

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'H': NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 1952/Del/2012
Assessment Year: 2004-05

Asstt. Commissioner of Income Tax, Circle -17(1), New Delhi	Vs.	M/s. Virtual Soft Systems Ltd., S- 101, Panchsheel Park, New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Sarabjeet Singh, Sr. DR
Respondent by	Sh. L.K. Poonam, Adv.

Date of hearing	16.02.2016
Date of pronouncement	28.03.2016

ORDER

PER O.P. KANT, A.M.:

This appeal of the Revenue is directed against the order dated 01/02/2012 of the Commissioner of Income-tax (Appeals)-XIX, New Delhi for assessment year 2004-05 raising following grounds of appeal:

- “1. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in deleting an addition of Rs. 42,34,269/-out of depreciation; without appreciating that computer worth Rs. 1,41,14,232/-were put to use only on 22 -03- 2004 and hence were entitled to depreciation 50% of the total claim.*
2. *On the facts and in circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs. 92,38,635/-made as unexplained credits in the name of Shri Gopal Tandon; without appreciating the facts that confirmation was filed from one Smt. Mohini Tandon and M/s Allambana India, whose income tax details and creditability was not proved.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 12,33,000/-on account of unexplained cash credit in the name of M/s Go To Customers Services (P) Ltd.*
4. *On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax(Appeals) erred in deleting the addition of Rs. 10,00,000/- out of the claim of various expenses without appreciating the fact that the assessee failed to produce books of accounts and vouchers etc. in support of the claim of such expenses.*
5. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal.”*

2. The facts in brief are that the assessee filed return of income declaring loss of Rs. 1,90,64,303/- on 30/10/2004. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short òthe Actö) was issued and served upon the assessee within stipulated period. In the scrutiny assessment completed under section 143(3) of the Act on 28/11/2006, the Assessing Officer determined the loss at Rs. 33,58,399/- making following additions/disallowances:

S. No.	Addition/disallowance	Amount in Rupees
1	disallowance of depreciation on computers	42,34,269/-
2.	Unexplained cash credit in the name of Sh. Gopal Tandon	92,38,635/-
3.	Unexplained cash credit in the name of M/s Go To Customers Services(P) Ltd	12,33,000/-
4.	Disallowance out of total expenses	10,00,000/-
	Total	1,57,05,904/-

3. Aggrieved with the above disallowances/additions, the assessee filed appeal before the Ld. Commissioner of Income-tax(Appeals), who, after

considering the submission of the assessee allowed relief in respect of all the additions/disallowances. Aggrieved with the finding of Id. Commissioner of Income-tax(Appeals), the Revenue is in appeal before the Tribunal.

4. The assessee filed an application on 21st October, 2013 under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 for admitting additional evidence, in respect of ground No. 2 raised by the assessee. It was requested to admit following documents as additional evidence:

- a) copies of income tax return, balance sheet and profit and loss account, computation of taxable income and receipted challans for payment of advance tax in the case of M/s Allambana India, sub-creditor for assessment years 2003-04 and 2004-05. (Pages 4 to 13 of the application)
- b) copies of income tax return and computation of taxable income in the case of Mrs Prem Mohini Tandon, sub-creditor for the assessment years 2003-04 and 2004-05. (Page 10 to 20 of the application)

5. The Ld. Authorized Representative of the assessee submitted that the Assessing Officer made addition for unexplained cash credit of Rs. 92,38,635/- which was unsecured loan taken by the assessee company from its Managing Director Sh. Gokul Tandon on the ground that no explanation regarding the source of credits in the bank accounts of the creditor and sub-creditors had been furnished. It was submitted that no opportunity to submit such an explanation was provided by the Assessing Officer. Ld. Authorized Representative further submitted that the copies of balance sheet and profit and loss account of M/s Allambana India for the year ending 31-03-2004 were very relevant and material to the ground raised and in failure to produce those documents was not *mala fide*

and thus accordingly, the assessee requested to take those documents on record.

6. The Ld. Departmental Representative, on the other hand, opposed the admission of the additional evidences on the ground that the authorities below had already provided sufficient opportunity of hearing to the assessee and, therefore, the assessee may not be allowed to produce those documents now at the stage of hearing before the Tribunal.

7. We have heard the rival submissions and perused the material on record. We find that the documents submitted by the assessee goes to the root of the issue of unexplained cash credit of Rs. 92,38,635/-, on which the revenue is in appeal. We don't find any *mala fide* in not producing these documents before the lower authorities. We are of the opinion that these documents are vital in deciding the issue in dispute raised in ground No. 2 of the appeal, therefore, we allow the application of the assessee for admitting the additional evidences stated in the application.

8. In the ground No. 1, the Revenue has challenged the deletion of Rs. 42,34,269/- by the learned CIT(A), which was disallowed by the Assessing Officer out of the depreciation claimed by the assessee on the computers.

8.1 Before us, the Ld. DR submitted that computers worth Rs. 1,41,14,232/- were put to use only on 25/03/2004 i.e. for a period less than 180 days and, therefore, was entitled for depreciation at the rate of 30%, i.e., half of the

prescribed rate of 60%, and thus the action of the Assessing Officer in disallowing the depreciation was correct.

8.2 The Id. Authorized Representative, on the other hand, relying on the order of Id. Commissioner of Income-tax (Appeals) submitted that the depreciation has been claimed by the assessee according to the depreciation chart reported in Form No. 3 CD issued by the Tax Auditor.

8.3 We have heard the rival submission and perused the material on record. The Assessing Officer emphasized that the date on which the computer was put to use was mentioned specifically by the Auditor as 25/03/2004, whereas in the Tax Audit Report in Form No. 3CD filed before the Id. Commissioner of Income-tax (Appeals) as well as before us at pages 11 to 31 of the paper book, there is no such remark in the depreciation chart enclosed as Annexure- 1 to the form No. 3 CD. The Id. Commissioner of Income-tax (Appeals) has given his finding on the issue as under:

“5. I have gone through the assessment order and the written submission filed by the Authorized Representative in this regard.

I have gone through the depreciation chart for tax purposes. The main additions are in respect of computers. The total additions during financial year relevant for impugned assessment year are Rs. 1,49,09,233/-. The details of additions in respect of computers made are as under:

<i>Before</i>	<i>30.09.2003</i>	<i>Rs. 1,44,07,927/-</i>
<i>After</i>	<i>30.09.2003</i>	<i>Rs. 35,625/-</i>

The Assessing Officer has not properly seen the details furnished. After going through the depreciation chart, there is no error in the claim made by the appellant. The deprecation disallowance of Rs. 42,34,369/- is hereby deleted.”

8.4 No doubt has been expressed by the Id. DR in respect of copy of the form No. 3 CD filed by the assessee before us. On perusal of the Annexure-I to the form No. 3 CD filed at page no. 20 of the paper book , it is clear that nowhere it is mentioned by the tax auditor that computers were put to use on 25/03/2004. Thus in our view the findings of the Id. Commissioner of Income-tax (Appeals) on the issue are well reasoned and no further interference is required by us. Accordingly, the ground of the Revenue is dismissed.

9. In ground No. 2, the Revenue has challenged the deletion of the addition of Rs. 92, 38, 635 made as unexplained credits in the name of Sh. Gokul Tandon.

9.1 The Ld. DR submitted that in the course of assessment proceeding the assessee company failed to discharge its burden of proof in respect of unsecured loans from Sh. Gokul Tandon. The sum of Rs. 6,11,661/-advanced by Mr. Gokul Tandon through book entries was accepted by the Assessing Officer, however, the balance amount of Rs. 92,38,635/- which was advanced through different bank accounts, few of which were maintained as joint account with Mrs. Mohini Tandon and few accounts belonging to firm namely M/s Allambana. The learned DR submitted that the assessee failed to explain the source of money advanced, thus, the Assessing Officer rightly made the addition. He further submitted that the Ld. CIT(Appeal) failed to appreciate that genuineness of the transaction and creditworthiness of the lender was not established. The Id. Authorized

Representative, on the other hand submitted that the assessee had filed all the documents required to substantiate the fact that loan received from Mr Gokul Tandon was duly explained, however, the assessee has produced additional evidence to explain the source of money in the hands of Mr Gokul Tandon.

9.2 We have heard the rival submissions and perused the material on record. As the additional evidences are filed by the assessee in respect of genuineness of the transaction and creditworthiness, before us, in the interest of justice, we feel it appropriate to remit the matter back to the file of the Assessing Officer, to examine all the additional evidences submitted by the assessee before the Tribunal and decide the issue in accordance to law. Accordingly, the ground of the appeal is allowed for statistical purpose.

10. In ground No. 3, the Revenue has agitated the deletion of addition of Rs. 12, 33, 000/-on account of unexplained cash credit in the name of M/s Go To Customer services private limited.

10.1 The Ld. DR submitted that the in the detail of unsecured loan filed by the assessee in respect of M/s Go To Customers Service private limited and details available in the Annexure-VI to form No. 3 CD difference was found both in loan taken during the year as well as loan repaid to the said party, which could not be explained by the assessee and therefore the Assessing Officer was justified in making addition for the difference. On the other hand, the Ld. Authorized Representative relying on the order of the Ld. that Commissioner of

Income-tax(Appeals) submitted that the difference was due to an inadvertent typographical error in the amount appearing in books of accounts of the assessee, which was found to be verified with the amount appearing in the books of M/s Go To Customers Service private limited. He further submitted that inadvertent error deserve to be ignored in as much as there is no law that the assessment had to made in conformity with the tax audit report, particularly when there was no material to support such report.

10.2 We have heard the rival submissions and perused the material on record. The Assessing Officer noticed difference in the amount of loan from the aforesaid party as per the details submitted by the assessee and as per the Annexure of the tax audit report submitted by the assessee as under:

Difference in loan received

name of the person	Amount of loan received in rupees		Difference
	as per details	as per Annexure	
Go to customer service private limited	7, 69,500	5,36,500	12,33,000

Difference in loan paid

name of the person	Amount of loan paid in rupees		Difference
	as per details	as per Annexure	
Go to customer service private limited	5,23,000/-	2, 46, 500/-	12, 33, 000/-

11. As regard to the difference, the assessee explained before the Assessing Officer that same was due to typographical error in the Annexure to tax audit report and the amount reflected in the details submitted by the assessee was

correct. The assessee further explained before the Ld. Commissioner of Income-tax (Appeals) that entries in the books of accounts of the assessee were duly verified with the confirmation submitted by M/s Go To Customers Private Limited prepared on the basis of their books of account and the typographical error in the audit report may not be taken into account. The Id. Commissioner of Income-tax (Appeals) after considering the submission of the assessee accepted the genuineness of transaction supported by the evidence. The relevant finding of the Commissioner of Income-tax (Appeals) are as under:

“I have gone through the assessment order and the detailed written submissions filed by the Authorized Representative in this regard.

The appellant has taken a loan of Rs. 17,69,500/- (sic Rs. 17,79,500/-) from M/s. GoTo Customer Services Pvt. Ltd. during the financial year 2003-04 relevant for the impugned assessment year. However in the Annexure VI to Audit Report, the amount of loan taken from the said party was shown at Rs. 5,36,500/-. The difference was Rs. 12,33,000/-.

Similarly the repayment was shown at Rs. 3,10,000/- in the Annexure-VII to Audit Report against actual amount of Rs. 15,23,000/-. The difference was Rs. 12,13,000/-. The Authorized Representative has explained these discrepancies were on account of typographical errors. The Assessing Officer disbelieved and made the addition of Rs. 12,33,000/- being the difference as mentioned above. In the course of assessment proceedings, the learned Authorized Representative has brought on record the confirmation letter issued by the creditor. The creditor is also assessed to tax. The account copies in the respective books of account were brought on record. No discrepancy has been pointed out by the Assessing Officer. No enquiry has been made to verify the details furnished. There was a genuine mistake. The Assessing Officer cannot simply ignore the submissions which are supported by evidence. I am in agreement with the contentions of the Authorized Representative and there is no case for addition of Rs. 12,33,000/-“

11.1 We find that the amount of unsecured loan received and paid as per the details filed by the assessee prepared on the basis of its books of accounts were

matched with the ledger accounts confirmed by the loan creditor M/s Go To Customer services private limited, then there was no basis for the Assessing Officer for holding the loan amount appearing in tax audit report as correct and making addition for unexplained cash credit on that basis, was not justified. In view of above, we find that order of the Id. Commissioner of Income-tax (Appeals) on the issue in dispute is well reasoned and we uphold the finding of Commissioner of Income-tax (Appeals) on the issue in dispute. Accordingly, the ground of the Revenue is dismissed.

12. In ground No. 4, the Revenue has challenged the deletion of disallowance of Rs. 10,00,000/- out of various expenses claimed by the assessee.

12.1 The Ld. DR submitted that the assessee failed to produce books of accounts and vouchers claimed for the expenses of Rs. 5,49,18,182/- and therefore on ad-hoc basis disallowance of Rs. 10,00,000 was reasonable and justified.

12.2 On the other hand, Ld. AR submitted that complete books of accounts with supporting bills and vouchers were produced before the assessing officer as was evident from the letter dated 22/09/2006 filed during assessment proceeding, wherein it had been categorically mentioned that complete books of accounts were produced and therefore the disallowance on estimate basis was not justified.

12.3 We have heard the rival submission and perused the material on record. The Ld. that Commissioner of Income-tax (Appeals) has given his finding on the issue as under:

õ16 I have gone through the assessment order and the written submissions filed by the Authorized Representative in this regard.

The books of account are audited which is acknowledged by the Assessing Officer while making the addition of Rs. 12,33,000/- as mentioned in the Ground No. 4 above.

The Assessing Officer himself mentioned that that details have been furnished as seen from the first para of the assessment order which reads as under:

“Subsequently, the case was selected for scrutiny and notice u/s 143(2) was issued and served upon the assessee company. In response to that Sh. Lokenderjit Singh, Advocate appeared from time to time and filed the details, which were placed on record.”

The Authorized Representative has stated that the books of account and bills and vouchers were produced as evident from the letter dated 22.09.2006 filed before the Assessing Officer in the course of assessment proceedings.

The Assessing Officer disallowed Rs. 10,00,000/- on estimate basis very casually by simply stating that books of account were not produced contrary to the observations made by himself and the facts on record. The approach of the Assessing Officer is neither scientific nor fact based. The disallowance is totally uncalled for.”

12.4 We find that not only the assessee has averred that books of account were produced before the assessing officer but also the books of accounts of the assessee company were audited by the auditor as per company law as well as by the tax auditor. In our opinion, the findings of the Id. Commissioner of Income-tax (Appeals) on the issue in dispute are well reasoned and no interference on our part is required. Thus, we uphold the finding of the Id.

Commissioner of Income-tax (Appeals) on the issue in dispute. The ground of appeal raised by the Revenue is accordingly dismissed.

13. Ground No. 5 is general in nature and not required to adjudicate upon accordingly dismissed as infructuous.

14. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

The decision is pronounced in the open court on 28th March, 2016.

Sd/-

(H.S. SIDHU)

JUDICIAL MEMBER

Dated: 28th March, 2016.

Laptop

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi