

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 4962/Del/2018
Assessment Year 2011-12

| | | |
|---|-----|---|
| SPG Finvest Pvt. Ltd. 711,7 th Floor, New Delhi House, 27, Barakhamba, New Delhi – 110 001 | Vs. | ACIT, Circle – 18, New Delhi PAN AABCS3934P |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|---|
| Assessee by: | Shri Ved Jain, Advocate Mrs. Surbhi Goyal, CA Miss Umang Luthra, Advocate |
| Department by : | Shri S.L. Anuragi, Sr. DR |
| Date of Hearing | 08/01/2019 |
| Date of pronouncement | 26/03/2019 |

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 13.6.2018, passed by Ld. CIT(Appeals) 27, New Delhi for the quantum of assessment passed u/s 254/143(3) from the assessment year 2011-12.

2. The assessee is mainly aggrieved by addition of Rs. 7,00,000/- on account of unsecured loan from one person which has been added u/s 68. In this case original assessment was completed u/s 143(3) on 30.3.2014 at an income of Rs. 31,09,670/- as against the returned loss of Rs. 84,670/-. After making addition of Rs. 24,30,000/- on account of unexplained cash deposits; addition of Rs. 7 lac on account of unsecured loan; and an addition of Rs. 64,343/- on account of

expenses. In So far as the addition of Rs. 7 lacs on account of unsecured loan taken from Shri Sohan Lal Singh is concerned, the same was confirmed by the Ld. CIT(A); and in the second appeal filed by the assessee, this issue was set aside to the file of the AO to be decided afresh.

3. In the set aside proceedings, Ld. AO asked the assessee to produce Sh. Sohan Lal Singh along with copy of bank account, income tax return etc. However, the assessee could not produce the person and accordingly, addition of Rs. 7 lacs was made by the AO. Before the Ld. CIT (A) submitted that in fact no loan was taken from Shri Sohan Lal Singh but it was only repayment of advance given in the earlier years to Shri Sohan Lal Singh and this fact was duly brought to the knowledge of AO during the course of assessment proceedings vide letter dated 24.1.2018; and despite this fact addition has been made by the AO in this year. Not only that, all the necessary documents were filed before the AO to prove the identity, genuineness and creditworthiness of the said person on the advance received in the earlier assessment years which has not even addressed by the AO. That apart it was submitted that Shri Sohan Lal Singh was present before the AO during the course of assessment proceedings on 29.1.2018; and he was also examined by the AO, but this is neither borne out from the assessment order nor from the order sheet entries and it was erroneous on the part of the AO to observe that the said person did not appear before him. Accordingly, assessee has filed an affidavit of the Director and also Shri Sohan Lal Singh that both were present before the AO. Ld. CIT (A) held that the assessee's contention that it has received a loan in the earlier year was an afterthought and no supporting evidence has been given that it has received the money in the earlier year. He has also rejected the contention of the affidavit

of the person on the ground that said person could not support this contention.

4. After considering the rival submission and on perusal of the relevant facts brought on record, I find it really surprising that assessee has duly informed to the AO that it has not received any advance or loan from Shri Sohan Lal Singh during the relevant assessment year. Not only that, affidavit has been filed by the said person that he had duly appeared before the AO during the course of the assessment proceedings whose presence has not even been acknowledged in the assessment order. The assessee has given the details before the Ld. CIT (A) that as on 1.4.2010, no unsecured loan from Shri Sohan Singh was received. Relevant extract of unsecured loan stated before the Ld. CIT (A) was as under :-

| <i>Name of Party</i> | <i>Unsecured Loan as on 01.04.2010</i> | <i>Received</i> | <i>Repayment</i> | <i>Unsecured Loan as on 31.03.2011</i> |
|--|--|------------------|------------------|--|
| <i>GTM Konichiva Builders</i> | <i>5,50,000</i> | <i>---</i> | <i>---</i> | <i>5,50,000</i> |
| <i>Rajdhani Leasing & Industries Ltd</i> | <i>30,13,790</i> | | | <i>30,13,790</i> |
| <i>Dmc Education Ltd</i> | | <i>32,00,000</i> | <i>7,00,000</i> | <i>25,00,000</i> |
| <i>Total</i> | <i>35,63,790</i> | <i>32,00,000</i> | <i>7,00,000</i> | <i>60,63,790</i> |

The amount which has been repaid back in this year has been added back by the AO under section 68. If the credit has not been received in this year, then it is unfathomable that how it can be taxed as deemed income of the assessee for the relevant assessment year. Once, Rs. 7 lacs amount has not been received during the year, then there is no question of making any addition u/s 68 and same is directed to be deleted.

4. In the result the appeal of the assessee are allowed.

Order pronounced in the open court on 26th March, 2019.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 26 /03/2019

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi