

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "G" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI O.P. KANT

ITA No. 5651/Del/2011
Assessment Year: 2007-08

ACIT,
Central Circle-09,
New Delhi.

vs.

S.K. Electronics,
Stall No. 94,
Old Lajpat Rai Market,
New Delhi.
(PAN: AAPFS2596G)

(Appellant)

(Respondent)

Assessee by: Shri Salil Aggarwal, Sr. Adv. And Shri
Shailesh Gupta, Adv.
Department by: Shri Rishpal Bedi, Sr. DR

Date of hearing : 21 .04.2016
Date of pronouncement: 29 :04.2016

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The Revenue has questioned first appellate order on the following grounds that the Learned CIT(Appeals) has erred in law and on facts in deleting the addition:

- i) Rs.7,41,11,000 made on account of unexplained cash credit;
- ii) Rs.2,15,96,360 made on account of unexplained liability and Rs.4,40,000 made on account of web designing.

2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

3. We find a defect in questioning the deletion of addition of Rs.4,40,000 made on account of web designing questioned in ground No.2 as the issue is not emerging from the orders of the authorities below and even in the authorization under sec. 253(2) by the ACIT(Hq.) no such issue has been prescribed to be raised at the ground in the appeal preferred by the Revenue before the ITAT. This issue is thus rejected for the adjudication of the ITAT.

4. In support of the grounds, the Learned Senior DR has placed reliance on the assessment order. The Learned AR on the other hand tried to justify the first appellate order in opposition to the grounds raised in the appeal. The Learned AR at the outset of hearing pointed out that issues raised in both the grounds are fully supported with evidences and after calling the remand report from the Assessing Officer on the submission of the assessee made before him, the Learned CIT(Appeals) has decided the issues in favour of the assessee. He reiterated the submissions made before the authorities below.

5. Ground No.1: The assessee, a partnership firm with two partners, having equal shares is in the business of trading in electronics components. During the course of assessment proceedings, the Assessing Officer was not

satisfied with the genuineness of the claimed unsecured loans and thus he made addition of Rs.7,41,11,000 in this regard. The details of unexplained unsecured loans are as under:

Sl.No.	Unsecured loans/creditors	Amounts of loans (Rs.)	Peak credit addition
1	M/s. Chetan India Enterprise	55,00,000	
2	Mera Baba Real Estate P. Ltd.	22,00,000	
3	M/s. N.K. Overseas	1,05,10,000	
4	Radhu Developer Pvt. Ltd.	55,00,000	Rs.25,00,000
5	Rajat Kamal Construction P. Ltd.	2,00,00,000	
6	Rama Krishna Buildwell P. Ltd.	2,26,94,750	Rs.52,06,250
	Total	6,64,04,750	Rs.77,06,250

$$(Rs.7,41,11,000 = Rs. 6,64,04,750 + Rs.77,06,250)$$

6. Having gone through the orders of the authorities below, we find that the main ground for making the addition in question by the Assessing Officer remained that creditworthiness of the creditors was doubtful. He noted that there were frequent deposit in the bank accounts of the creditors from which cheques had been issued to the assessee firm. In the case of

Radhu Developers P. Ltd. and Rajat Kamal Construction P. Ltd., he noted that they were not available on their given addresses during the course inquiry made under sec. 133(6) of the Act. The addition of Rs.77,06,250 made by the Assessing Officer consisted of Rs.25 lacs and Rs.52,06,250 for the peak credit from the ledger account of Radhu Developers P. Ltd. and Rama Krishna P. Ltd. respectively in addition to the amount of unsecured loan. The Learned CIT(Appeals) called for the remand report from the Assessing Officer on the submission of the assessee and noted that all the payments were received in cheques from the creditors, all the creditors are identified and were having full creditworthiness. He has also noted the details of the bank accounts from which the loans have been received. That all the creditors are existing assessee of the department and they have been filing regular returns of income and unsecured loans were reflected in their respective balance sheet and the income-tax returns. The details of which were furnished before the Learned CIT(Appeals) and have been reproduced all the relevant details in para Nos. 4.5, 4.6, 4.7 and 4.8 of the first appellate order, which we are not repeating here for the sake of brevity. The Learned CIT(Appeals) has also noted the name of creditors in whose cases assessment under sec. 143(3) of the Act for the assessment year under consideration have been framed. In para No. 4.8 of the first appellate order,

the Learned CIT(Appeals) reproduced the details submitted by the assessee showing net worth of the creditors in support of their creditworthiness. In para No. 5, the Learned CIT(Appeals) has reproduced the relevant report of the remand report of the Assessing Officer reporting as “*all the transactions have been made through bank accounts and copy of their bank statements have been filed which shows the genuineness of the transaction. All the parties have filed copy of balance sheet which shows the creditworthiness of the creditors*”. We thus find that reproducing details of the creditors furnished by the assessee in his order and calling report on those submissions from the Assessing Officer, as discussed above, the Learned CIT(Appeals) has come to the conclusion and rightly so that there was considerable merits in the submissions of the assessee that all the unsecured loans were genuine as the same were examined and verified by the Assessing Officer after reexamine the creditors during the course of remand proceedings. Since the assessee in the present case has been able to establish identity, the creditworthiness of the creditors and genuineness of the claimed genuineness of the unsecured loans, we are of the view that the Learned CIT(Appeals) has rightly deleted the addition of Rs.7,41,11,000 made by the Assessing Officer on account of unexplained unsecured loan. The same is upheld. The ground No. 1 is accordingly rejected.

7. Ground No. 2: During the course of assessment proceedings, the Assessing Officer while examining the liability of payment of Rs.2,15,96,503 to Shri Kishan Chand, came to the conclusion that the land was purchased by the assessee from Shri Kailash Chand, registration was also done but on account of sale consideration only a post dated cheque was given by the assessee to the seller which was never in cash by the seller as the land was acquired by the Government of Haryana in between. Thus, the Assessing Officer treated the outstanding liability of Rs.2,15,96,503 (Rs.2,00,00,000 + Rs.15,96,503) as unexplained/bogus liability. The Assessing Officer was of the view that normally stamp duty is paid by the buyers i.e. the assessee and the assessee would have already made the payment in cash to the seller i.e. Shri Kailash Chand. The Assessing Officer accordingly made addition of Rs.2,15,96,503.

8. We find that the Learned CIT(Appeals) has deleted the addition after calling remand report of the Assessing Officer on the submission of the assessee before him. Submissions of the assessee remained that the seller Shri Kailash Chand was having agricultural land and he was expecting to get good price of the land if the same was developed into a residential zone and accordingly a Memorandum of Understanding was signed between the assessee firm and the said Shri Kailash Chand that the postdated cheque

would be encashed by the seller only when the agricultural land was converted into a residential zone. In the meanwhile, the land was acquired by the Government of Haryana and since the compensation amount was attached and received by the Assessing Officer, no payment could be made to the seller. It was submitted that as such even during the first appellate proceedings, the outstanding liability of the assessee was standing in the name of Shri Kailash Chand which was also reflected in the balance sheet. It was contended that no cash payment was made to the seller and the Assessing Officer had made addition merely on the basis of exemption. It was also pointed out that the assessee had been receiving legal notices from Shri Kailash Chand for the payment of outstanding liability against the assessee. It was submitted further that assessee was not in a position to make the payment of the outstanding liability to the seller since the Assessing Officer had attached the land compensation receivable from the LAO and the amount of Rs.4,03,59,894 was recovered and received by the TRO of the CIT-X, New Delhi. After receiving the remand report and considering the submissions of the parties, the Learned CIT(Appeals) has come to the following finding:

“6.6 I have considered the order of the A.O., remand report of the A.O. and the submissions of the assessee and I find considerable merit in the submission of the assessee. It is apparent from the available

*records as discussed above, that the assessee had entered into an agreement (MOU) vide **Annexure-B** with the seller (Sh. Kailash Chand) and a post dated cheque was issued which has not been encashed by the seller because the land has been finally acquired by the LAO, Sonapat, Govt. of Haryana. When the matter was remanded to the A.O., the A.O. has also examined the same and has noted that the land compensation receivable by the assessee was attached and the same has been collected by the TRO of CIT-X, New Delhi vide the remand report of the A.O. in **Annexure-A**.*

9. As discussed above, we find that the first appellate order on the issue is comprehensive and reasoned one. In the remand report, the Assessing Officer has also examined the issue and noted that the land compensation receivable by the assessee was attached and the same was collected by TRO of CIT-X, New Delhi. Thus, the Learned CIT(Appeals) was right in holding that there was substance in the submissions of the assessee that there was no evidence that any cash payment was made by the assessee to the seller and the outstanding liability was still standing against the assessee in the name of Shri Kailash Chand, seller, as claimed by the assessee. Thus, there was no material before the Assessing Officer to treat the outstanding liability as bogus to make the addition in question. The Learned CIT(Appeals) has thus rightly deleted the addition of Rs.2,15,96,503 in question on account of

unexplained liability. The first appellate order in this regard is thus upheld.

The ground No.2 is accordingly rejected.

10. In result, the appeal is dismissed.

Order pronounced in the open court on 29.04.2016

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 29/04/2016

Mohan Lal

Copy forwarded to:

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

ASSISTANT REGISTRAR

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