

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2718/Del/2018
Assessment Year: 2009-10

RR DISTRIBUTORS PVT. LTD.
294, 1ST FLOOR, RAJDHANI
ENCLAVE, PRITAMPURA,
DELHI – 110 034
(PAN: AAACR7497K)

VS. ITO, WARD 20(3)
NEW DELHI

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. Shafiq Khan, Advocate
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

This appeal has been filed by the Assessee against the Order dated 14.12.2017 of the Ld. Commissioner of Income Tax (Appeals)-38, Delhi relevant to assessment year 2009-10.

2. The grounds raised in the appeal read as under:-

1. *That on the facts and circumstances of the case and in view of settled law the order passed by Ld. Assessing Officer, Ward 20(3), New Delhi and subsequently affirmed/upheld by Ld. CIT(Appeal)-38, New Delhi is contrary to the facts and circumstances of case and also bad in law as the assessment proceedings initiated and concluded under section 147/148 read with section 142(1)/143(2)/143 (3) of The Income Tax Act is illegal and irrational as the reason recorded by the*

Assessing Officer for re-opening of the case were solely based on information received from DIT (Investigation)-II, New Delhi and recorded statement of Mr. Surender Kumar Jain and Sh. Virendera Kumar Jain and loose paper/Diary seized and were never corroborated and cross examined and thus remained unsubstantiated and thereby invalidating the assessment proceedings.

- 2. That on the facts and circumstances of the case and in law both the Ld. CIT (Appeal) -38, New Delhi and the Ld. Assessing Officer erred and misconstrued and were not justified in affirming/making huge addition of Rs.30,00,000/- by treating/presuming the Share Application money received during the Assessment Year under consideration as Unexplained Cash Credit u/s 68 of the Income Tax Act which is totally baseless and unjustified as all the relevant/Required documents were placed on record during assessment proceedings.*
- 3. That both the Ld. CIT (Appeal)-38, New Delhi and the Ld. Assessing Officer erred and misconstrued and were not justified as the action of the Ld. Assessing Officer in making impugned addition is unsustainable as proper and reasonable opportunity was not provided/conferred to the Assessee/Appellant Company during the course of assessment proceedings*
- 4. That the action of the Ld. Assessing Officer was unsustainable in view of the fact that copies of confirmation, ITR, Balance Sheet of all the*

companies who invested in Share Capital in the Assessee/Appellant Company were duly filed / furnished during the assessment proceedings to prove the identity, genuinity and creditworthiness which was overlooked both by the Ld. CIT(Appeal)-38, New Delhi and the Ld. Assessing Officer 20(3), New Delhi.

5. *That the both Ld. CIT (Appeal)-38, New Delhi and the Ld. Assessing Officer erred and misconstrued and were not justified in fact in charging interest under section 234B and 234C of the Income Tax Act, 1961.*
6. *That the learned Assessing Officer erred in law and in fact in initiating penalty proceedings under section 271(1) (c) of the Income Tax Act, 1961 which was subsequently affirmed by Ld. CIT(Appeal)-38, New Delhi*
7. *That the Appellant craves leave to add, modify, alter, delete or raise any other ground at the time of hearing of appeal.*

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. At the time of hearing, Ld. Counsel for the assessee stated that AO has made the addition in dispute u/s. 68 of the I.T. Act, 1961 ignoring the fact that addition in dispute has been made in the hands of the assessee company on the ground that summons/ notices issues to the companies were returned back unserved and the non-

existence of the companies as well as on the non-production of the Director of the Company. He further submitted that AO has also held that the identity of the companies were not proved and initial onus laid u/s 68 of the Act has not been discharged by the assessee. He further contended that assessee has filed all the necessary evidences before the AO as well as before the Ld. CIT(A) which has not been even considered by both the revenue authorities, resulting the addition. He has also filed the copy of the Paper Book containing pages 1 to 351 containing copy of power of attorney; certificate of no additional evidence; synopsis of the case; list of dates and events; detailed submissions with judicial pronouncements; detailed arguments in the form of written submissions before CIT-A-38, New Delhi; Annexure-1 – Copy of ITR acknowledgement alongwith computation sheet, audited balance sheet; Annexure-2 Copy of reason recorded under section of the I.T. Act, 1961; Annexure-3 copy of share application form for allotment of shares, affidavit by Directors, copy of bank statements and audited balance sheet with all Annexures; Annexure-4 copies of audited balance of investors companies alongwith necessary filed forms with ROC, New Delhi; Annexure-5 copy of assessment order dated 16.12.2016 and Annexure-6 copy of Appeal order dated 14.12.2017 passed by Ld. CIT(A)-38, New Delhi. He further submitted that assessee is ready to substantiate its claim before the AO, if this Bench set aside the issues in dispute to the file of the AO.

5. Ld. DR has not raised any serious objection on the request of the Ld. counsel for the assessee, but he has relied upon the orders of the authorities below.

6. I have heard both the parties and perused the records, especially the orders of the revenue authorities alongwith the Paper Book containing pages 1-351 as discussed above. In the interest of justice, I am of the considered view that the issue in dispute needs to be re-adjudicated at the level of the Assessing Officer. I am also of the view that Ld. CIT(A) has not considered the documentary evidences filed by the assessee and confirmed the addition in dispute which is contrary to the principle of natural justice. Secondly, in para 4.3 of the appellate order, Ld. CIT(A) has wrongly held that Report of the Investigation Wing relied upon by the AO for the addition in dispute has not been supplied to the assessee and held that no negative inference could be drawn on non-supply of Investigation Report to the assessee. Therefore, in my considered view the finding of the Ld. CIT(A) is against the principle of natural justice and contrary to law as laid down by the Hon'ble Apex Court in the case of Kishinchand Chellaram vs. CIT 125 ITR 713 at page no. 714. Keeping in view of the facts and circumstances of the present case, orders passed by the revenue authorities and the evidences produced by the assessee in shape of Paper Book, as aforesaid, I am of the considered view that in the interest of

justice, the matter needs to be reconsidered at the level of the AO. Accordingly, I set aside the issues in dispute to the file of the AO with the directions to decide the same, afresh, as per law and give adequate opportunity of being heard to the assessee. However, the assessee is at liberty to file all the necessary evidences before the AO to substantiate its claim and fully cooperate with the AO during the proceedings and did not take any unnecessary adjournment.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 31-12-2018.

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

Dated : 31-12-2018

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.