

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

**BEFORE SHRI G. D. AGRAWAL, PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 2342/DEL/2016 (A.Y 2012-13)

ACIT Central Circle-6, (Erstwhile Central Circle) Room No. 364, 3 rd Floor, E-2, ARA Centre, Jhandewalan Extension New Delhi (APPELLANT)	Vs	Umesh Pharmaceuticals Pvt. Ltd. C-30, Panchsheel Enclave New Delhi AAACU7237L (RESPONDENT)
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ITA No. 2343/DEL/2016 (A.Y 2011-12)

ACIT Central Circle-6, (Erstwhile Central Circle) Room No. 364, 3 rd Floor, E-2, ARA Centre, Jhandewalan Extension New Delhi (APPELLANT)	Vs	Kunal Medicare, C-30, Panchsheel Enclave New Delhi AADCK3300M (RESPONDENT)
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Appellant by	Sh. S. S. Rana, CIT DR
Respondent by	Sh. P. C. Yadav, Adv

Date of Hearing	06.06.2018
Date of Pronouncement	11.06.2018

ORDER

PER BENCH

These two appeals are filed by the Revenue against the orders dated 25/2/2016 passed by CIT(A)-24, New Delhi.

2. The grounds of appeal are as under:-

ITA No. 2342/DEL/2016 (A.Y. 2012-13)

1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 34,00,000/- based on seized documents.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition on the basis of additional evidence without giving opportunity to the A.O.*
4. *The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.*

ITA No. 2343/DEL/2016 (A.Y. 2012-13)

1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 37,50,000/- based on seized documents.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition on the basis of additional evidence without giving opportunity to the A.O.*
4. *The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.*

3. In the both the appeals, the facts are identical therefore, we are taking the facts of ITA No. 2342/DEL/2016 (A.Y 2012-13). Search and seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on the Rockland Group and its Directors on 06.09.2011. The assessee company belongs to the Rockland Group and was also covered under the search and seizure action. Based on certain seized documents the Assessing Officer considered a sum of Rs. 34,00,000/-, being unsecured loan received by the assessee, as income of the assessee. Another addition was made towards the amount disclosed by the assessee before the Settlement Commission in its bid to be admitted, but the Settlement Commission was not admitted it. Thus, the Assessing Officer made total addition of Rs.35,00,000/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR relied upon the order of the Assessing Officer. The Ld. DR submitted that the assessee received temporary loan from M/s Patliputra Entertainment Pvt. Ltd. of Rs.34,00,000/-. The Ld. DR further submitted that the assessee did not furnish any details showing that the above temporary loan was reflected in its books of account and was returned back to the party. The Ld. DR further submitted that there was no compliance to the notice u/s 133(6) issued to M/s Patliputra Entertainment Pvt. Ltd. Hence, the onus shifted to the assessee. The Ld. DR submitted that the assessee failed to discharge its onus of proving identity, creditworthiness and genuineness of the transaction. The Ld. DR also relied upon the following decisions:-

1. PCIT Vs. Bikram Singh [ITA No. 55/2017] (Delhi)
2. Sanraj Engineering Pvt. Ltd. Vs. CIT(ITA 79/2016) (Delhi)
3. Maresj Chandra Jain Vs. CIT(ITA No. 335 of 2009)(Allahabad)
4. CIT Vs. Nova Promoters & Finlease (P) Ltd (18 Taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187)
5. CIT vs. MAF Academy (P). Ltd (361 ITR 258)
6. CIT Vs. Precision Finance (P) Ltd [1995]82 Taxman 31 (Calcutta)/ [1994] 208 ITR 465 (Calcutta)/[1994] 121 CTR 20 (Calcutta)

6. The Ld. AR submitted that the CIT(A) has rightly considered this issue and passed a reasoned order.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the seized document is a letter of M/s. Patliputra Shoppers Plaza Ltd. addressed to the assessee seeking confirmation that it provided temporary loans amounting to Rs. 34,00,000/- to the assessee, which was sent through RTGS. The confirmation letter itself indicates that the loan is temporary and is interest free. These documents were

with the assessee for its confirmation of the transactions and eventually return to M/s. Patliputra Shoppers Plaza Ltd. The assessee submitted a copy of the ledger account of M/s. Patliputra Shoppers Plaza Ltd. and M/s Patliputra Entertainment P. Ltd. as well as its own bank statements showing the receipts of the money through RTGS and return of amount again by RTGS soon thereafter. The CIT(A) in Para 4.5 held as under:-

“4.5. Ground No. 14

4.5.1 The A.O noticed that certain documents have been seized during the search which indicated that the appellant company had received of Rs.15 lakhs and Rs. 19 lakhs temporarily loan from one M/s. Patliputra Shoppers Plaza Ltd., and M/s Patliputra Entertainment P. Ltd. respectively amounting to Rs. 34,00,000/- during the course of the year. He has noted in the assessment order that the appellant has not furnished any details showing that the temporarily loans had been duly reflected in the books of accounts and that the same has been returned to be party. He also noted that the appellant has not furnished any confirmation from the party in this regard. Notice u/s 133(6) issued to the party remained uncomplied with. Consequently the A.O. held that the appellant has failed to explain the transactions. Accordingly he made an addition of Rs. 34,00,000/- for the year under consideration.

4.5.2 Before me the appellant submitted the following:

(a) The seized document is itself is a letter of M/s. Patliputra Shoppers Plaza Ltd. addressed to the appellant seeking confirmation that it has provided temporarily loans amounting to Rs. 34,00,000/- to the appellant, which was sent through RTGS. The confirmation letter itself indicates that the loan is temporarily and is interest free. This documents were lying with the appellant for its confirmation of the transactions and eventual return to M/s. Patliputra Shoppers Plaza Ltd. Therefore, it is futile to say that the appellant has not provided a confirmations from the appellant.

b) The A.O has stated in the assessment order that the appellant has not furnished any details showing that temporarily loans have been duly reflected in the books and that the same has been returned. This is surprising because in the preceding para itself, the A.O noted the following:

The assessee has filed reply with the submission that:-

“These contain the details of temporarily loans received by Umesh Pharmaceuticals Private Limited assessee and then returned back. All the transactions are duly reflected in the bank account of the assessee. Copy of ledger account alongwith bank statement attached herewith.

The appellant submitted a copy of the ledger account of M/s. Patliputra Shoppers Plaza Ltd. and M/s Patliputra Entertainment P. Ltd. as well as its own bank statements showing the receipts of the money through RTGS and return of amount again by RTGS soon thereafter. Sh. Gupta, AR submitted that the conclusion of the A.O. is contradictory to the preceding paragraph which itself shows that it had filed all the details before the A.O.

4.5.3 I have considered the contents of the assessment order and as well as the submissions of the appellant. I am in full agreement with the appellant that considering that the A.O. has noted that the documents have been submitted by the appellant, it cannot be said that the appellant has not provided any details. A perusal of these documents show that the money had been received through banking channels and has been returned immediately thereafter, without the amount having been utilised by the appellant. As for the allegation that the appellant has not produced any confirmation, it needs to be emphasized that the seized document itself is a confirmation letter. To my mind, the appellant has discharged the burden on it quite satisfactorily. The non-compliance to notice u/s 133(6) by M/s. Patliputra Shoppers Plaza Ltd and M/s Patliputra Entertainment P. Ltd. .is neither a conclusive nor determinative of the addition in the appellant’s hands. In any case, it would also be noted that the non-compliance to notice u/s 133(6) by the party has not been confronted to the appellant and therefore the A.O. has not discharged the burden on him. I therefore, delete the addition in the appellant’s hands. This ground of appeal succeeds.”

Thus, the assessee has discharged its onus. We find no infirmity in CIT(A)’s order. Therefore, we are not interfering in the findings of the CIT(A). The case laws cited by the Ld. DR will not be applicable in the present case as the assessee has discharged its onus as relating to the loan transaction. Thus, appeal of the Revenue being ITA No. 2342/DEL/2012 is dismissed. As regards to ITA No. 2343/DEL/2012, the facts are identical. Therefore, appeal of the Revenue being ITA No. 2343/DEL/2012 is also dismissed.

9. In result, both the appeals of the Revenue are dismissed.

Order pronounced in the Open Court on 11th June, 2018.

Sd/-
(G. D. AGRAWAL)
PRESIDENT

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 11/06/2018
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

