

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
ITA No.521/Mum/2017
(Assessment Year :2009-10)

ITO 1(1)(2) 534, Aayakar Bhavan M.K. Road Mumbai – 400 020	Vs.	M/s. Dharmakot Investment and Trading Co. Pvt. Ltd., 8, Rajabh Mahal 144, M.K.Road Mumbai – 400 020
PAN/GIR No.		AAACD2115N
Appellant)	..	Respondent)

Assessee by	Shri Rajesh P. Shah
Revenue by	Shri Ram Tiwari
Date of Hearing	27/09/2017
Date of Pronouncement	23/10/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the revenue against the order of CIT(A)-2, Mumbai dated 18/10/2016 for the A.Y. 2009-10 in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act.

2.The following grounds have been taken by the revenue:-

(i) "Whether, on the facts and circumstances of the case and in law, the CIT(A) was right in deleting the addition of Rs.37,00,000/- made u/s.68 on account of unsecured loan by solely relying on the decision of CIT(A)-37, Mumbai in the case of Vashu Bhagnani without appreciating that the facts of that case are totally different from the instant case?"

(ii) "Whether, on the facts and circumstances of the case and in law, the CIT(A) erred in ignoring that in the case of Vashu Bhagnani, the said assessee had paid interest of Rs.4,50,000/- after effecting TDS whereas in the instant case no such transaction of interest payment has been brought on record by the assessee?"

(iii) "Whether, on the facts and circumstances of the case and in law, the CIT(A) was right in ho/ding that A O had solely relied on the

information of Investigation Wing, without appreciating the facts that assessee had failed to discharge the onus cast upon it to prove the identity & credit worthiness of the lender, as also genuineness of the transaction was not established, hence the AO was legally correct in invoking section 68 of the Income tax Act since the lender was found to be one of the group concern of Pravin Jain group engaged in providing accommodation entries and assessee's name was reflected in the list of beneficiaries of such transactions?"

The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal.

2. Rival contentions have been heard and record perused.
3. The AO has added a sum of Rs. 37,55,500/- by treating Rs. 37,00,000/- as bogus unsecured loans found to be received from one Shri Praveen Kumar Jain and further a sum of Rs. 55,500/- as commission for the above transaction and therefore arrived at a taxable income of Rs. 37,55,500/- against the loss filed by the assessee on 26.09.2009 of Rs. 11,210/-. Therefore, he issued notice u/s. 148 after receiving information from DG1T, Mumbai as the assessee is found to be accepting some accommodation loans from one Shri Praveen Kumar Jain.
4. By the impugned order, CIT(A) deleted the addition after observing that order passed by CIT(A)-37, Mumbai vide order no. CIT(A)-37/IT-119/ACIT 25(3)/2015~16 dated 14.07.2016 on identical grounds wherein the Ld. CIT(A) has decided the issue in favour of the assessee. The relevant portion is as under :

"6.6. In view of the facts and circumstances mentioned above, in my opinion, the appellant has submitted sufficient evidences to prove the genuineness of transactions during the year under consideration. The AO has solely relied upon the statements of Bhawar Lal Jain and did not carry out any worthwhile independent inquiry in the matter. He has

totally ignored the documentary evidence submitted by the appellant. The AO has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness cannot be rejected, unless and until proved otherwise by the AO, which he has failed to do. Therefore, the decision of the AO treating the same as bogus or non-genuine transactions is not in order and cannot be justified. The AO is accordingly directed to delete the addition of Rs. 50,00,000/-."

In the assessee's case the AO has solely relied on the investigation wing and further has also relied on the statement recorded from DDIT, Mumbai only. Therefore, I am inclined to follow CIT(A)'s decision cited above which was passed on 14.07.2016. So accordingly I am of the opinion that the addition made was not found to be in order and I direct the AO to delete the addition made. The grounds of appeal are allowed."

5. Against the above order of CIT(A), revenue is in further appeal before me.
6. I have considered rival contentions and found that CIT(A) has deleted the addition just by following the order of CIT(A) – 37 in some other cases. Nowhere CIT(A) has indicated how the facts of that case are identical to the facts of the instant case. From the order of AO I found that AO has discussed the issue threadbare and observed that assessee was unable to prove the identity, genuineness and credit worthiness. However, without giving any finding on these ingredients, the CIT(A) has deleted the addition just by following the order of another CIT(A). I do not find any merit in the order of CIT(A), accordingly same is set aside and matter is restored back to the file of CIT(A) for deciding afresh as per law.
7. Needless to say that assessee should be given due opportunity before deciding the issue.

8. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on this 23/10/2017

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 23/10/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai