

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.4583/Del/2013
Assessment Year: 2008-09

Mool Chand Textiles,
Pilkhuwa,
Ghaziabad.

Vs ITO,
Ward-1,
Hapur.

PAN: AABFM3097Q

(Appellant)

(Respondent)

Assessee by	:	Shri K. Sampath & Shri Raj Kumar, Advocates
Revenue by	:	Ms Rinku Singh, Sr. DR
Date of Hearing	:	14.03.2019
Date of Pronouncement	:	18.04.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 30th April, 2013 of the CIT(A), Muzaffarnagar, relating to assessment year 2008-09.

2. Grounds of appeal Nos.1 to 3 of the assessee read as under:-

“1. That the Ld. CIT(A) erred in law and on facts in maintaining the aggregate addition of Rs. 4,29,183=00 for alleged unexplained source of capital introduced by the partners towards the firm in the following manner and treating it as unexplained cash credits of the appellant firm.

Shri Pradeep Kumar	1,63,133.00
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Shri Vijay Kumar	1,22,295.00
Smt. Anjana Devi	1,43,755.00

2. That the Ld. CIT (A) also erred in law and on facts in endorsing the observation of the Ld. A.O. in the context of making the aforesaid aggregate addition of Rs. 4,29,183=00 that the house hold expenses of the partners were under disclosed by Rs. 4,74,000=00.

3. That the Ld. CIT (A) erred in maintaining the addition of Rs. 51,150=00 for disallowance on account of interest computed at Rs. 51,150=00 by the Ld. A.O. on the aforesaid addition of Rs. 4,29,183=00 as mentioned in ground no.1 and 2 above.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of manufacturing and sales of cotton clothes both own and on commission basis. It filed its return of income on 30th September, 2008 declaring total income of Rs.5,948/-. During the course of assessment proceedings, the Assessing Officer observed that the partners have introduced capital of Rs.4,29,183/-, the details of which are as under:-

Shri Pradeep Kumar	1,63,133.00
Shri Vijay Kumar	1,22,295.00
Smt. Anjana Devi	1,43,755.00

4. He asked the assessee firm to substantiate with evidence to his satisfaction regarding the source of introduction of the capital by the partners. It was explained that all the three partners are income-tax payees and have introduced the capital from their respective business income. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that the partners have disclosed their income u/s 44AF for the assessment year 2007-08 and no balance sheet, capital account, etc. were furnished along with the return of income. Further,

the partners have shown meager drawals for personal expenses. Therefore, it was not possible to introduce so much capital by the partners. Rejecting the various explanations given by the assessee and observing that whatever income disclosed by them is sufficient only to meet their personal expenses and nothing is left with him for investment in the partnership firm towards capital, the Assessing Officer made addition of Rs.4,29,183/- to the total income of the assessee firm by treating the same as unexplained cash credits. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer.

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

6. The Id. counsel for the assessee at the outset, submitted that addition, if any, could have been made in the hands of the partners for introduction of the capital by them and addition cannot be made in the hands of the partnership firm. He submitted that the firm was constituted on 1st April, 2007 and, therefore, it is impossible for the partnership firm to earn any income on the very first day of the year when the partnership firm was formed. Relying on the decision of the Hon'ble Allahabad High Court in the case of *Abhyudaya Pharmaceuticals vs. CIT (2013) 32 taxmann.com 68 (Allahabad)*, he submitted that the Hon'ble High Court in the said decision has held that where addition was made to assessee's income on the ground that it failed to prove the source of amount contributed by one partner, in view of the fact that it was first year of operation of the firm and it could not have personal funds and, moreover,

addition, if any, should be made in the hands of the said partner only. The addition made in the hands of the partner was accordingly directed to be deleted. Relying on various other decisions placed in the paper book, he submitted that in those cases the additions made in the hands of the firm were deleted on the ground that addition, if any, can be made only in the hands of the partners who have introduced capital in the partnership firm.

7. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). She submitted that all the partners who have introduced capital have declared their profit u/s 44AF in the previous year. The transaction was in cash and not by cheque and, therefore, it is unverifiable. None of the partners have filed the balance sheet or capital account of the contributors and the personal withdrawals declared by the partners was very low. Referring to the findings given by the Assessing Officer and CIT(A), the Id. DR submitted that they have given justifiable reasons for making the addition. Referring to the following decisions, the Id. DR submitted that where the explanation given by the firm is not satisfactory, the credits can be added in the hands of the firm:-

- (i) Multi Chemicals vs. ACIT (2001) 76 itd 367 (Del);
- (ii) Decision of the Hon'ble Patna High Court in the case of R.A. Himatsingka & Co. dated 01.07.2016 in MA No.356 of 2009 and M.A. No.49 of 2011;

- (iii) Decision of the Hon'ble Rajasthan High Court in the case of M/s Kailash Chand Agarwal dated 17.01.2017 in ITA No.75 of 2006; and
- (iv) Decision of the Hon'ble Rajasthan High Court in the case of m/s Kishorilal Santoshilal dated 06.02.1995.

8. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. It is an admitted fact that this is the very first year of the operation of the partnership firm which was constituted by a deed of partnership on 1st day of April, 2007 consisting of three partners. The three partners contributed an amount of Rs.4,29,183/- towards capital of the firm the details of which are already reproduced in the preceding paragraphs. It is the case of the Assessing Officer that the partners could not explain satisfactorily the source of introduction of capital. Their returns of income show that they have declared income u/s 44AF of the IT Act and which returns do not accompany the capital account and balance sheet of the firm. Since the partners failed to explain the source of their capital, the Assessing Officer made the addition as unexplained cash credits in the hands of the partnership firm. 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 who have introduced the capital and not in the hands of the firm. We find merit in the above argument of the Id. counsel for the assessee. Admittedly, this is the very first year of the operation of the partnership firm. Therefore, on the very first day, it cannot be said that the firm had some undisclosed income. We find the Hon'ble Allahabad High Court in the case

Abhyudaya Pharmaceuticals vs. CIT(supra) has held that addition, if any, should be made in the hands of the partners and not in the hands of the firm. The relevant observations of the Hon'ble High Court at para 16 of the order read as under:-

“16. On the facts and circumstances of this case, we are of the considered opinion that the authorities below have committed error as they have failed to take into account that this was the first year of the business of the assessee-firm. The partnership firm was formed on July 5, 1990, and on July 7, 1990, Master Shishir Garg deposited Rs. 1,90,000 and Rs. 72,000 as capital money with the firm through bank clearance of two bank drafts. The accounting period being financial year, i.e., ending on March 31, 1991, the firm could not have any income at the time of its formation. The identity of the depositor, i.e., Master Shishir Garg was not in issue at any point of time before the income-tax authorities. They treated the said deposit by Master Shishir Garg. This being so, if for one reason or the other, they were not satisfied with the financial capability of Master Shishir Garg, the amounts could have been added at the hands of Master Shishir Garg and not at the hands of firm.”

9. The various other decisions relied on by the Id. counsel for the assessee in the paper book also supports its case. The decisions relied on by the Id. DR are distinguishable under the facts and circumstances of the case since in none of the cases the issue is introduction of the capital by the partners of the firm on the very first day of the constitution of the firm. We, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to accept the capital introduced by the partners of Rs.4,29,183/- as genuine. Since the capital has been held to be genuine, the Assessing Officer is also directed to allow interest allowed to the partners on the capital. The ground Nos.1 to 3 raised by the assessee are accordingly allowed.

10. Ground of appeal No.4 by the assessee reads as under:-

“4. That the Ld CIT(A) also erred in maintaining the disallowance of Rs. 2,62,116.50 correcting it to Rs.2,52,116.50 on account of sales return as claimed by the appellant firm.”

11. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the assessee has shown sales return of Rs.2,62,116.50. On being questioned by the Assessing Officer, it was submitted that the transportation charges of the sales made are paid by the purchaser and if there is any sales return, the transportation charges on the same have to be borne by the party who is returning the goods. Since there is no transportation charges paid nor claimed in its return of income by the assessee, there is no question of submitting the evidence of transportation charges paid. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made addition of Rs.2,62,116.50 by holding the same to be suppressed sales. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer by observing as under:-

“The facts of the case as well as submissions made by the appellant have been carefully considered. It is observed that the AO had made addition of Rs.2,62,116/- on the ground that the appellant had not furnished confirmations from the persons from whom goods were received back. Further, no transportation charges were found debited to the profit & loss account. On the other hand it has been contended by the appellant that the claim of the appellant's firm was supported by copies of accounts. It is observed that the appellant neither during the course of assessment proceedings nor during appellate has furnished confirmation letters from the persons from whom goods/sales were returned back. Further, no stock register was produced so as to verify the claim of the appellant. Even in the appellate proceedings no challan/transportation receipts/debit note was furnished which could establish that the goods were actually received back. The onus was squarely on the appellant to establish his claim as genuine. However, the appellant has utterly failed to discharge his burden. Thus in absence of the same, it is held that the AO was justified in making addition of Rs.2,62,116/-. The same is hereby confirmed. Ground of appeal No.4 is dismissed.”

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

13. The ld. counsel for the assessee strongly objected to the order of the CIT(A). He submitted that the Assessing Officer as well as the CIT(A) confirmed the addition on the ground that the assessee had not furnished confirmations from the persons from whom goods were received back and no transportation charges were debited to the Profit & Loss Account. He submitted that the very basis on which the addition has been made by the Assessing Officer and sustained by the CIT(A) is factually incorrect. He accordingly submitted that the addition should be deleted.

14. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

15. After hearing both the sides and perusing the relevant material on record, we find the addition was made by the Assessing Officer on the ground that the assessee did not furnish confirmations from the persons from whom goods were received back. Further, no transportation charges were found debited to the Profit & Loss Account. It is the submission of the ld. counsel for the assessee that the claim of the assessee firm was supported by copies of accounts. It is also his submission that when the transportation charge is borne by the person who returns the goods, there is no question of debiting the same in the P&L Account. We find the assessee, during the course of assessment proceedings or appeal proceedings has not submitted the stock register so as to verify the claim of the assessee. Considering the totality of the facts and circumstances and in the interest of justice, we deem it proper to restore this issue

to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding such sales returns. The Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground No.4 raised by the assessee is accordingly allowed for statistical purposes.

16. Ground No.5 was not pressed by the ld. counsel for the assessee for which the Ld. DR has no objection. Accordingly this ground is dismissed.

17. Ground No.6 raised by the assessee relates to levy of interest u/s 234B and 234C. Charging of interest under this provision being mandatory and consequential in nature, the ground raised by the assessee is dismissed as such.

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

The decision was pronounced in the open court on 18.04.2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 18th April, 2019

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi