

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.2762/Del/2015
Assessment Year: 2008-09**

Income Tax officer, Ward 54(2), Room No. 1601, 16 th floor, Civic Centre, E-2 Block, New Delhi.	vs	M/s I.O. Creations, 198, Jeevan Nagar Ashram, New Delhi-110014
Appellant		Respondent

**Department by: Shri S.L. Anuragi, Sr. DR
Assessee by : Shri Sandeep Sapra, Adv.**

**Date of hearing : 18.06.2018
Date of pronouncement : 14.09.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal is preferred by the department against the order dated 27.02.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-18, New Delhi for assessment year 2008-09.

2. Brief facts of the case are that the return of income was filed declaring an income of Rs. 64,730/-. The case was selected for scrutiny under CASS and notices were issued to the assessee from time to time on numerous occasions but the assessee did not fully cooperate in the assessment proceedings and, therefore,

the Assessing Officer proceeded to frame the best judgment assessment u/s 144 of the Income Tax Act, 1961 (hereinafter called 'the Act') by making a disallowance on account of expenses relating to salary, brokerage and commission amounting to Rs. 7,07,939/- which were debited to the Profit & loss account. Further, the Assessing Officer also made an addition of Rs. 61,46,490/- on account of deposits which had been made by the assessee in the bank account. A further addition of Rs. 74,721/- was made towards unexplained unsecured loans. The assessment was completed at an income of Rs. 69,19,163/-.

2.1 Aggrieved, the assessee approached the Id. Commissioner of Income Tax(A) who allowed the assessee's appeal by deleting all three additions. Now, the department is in appeal before the ITAT challenging the deletion of additions/disallowances by the Id. Commissioner of Income Tax(A) and has raised the following grounds of appeal:-

“(i) Whether the CIT(A) has acted in gross violation of provision u/s 250 I.T.Act read with Rule 46A(1) & (2) by admitting additional evidence contrary to provisions thereto.

(ii) Whether the CIT(A) has failed to appreciate that there is no correlation between the expenses incurred on salary and commission with respect to business activities as

assessee has received only income from interest of Rs. 12,24,000/- on which TDS u/s 194A has been deducted.

(iii) Whether the CIT(A) has failed to appreciate that assessee was given nineteen opportunity to explain the deposit of Rs.2,17,500/- in cash and Rs.59,28,990/- by transfer in his bank account and assessee failed to explain the source of deposits.

(iv) Whether the CIT(A) has erred in deleting the addition of Rs.74,721/- as the assessee has failed to file confirmation of unsecured loan during the course of assessment proceedings.”

3. The ld. Sr. DR submitted that the assessee had made no compliance to the various notices issued by the department and, therefore, the Assessing Officer had no option but to decide the case on merits based on the material available on record. The ld. Sr. DR assailed the findings of the ld. Commissioner of Income Tax(A) and vehemently argued that the disallowances/additions had been wrongly deleted by him.

4. In response, the ld. AR placed extensive reliance on the findings of the ld. Commissioner of Income Tax(A) and submitted that the ld. Commissioner of Income Tax(A) had deleted the disallowances only after obtaining the remand report from the Assessing Officer in this regard and further submitted that the order of the ld. Commissioner of Income Tax(A) was based on facts and, therefore, the same should be upheld.

5.0 We have heard the rival submissions and perused the material available on record. Although the department has raised a ground that the Id. Commissioner of Income Tax(A) has acted in violation of Rule 46A(1) & (2) of the Income Tax Rules by admitting additional evidences contrary to the provisions, we find that this ground does not hold any substance as the Id. Commissioner of Income Tax(A) has duly called for a remand report from the Assessing Officer at the time of admitting the additional evidences and this fact is duly recorded by the Id. Commissioner of Income Tax(A) in the impugned order. Therefore, this ground is dismissed.

5.1 Coming to the deletion of various disallowances and additions on merits, it is seen that as far as the deletion of addition on account of salary, brokerage and commission expenses is concerned, it is seen that this amount has been disallowed by the Assessing Officer on the ground that there was no nexus between earning of interest by the assessee firm and incurring of these expenses. The Assessing Officer was of the view that since the firm had earned interest from builders, the same was in the nature of income from other sources and, accordingly, salary, brokerage and commission were not

allowable expenses against such income. However, while allowing the assessee's appeal, the ld. Commissioner of Income Tax(A) has placed reliance on the judgement of Hon'ble Delhi High Court in the case of Snam Progetti S.P.A. vs Addl.CIT reported in (1981) 132 ITR 70 (Delhi) wherein the Hon'ble Delhi High Court has taken a broader view and has considered interest income as incidental to business income in case where the company was established for carrying on business. It is undisputed that the nature of assessee's business is sale and purchase of properties and, thus, the assessee's main source of income is business and not from income from other sources. The Hon'ble Apex Court has held in the case of C.I.T. vs Govidaa Choudhary and Sons reported in (1993) 203 ITR 881 (SC) that Section 56 of the Act relating to income from other sources is a residuary one and it is only where an income does not fall under any of the other regular sources of income, there should be need for invoking section 56. The Hon'ble Apex Court further held that where a person has only one source of income and that is business, there could hardly be any other inference. On the facts of the case, it is our considered opinion that the interest earned from the builders by the assessee during the year under

consideration was essentially in the nature of business income and, therefore, it was patently incorrect on the part of the Assessing Officer to have treated it as income from other sources and consequently disallow salary, brokerage and commission expenses. Accordingly, the ld. Commissioner of Income Tax(A) was justified in allowing the assessee's claim of expenditure towards salary, brokerage and commission and we find no reason to interfere with the findings of the ld. Commissioner of Income Tax(A) on this issue and we dismiss the ground raised by the department.

5.2 Coming to the addition of disallowance pertaining to alleged unexplained back deposits, it is seen that the ld. Commissioner of Income Tax(A) has discussed the issue at length and has given a categorical finding that the impugned amounts either pertained to amounts received from the sister concern i.e. M/s IK Onkar International or were deposited by Mr. R.S. Wahi and Mrs. S.K. Wahi (both partners of the assessee firm) from their NRO accounts. The ld. Commissioner of Income Tax(A) has further noted that an amount of Rs. 6,90,000/- was contributed by another partner Shri C.K. Wahi towards his capital account and further an amount of Rs. 33,63,990/- was received from M/s

PIDPL who was a builder and this amount was received as refund from the builder which had been given earlier for the booking of flats. The ld. Sr. DR could not point out any factual inaccuracy in the findings of the ld. Commissioner of Income Tax(A) on this issue. Accordingly, we find no reason to interfere on this issue also and dismiss the grounds raised by the department.

5.3 Coming to the last ground raised by the department which challenges the deletion of addition of Rs. 74,721/- on account of unexplained unsecured loan, it is seen that the ld. Commissioner of Income Tax(A) has again recorded a categorical finding that this loan was taken from a sister concern as a temporary loan which was repaid in the subsequent years. Here also, the ld. Sr. DR was unable to find any factual inaccuracy as recorded by the ld. Commissioner of Income Tax(A) on this issue. Accordingly, we dismiss this ground also.

6. In the result, the appeal of the department stands dismissed.

Order pronounced in the open court on 14th September, 2018.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 14th SEPTEMBER, 2018
'GS'

Copy forwarded to: -

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

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By Order
ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	