

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.3523/Del/2016
Assessment Year: 2012-13

Pintu,
B-208, Gali No.1,
Rajveer Colony, Gharoli Extension,
Delhi.

Vs ITO,
Ward-60(4),
New Delhi.

PAN: ARVPP5359D

(Appellant)

(Respondent)

Assessee by	:	Shri K.R. Manjani, Advocate
Revenue by	:	Shri N.K. Bansal, Sr. DR
Date of Hearing	:	30.04.2019
Date of Pronouncement	:	03.05.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 5th May, 2016 of the CIT(A)-19, New Delhi, relating to assessment year 2012-13.

2. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of taking the contracts for parking slots mainly in Connaught Place area. These contracts were taken from NDMC and were subjected to TCS. In the preceding assessment years, the assessee used to declare his income on presumptive basis and no

books of account were maintained. For the impugned assessment year, the assessee filed the original return of income on 30th September, 2012 declaring total income of Rs.4,01,260/-. Subsequently, the return was revised on 30th September, 2012 declaring the same income. This return was again revised on 14th January, 2013 declaring the total income of Rs.4,64,120/-. In response to notice u/s 143(2)/142(1), the assessee filed various details as asked for by the Assessing Officer from time to time. However, books of accounts were never produced despite being given adequate opportunities.

3. The Assessing Officer, during the course of assessment proceedings, observed that the assessee, in the original return has shown gross receipts of Rs.4,36,60,256/- and declared net profit of Rs.4,01,260/-. In the revised return, the gross receipt was declared at Rs.3,87,90,014/- and the profit determined was Rs.5,50,120/-. The Assessing Officer examined the various expenditure debited in the Profit & Loss Account and various items in the balance sheet as per the original return as well as the revised return and found substantial discrepancies in the figures of sales as well as in the figures of other expenses. He, therefore, asked the assessee to substantiate the same. Although the assessee filed certain details, no books of account were produced. The Assessing Officer, therefore, considering the profit declared by the assessee in the preceding years at 8%, determined the profit for the current year at 8% of the gross receipt originally shown at Rs.4,36,59,429/- and made addition of Rs.48,49,415/- to the total income of the assessee.

4. The Assessing Officer further made addition of Rs.20,50,340/- by disallowing part of the expenses on account of non-submission of full details for his examination. The Assessing Officer further noted that the assessee has taken unsecured loan from M/s Gautam & Company, M/s V.K. Chauhan Paints, Shri Rajpali and Shri Sahab Ram Bhati. He, therefore, asked the assessee to substantiate the same with evidence to his satisfaction regarding the identity and credit worthiness of the parties and genuineness of the transactions. The assessee instead of filing the desired details, submitted that Smt. Rajpali is the mother of the assessee who is not assessed to income-tax and it is an old loan. The other three creditors are assessed by you (i.e., the Assessing Officer). They are Shri Brij Gopal Chauhan, Proprietor of M/s V.K. Chauhan Paints, Shri Sohan Prashad Rai who is proprietor of M/s Gautam & Co., and Shri Sahab Ram Bhati. No interest has been paid to any of these persons except Shri Brij Gopal Chauhan's bank. It was submitted that the assessee shared loan taken by Shri Brij Gopal Chauhan from bank and interest claimed is proportionate to interest charged by the bank. However, the Assessing Officer was not satisfied with the explanation given by the assessee. He observed from the confirmations of these parties filed by the assessee that unsecured loan given by Shri Sohan Prashad Rai, proprietor of M/s Gautam & Company of Rs.18,50,000/-, Shri Brij Gopal Chauhan, proprietor of M/s V.K. Chauhan Paints of Rs.98,20,537/- and Shri Sahab Ram of Rs.18,00,000/- were given during the year under consideration. Since copy of their ITR and bank statements evidencing these payments were filed by the assessee, he again gave

another opportunity to the assessee to file the following details. The question No.14 issued by the Assessing Officer reads as under:-

"Vide Q No. 14 of questionnaire dated 19.12.2014 - you were requested to furnish confirmation, ITR and Bank statement of the parties from whom unsecured loans have been taken i.e. Rs. 18,50,000/- from M/s Gautam & Co., Rs. 98,20,537/- from M/s V.K Chauhan Paints, Rs. 1,18,572/- from Sh. Rajpali and Rs. 18,00,000/- from Sh. Sahab Ram Bhati. However, only confirmation of these parties could be furnished. *In order to verify the creditworthiness of the parties and genuineness of the transactions, please produce these parties for verification along with their Income tax returns and Bank statements to justify their creditworthiness.*"

4.1 The assessee in its response submitted as under:-

"4 All loans except from M/s. V.K Chauhan Paints are old ones. Consequently bank statements of creditors are not relevant for this year. In regard to M/s V.K. Chauhan Paints is proprietorship of Shri Brij Gopal Chauhan who is assessed with you and his Bank accounts are also filed in his case."

5. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that the assessee has taken an amount of Rs.18.50 lakhs from Shri Sohan Prasad, Rs.98,20,537/- from Shri Brij Gopal Chauhan and Rs.18,00,000/- from Shri Sahab Ram during assessment year 2012-13, the details of which are as under:-

Name of the party	Date of payment	Amount	Pertaining to A.Y.
Sohan Prasad Rai	06.03.2012	7,50,000	A.Y. 12-13
	27.03.2012	11,00,000	A.Y. 12-13
Brij Gopal Chauhan	31.03.2012	98,20,537	A.Y. 12-13
Sahab Ram	26.05.2011	5,00,000	A.Y. 12-13
	26.05.2011	5,00,000	A.Y. 12-13
	09.08.2011	5,00,000	A.Y. 12-13
	01.02.2011	3,00,000	A.Y. 12-13

6. Since the assessee could not satisfy the Assessing Officer in terms of the provisions of section 68 of the IT Act, therefore, the Assessing Officer made addition of Rs.36,50,000/- to the total income of the assessee. The Assessing Officer further made addition of Rs.2,55,600/- on account of low household withdrawals. Accordingly the Assessing Officer determined the total income at Rs.1,12,69,480/- to the total income of the assessee.

7. Before the CIT(A), the assessee made elaborate submissions. However, the CIT(A) also was not fully satisfied with the arguments advanced by the assessee. While he deleted the addition on account of low household expenses and part disallowance of expenses, he sustained the addition made by the Assessing Officer on account of estimation of GP and the addition on account of unsecured loans.

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

“1. The Id. CIT(A) has erred on facts as well as in law in determining profit of Rs.34,92,755/- in spite of the fact that 8% is applicable U/s. 44AD where turnover is below Rs.40 lakhs and not in cases where turnover is Rs.3,87,90,014/-.

2. The Id. CIT(A) has erred on facts as well as in law in taking turnover of Rs.4,36,59,429/- against the correct turnover of Rs.3,87,90,014/- specially when there is no material in support of turnover of Rs.4,36,59,429/-.

3. The Id. CIT(A) has erred on facts as well as in law in sustaining addition of loans of Rs.36,50,000/- in names of Shri Sohan Prasad Rai and Shri Sahab Ram even though they are regular assesseees in the same Ward in which the appellant being assessed, all details, Balance Sheet etc of these parties are with the Ld. A.O., their confirmations were duly filed with the Ld. A.O. and loans are through banking channels. Thus the assessee has discharged his onus and department has nothing against this.

4. When the Id. CIT(A) has determined the income by applying Net Profit Rate of 8%, he should have deleted income of Rs.5,50,120/- which is separately assessed in assessment order.

It is therefore prayed that income shown by the appellant may be held to be ordered to be accepted.”

9. The Id. counsel for the assessee, referring to the Profit & Loss Account for the year ending 31st March, 2012, submitted that the assessee has received parking receipt of Rs.3,87,90,014/-. The assessee has paid an amount of Rs.2,82,42,269/- to NDMC towards parking fee. Referring to Profit & Loss Account for the year ending 31st March, 2013, he submitted that as against parking receipt of Rs.3,36,65,632/-, the assessee has paid an amount of Rs.2,62,55,094/- to the NDMC towards parking fees. He submitted that for the year ending 31st March, 2013, relevant to assessment year 2013-14, the Assessing Officer has passed assessment order u/s 143(3) by disallowing certain expenses on *ad hoc* basis @ 20% and made addition of Rs.1,55,947/- to the income of the assessee. Therefore, for the current year, estimation of profit @ 8% on the incorrect receipts is not justified. He submitted that the correct receipt during the year is only Rs.3,87,90,014/- as filed in the revised return because the auditors in the original return has made the parking receipt of one of the slots twice for which this discrepancy happened. Subsequently, the assessee has terminated his services and appointed a fresh auditor. So far as the unsecured loans are concerned, he submitted that the assessee has filed the requisite details before the Assessing Officer by producing all the details, therefore, the addition made by the Assessing Officer and sustained by the CIT(A) is not justified. Referring to various pages of the paper book,

he submitted that the assessee has filed confirmations of the parties, their bank statements, income-tax returns, etc. and, therefore, no addition u/s 68 is justified.

10. The ld. DR, on the other hand, strongly supported the order of the CIT(A). He submitted that despite opportunities granted by the Assessing Officer the books of account were never produced. Further, the assessee has paid huge interest during the year which is missing in the next year which shows that there is something wrong in the accounts presented by the assessee. Referring to page 8 and 10 of the order of the CIT(A), he drew the attention of the Bench to the findings given by the CIT(A) while rejecting the book results and sustaining the addition made by the Assessing Officer by estimating profit @ 8%.

10.1 So far as the addition on account of unsecured loan is concerned, the ld. DR drew the attention of the Bench to the findings given by the CIT(A) at para 15 of his order which reads as under:-

“15, I have gone through the facts. The appellant had verified records of Sh. Brij Gopal Chauhan and after confirming the loan, no addition has been made in respect of Sh. Brij Gopal Chauhan. However, no details have been provided by the appellant in respect of Sohan Prasad Rai and Sahab Ram. He has merely stated that same are old loans, although the Assessing Officer had shown in his order that they are new loans taken during the year. Although in the submissions, the appellant had stated that confirmations have been filed but the same were not filed during the course of assessment proceedings & not during the course of appellate proceedings. Since no particulars of the unsecured creditors were provided to the Assessing Officer he cannot be expected to verify the genuineness & creditworthiness of these persons. The appellant has not even proved the identity of such persons. In view of the facts, the addition made by the Assessing Officer is confirmed.”

11. He accordingly submitted that the order of the CIT(A) be upheld and the grounds raised by the assessee be dismissed.

12. We have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that the assessee never produced the books of account before the Assessing Officer despite opportunities granted. Further, there is huge discrepancy in the amount of gross receipts shown in the original return and the revised return of income. Therefore, under the facts and circumstances of the case, the rejection of book results by the Assessing Officer is fully justified. However, the estimation of profit at 8% of the turnover appears to be on the higher side. Even if for a minute it is admitted that the gross receipts shown in the original return at Rs.4,36,60,256/- is accepted, however, there is no discrepancy in the amount of parking fees paid by the assessee to NDMC at Rs.2,82,42,269/- which constitutes about 65% of the total receipts. There is also no major discrepancy in the salary & wages, power & fuel, conveyance expenses, etc. Therefore, estimating the profit at 8% in our opinion is not justified. Considering the totality of the facts of the case, we are of the considered opinion that estimation of net profit @ 4% of the turnover as per the original return at Rs.4,36,60,256/- will meet the ends of justice. We hold and direct accordingly. The Assessing Officer will compute the NP at 4% of Rs.4,36,60,256/- and recompute the disallowance after deducting the income already shown by the assessee. We hold and direct accordingly.

13. So far as ground relating to addition u/s 68 of the IT Act on account of unsecured loan from various parties is concerned, it is an admitted fact that the assessee is changing his stand from time to time. Originally, it was submitted that these loans are old outstanding loans whereas it is the case of the Assessing Officer that all these loans were obtained during the year itself. Although the assessee has filed certain details, however, these were not sufficient enough. It is an admitted fact that the assessee during the course of assessment proceedings submitted before the Assessing Officer that they are being assessed under him. However, the Assessing Officer has not verified the returns of those loan creditors who were assessed under him to find out as to whether they have also disclosed the same in their return of income. It is the settled proposition of law that for accepting any cash credit, the onus is always on the assessee to substantiate with evidence to the satisfaction of the Assessing Officer regarding the identity and credit worthiness of the loan creditor and the genuineness of the transaction. In the instant case, the assessee, though filed certain details and tried to explain the same before us also that all these loans are reflected in the bank accounts of the respective loan creditors, however, it needs further verification at the level of the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue relating to addition u/s 68 of the Act for fresh adjudication. The Assessing Officer shall decide the issue afresh and in accordance with the law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The

second issue raised in the grounds of appeal are accordingly allowed for statistical purposes.

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

The decision was pronounced in the open court on 05.2019.

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: May, 2019

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi