

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.3407/Del/2014
Assessment Year : 2009-10**

Behl Promoters & Realtors Pvt. Ltd., B-29, Pamposh Enclave, New Delhi.	Vs.	ACIT, Central Circle- 21, New Delhi.
PAN : AAMPB3279L		
(Appellant)		(Respondent)

Assessee by : Shri Kapil Goel, Adv.
Department by : Shri R. C. Danday, Sr.DR
Date of hearing : 30-08-2017
Date of pronouncement : 30-10-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 24.03.2014 of CIT(A)-XII, New Delhi relating to assessment year 2009-10.

2. In ground no.1, the assessee has challenged the order of the CIT(A) in upholding the disallowance of Rs.12,05,421/- made by the Assessing Officer on account of expenses and depreciation.

3. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 30.09.2009 declaring total income of Rs.3,00,817/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee company has shown commission income and trading in fabric.

However, the commission has been raised only in the month of August, 2008 and both proceeds of Rs.5,00,000/- each were received on the same day. However, no TDS was deducted by M/s Sathi Properties and M/s Sathi Associates and further no details are mentioned in copy of the bill regarding services rendered by the assessee company for which commission was paid. The Assessing Officer further noted that the assessee has made the trading of fabric only in the month of February and March, 2009. Neither any payment was received nor any payment was made against the sale or purchase. He observed that all purchases were made from M/s Stallion Textiles and similarly all sales were made to M/s Anshu Garments Pvt. Ltd.. He, therefore, was of the opinion that the assessee has not done any business in the present year and the commission income shown by the assessee is the assessee's own money which is being introduced through this route. According to the Assessing Officer, the expenses claimed by the assessee during the year are not allowable as the assessee company has not done any work during the year. He, therefore, disallowed the expenses claimed under the head Administrative & selling expenses amounting to Rs.9,62,282/- and depreciation amounting to Rs.2,43,139/- and accordingly made addition of Rs.12,05,421/- to the total income of the assessee.

4. In appeal, ld. CIT(A) sustained the addition made by the Assessing Officer. While doing so, he observed that the assessee has received small commission only twice for which no TDS was deducted and no details were mentioned in the copy of bill regarding services rendered by the assessee for which commission was paid to them. According to him, the assessee has virtually done no business activity and has claimed huge expenses. Further, the assessee before him could not prove if there is ongoing business activity. He accordingly upheld the action of the Assessing Officer.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. Ld. counsel for the assessee strongly objected to the order of the CIT(A). He submitted that if the payer does not deduct TDS, the character of income cannot change. Referring to page 104 of Paper Book, ld. counsel for the assessee submitted that no disallowance has been made in the assessment order passed u/s 143(3) for assessment year 2008-09 under identical circumstances. Further, Assessing Officer never called for the books of account. Referring to page 58 of Paper Book, ld. counsel for the assessee drew the attention of the Bench to the Schedule – 8 : Administrative & Selling Expenses, which includes the major expenses such as rent, salary and managerial remuneration, etc.. He further submitted that the Assessing Officer has assessed the income as business

income, which was claimed by the assessee in the return of income filed. Therefore, no disallowance should have been made.

7. Ld. DR on the other hand strongly supported the order of the CIT(A). He submitted that no genuine business activity has been carried out by the assessee. Therefore, under these circumstances, the Revenue authorities are fully justified in disallowing administrative expenses and depreciation.

8. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee before us. We find the Assessing Officer disallowed the administrative expenses of Rs.9,62,282/- and depreciation of Rs.2,43,139/- on the ground that the assessee has not done any business during the year. According to him, no TDS was deducted by M/s Sathi Properties and M/s Sathi Associates from whom the commission was received by the assessee. Further, according to the Assessing Officer, the assessee company has made the trading of fabric only in the month of February and March, 2009 and neither any payment was received nor any payment was made against the sale or purchase. According to the Assessing Officer, the assessee has introduced its own money through this route and, therefore, the expenses not being genuinely incurred for the purposes of business should be disallowed. We find in appeal ld. CIT(A) upheld the action of the Assessing Officer in disallowing the administrative

expenses and depreciation. It is the submission of the ld. counsel for the assessee that the assessee has done genuine business and no such disallowance was made in the preceding year. We find merit in the submissions of the ld. counsel for the assessee that mere non-deduction of tax by the payer cannot change the character of the income. We find the Assessing Officer in the assessment order has also mentioned that assessee company has made trading of fabric only in the month of February and March, 2009. This otherwise indicates that the assessee has done some business. Further, the Assessing Officer has computed the income of the assessee as “income from business” and not income from other sources. We further find the major amount of the administrative expenses relates to the rent and selling and managerial remuneration etc.. Merely because there is meager business the same, in our opinion, cannot be a ground to disallow the various expenses incurred by the assessee. It is not the case of the Assessing Officer that such expenses are bogus or not genuine. He has merely disallowed the same on the ground that the assessee has not done any business during the year. As mentioned earlier the Assessing Officer himself has mentioned in the body of the assessment order that the assessee has done trading of fabric in the month of February and March, 2009. Considering the totality of facts of the case, we are of the considered opinion that the expenses claimed by the assessee under the head administrative and selling

expenses and the depreciation cannot be disallowed. We therefore set-aside the order of the CIT(A) and direct the Assessing Officer to allow the expenses. The first ground raised by the assessee is accordingly allowed.

9. In ground no.2, the assessee has challenged the order of the CIT(A) in disallowing the unsecured loan of Rs.1,00,05,000/-.

10. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the assessee company has received a loan of Rs.25,00,000/- from Shri Tanvir Ur Rahman which was utilized by the assessee for booking made in M/s Nagpal Builders Pvt. Ltd.. The said booking was cancelled and an amount of Rs.30,00,000/- was received back from M/s Nagpal Builders P. Ltd. on 03.11.2008 and the said amount was utilized by the assessee to transfer the same to another account and the same loan amount was outstanding at the end of the financial year. The Assessing Officer asked the assessee to prove the genuineness of the loan. Since the assessee, according to him, failed to do so and in absence of any confirmation filed by the assessee, the Assessing Officer made addition of Rs.25,00,000/- to the total income of the assessee.

11. Similarly, the Assessing Officer observed that the assessee company has not shown any work during the year but has raised unsecured loans from M/s TKS Project P. Ltd. and M/s D.D. Township Ltd. for Rs.5,00,000/- and

Rs.75,00,000/- respectively. The Assessing Officer asked the assessee to prove the genuineness of the loan. In support of its claim, the assessee company just filed only the confirmation without filing the copy of ITR and capacity to prove the genuineness of the transactions. In view of the above, the Assessing Officer held that the assessee could not substantiate the claim. He accordingly made addition of Rs.80,00,000/-. Thus, he made total addition of Rs.1,05,00,000/- to the total income of the assessee.

12. Before the CIT(A), it was submitted that the Assessing Officer has made the addition on general allegations that documentary evidence has not been furnished during the assessment proceedings. It was argued that no summons u/s 133(6) of the I.T. Act has been issued to verify the transaction. It was submitted that the assessee has filed all the details to prove the identity, creditworthiness as well as genuineness of the amount received from the above parties. However, the Assessing Officer without going through the details furnished before him and without giving any reasonable opportunity to the assessee to explain the nature and source of transaction has made the addition. Various decisions were brought to the notice of the CIT(A) for the proposition that the addition made by the Assessing Officer amounting to Rs.1,05,00,000/- is not justified.

12.1 However, Id. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the addition made by the Assessing Officer by observing as under :-

- “4.1 I have considered the ground raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*
- 4.2 The appellant has raised ground against the addition of Rs.1,00,05,000/- made on account of unproven unsecured loan. The Assessing Officer has disallowed the amount holding that genuineness of the loan and capacity to prove the creditworthiness of the persons is not proved. The appellant submitted that the said amount of Rs.1,00,05,000/- includes Rs.25,00,000/- from Tanvir Ur Rehman, Rs.5,00,000/- from TKS Projects Pvt. Ltd., Rs.75,00,000/- from DD Township Ltd. However it is evident that there is nothing to prove the genuineness of the said loans. It is for the assessee to prove the identity, creditworthiness and genuineness of the persons who have given the loan. Further, as the appellant had not done any business the reason for which the loans were taken is also not justified. During the appeal proceedings also the appellant has not proved the genuineness of the loans hence I am forced to agree with the Assessing Officer on the issue. The case law relied upon by the appellant is distinguishable on facts. The disallowance of the loan of Rs.1,00,05,000/- has been correctly made. Ground disallowed.”*

13. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before us.

14. Ld. counsel for the assessee strongly objected the addition sustained by the Id. CIT(A). Referring to page 69 of the Paper Book, he drew the attention of the Bench to the Confirmation of Accounts received from M/s D.D. Township Ltd. for Rs.75,00,000/-. He submitted that despite given PAN details of the assessee, the Assessing Officer never issued any summons u/s 131 nor called for any information u/s 133(6) of the I.T. Act. Further, all the amounts were received in cheque. Referring to page 69 of the Paper Book, he drew the

attention of the bench to the copy of the Confirmation of Accounts from M/s D.D. Township Ltd. for the assessment year 2009-10 along with copy of bank statement, copy of ITR for the assessment year 2009-10 with computation of total income. Referring to page 91 of the Paper Book, he drew the attention of the Bench to the copy of Confirmation of Accounts from M/s TKS Projects Pvt. Ltd. for the assessment year 2009-10 along with audit report. Referring to page 66 to 68 of the Paper Book, he drew the attention of the Bench to the copy of the Confirmation of Accounts from Tanvir Ur. Rehman along with copy of bank statement from 06.08.2008 to 06.09.2008, copy of ITR for the assessment year 2009-10. He submitted that the assessee has discharged the onus cast on it. However, the Assessing Officer did not issue any summons u/s 131 nor called the information u/s 133(6) of the I.T. Act.

15. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Gangeshwari Metal (P.) Ltd. reported in 361 ITR 10, he submitted that the Hon'ble High Court in the said decision has held that where there is a clear lack of enquiry on the part of the Assessing Officer once the assessee had furnished all the relevant material, in such an eventually no addition can be made u/s 68 of the I.T. Act. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. D. K. Garg vide ITA 115/2005 order dated 04.08.2017, ld. counsel for the assessee drew the attention of the Bench to para

14 of the order and submitted that the Hon'ble High Court in the said decision has held that where the assessee discharges the initial onus of establishing the identity and creditworthiness of the credit provider and the genuineness of the transactions, be it one of loan or subscribing to share capital, the onus shifts to the Revenue to show the contrary. Where the Assessing Officer fails to make such an enquiry, a Court might delete the additions made by the Assessing Officer.

16. Referring to the decision of the Hon'ble Delhi High Court in the case of Pr.CIT vs. Softline Creations Pvt. Ltd. vide ITA 504/2016 order dated 31.08.2016, he submitted that the Hon'ble High Court in the said decision has held that where the assessee has provided the PAN Numbers of the share applicants to highlight their identity as well as produced the affidavits of the Directors and the bank details of the share applicants were provided, in such circumstances, it cannot be held that the assessee has not established the identity of the share applicants, the genuineness of transactions and their creditworthiness.

17. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation P. Ltd. reported in 159 ITR 78, he submitted that the Hon'ble Supreme Court in the said decision has held that where the assessee has given the names and addresses of the alleged creditors and it was in the

knowledge of the Revenue that the said creditors were income-tax assesseees and their index numbers were in the file of the Revenue and the Revenue, apart from issuing notices u/s 131 at the instance of the assessee, did not pursue the matter further and did not examine the source of income of the said alleged creditors to find out whether they were creditworthy and in such circumstances the assessee could not do anything further and the addition made by the Assessing Officer was rightly deleted. He accordingly submitted that the order of the CIT(A) be set-aside.

18. Ld. DR on the other hand strongly supported the order of the CIT(A). Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Nipun Builders & Developers (P.) Ltd. reported in 350 ITR 407, he submitted that the Hon'ble High Court in the said decision has held that where the assessee failed to prove identity and capacity of subscriber companies who paid share application money, amount so received was liable to be taxed u/s 68 of the I.T. Act.

19. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Nova Promoters & Finlease (P) Ltd. reported in 342 ITR 169, ld. DR submitted that the Hon'ble High Court in the said decision has held that amount received by assessee from accommodation entry providers in garb of share application money, was to be added to its taxable income u/s 68 of the I.T. Act.

20. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Ultra Modern Exports (P.) Ltd. reported in 40 taxmann.com 458, Id. DR submitted that the Hon'ble High Court in the said decision has held that where in order to ascertain genuineness of assessee's claim relating to receipt of share application money, the Assessing Officer sent notices to share applicants which were returned unserved, however, the assessee still managed to secure documents such as their income-tax returns as well as bank account particulars, in such circumstances, the Assessing Officer was justified in drawing adverse inference and adding amount in question to assessee's taxable income u/s 68 of the I.T. Act.

21. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Frostair (P.) Ltd. reported in 26 taxmann.com 11, Id. DR submitted that the Hon'ble High Court in the said decision has held that where details furnished by assessee about share applicants were incorrect, addition u/s 68 was proper.

22. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. N. R. Portfolio Pvt. Ltd. reported in 263 CTR 456, Id. DR submitted that the Hon'ble High Court in the said decision has held that if Assessing Officer doubts the documents produced by assessee, the onus shifts on assessee to further substantiate the facts or produce the share applicant in proceeding.

23. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Empire Builtech (P.) Ltd. reported in 366 ITR 110, ld. DR submitted that the Hon'ble High Court in the said decision has held that u/s 68 it is not sufficient for assessee to merely disclose address and identities of shareholders; it has to show genuineness of such individuals or entities.

24. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. MAF Academy (P.) Ltd. reported in 361 ITR 258, ld. DR submitted that the Hon'ble High Court in the said decision has held that where assessee, a private limited company, sold its shares to unrelated parties at a huge premium and thereupon within short span of time those shares were purchased back even at a loss, share transactions in question were to be regarded as bogus and, thus, amount received from said transactions was to be added to assessee's taxable income u/s 68 of the I.T. Act.

25. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Focus Exports (P.) Ltd. reported in 51 taxmann.com 46, ld. DR submitted that the Hon'ble High Court in the said decision has held that where in respect of share application money, assessee failed to provide complete address and PAN of certain share applicants whereas in case of some of share applicants, there were transactions of deposits and immediate withdrawals of money from bank, impugned addition made u/s 68 was to be confirmed.

26. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Navodaya Castles Pvt. Ltd. reported in 50 taxmann.com 110, ld. DR submitted that the Hon'ble High Court in the said decision has held that in case of private limited companies, generally persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares and, therefore, an assessee cannot simply furnish some details and remain quiet when summons issued to shareholders remain unserved and uncomplied, their reluctance and hiding may reflect on genuineness of transaction and creditworthiness of creditors.

27. Referring to the decision of Hon'ble Allahabad High Court in the case of Suman Gupta vs. ITO vide ITA No.680/2012 order dated 07.08.2012, ld. DR submitted that the Hon'ble High Court in the said decision has held that where identical amounts were found to have been deposited in accounts of half a dozen lenders prior to lending, and assessee could only produce one lender for examination, addition is to be made as assessee failed to prove genuineness of loans.

28. Referring to the decision of Hon'ble Delhi High Court in the case of Sanraj Engineering Pvt. Ltd. vs. CIT vide ITA 79/2016, ld. DR submitted that the Hon'ble High Court in the said decision has held that the addition made u/s

68 on account of unsecured loans was justified, where initial onus of proving the creditworthiness of the lenders was not discharged by the assessee.

29. Referring to the decision of Hon'ble Allahabad High Court in the case of Naresh Chandra Jain vs. CIT vide ITA No.335 of 2009, ld. DR submitted that the Hon'ble High Court in the said decision has held that the Tribunal was justified in holding that amount of loan received by assessee was unexplained income u/s 68 in as much as identity, genuineness, creditworthiness of the transaction is not proved.

30. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer made addition of Rs.25,00,000/- being loan received from Shri Tanvir Ur Rahman on the ground that the assessee could not prove the genuineness and failed to file the confirmation of the said transactions. Similarly, he also added an amount of Rs.80,00,000/- being amount of Rs.5,00,000/- received from TKS Project Pvt. Ltd. and Rs.75,00,000/- received from D.D. Township Ltd. on the ground that the assessee could not prove the genuineness of the loan and had filed the confirmation without filing the copy of ITR and capacity to prove the genuineness of the transactions. We find the CIT(A) upheld the addition made

by the Assessing Officer. It is the submission of the Id. counsel for the assessee that he has filed the necessary details and the Assessing Officer without going through the details so filed made addition which has been sustained by the CIT(A).

31. So far as addition of Rs.25,00,000/- being the amount of loan received from Shri Tanvir Ur Rahman is concerned, we find from the Paper Book at page 66 that the assessee has filed the Confirmation of Accounts from Shri Tanvir Ur Rahman giving his PAN details. Similarly, we find the copy of the acknowledge of the return of income of Shri Tanvir Ur Rahman placed at page 68 of the Paper Book showing income of Rs.68,930/-. Similarly, from page 67 of the Paper Book, we find the bank statement for the period from 06.08.2008 to 06.09.2008 showing the amount of Rs.25,00,000/- given from his overdraft account.

32. Similarly, so far as the amount of Rs.75,00,000/- received from D.D. Township Ltd. is concerned, we find the assessee has filed the confirmation from the said company with PAN Number, copy of which is placed at page 69 of the Paper Book. The assessee has filed the bank statement of the said company showing the amount paid from the bank account, copy of which is placed at page 70 -71 of the Paper Book. Acknowledgement of the income-tax return filed by the said company for the assessment year 2009-10 is also placed

at page 72 of the Paper Book, the computation of income along with audited accounts are enclosed in the Paper Book from pages 73 to 90 of the Paper Book.

33. So far as the amount of Rs.5,00,000/- received from M/s TKS Project Pvt. Ltd. is concerned, we find the assessee has filed the confirmation of the said party along with PAN Number and the copy of the audited accounts. Although the said amount was received through banking channel, however, bank statement of the said company is not enclosed in the Paper Book from the confirmation filed. Thus, a perusal of the Paper Book shows that the assessee has filed certain details to establish the identity and creditworthiness of the creditor and genuineness of the transactions. However, the above details according to the Assessing Officer are not sufficient to prove the loan transactions in terms of section 68 of the I.T. Act. Further, the Assessing Officer has neither summoned the above parties nor asked the assessee to produce them before him for his examination. For accepting any cash credit/loan transactions as genuine, the onus is always on the assessee to substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and creditworthiness of the loan creditors and genuineness of the transactions. In the instant case, although certain details were filed these were not properly appreciated by the Assessing Officer nor did he issue summons u/s 131 or called for information u/s 133(6) of the I.T. Act. Considering the totality

of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the identity and creditworthiness of the loan creditors and genuineness of the transactions. The Assessing Officer shall decide the issue in accordance with law after giving one more opportunity of being heard to the assessee. We hold and direct accordingly. The second issue raised by the assessee is accordingly allowed for statistical purposes.

34. In the result, the appeal stands allowed for statistical purposes.

Order pronounced in the open court on this 30th day of October, 2017.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 30-10-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi