

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.3734/Del/2018
Assessment Year: 2006-07

AMS Roadlines,
160, Urban Estate-II,
Hisar, Haryana.

Vs. DCIT,
Hisar Circle,
Hisar.

PAN: AAMFA1122B

(Appellant)

(Respondent)

Assessee by	:	Shri K. Sampath, Advocate & Shri V. Rajakumar, Advocate
Revenue by	:	Ms Rakhi Vimal, Sr.DR
Date of Hearing	:	14.03.2019
Date of Pronouncement	:	29.03.2019

ORDER

This appeal by the assessee is directed against the order dated 19th March, 2018 of the CIT(A), Hisar, relating to Assessment Year 2006-07.

2. The first issue raised by the assessee in the grounds of appeal relates to the order of the CIT(A) in confirming the addition of Rs.4 lakhs made by the Assessing Officer on account of capital introduced by the partner of the firm Shri Sunny Bansal.

3. Facts of the case, in brief, are that the assessee is a partnership firm and filed its return of income on 31.10.2006 declaring a loss of Rs.6,40,000/-. The Assessing Officer, vide order passed u/s 144/263 of the IT Act made addition of Rs.7,40,000/- being the capital introduced by partners on the ground that source of introducing fresh capital remained unexplained. The details of such capital introduced are as under:-

- | | | |
|-----------------------|---|---------------|
| i) Shri Ajay Kumar | - | Rs.40,000/- |
| ii) Shri Arun Kumar | - | Rs.1,00,000/- |
| iii) Shri Mohit Syal | - | Rs.2,00,000/- |
| iv) Shri Sunny Bansal | - | Rs.4,00,000/- |

4. In appeal, the Id.CIT(A) deleted the introduction of capital by the three partners except Shri Sunny Bansal who has introduced a capital of Rs.4 lakhs. The Revenue is not in appeal against the order of the CIT(A) deleting the addition of Rs.3,40,000/-. The assessee is in appeal against the order of the CIT(A) confirming the addition of Rs.4 lakhs made by the Assessing Officer.

5. The Id. counsel for the assessee submitted that the capital introduced by any of the partners has to be taxed in the hands of the partner and not in the hands of the firm. Referring to the decision of the Hon'ble Allahabad High Court in the case of *India Rice Mills vs. CIT reported in 218 ITR 508*, he submitted that the Hon'ble High Court in the said decision has held that it was for the partners to explain the source of the deposits and if they fail to discharge the onus, then, such

deposits could be added in the hands of the partners only. He submitted that various Benches of the Tribunal are also taking this consistent view that addition, if any, can be made in the hands of the partners only and not in the hands of the firm. So far as the various decisions relied on by the CIT(A) are concerned, he submitted that those decisions relate to the addition on account of introduction of share capital and share premium by companies on the basis of report of the Investigation Wing and does not relate to any introduction of capital by any partner of a partnership firm. He accordingly submitted that the order of the CIT(A) should be reversed and the ground raised by the assessee should be allowed.

6. The Id. DR, on the other hand, heavily relied on the order of the CIT(A) and submitted that since the assessee failed to discharge the onus cast on it by proving the source of funds of the partners to invest such huge amount in the capital, the CIT(A) is justified in confirming the addition made by the Assessing Officer.

7. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before me. I find the Assessing Officer, in the instant case, made addition of Rs.7,40,000/- being capital introduced by the partners on the ground that the assessee firm could not explain the source of making investment in fresh capital. I find the Id. CIT(A) deleted the addition to the extent of Rs.3,40,000/- in respect

of three partners and sustained an amount of Rs.4 lakhs being capital introduced by one of the partners Shri Sunny Bansal on the ground that the capital contribution of Rs.4 lakhs made by Shri Sunny Bansal is not fully explained since his credit worthiness was not proved. Further, no copy of return of income for assessment year 2006-07 was filed. It is the submission of the Id. counsel for the assessee that addition, if any, could have been made in the hands of the partners and not in the hands of the firm. I find merit in the above arguments made by the Id. Counsel. It has been held in various decisions that when any partner invests or contributes in capital to the partnership firm, it is the partner who has to explain the source of such contribution and addition, if any, can be made in the hands of the partner only u/s 68 or 69 of the IT Act and no addition can be made in the hands of the firm. I find the Hon'ble Allahabad High Court in the case of India Rice Mills (supra) while dealing with an identical case has held that it is for the partners to explain the source of the deposits and if they fail to discharge the onus, then, such deposits could be added in the hands of the partners only. It was held that the Tribunal erroneously came to the conclusion that the deposits represented the undisclosed income of the assessee firm. Respectfully following the decision cited, supra, I am of the considered opinion that no addition in the hands of the firm could have been made in the instant case and addition, if any, can be made only in the hands of the partner who has contributed such capital. The order of the CIT(A) is accordingly set aside and the ground raised by the assessee on this issue is allowed.

8. The second issue raised by the assessee relates to the order of the CIT(A) confirming the addition of Rs.18,50,000/- made by the Assessing Officer on account of loan from the following three parties treating the same as unexplained:-

- | | | |
|---------------------------|---|---------------|
| a) Shri Hari Singh Poonia | - | Rs.9,50,000/- |
| b) Shri Narender Singh | - | Rs.4,50,000/- |
| c) Smt. Sneh Lata | - | Rs.4,50,000/- |

9. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the assessee firm has raised fresh unsecured non-interest bearing loans amounting to Rs.27,25,000/- from five creditors, namely, M/s Hisar Distributors, Sh. Hari Singh Poonia, Shri Narender, Shri Ravi and Smt. Sneha. Since the assessee failed to prove the genuineness of the loans, the Assessing Officer, invoking the provisions of section 68 of the Act, made an addition of Rs.27,25,000/- to the total income of the assessee. In appeal, the Id.CIT(A) deleted the addition in respect of loan obtained from M/s Hisar Distributors and Shri Ravi amounting to Rs.8,75,000/-. He, however, sustained the addition in respect of the remaining three loan creditors as mentioned above.

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

11. I have considered the rival arguments made by both the sides and perused the material available on record. I have also considered the various decisions

relied on by the Id. counsel for the assessee. I find the Assessing Officer, in the instant case, made addition of Rs.27,25,000/- u/s 68 being the amount of loan received by the assessee from five loan creditors. I find the Id.CIT(A) deleted the loan obtained by the assessee from M/s Hisar Distributors and from Shri Ravi. He, however, sustained the loan obtained from the remaining three loan creditors amounting to Rs.18,50,000/-. It is the submission of the Id. counsel for the assessee that he has filed all the details before the lower authorities and proved the identity and credit worthiness of the loan creditors and genuineness of the loan transaction. The Id. DR, on the other hand, states that the assessee has not filed the requisite details to substantiate the credit worthiness of the loan creditors and genuineness of the transaction. It is the settled proposition of law that for allowing any loan credit as genuine, the assessee has to substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and credit worthiness of the loan creditor and genuineness of the transaction. Considering the totality of the facts of the case and in the interest of justice, I deem it appropriate to restore the issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate with evidence to his satisfaction regarding the fulfillment of the above three conditions in terms of the provisions of section 68 of the IT Act. The Assessing Officer shall decide the issue as per fact and law after giving an opportunity of being heard to the assessee. I hold and direct accordingly. The second issue raised by the assessee is accordingly allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 29.03.2019.

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

Dated: 29th March, 2019

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

Asstt. Registrar, ITAT, New Delhi