

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

**BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 3439 /Del/ 2019
Assessment Year: 2015-16**

Shikhar films private limited,
A-81, F/F, NDSE Part-II,
New Delhi-110049
PAN: AAUCS3860K

Vs ACIT, Circle 23 (1),
New Delhi.

**Assessee by: Shri Ajay Wadhwa, Advocate
Revenue by: Ms NainaSoin Kapil, Sr. DR**

**Date of Hearing 03.05.2019
Date of Pronouncement 14.05.2019**

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 23/1/2019 in Appeal No 10402/17-18 passed by the learned Commissioner of Income Tax (Appeals)-8, New Delhi ("Ld. CIT(A)") assessee preferred this appeal.

2. Assessee filed the return of income on 30/9/2015 by disclosing a loss of Rs. 18,09,59,342/-and the assessment under section 143(3) of the Act was complete by order dated 27/12/2017 by making addition of rupees Rs.19,05,00,000/-under section 15 BBE of the Act and a sum of Rs. 3,75,000/-by disallowing the expenses on account of promotional

song. Appeal preferred to the Ld. CIT(A) was dismissed by way of impugned order.

3. It is the argument of the Ld. AR that the Ld. CIT(A) erred in upholding the addition of Rs. 19,05,00,000/-on account of unexplained cash credit under section 68 of the Act in respect of unsecured loan of Rs. 16,55,00,000/-and Rs. 2,50,00,000/-received by the assessee from M/s Limelight Goods Private Limited and M/s UniconVanijya Private Limited respectively despite the fact that the assessee had discharged its onus under section 68 of the Act by providing the particulars relating to identity, genuineness and creditworthiness by furnishing compelling documentary evidences. He further argued that the Ld. CIT(A) erred in not adjudicating all the ground relating to the allowing the set off of current year loss against the income assessed under section 68 of the Act and certain expenses which wereraised in the appeal before the Ld. CIT(A). He further submitted that as could be seen from the order of the Ld. CIT(A) though the assessee sought time to produce the additional evidence, Ld. CIT(A) refused the same stating that such an evidence should have been produced at the earliest point of time since the assessee being a good company had the luxury of best professional advice. He therefore submitted that the order of the Ld. CIT(A) is not well considered order and has to be set aside.

4. Per contra, Ld. DR heavily relied on the orders of the authorities below and submitted that without satisfying the conditions required for admission of additional evidence, is not open for the assessee to seek time to place the additional evidence on record. She further submitted that the Ld. CIT(A) reached a conclusion, after examination of the documents filed by the assessee during the course of assessment

proceedings, that the amounts advanced by the creditors of the assessee are disproportionately to their total income and such an aspect remained unexplained.

5. We have gone through the record in the light of the submissions made on either side. Ld. CIT(A) rejected the additional evidence on the ground that such an evidence was available with the assessee at this stage of assessment itself, it is not the case of the assessee that no adequate opportunity was provided to them, assessee being a big company with the luxury of best professionals to advise them cannot contend that they did not think it necessary to place such evidence on record at this stage of assessment and lastly, that the assessee failed to explain circumstances to plead that nonproduction of such evidence was beyond the control of the assessee.

6. It could, however, be seen from the paragraph No. 3 of the impugned order, Ld. CIT(A) recorded that on 22/11/2018 the assessee produced a paper book containing the copies of documents filed before the learned Assessing Officer and submitted that certain documents could not be submitted before the learned Assessing Officer and, therefore, they need to be filed as additional evidence under rule 46-A of the Rules, but no such an application was filed nor the additional evidence was adduced. In the circumstances, we fail to understand how the Ld. CIT(A) rejected the additional evidence that was never produced through any application under rule 46-A of the Rules. Unless the assessee files any application under Rule 46-A of the Rules, it would be difficult to assess the reasons for nonproduction of any documents at the time of assessment or to know the circumstances which prevented the assessee for producing the same before the learned Assessing Officer.

7. Vide grounds No. 6 to 8 in the appeal before the Ld. CIT(A), the assessee challenged the addition under section 68 of the Act in the light of an amendment to section 115 BBE w.e.f. 1/4/2017 prohibiting the set off losses from the addition under section 68 or section 69 or 69-A or section 69-B or section 69-C or section 69-D of the Act and the said amendment will not be applicable to the assessment year 2015-16 and the disallowance of the expenses. The impugned order, however, does not show any discussion on these grounds.

8. Further, in respect of the addition of Rs. 19,05,00,000/-on account of unexplained cash credit under section 68 of the Act, grievance of the assessee is that though the confirmations, ITRs, bank statements, financial statements etc were produced before both the authorities, the impugned order does not show that such documents were considered by the Ld. CIT(A) on the aspect of the loans received by the assessee company.

9. In these circumstances, we find it difficult to brush aside the submissions made on behalf of the assessee that the impugned order does not show the due consideration of the matter by the Ld. CIT(A) in a proper perspective and it requires to be remanded to the file of the Ld. CIT(A) for consideration of all the facts and circumstances of the case with reference to the circumstances and contentions of the assessee seeking to file the additional evidence. We are, therefore, of the considered opinion that the matter requires a detailed consideration by the Ld. CIT(A) and Ld. CIT(A) has to consider and adjudicate the grounds of appeal of the assessee and also the reasons seeking admission of the additional evidence under Rule 46-A of the Rules. So also, Ld.

CIT(A) would educate all the grounds of appeal before him and pass a reasoned order.

10. The impugned order is, therefore, set aside and the matter is remanded to the file of the Ld. CIT(A) for adjudication in the light of our above observations.

11. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 14th May, 2019.

Sd/-
(G.D. AGARWAL)
VICE PRESIDENT
Dated: 14th May, 2019

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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