance.

2. On the facts and circumstances of the case Ld. CIT(A) erred in deleting the addition of Rs.42,50,000/- made on account of undisclosed loan transactions, without appreciating the fact that assessee had failed to produce the relevant

original Ledger-book at the time of assessee proceedings as well as remand proceedings thereby rendering it not possible to verify the ledger by the AO."

Shri S.K.Tulsiyan Ld. Authorized Representative appearing on behalf of assessee and Shri G.Mallikarjuna, Ld. Departmental Representative appearing on behalf of Revenue.

2. First issue raised by Revenue in its appeal is that the Ld CIT(A) erred in deleting the addition made by the Assessing Officer for Rs.1,64,117/- on account of short credit of income as the assessee failed to substantiate the claim of the related expenditure.

3. At the outset we observed that the issue is already covered in favour of assessee in assessee's own case for the assessment years 2009-10 and 2010-11 in **ITA No. 550 & 551/Kol/2013** vide order dated 18.12.2015 wherein it was held as under :

"But the AO in the remand report for assessment year 2010-11 admitted that the assessee has produced a reimbursement agreement for car parking space and maintenance in support of such reimbursement. The Id. CIT(A) in view of these reasons deleted this addition. We find no infirmity in the order of Id. CIT(A) and accordingly, the same is confirmed."

Taking a consistent view of this Tribunal in assessee's own case (supra) we uphold the order of Ld. CIT(A) this ground of appeal of Revenue is dismissed.

4. Next issue raised by Revenue in its appeal is that the Ld CIT(A) erred in deleting the addition made by AO for Rs. 42.50 lacs on account of undisclosed loan transaction.

5. Facts of the case are that assessee is a Private Limited Company registered under the Companies Act, 1956 and engaged in the business of material handling, transportation, supervision of coal rake movement, developing coal mines and coal blocks allocated by Coal India Ltd. and in money lending business. During the year assessee has made the investment in the shares of M/s Global Coal & Mining Private Limited for a sum of Rs. 42.50 lacs on dated 27.11.2003. The payment for the aforesaid purchase of

shares was made by M/s Naresh Kumar & Co. Pvt. Ltd on behalf of the assessee. The AO during assessment proceedings found that the amount of such loan has neither been refunded nor it is appearing in the balance sheet of the assessee. Therefore the AO treated the same as undisclosed income and accordingly made the addition to the total income of assessee.

6. Aggrieved assessee preferred an appeal to Ld. CIT() who has deleted the addition made by AO by observing as under:- Page 17 of CITA

*"It is observed that a copy of the ledger account of M/s Naresh Kumar & Co. Pvt. Ltd. in the books of the appellant was submitted by the appellant at pages 54 to 63 in the paper book filed by the appellant along with its written submissions during the appellate proceedings. The paper book was also sent to the AO in the remand proceedings along with the appellant's written submissions on which the AO submitted his remand report. In the said ledger account the said amount of Rs.42,50,000/- is duly reflected on page 59 of the paper book. After the transaction there are various transactions of receipt of co-ordination charges, rent, service charges etc., recorded in that ledger account. At the end of the relevant year there is a net debit balance of Rs.49,109/- in that account. This fact clearly corroborates the explanation offered by the appellant that the loan of Rs.42,50,000/- was duly recorded in its books of account and receipts / receivable from M/s Naresh Kumar & Co. Pvt. Lt., were adjusted against that loan. Therefore, the addition made by the AO on account of repayment of loan out of unexplained sources is found to be erroneous and deserves to be deleted. Hence, the addition of Rs.42,500/- is **deleted.**"*

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

7. Before us both the parties relied on the orders of Authorities Below as favourable to them. Ld. AR drew our attention on page 34 of the paper book where the transaction for the purchase of the shares was duly recorded. The Ld. AR further submitted that the loan amount of M/s Naresh Kumar & Co. Pvt. Ltd. was not the paid during the year but it was adjusted against the various transactions such as coordination charges, rent and service charges etc. The ledger copy of M/s Naresh Kumar & Co. Pvt. Ltd. was reflecting all these directions which are placed on **page 23 to 33** of the paper book. Ld. DR left the issue to the discretion of the Bench.

8. We have heard rival contentions and the perused materials available on record. Before us Ld. AR submitted paper book which is running pages from 1 to 79. The issue involved in this appeal is that the AO found that the loan taken by the assessee for the purchase of the shares was not reflecting in the balance sheet. Accordingly the AO opined that the assessee has repaid the same during the year out of its undisclosed income so the addition was made. However, from the argument made by Ld. AR of the assessee on the basis of the documents before us, we are of the considered view that the transaction has duly been recorded in the books of the assessee. The learned the DR has not brought anything on record contrary to the argument of the Id. AR. In view of above facts and circumstances of the case, we are inclined to uphold the order of Ld. CIT(A) and ground raised by Revenue is dismissed.

9. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 27/04/2016

Sd/-
(S.S.Vishwanethra Ravi)
(Judicial Member)
Kolkata,
*Dkp

Sd/-
(Waseem Ahmed)
(Accountant Member)

दिनांक:- 27/04/2016 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, CC-XX 110, Shantipalli, Aayakar Bhavn, Poorva, 5th Fl.Kol-107
2. प्रत्यर्थी/Respondent-M/s Arjun Associates Pvt. Ltd., 9/1, Middleton Street, Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।