

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No.6085/DEL/2015
Assessment Year: 2008-09

ACIT, Circle-10(2), New Delhi.	v.	M/s. Gurdyal Shyam Lal Pvt. Ltd., Kucha Ustad Dag, Chandani Chowk, Delhi.
TAN/PAN: AAACG 0726A		
(Appellant)		(Respondent)

Appellant by:	Shri Surjit Kumar, Sr.D.R.		
Respondent by:	None		
Date of hearing:	04	07	2018
Date of pronouncement:	17	07	2018

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 14.09.2015 passed by the CIT(A)-IV, New Delhi for the quantum of assessment passed u/s. 144 for the Assessment Year 2008-09. In the grounds of appeal, the Revenue has raised the following grounds:-

- "1. Whether on the facts and circumstances of case & in law, the Ld. CIT(A) has erred in holding that the address on notice/assessment order is different from that on the return filed by the assessee.*
- 2. Whether on the facts and circumstances of case & in law, the Ld. CIT(A) has failed to appreciate the fact return of income as well as the genuineness of the unsecured loan amounting of Rs. 97,72,281/."*

2. The brief facts are that assessee has filed its return of income declaring the loss of 13,80,692/- on 02.02.2009. The said return was selected for scrutiny and it has been noted by the Id. Assessing Officer in the assessment order that despite issuance of notices, the assessee failed to comply with the said notices and accordingly he proceeded to complete the assessment u/s.144. From the perusal of the balance sheet, he noted that assessee has shown unsecured loan amounting to Rs.97,72,281/-, which has been added by him on the ground that same is unexplained cash credit. Apart from that, Assessing Officer has noted that assessee has shown sale at Rs.25,88,565/- which has been estimated to Rs.30 lacs. After invoking the provision of Section 44AD, he worked out the net profit at Rs.1,50,000/-.

3. Before the Id. CIT(A), assessee submitted that the notices sent by the Assessing Officer were not received, because same were sent on incomplete address as the complete address is 4884, Kucha Ustad Dag, Chandni Chowk, Delhi, whereas the Assessing Officer has not mentioned Chandni Chowk, therefore, in absence of service of any notice the assessee could not appear before the Assessing Officer. Id. CIT(A) held that simply because there are unsecured loan in the balance sheet, the same cannot be added u/s.68 and even the blind estimation of sales is also incorrect. He thus deleted the entire addition.

4. At the stage of this Tribunal also, there is no compliance by the assessee on the notices sent by the Registry. It is noticed that again the address mentioned in Form-36 by the Department itself is incomplete as Chandni Chowk has not mentioned again. Already various dates of hearing have been fixed, therefore we thought appropriate to dispose of the appeal on the basis of material on record.

5. From the perusal of the order, we find that none of the authorities have given any reason either for making the addition or for deleting the same. In so far as the unsecured loans outstanding as on 31st March, 2008 as shown in the balance sheet, the assessee had given following details in the statement of facts before CIT (A) :-

Following unsecured loans were outstanding on 31.03.2008:

<i>Loan from ICICI Bank (secured by personal properties of Directors)</i>	<i>Rs. 65,03,941 .00</i>
<i>Loans from Directors</i>	<i>Rs. 19,04,000.00</i>
<i>Loans from Shareholders</i>	<i>Rs. 13,64,339.60</i>
<i>TOTAL</i>	<i>Rs. 97,72,280.60</i>

4. *The Ld. Assessing Officer had incorrectly treated all the unsecured loans as new in the assessment order passed by him. The company, during the financial year 2007-08 did not take any new loan, all the loans outstanding as on 31.03.2008 were old loans. The following table shows the balances of the unsecured loans as on 31.03.2007 and 31.03.2008:*

<i>Unsecured Loans From</i>	<i>Balance as on 31.03.2007</i>	<i>Balance as on 31.03.2008</i>
<i>ICICI Bank (secured by personal properties of the directors)</i>	<i>Rs.65,69,745.00*</i>	<i>Rs. 65,03,941 .00</i>
<i>Directors</i>	<i>Rs. 19,04,000.00</i>	<i>Rs. 19,04,000.00</i>

Shareholders	Rs. 13,64,339.60	Rs. 13,64,339.60
TOTAL	Rs. 98,38,084.60	Rs. 97,72,280.60

The balances mentioned above can also be verified with the financial statements of financial year 2006-07 & 2007-08 (attached). {ANNEXURE 5}

"The balance of loan from ICICI Bank as on 31. 03.2007 was incorrectly shown as 'Secured Loan' in the balance sheet as on 31.03.2007, as the same was secured by the personal properties of the directors and not by the assets of the company. This mistake was rectified in the next year and the balance of loan from ICICI Bank was correctly shown as Unsecured Loan in the balance sheet as on 31.03.2008.

5. *Earlier, the company was availing a Cash Credit Limit facility with the Central Bank of India (CBI), which was taken over through a loan from ICICI Bank during the Financial Year 2006-07.*

<i>Loan From</i>	<i>Balance as on 31.03.2006</i>	<i>Balance as on 31.03.2007</i>
<i>Central Bank of India</i>	<i>Rs.71,88,732.38</i>	<i>"NIL"</i>
<i>ICICI Bank</i>	<i>NIL</i>	<i>Rs.65,69,745.00</i>

The loan agreement with the ICICI Bank, loan disbursement memo and the copy of cheques issued by the ICICI Bank in the favour of Central Bank of India for closure of the loan are attached for your perusal. {ANNEXURE 3 & 4}

The balances mentioned in the table above, were also disclosed in the audited financial statements of Financial Year 2006-07 (attached). {ANNEXURE.5} "

Thus there is categorical averment by the assessee that no fresh loan has been taken in this year as these loans were appearing in the balance sheet as on 31st March, 2007. In such a case, ostensibly no addition u/s.68 can be made. On the issue of estimation of sales also no reason has been given by the Assessing Officer and invoking of Section 44AD is not correct, because assessee is not into civil construction. Under these facts and circumstances of the case, we find that in so

far as addition of Rs.97,92,280/-, the same are not sustainable, however the Assessing Officer is directed to verify that if the unsecured loan appearing in the balance sheet as on 31st March, 2008 is coming from the earlier years as stated by the assessee in the aforesaid statement of facts, then such an addition should be deleted. In so far as estimation of sales is concerned, this issue is also restored back to the file of the Assessing Officer to compute the income after verifying the books of account after giving due and reasonable opportunity to the assessee. Needless to say that the notices should be sent on the correct address as mentioned above. With this direction, the appeal of the Revenue is partly allowed for statistical purposes.

6. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on 17th July, 2018.

sd/-
[L.P. SAHU]
ACCOUNTANT MEMBER

sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 17th July, 2018

PKK:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar

		Date
1.	Draft dictated on (Direct on computer)	04.07.2018
2.	Draft placed before author	06.07.2018
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File comes back to PS/Sr. PS	
8.	Uploaded on	
9.	File sent to the Bench Clerk	
10.	Date on which file goes to the AR	
11.	Date on which file goes to the Head Clerk.	
12.	Date of dispatch of Order.	