

आयकर अपीलीय अधिकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष)Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम. बालगनेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

आयकर अपील संख्या / I.T.A No. 456/Kol/2014

निर्धारण वर्ष/Assessment Year: 2008-09

Income-tax Officer, Wd-5(3), Kolkata	Vs.	M/s. Elbee Securities Pvt. Ltd. (PAN: AAACE5633N)
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Date of Hearing	22.05.2017
Date of Pronouncement	14.07.2017
For the Appellant/ अपीलार्थी	Shri Tanuj Neogi, JCIT, Sr. DR
For the Respondent/ प्रत्यर्थी	Shri D. S. Damle, AR

आदेश/ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-VI, Kolkata dated 06.12.2013 for AY 2008-09.

2. Ground no. 1 relates to deletion of addition of Rs.2,15,357/- on account of subscription expenses. For this, the revenue has raised following ground no. 1:

“1. That on the facts and in circumstances of the case, the CIT(A)-VI erred in holding that subscription expenses of Rs.2,15,357/- is allowable, without appreciating the fact that during the course of assessment the assessee failed to establish that this expenditure was incurred wholly and exclusively for the purpose of business.”

2.1. Brief facts of this issue are that the expenditure on account of subscription amounting to Rs.2,15,357/- has been disallowed which, inter alia, included Rs.1,00,000/- paid to National Stock Exchange being annual subscription for assessment year under consideration and Rs.1,15,357/- paid to ‘The Conclave’, a business club, of which director of the assessee was a member. The AO disallowed the expenditure on the ground that the assessee did not file details of these expenses. He also observed that subscriptions were in

the nature of contributions made to some parties which was non-business expenditure. Aggrieved by the order of AO, the assessee preferred an appeal before the Ld. CIT(A), who while allowing the ground of appeal of assessee has observed as under:

“6.4. I have considered the facts of the case. The subscription consists of amount paid to National Stock Exchange and to a club. In his report, the assessing officer has not raised any objection in respect of payment made to the NSE. The same is related to appellant’s business and allowable as business deduction. On payment to club, the assessing officer has expressed his view that the payment to club was not allowable. However, it has been held by a number of judicial authorities, that payment of membership fee made to club for business exigency is allowable as deduction. Some such decisions are in the cases of Sundaram Industries Ltd. 240 ITR 335, Otis Elevator Co. (India) Ltd., 195 ITR 682, Gujarat State Exports Corporation Ltd. 209 ITR 649 (Guj), Groz Beckert Asia Ltd. 31 taxmann.com 155 (P&H) etc. In view of the ratio of these decisions, the claim is allowed. In the result, the disallowance of Rs.2,15,357/- is deleted.”

Aggrieved by the said order of Ld. CIT(A), the revenue is before us.

2.2. We have heard rival submissions and gone through the facts and circumstances of the case. At the time of hearing before us, the Ld. DR vehemently supported the order of AO and urged before the bench to confirm the order of AO as the assessee did not file details of these expenses. He also submitted that subscriptions were in the nature of contributions made to some parties which was of non-business expenditure. Hence, the order of Ld. CIT(A) ought to be reversed and that of the AO be restored. On the other hand, the Ld. Counsel for the assessee submitted that the finding of the AO is self contradictory. If the assessee had not furnished the details, then on what basis the AO concluded that expenditure was for non-business purposes. In absence of the details furnished, AO could not have ascertained the purpose for which the amounts were paid. In this regard he submits that both the subscriptions were paid for business purposes and, therefore, fully allowable. He lastly submitted that the Ld. CIT(A) has rightly allowed the expenditure claimed by the assessee by observing that it has been held by a number of judicial precedents, that payment of membership fee made to club for business exigency is allowable as deduction. We note that the view of Ld. CIT(A) is in line with the decisions of Hon’ble Gujarat High Court & P&H High Court in the cases of Gujarat State Exports Corporation Ltd. Vs. CIT (1994) 209 ITR 649 (Guj), CIT Vs. Groz Beckert Asia Ltd. (2013) 351 ITR 196 (P&H). We do not find any infirmity in the order of the Ld. CIT(A) in allowing the expenses incurred for membership in club which has nexus to the business of the assessee, which is required to

forge friendship and required to entertain clients in order to make progress and benefits business in the long run. So, we uphold the order of Ld. CIT(A) and dismiss this ground of appeal of revenue.

3. Ground no. 2 relates to deletion of addition on account of unsecured loans as cash credit u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). For this, the revenue has raised the following ground no.2:

"2. That on the facts and in circumstances of the case, the CIT(A)-VI erred in holding that addition of Rs.66,52,649/- on account of unsecured loans as cash credit u/s. 68 was not warranted, ignoring the fact that at the time of assessment before the Assessing Officer the assessee failed to establish the identity, genuineness of transaction and creditworthiness of the loan creditors, which are precondition to prove the genuineness of any amount credited in the books."

3.1. Brief facts of this issue are that the assessee had obtained loans from nine parties listed on page no. 4 of the assessment order. The AO issued notice u/s. 131 of the Act to five parties. Among them three notices were returned unserved with the postal remark "not found/not known" and remaining two parties did not appear. The AO asked for explanation of the assessee. Assessee has filed written submission before the AO but he has opined that creditworthiness and genuineness of the party have not been established. Accordingly, he treated the loans of Rs.66,52,649/- as unexplained cash credit and made addition u/s. 68 of the Act. He also disallowed interest of Rs.6,66,827/- claimed in respect of the above loans. Aggrieved against the said order of AO, the assessee preferred an appeal before the Ld. CIT(A), who deleted the additions by observing in para 8.4 as under:

"I have carefully considered facts of the case. The assessing officer had made addition in respect of unsecured loans from nine parties. However, actually the loans taken during the year are from five parties only. So, in any case, no addition can be made in respect of the remaining parties. Coming to the five parties, from which loans had been taken during the year, it is seen that all of them are companies and nature of their business is stated to be NBFC. The loans given by them are by way of cheques. They are assessed to income tax. Copies of the returns filed by them have been furnished. The balance sheets, in which the loans given to the appellants are reflected, have also been furnished. The main objection of the assessing officer appears to be that most of the companies from who the appellant has shown loans have low returned income. From this, he has concluded the said companies are not creditworthy, but are engaged in jama kharchi operations. However, it is not necessary that the creditor should necessarily have high income in order to be called creditworthy. Even a person with low income can give loan, provided it is in possession of funds to be given for lending. As long as sources of fund is properly explained, no adverse inference can be drawn merely because of amount of loan is higher than income / net assets in the year. The

companies, who have given loan to the appellant, are all having balance sheet with substantial assets. Thus, they were having funds more than sufficient to advance loan to the appellant. The assessing officer's assertion that they were jama kharchi companies is an unsubstantiated allegation. While the assessing officer may have such suspicion, he has not brought out any material on record to back such an allegation. As held in the decision in the case of CIT vs. Ram Narain Goel 224 ITR 180 (P&H) and various other cases, suspicion, however strong, cannot substitute for evidence for making addition. So far as the appellant is concerned, it has provided confirmation letters from the creditors, loans are through banking channels, the creditors are assessed to Income tax and loans to the appellant are duly reflected in their balance sheets. The appellant has, in my opinion, discharged its onus regarding the unsecured loans and the same cannot be considered to be unexplained cash credit, This view is further supported by various decisions cited by the appellant, including those in the cases of Rohini Builders 256 ITR 360 (Guj.) and Nemichand Kothari 264 ITR 254 (Gau.). The addition made u/s 68 is accordingly deleted. As a logical consequence, the disallowance of Rs.6,66,827/- in respect of interest on the same is also deleted.”

3.2. We have heard rival submissions and perused the material available on record. And we fully agree with the factual finding recorded by the Ld. CIT(A). The Ld. DR could not point out any defect in the factual assertion made by the Ld. CIT(A). The borrowing in this year is only from five parties and that too from NBFC. The company from which the assessee has borrowed funds have enough assets and are income tax assessee. The assessee has discharged its burden of proof and thereafter, if the AO had to make any additions then he should have discredited the evidences adduced by the assessee. Without doing so, merely because notice of 3 creditors were returned back to him un-served, cannot be the sole basis for addition and therefore, the Ld CIT(A) has rightly deleted the same. Therefore, the view of the Ld. CIT(A) is backed by evidence and judicial precedents, therefore, does not call for any interference. This ground of appeal of revenue is dismissed.

4. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 14.07.2017

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 14th July, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Ward-5(3), Kolkata.
2. Respondent – M/s. Elbee Securities Pvt. Ltd., 19, R. N. Mukherjee Road,
2nd floor, Kolkata-700 001.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secy